

BEFORE THE INDIAN CLAIMS COMMISSION

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| PRAIRIE BAND OF THE POTAWATOMI |) | |
| TRIBE OF INDIANS, et al., |) | Docket No. 15-M |
| |) | |
| Plaintiff, |) | (Consolidated with |
| |) | Docket Nos. 146 and 29-K) |
| v. |) | |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

ORDER ALLOWING EXPENSES INCURRED BY ATTORNEYS FOR THE
PRAIRIE BAND OF POTAWATOMI TRIBE OF INDIANS

HAVING CONSIDERED the application for reimbursement of attorneys' expenses filed on June 10, 1974, by Robert Stone Johnson, attorney of record on behalf of all the attorneys having an interest in reimbursement of the expenses advanced in the prosecution of this claim; the expense schedules, vouchers, and other supporting documentation; the response to said application filed on August 5, 1974, by the United States Department of Justice; and the contracts under which counsel prosecuted this claim, the Commission finds as follows:

1. Award. On April 19, 1974, the Commission entered a final award in favor of the plaintiff tribe (Prairie Band) and the other plaintiffs in this consolidated case in the amount of \$2,296,870.70 "on behalf of the Potawatomi Tribe or Nation." (34 Ind. Cl. Comm. 1). Funds to satisfy the award were appropriated by P.L. 93-554, approved December 27, 1974.

2. Attorneys' Contracts. The first contract of record No. I-1-ind. 18372, dated October 22, 1947, was entered into by the plaintiff tribe with the law firm of Stone, McClure, Webb, Johnson and Oman. This firm was dissolved on November 15, 1947, with Attorney Robert Stone continuing to represent the Prairie Band. The association of Attorney O. R. McGuire with Robert Stone was approved on January 19, 1948. Through a series of assignments beginning in 1953 and duly approved by the Department of the Interior, various percentage interests in the contract were retained by O. R. McGuire, Robert Stone, Robert S. Johnson and Beryl S. Johnson. No interest in fee or reimbursable expenses was retained by Attorneys McClure, Webb, and Oman.

Contract No. 18372 was superseded by contract Symbol 14-20-0200, No. 1856, dated December 12, 1964, between the Prairie Band plaintiff and Robert Stone Johnson and Beryl R. Johnson. This contract, approved on December 29, 1964, was extended for a period of ten years beginning on December 29, 1969. Contract No. 1856 provides that claims counsel shall be allowed and reimbursed for actual expenses incurred by them as may be fixed by the court, tribunal or Commission.

The record discloses that, subsequent to the execution of the aforesaid contracts and assignments, Robert Stone and O. R. McGuire have died on June 24, 1957, and August 27, 1963, respectively.

3. Expense Application. The application filed by Robert Stone Johnson on June 10, 1974, requests reimbursement of litigation expenses of \$8,185.67 incurred in the prosecution of this claim. All of the claimed expenses were incurred by Robert Stone Johnson, with the exception of expenses of the late O. R. McGuire, in a total amount of \$1,126.85. The claimed expenses include the amount of \$5,912.75 which is the Prairie Band's share of the compensation and expenses of expert appraisers employed jointly by counsel in this case and counsel in Dockets 146 and 40-K. The said amount of \$5,912.75 includes moneys advanced and actually paid to the witnesses over the course of these proceedings, and a balance of \$3,378.92 which is firmly obligated and owed by Mr. Johnson to the estate of J. W. Trygg deceased, one of the expert witnesses in this claim.

4. Notification. The Clerk of the Commission has timely notified the appropriate parties, including the tribal client herein (Prairie Band), and the United States Departments of Justice and Interior. The tribal client has filed no response to date. On August 5, 1974, the Department of Justice filed a response which included a copy of an examination and comments respecting the application, made by the Acting Deputy Commissioner of Indian Affairs of the Department of the Interior, and dated July 9, 1974. The Department of Justice has taken no position with reference to the amount claimed herein. In its July 9, 1974, examination, the Department of the Interior concluded that, with one exception, the categories of expenses claimed are adequately documented and appear reasonable and proper for reimbursement. The one exception, comprised of items dated May 13, 1974, and subsequent thereto, are discussed in finding 5, infra.

5. Determination of Expenses. Section 15 of the Indian Claims Commission Act (60 Stat. 1049) provides for the reimbursement to attorneys for actual, reasonable expenses incurred in the prosecution of the claim. After an examination of the application, the supporting documentation,


and the entire record relative to the expenditures incurred by the attorneys during the prosecution of the claim, the Commission concludes that the items of expenses, listed in Exhibit "A" and made part of the application, are reasonable and proper expenses of litigation and should be allowed, with the exception of the following.

(a). The last 6 expense items in Exhibit "A", page 6, dated May 13, 1974, and thereafter, in the total amount of \$88.02, were incurred in connection with the filing of applications for reimbursement of attorney expenses. Such expenses are not litigation expenses incurred in the prosecution of the claim. The costs of filing applications for attorneys' expenses are for the benefit of the claims counsel and are not properly chargeable to the tribal client. Accordingly, the sum of \$88.02 will be disallowed.


6. Conclusion. On the basis of the foregoing findings, and after deducting the disallowed expenses of \$88.02 from the total of \$8,185.67, the amount claimed, the Commission concludes that the sum of \$8,097.65 is reasonable and proper for reimbursement.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on April 19, 1974, there shall be disbursed to Robert Stone Johnson the sum of \$8,097.65 as reimbursement in full for expenditures made in the prosecution of the claim under Docket 15-M, said sum to be distributed by Robert Stone Johnson to all parties having an interest in this application.

Dated at Washington, D. C., this 20th day of February 1975.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner