

BEFORE THE INDIAN CLAIMS COMMISSION

BAY MILLS INDIAN COMMUNITY,)	
SAULT STE. MARIE, ARTHUR)	
LAWRENCE LE BLANC, DANIEL)	Docket No. 18-E
EDWARD, & JOHN L. BOUCHER,)	
)	
and)	
)	
OTTAWA AND CHIPPEWA INDIANS)	
OF MICHIGAN, ex rel ROBERT)	Docket No. 58
DOMINIC, et al.,)	
Plaintiffs,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 21, 1976

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

HAVING CONSIDERED the application for the allowance of attorneys' reimbursable expenses, filed on May 20, 1974, by Rodney J. Edwards, attorney of record for the plaintiffs in Docket 18-E, on behalf of himself, James R. Fitzharris, attorney of record for the plaintiffs in Docket 58, and other persons and estates entitled to participate in the reimbursement of expenses, the supporting record of expenditures including vouchers, receipts, other documentation and the supplemental data submitted January 15, 1976, the employment contracts, the defendant's response to the application, and the record in its entirety, the Commission finds that:

1. Award

The Commission entered a single final award December 29, 1971, 26 Ind. Cl. Comm. 562, amended March 15, 1972, 27 Ind. Cl. Comm. 97. Plaintiffs in Dockets 18-E and 58 were awarded the sum of \$10,109,003.55. Funds to satisfy the judgment were appropriated by the Act of October 31, 1972 (86 Stat. 1498).

2. The Attorney Contracts

The contracts between the applicant and the plaintiffs are fully described and identified in our findings of fact 2 through 6, entered August 9, 1973, relating to attorneys' fees. 31 Ind. Cl. Comm. 73. These findings are incorporated herein by reference.

3. Pertinent Contract Provision Relative to Reimbursement of Expenses

The several contracts entered into by the attorneys and the plaintiffs provided in pertinent part, for reimbursement to the attorneys of all reasonable expenses incurred in the prosecution of the claims herein. However, contract No. I-1-ind. 42200, dated June 2, 1949, provided that reimbursement for travel in a personal car would be five cents (.05¢) per mile. This provision was amended by the agreement of July 29, 1960 (Symbol 14-20-0650-1111), which provided in part that ". . . parties of the second part [attorneys] be reimbursed for expenses . . . which may in the future be incurred . . . , the rate of reimbursement shall be ten (10¢) per mile, . . . Such reimbursement shall include meals and lodging of twelve (\$12.00) dollars per diem in lieu of subsistence."

4. Application for Reimbursement of Expenses

The application for reimbursement of attorneys expenses was filed on May 20, 1974, by Rodney J. Edwards, attorney of record for the plaintiffs in Docket 18-E, on behalf of all attorneys having an interest in the reimbursement of expenses. The petition requests the reimbursement of \$55,840.24^{1/} as the sum expended on behalf of the plaintiffs for the prosecution of their claims in these dockets before the Commission.

5. Notice to Parties

Notice of the filing of the application for reimbursement of attorney expenses, together with a copy of the application were mailed on June 4, 1974 to:

- a. Robert Dominic, President, Northern Michigan Ottawas Association
- b. Donald Parish, President, Bay Mills Indian Community
- c. Honorable Wallace H. Johnson, Assistant Attorney General, Land & Natural Resources Division, Department of Justice
- d. Honorable Morris Thompson, Commissioner, Bureau of Indian Affairs, Department of Interior

6. Responses

The tribal representatives in Dockets 18-E and 58 have not responded to the Commission's notice of the application aforementioned.

The Department of Justice responded to the notice by letter dated July 9, 1974, incorporating and adopting, for the purpose of its reply, a memorandum from the Commissioner of Indian Affairs, dated June 24, 1974. The Commissioner found that the items for which reimbursement was sought

^{1/} The application states that the claimed expenses total \$54,656.98. However, this total is understated in the amount of \$1,183.26 due to errors in calculations.

were within those categories of attorney expenses proper for reimbursement, and that the total amount claimed appeared to be reasonable. However, it was pointed out that deficiencies appeared to exist in the supporting documentation with regard to certain items.

7. Supplemental Information

Counsel, on January 15, 1976, filed additional substantiation as to several items of questioned expenses and requested there be withdrawn from the application certain items of expense in the total amounts as follows: Hoag and Edwards, \$1,527.86; McGinn and Fitzharris, \$775.29.

No additional substantiation was furnished regarding the expenses claimed by the Estates of Charles B. Rogers and Arthur B. Honnold. The petitioning counsel declared himself to be without authority to withdraw the Honnold and Rogers claim and requested the Commission's determination be made on the record.

Following the reply of the petitioning attorney regarding the Rogers-Honnold expenses, a request was made of Mrs. Charles B. Rogers, last known address, 1229 South Baltimore, Tulsa, Oklahoma 74119, widow of Attorney Charles B. Rogers, and Mrs. Mary C. Honnold, last known address, c/o Mrs. Elizabeth H. Dalrymple, 1255 May Lane, Bartlesville, Oklahoma 74003, widow of Attorney Arthur B. Honnold, for such information in their possession or that of the executors of the respective estates as would additionally substantiate the expenses claimed by Attorneys Rogers and Honnold as having been incurred in the prosecution of Dockets 18-E and 59. No reply has been received from either person or from any person acting in their behalf.

Accordingly, the total amount of expense claimed as incurred in the prosecution of the claim herein and for which reimbursement is sought is as follows:

Hoag and Edwards	\$42,270.71
McGinn and Fitzharris	10,156.13
Honnold and Rogers	<u>1,110.25</u>
	\$53,537.09

8. Determination of Expense

The Commission, after examination of the receipts, vouchers and other supporting documentation of attorneys' expenses, including the supplemental information and evidence filed January 15, 1976, relative to the expenditures herein claimed pursuant to the application for reimbursement of attorneys' expenses, concludes that:

a. The amounts set forth in the application as expenses of Attorneys Hoag and Edwards and Attorneys McGinn and Fitzharris, less the amounts withdrawn, are allowable as reasonable attorneys' expenses.

b. No part of the sum claimed as attorneys' expenses by Attorneys Honnold and Rogers is allowable for the reason that such expenses as are claimed to have been incurred are not shown to have been incurred in these dockets.

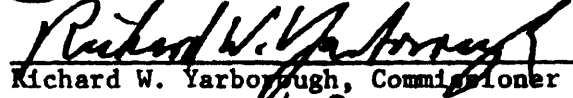
9. Conclusion

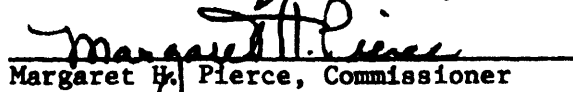
After deducting the \$1,110.25 claimed as attorneys' expenses for Honnold and Rogers from the revised total set forth in finding 7, we find the sum of \$52,426.84 to be reasonable and proper for disbursement to the applicant as reimbursement for expenses incurred herein.

IT IS THEREFORE ORDERED that out of the funds heretofore appropriated to pay the final award herein entered on March 15, 1972, there be disbursed to Rodney J. Edwards, the sum of \$52,426.84, for payment by him to all attorneys or estates in accord with their respective entitlement to participate in such reimbursement. The payment of said amount shall represent payment in full of all obligations of plaintiffs to reimburse attorneys for expenses incurred herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner