

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF)	
OKLAHOMA; THE CHIRICAHUA)	
APACHE TRIBE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 30, 48,
)	30-A, and 48-A
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 26, 1974

FINDINGS OF FACT ON ATTORNEY EXPENSES
OF ROY T. MOBLEY

The Commission makes the following findings of fact.

1. Petition for Reimbursement of Attorney Expenses. On March 25, 1974, Mr. Kenneth Simon, attorney for Mr. Roy T. Mobley, petitioned this Commission for reimbursement of \$3,689.26 of Mr. Mobley's expenses as one of the contract attorneys for the Chiricahua and Warm Springs Tribes of Apache Indians, plaintiffs in Dockets 48 and 48-A. The petition was accompanied by a statement of reimburseable expenses and an affidavit by Mr. Simon. It was supported in part by a copy of excerpts from a diary of travel and other expenses kept by Mr. Mobley, and by various bills, receipts, and cancelled checks or photostats thereof.

2. Award and Attorney Contracts. On November 7, 1973, we issued findings of fact on attorneys' fee in this proceeding, in respect to a petition for award of attorneys' fee filed by I. S. Weissbrodt. See 32 Ind. Cl. Comm. 216. Our findings 1 and 4 thereof, setting forth

details of the award and attorney contracts in this proceeding, are hereby incorporated by reference.

In sum we find that Mr. Mobley represented the Chiricahua and Warm Springs Tribes of Apaches under Contract No. I-1-ind. 42132, dated March 5, 1948. The contract was amended on September 30, 1948, striking out all provision for reimbursement of attorney expenses. The amended contract was approved by the Department of Interior for ten years on January 7, 1949, and extended for ten years beginning January 7, 1959. Mr. Mobley entered the employ of the Federal Government on November 1, 1948, and on April 3, 1950, assigned all of his interest in the contract to Attorney Guy Martin. The assignment was approved by the Department of Interior on April 26, 1950. Mr. Mobley's federal employment ended on July 4, 1952.

On April 29, 1957, the Bureau of Indian Affairs approved, as an assignment by Guy Martin to Mr. Mobley, an agreement reemploying Mr. Mobley as attorney under the same contract in association with Guy Martin. On July 23, 1957, the Bureau approved an agreement whereby William A. Sloan, Esquire, became associated as an attorney under the contract along with Roy T. Mobley and Guy Martin. On July 12, 1960, the Solicitor of the Department of the Interior approved a further agreement whereby the contract with Attorneys Mobley, Martin, and Sloan was extended, as of January 7, 1959, for a ten-year period thereafter. The agreement was extended for an additional five years from January 7, 1969.

3. Notice to Parties. Notice of the filing of the application for allowance of Mr. Mobley's attorney's expenses, together with copies of the application and the statement in support thereof, were mailed by the Deputy Clerk of the Commission on March 25, 1974, to:

- a. Mr. Talbert A. Gooday, Chairman, Fort Sill Apache Tribe,
- b. Mr. Wendell Chino, President, Apache Tribe of the Mescalero Reservation,
- c. Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, U. S. Department of the Interior, and
- d. Honorable Wallace N. Johnson, Assistant Attorney General, Land and Natural Resources Division, Indian Claims Section, U. S. Department of Justice.

4. Response of Fort Sill Apache Tribe. The Chairman of the Fort Sill Apache Tribe replied to the notice on April 8, 1974. The reply, which was filed on April 10, 1974, states that that tribe did not deal with Mr. Mobley, and requests that the Commission verify and determine Mr. Mobley's entitlement to the petitioned-for reimbursement before allowing any portion of same.

5. No Response by Apache Tribe of the Mescalero Reservation. The Chiricahua and Warm Springs Apache Tribes of the Mescalero Reservation have not responded to the Commission's notice of Mr. Mobley's petition for reimbursement of expenses.

6. Defendant's Response. The Department of Justice responded to the notice on May 16, 1974. Enclosed with the response, which was filed on May 17, 1974, was a copy of a letter dated May 10, 1974, from the

Associate Solicitor for Indian Affairs, United States Department of Interior, transmitting a copy of a memorandum dated April 19, 1974, from the Acting Deputy Commissioner of Indian Affairs. The latter memorandum noted, inter alia, that the expense petition lists expenses dated August 7, 1956, through April 14, 1957, which was during the period when Mr. Mobley was without contract authority to represent the Chiricahua and Warm Springs Apache Indians as their tribal claims counsel. The Department of Justice interpreted this as an objection by the Department of Interior to those expenses, and concurred therewith.

7. Amended Petition for Reimbursement of Attorney Expenses. On June 6, 1974, Mr. Kenneth Simon filed an amended petition for reimburseable expenses of Roy T. Mobley. The amended petition deleted from the original petition the expenses for the period August 7, 1956, through April 14, 1957, which were objected to by the Department of Justice as being without contract authority. This left a net balance of claimed expenses of \$3,041.16.

8. Seconded Amended Petition. Upon notification that certain claimed expenses were not adequately substantiated, Mr. Simon, on October 23, 1974, filed a second amended petition for reimburseable expenses of Roy T. Mobley, deleting or reducing a number of claimed expenses, and supplying an affidavit of Mr. Mobley further explaining other claimed expenses. The amendment reduced the net amount claimed to \$2,868.61.

9. Disallowed Expenses. 1958, Item #4: The net amount claimed under this item is \$101.82 representing a claimed pro-rata share of expenses incurred on a trip to Washington, D. C., on behalf of the plaintiffs in this proceeding and on behalf of the Jicarilla Apache Tribe in Docket 22-A. Mr. Mobley alleges total diary expenses on this trip of \$337.48, one-half of which (\$168.74) allegedly should be charged to this case, less \$66.92 already received as reimbursement from Attorney Sloan, leaving a net claim of \$101.82.

However, the portions of Mr. Mobley's diary which were submitted to support this claim total only \$269.38. No evidence was submitted to show amounts for lodging and "miscellaneous" expenses. Seventy-five cents of the claimed amount is for cab fares to the Washington Monument and the Capitol. This amount will be disallowed as apparent sightseeing expense. The balance of the unsupported claim will also be disallowed. Our computations are as follows. \$269.38 less .75 disallowed cab fare, leaves \$268.63. Half of this amount, or \$134.32, less the \$66.92 paid by Mr. Sloan, leaves an allowable amount of \$67.40. The difference between the \$101.82 claimed and the \$67.40 allowable, leaves a net disallowable amount of \$34.42.

10. Allowable Expenses. The balance of the claimed expenses are allowable, except for an apparent error in addition which reduces the total amended claim for 1960 from \$515.83 to \$514.32. The allowable expenses are summarized as follows:

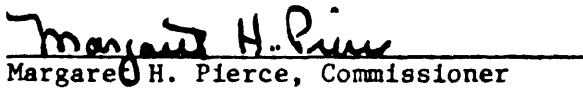
1957 - \$ 40.14
1958 - 1,431.29
1959 - 846.93
1960 - 514.32
Total \$2,832.68

11. Conclusion. The Commission concludes that Roy T. Mobley is entitled to receive \$2,832.68 in reimbursement of his expenses as an attorney in this proceeding.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner