

BEFORE THE INDIAN CLAIMS COMMISSION

AMERICAN INDIANS RESIDING ON THE)	
MARICOPA-AK CHIN INDIAN)	
RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 235
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 14, 1976

Appearances:

Z. Simpson Cox, Attorney for Plaintiff.

Alexander J. Pires, with whom was Assistant Attorney General Wallace H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the opinion of the Commission.

Plaintiff's original petition contained six causes of action.

All have now been dismissed except the sixth cause which is an accounting claim. On March 27, 1974, the Commission issued an order for supplemental filing. This order was the result of plaintiff's exceptions to defendant's accounting report. The Commission ruled that exception Nos. 1 through 3 were vague and unless a more definite statement were made, they would be subject to dismissal. The Commission further ruled that exception Nos. 4 through 6 and 8 would be more appropriately cast in a motion for a supplemental accounting. The Commission also ruled that exception Nos. 7, 9 and 10 were ready for trial. Plaintiff

was given 30 days to make a supplemental filing in accordance with the Commission's order. As an outgrowth of the above-mentioned order, the parties filed seven pleadings which we shall examine and dispose of in this opinion.

Plaintiff responded to the Commission's order on February 25, 1975, when it filed its more definite statement of plaintiff's exceptions 1, 2 and 3, and its motion for supplemental accounting. In all material respects, these two pleadings raise the same contentions and their language is almost identical.

On March 5, 1975, plaintiff filed its request to file out of time plaintiff's motion for supplemental accounting, and its request to file out of time plaintiff's more definite statement of plaintiff's exceptions 1, 2 and 3. We shall grant both requests in an attempt to attain substantive justice. In doing so we would point out that the plaintiff was given three extensions of time in which to make its supplemental filings and that the last extension expired October 11, 1974. Plaintiff requested no further extensions, yet made its filing more than four months after the last extension expired. We are compelled to remind counsel that we cannot condone such failure to adhere to the Commission's Rules of Procedure or its order^s. The plaintiff's claims should not be placed in peril by cavalier attention to furthering the case.

An examination of these pleadings taken together indicates plaintiff's belief that defendant has failed to provide adequate information with regard to two rights-of-way and an adequate accounting of both rights-of-way and seven agricultural leases. Information on

the rights-of-way are related to exception No. 2 of plaintiff's exceptions to the 1971 General Services Administration Report filed on August 7, 1972. The matter of an inadequate accounting is related to plaintiff's exception No. 1.

The first right-of-way was granted to the Southern Pacific Railroad. Although plaintiff has not requested such relief in these two pleadings, it is our opinion that it is entitled to a copy of the agreement, if one exists, between the railroad and the government, with whom the agreement was apparently made. There is no evidence to indicate when the right-of-way was granted. Absent a copy of the agreement we cannot determine whether the railroad paid for the right-of-way or whether it was free. This information is necessary in order to determine whether any funds were collected or should have been collected. In Blackfeet Indians v. United States, 32 Ind. Cl. Comm. 65, 82 (1973) we said:

Except where the rule de minimis applies, we hold that the defendant has the duty to account for all licenses, permits, and informal and even extralegal arrangements made by its officers and agents with third parties for use of plaintiffs' lands or exploitation of their natural resources.

We went on to state:

Each schedule should list in chronological order the leases, rights-of-way, or other arrangements covered. The identification number of the contract, if any, should be shown, as well as the date, the lessee, grantee, etc., a description of the land involved, the stipulated consideration (bonus, rental, royalty, fee per AUM, etc.) with due dates, and, if defendant does not supply a copy, a

reference to where the original of the contract is available for plaintiffs' inspection and copying. [Id.]

Therefore, in accordance with our opinion in the Blackfeet case, we shall order defendant to supply a copy of the agreement establishing the right-of-way, if such copy exists, and account for any funds, if any, that were collected pursuant to the agreement.

The Arizona Edison Company right-of-way was not granted until March 16, 1951. Any cause of action accruing from this agreement is beyond the scope of the Commission's jurisdiction. Plaintiff appears to contend that because defendant filed an accounting through June 30, 1951, the Commission's jurisdiction is somehow extended. The simple filing of the defendant's report does not waive or alter the jurisdictional requirements of the Indian Claims Commission Act. Plaintiff is not entitled to information regarding this right-of-way.

The seven agricultural leases plaintiff refers to relate to its exception No. 1. Only one lease, the T. G. Decker Lease (Lease No. 509) was made prior to August 13, 1946. Since this lease was made on February 1, 1946, it is the only one of the seven from which a cause of action might accrue absent a showing of a continuing wrong. Plaintiff claims it has been unable to obtain a copy of this lease since requesting it in 1955. Under the rationale of the Blackfeet case, as expressed above, plaintiff is entitled to a copy of the lease, and we shall order defendant to provide plaintiff with a copy. Because this lease was made within the jurisdictional limits of the Commission,

plaintiff is entitled to an accounting for the entire term of the lease. We shall therefore order defendant to provide a full accounting for the receipt of funds under this lease from February 1, 1946, to January 31, 1956.

The remaining six leases were entered into after August 13, 1946. The Commission is without jurisdiction over these leases unless they constitute part of a wrongdoing which first accrued prior to August 13, 1946, and continued thereafter. See generally Blackfeet, supra, at 71-75. A situation similar to the one in this docket occurred in Docket 236-I, Gila River Pima-Maricopa Community v. United States, 25 Ind. Cl. Comm. 305 (1971). In that case the Commission stated,

If plaintiff is alleging in the instant suit a cause or causes of action which arose prior to August 13, 1946, and, if damages or plaintiff's right to compensation resulting therefrom continued to accrue subsequent to the passage of our Act, then the Commission clearly has jurisdiction. Presumably, the plaintiff's basis for recovery is that the entire leasing policy as administered by the Government, of which the leases are evidence, gave rise to the initial wrongdoing accruing prior to 1946. The cause of action being a continuing one, as evidenced by the leases, gives this Commission jurisdiction to award damages, as measured by the leases. . . . If, on the other hand, plaintiff's theory of recovery is founded on wrongful acts arising independently and separately out of each single lease of plaintiff's lands, defendant's objection to our jurisdiction would have merit. [Id. at 308.]

In this docket, plaintiff has not alleged that the defendant's leasing policy gave rise to the cause of action. To cross the jurisdictional threshold, plaintiff must allege or show some wrong arising from the 1946 lease, which may have continued. Therefore, plaintiff has failed at this

stage to establish such a possibility of our having jurisdiction over the six post-1946 leases and that, therefore, defendant should be required to account for them.

Defendant filed a motion for partial summary judgment on May 10, 1974, seeking to dismiss plaintiff's exception Nos. 1 through 6 and 8. Exception Nos. 1, 2 and 3 dealt with the claim that defendant failed to file a complete and up to date accounting and did not handle plaintiff's funds in a proper fashion. Exception Nos. 4, 5 and 6 allege that defendant failed to account for plaintiff's property rights, failed to make such property productive, and failed to account for funds it received or should have received. Exception No. 8 charges disloyalty and defalcation by defendant's employees, specifically Indian agents. Having examined all the relevant pleadings, the Commission concludes that defendant's motion should be denied with regard to exception Nos. 1 and 2 because of the relief to which we have determined plaintiff is entitled in the above discussion. However, we shall grant defendant's motion to the extent of dismissing plaintiff's exception Nos. 3, 4, 5, 6 and 8. We find plaintiff's exceptions to be generally vague and overlapping. Plaintiff has failed to meet the obligation imposed on them by our order of March 27, 1974.

On March 10, 1975, defendant filed its motion to strike plaintiff's more definite statement and accompanying exhibits. For the reasons stated in our discussion of plaintiff's more definite statement and its

motion for supplemental accounting, we shall order stricken so much of plaintiff's more definite statement and accompanying exhibits as refers to any matters other than the Southern Pacific Railroad right-of-way and the T. G. Decker lease of February 1, 1946.


On April 10, 1975, plaintiff filed a motion for an order compelling discovery. This motion is a result of interrogatories served on defendant on February 19, 1975, which defendant answered on March 10, 1975.

Plaintiff's interrogatories generally request more information than plaintiff is entitled to, and such information as plaintiff is entitled to has been granted in our disposition of the several motions herein filed. However, with respect to some of the questions, which request additional information relevant to this docket, defendant's answers are not responsive. Plaintiff is entitled to a breakdown of the specific source, amount, and date of all revenues received from rentals of apiary locations and the use of irrigation wells. We shall order defendant to provide this information.

On April 15, 1975, defendant filed a motion to strike plaintiff's response to defendant's motion for partial summary judgment. For the reasons stated and to the extent provided for in our above stated decision in defendant's motion to strike plaintiff's more definite statement and accompanying exhibits, defendant's motion to strike will be granted.



Richard W. Yarborough, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner