

BEFORE THE INDIAN CLAIMS COMMISSION

CITIZEN BAND OF POTAWATOMI INDIANS)	
OF OKLAHOMA)	
and)	
)	
POTAWATOMIE NATION REPRESENTED BY)	
THE CITIZEN BAND OF POTAWATOMI)	Docket No. 217
INDIANS OF OKLAHOMA, et al.,)	
)	(Consolidated with Docket
Plaintiffs,)	Nos. 15-K and 29-J)
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER ALLOWING EXPENSES INCURRED BY ATTORNEYS
REPRESENTING THE CITIZEN BAND OF POTAWATOMI TRIBE OF INDIANS

HAVING CONSIDERED the application for reimbursement of attorneys' expenses filed by Jack Joseph, for and on behalf of the contract attorneys for the Citizen Band of the Potawatomi Tribe of Indians; the defendant's response thereto; the attorneys' employment agreements; and the record in its entirety; the Commission finds that

1. Award. On April 25, 1973, the Commission entered a final award in favor of the plaintiff Citizen Band and the other plaintiffs in this consolidated case in the sum of \$4,104,818.98 "on behalf of the Potawatomi Tribe or Nation." (30 Ind. Cl. Comm. 144). Funds to satisfy the award were appropriated by the Congress on January 3, 1974 (87 Stat. 1071).

2. Application. The petition for reimbursement of expenses was filed on May 10, 1974, by Jack Joseph, one of the contract attorneys. On July 31, 1974, he filed a supplement to the petition in which he detailed the claimed expenses and furnished documents in support of the application. The total of the expenditures for which reimbursement was sought was \$42,269.37.* However, by letter dated October 29, 1974, Mr. Joseph requested that the first four items in the supplemental petition be withdrawn since those items of expense had previously been allowed for reimbursement. Items 1 through 4 total \$29,983.21, and their withdrawal reduced the total amount claimed to \$12,286.16.

*This sum and certain other figures in the petition reflected mathematical or typographical errors. They have been corrected in these findings to show the true amounts claimed.

The Citizen Band of Potawatomi Indians was initially represented by two sets of contract attorneys. All of the original members of those two firms are now deceased. The first firm was Blake, Voorhees & Stewart. Giddings Howd was the last active attorney in that firm, and his executor, the Bank of New York, succeeds him in liquidating the partnership assets. The expenses incurred by that firm for which reimbursement is now claimed total \$11,132.22, and they are referred to as the Howd expenses.

The other law firm which represented the Citizen Band was Adams, Moses & Culver, a partnership of Howard Moses and Charles G. Culver, both of whom are now deceased. The expenses incurred by Messrs. Culver and Moses for which reimbursement is now claimed total \$1,153.94. However, the estates of Howard Moses and Charles G. Culver have been reimbursed this amount by the firm of Joseph & Friedman and by Louis L. Rochmes. Accordingly, the \$1,153.94 is now claimed on behalf of Mr. Rochmes and the firm of Joseph & Friedman.

3. Attorneys' Contracts. The plaintiff, Citizen Band of Potawatomi Indians, entered into Contract No. I-1-ind. 42065, dated April 17, 1948, with the law firms of Blake, Voorhees & Stewart and Adams, Moses & Culver. This contract was approved by the Commissioner of the Bureau of Indian Affairs on August 4, 1948, for a period of ten years beginning with the date of approval. An amendment to the contract, approved on September 28, 1956, provided that reimbursement of attorney expenses shall conform to the provisions of Section 15 of the Act of August 13, 1946, 60 Stat. 1049. The contract was extended for five years beginning August 4, 1958, and this extension was approved on March 17, 1958. The association of Louis L. Rochmes under the aforesaid contract was approved on May 3, 1963.

The same parties then entered into contract, Symbol 14-20-0200, No. 1837, dated July 27, 1963, which was approved on August 28, 1963. Under this contract the provisions of Contract I-1-ind. 42065 were extended for five years beginning August 5, 1963; and an amendment to the contract making Louis L. Rochmes a party thereto was approved on January 7, 1966. Mr. Jack Joseph of the law firm of Joseph & Friedman was made a party to the contract by an amendment which was approved on February 7, 1973; and the contract was extended until August 5, 1978, by approval on December 17, 1968.

Generally, contract I-1-ind. 42065 provided that all expenditures shall be itemized and verified by the parties and shall be accompanied by proper vouchers and shall be allowed and reimbursed from the amount of any judgment received, such reimbursement of actual expenses to be fixed by the Indian Claims Commission as provided by the Act of August 13, 1946, supra.

4. Notification. By letter of August 2, 1974, the Commission notified all parties of the filing of the application and supplement thereto. No reply has been received from the representatives of the Citizen Band of Potawatomi Indians. The Department of Justice did not take a position regarding the amount

of expenses which should be awarded pursuant to the application for reimbursement, but in response to the Commission notification, transmitted correspondence dated September 23, 1974, from the Office of the Solicitor, Department of the Interior, including a memorandum to the Solicitor from the Bureau of Indian Affairs. In the memorandum, dated September 6, 1974, the Solicitor was informed that Items 1 to 4, inclusive, of the supplement to the application for reimbursement of expenses were asserted for expert assistance and were not sufficiently documented; and that due to the lack of such supporting evidence no further comment could be made concerning the compensability of costs of expert assistance for which reimbursement was sought herein. However, as noted in finding 2, supra, items 1 through 4 have been withdrawn from the application.

6. Determination of Expenses. The aforesaid attorneys' contract with the plaintiff and Section 15 of the Indian Claims Commission Act of August 13, 1946, supra, provide for the reimbursement of actual and reasonable expenses incurred in the prosecution of this claim. After examination of the vouchers and other documentation concerning the actual expenditures made by the attorneys during the course of the present litigation, the Commission concludes that the items of expenses should be accepted according to the itemization set forth in the supplement to the petition for reimbursement of expenses in this docket, with the exception of the following items:

A. Three items under the "Howd" expenses are not supported by any receipts or vouchers. In each instance the only supporting evidence is the canceled check or a photocopy of the check stub, which shows that Giddings Howd was both the maker and payee, and the check or stub bears a notation referring to travel. However, there is no listing of the individual items of expense (such as meals, lodging and transportation) which were incurred on the trip. In the absence of vouchers, receipts, or some contemporaneous documentation itemizing these general expense items, they cannot be approved for reimbursement. The disallowed items, which total \$260.34, are:

Item 9. Check #2, November 12, 1963, \$56.85, with certain unexplained numbers totaling \$56.85, and notation on reverse side of check "Re trip to Wash. D. C. 10/1/63 and return."

Item 25. Check #38, April 26, 1965, \$68.97, with photocopy check stub showing "Indian - W.D.C. 4/1-2/65. Sta. 4/23."

Item 34. Check #52, December 2, 1965, \$134.52, with photocopy of check stub showing "Trip to Chicago, 11/18-21 and Oklahoma Indians, Docket 217."

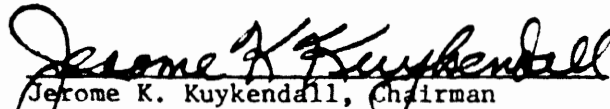
B. The second category involves three items, namely, Item 56-A (\$222.49), Item 72 (\$237.47), and Item 86 (\$184.45), for a total of \$644.41. The evidence shows that these expenses were incurred in the prosecution of the claims in Docket 96. The claims in Docket 96, in which the Citizen Band of Potawatomi Indians was also the plaintiff,

involved the Citizen Band's interest in certain reservation lands in Oklahoma. The unallotted lands in the reservation, which had been created under the provisions of the Treaty of February 27, 1867, 15 Stat. 531, were ceded to the United States by the Agreement of June 25, 1890, 26 Stat. 989, 1016. A final judgment in Docket 96, in the amount of \$797,508.99, was entered for the Citizen Band of Potawatomi Indians of Oklahoma on August 27, 1968, 19 Ind. Cl. Comm. 368. The claims in Docket 96 are not in any way related to the claim in this consolidated case, which involves lands in Wisconsin and Illinois which the Indians ceded to the United States under the Treaty of July 29, 1829, 7 Stat. 320. Therefore, expenses incurred in the prosecution of the Docket 96 claims are not proper items for reimbursement from the judgment in this case.

6. Conclusion. Deducting the rejected expenses of \$904.75 from the claimed "Howd" expenses of \$11,132.22 leaves a balance of \$10,227.47. This sum represents expenditures which are reasonable and proper attorney expenses incurred in the prosecution of the claim in Docket 217. The entire sum of \$1,153.94 claimed by Mr. Rochmes and the law firm of Joseph & Friedman represents expenditures which are reasonable and proper attorney expenses incurred in the prosecution of the claim in Docket 217.

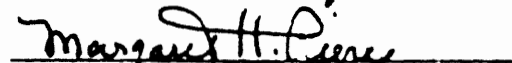
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered April 25, 1973, there shall be disbursed to Louis L. Rochmes, attorney of record, the sum of \$11,381.41 as reimbursement in full for expenditures made in the prosecution of the claim in Docket 217, said sum to be distributed by Mr. Rochmes to all parties entitled to share in this reimbursement.

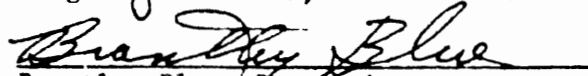
Dated at Washington, D. C., this 7th day of February 1975.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner