

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE and bands thereof,)
 ex rel., Pedro Mendez and Philemon Venego;)
)
 THE Mescalero Apache Tribe and bands thereof,)
 ex rel., Solon Sombrero, Fred Pellman,)
 Eric Tortilla and Victor Dolan;)
)
 THE APACHE TRIBE OF THE Mescalero Reservation)
 on behalf of, or as successor to, the)
 Lipan Apache Tribe and bands thereof, and)
 the Mescalero Apache Tribe and bands thereof,)
)
 Plaintiffs,)
)
 v.) Docket No. 22-C
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)
)
 Decided: June 22, 1977

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY'S EXPENSES

Having considered the application for the reimbursement of attorney's expenses filed on November 10, 1976, by Roy T. Mobley, one of the contract attorneys herein, and the entire record related to this application the Commission finds as follows:

1. Award. On February 19, 1976, the Commission entered a final judgment and award in favor of the plaintiffs in the total amount of \$10,000,000.00 pursuant to a joint motion by the parties for entry of a final judgment in this docket. The judgment awarded to the plaintiff, the Apache Tribe of the Mescalero Reservation, the sum of \$5,000,000 for and on behalf of the aboriginal Lipan Apache Tribe, and the further sum

of \$5,000,000 for and on behalf of the aboriginal Mescalero Apache Tribe (37 Ind. Cl. Comm. 239-40). Funds to pay the award were appropriated by the Act of September 30, 1976, P.L. 94-438.

2. Expense Application. The application filed by Roy T. Mobley on November 10, 1976, covers expenses and costs totalling \$316.29 incurred by Mr. Mobley in the course of the performance of his duties on behalf of plaintiffs in connection with the prosecution of the claim in this docket. The expenses claimed were incurred between January 16, 1948, and November 1, 1948, the period during which Mr. Mobley was under contract to the plaintiffs. (See, Finding 3, infra).

The application seeks reimbursement for travel expenses (mileage), lodging, meals, and telephone costs. In support of the expenditures counsel has submitted contemporaneous day-book entries, hotel receipts, and telephone company bills.

3. Attorney's Contract. The contract under which Roy T. Mobley claims reimbursement of expenses is contract No. I-1-ind. 42138 dated September 13, 1947, entered into between plaintiff tribes and attorneys James E. Curry and Mr. Mobley. This contract was approved on January 16, 1948, by the Department of the Interior, and was for a term of ten years beginning with the date of approval. On November 1, 1948, Mr. Mobley entered the employ of the United States Government. Thereafter, an amended contract dated January 5, 1952, terminated all attorney services of Mr. Mobley.

The pertinent provisions of the contract of September 13, 1947, relating to this expense application reads as follows:

The attorney shall also be reimbursed such additional expenses and such actual expenses as seem necessary and proper in connection with the printing of briefs, proceedings, and other similar matters including the actual and necessary travel expenses, clerical hire, and the like as may be properly required in connection with the performance of his duties hereunder.

4. Notice to Parties. Pursuant to Commission rules, notices of the filing of this application were mailed on November 11, 1976, by the Clerk of the Commission to the tribal representatives, the Department of Justice, and the Department of the Interior. The notice requested that any comments or information regarding the expense application should be filed with the Commission within two weeks from the date of the notice.

On November 29, 1976, Mr. Wendell Chino, President of the Mescalero Apache Tribe, submitted a letter to the Commission raising several questions regarding Mr. Mobley's expense petition. Among other matters relating to Mr. Mobley's fee, not in issue here, Mr. Chino questioned the validity of expenses connected with telephone calls, general attorney's services as they relate to lands in Texas, and whether or not the terminated contract authorized reimbursement of expenses.

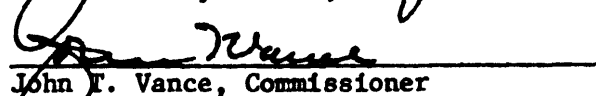
On April 13, 1977, the Department of Justice responded to the notice of the application by taking no position in regard to the reimbursement of expenses in this case. The response of the Department of Justice also included copies of comments of the Department of the Interior dated April 4 and April 7, 1977. The Department of the Interior, through its Solicitor, also questioned the validity of the telephone calls as well as certain travel expenses not supported by hotel receipts.

5. Determination of Expenses. Pursuant to section 15 of our Act, rule 34(b) of the Commission's Rules of Procedure (25 C.F.R. §503.34(b)),

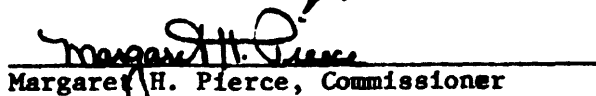
as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102, issued July 15, 1968, the findings entered herein, and upon examination of the application, the attorney's contract with the plaintiffs, and the record of expenditures incurred in the early development and prosecution of the claims in this docket, the Commission concludes that, out of the total attorney's expenses claimed herein in the amount of \$316.29; (1) travel expenses totalling \$303.93 are reasonable and proper attorney expenses that have been supported by contemporaneous day-book entries and should be allowed; and (2) telephone expenses in the amount of \$12.36, have not been properly identified or supported in the record and are hereby denied.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the awards entered in this docket there shall be disbursed to Attorney Roy T. Mobley the sum of \$303.93 as reimbursement in full for expenditures incurred by said attorney in the prosecution of all the claims herein.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner