

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PILLAGER BANDS OF CHIPPEWA INDIANS	)	
IN THE STATE OF MINNESOTA,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 144
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY'S EXPENSES AND DENYING  
PETITION FOR ALLOWANCE OF INTEREST ON DISBURSEMENTS

HAVING CONSIDERED the application for the reimbursement of attorney expenses filed by Robert C. Bell, Esq., attorney of record for the plaintiffs in this docket, and the entire record regarding the application, the Commission finds and determines as follows:

1. The Award. On October 25, 1973, the Commission entered a final award in favor of the plaintiffs for \$405,293.06 in full satisfaction of all claims in Docket 144. 32 Ind. Cl. Comm. 156. Funds to satisfy the award were appropriated by the Congress on June 8, 1974, 88 Stat. 195.

2. The Attorney Contracts. The contracts between the petitioner and the plaintiffs are fully described and identified in the Commission's finding of fact 4 entered on July 17, 1974, relating to attorney's fee. 34 Ind. Cl. Comm. 255. This finding is incorporated herein by reference.

3. Contract Provisions on Expenses. In the said contracts between petitioner and plaintiffs, the following paragraph provides for the reimbursement of expenses incurred by petitioner as follows:

In addition to the fees, or compensation for services hereunder, said attorney shall be allowed and paid out of any judgment, appropriation or award contemplated hereunder, such actual and necessary expenses incurred by him as are proper in connection with the performance of his duties in the premises, including among other things, court costs, printing of pleadings, briefs, transcripts and records, depositions, interpreting, clerical hire and stenographic charges, auditing and accounting, telegraph and telephone bills; and other similar items, properly chargeable, arising out of the investigation, preparation or prosecution of the claims of the Pillager Bands, including automobile travel, as may be incurred for self, associate counsel, stenographer and interpreter, all bills for expenses to be itemized and verified by the attorneys, and paid upon the approval of the Secretary of the Interior, or some officer designated by him for the purpose.

4. Expense Petition. Robert C. Bell, attorney for plaintiffs herein, has filed a petition and a supplemental affidavit for the reimbursement of attorney's expenses incurred in the prosecution of this case. In the initial petition, filed March 29, 1974, petitioner alleged that he incurred \$7,390.27 <sup>1/</sup> in reimbursable expenses during the period October 4, 1968, through December 14, 1972, with the exception of telephone expenses of \$137.13 <sup>2/</sup> which were incurred during the years 1957 through 1962. Subsequently, on July 8, 1974, petitioner withdrew two expense items, one for \$9.57 and the other for \$19.95. However, in a letter filed on March 22, 1977, Mr. Bell stated that he did not wish to withdraw the latter expense item

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<sup>1/</sup> The petition states that the claimed expenses total \$7,374.72. However, this total is understated by \$15.55 due to errors in calculations.

<sup>2/</sup> The petition states that telephone expenses for the years 1957 through 1962 total \$138.33. However, this total is overstated in the amount of \$1.20 due to an error in calculation.

for \$19.95. Therefore, the net amount claimed in the initial petition is \$7,380.70.

Mr. Bell filed a supplemental affidavit for expenses on July 8, 1974, for the period 1946 through 1965, wherein he claimed additional reimbursable expenses in the amount of \$2,503.09. Thus, the total net claim for reimbursable expenses in this docket is \$9,883.79.

5. Notice to Parties. Pursuant to Rule 34b of the Commission's Rules of Procedure, the Clerk of the Commission notified the appropriate parties of the filing of the petition and the supplemental affidavit for the reimbursement of expenses in this docket. The following responses have been received:

A. On June 27, 1974, the defendant filed a motion for an order requiring additional support of the initial petition for attorney's expenses. Attached thereto was a copy of a letter dated June 12, 1974, from the Associate Solicitor for Indian Affairs, Department of the Interior, transmitting a copy of a memorandum dated May 29, 1974, from the Acting Deputy Commissioner of Indian Affairs to the Solicitor of the Department of the Interior. The memorandum outlined numerous objections to specific items of expense alleged in the application.

B. The Department of Justice responded to the supplemental affidavit for expenses on August 21, 1974, stating that it takes no position in respect to the expenses claimed. Enclosed with the response was a copy of a letter dated August 16, 1974, from the Associate Solicitor for Indian Affairs, Department of the Interior, transmitting a copy of a

memorandum dated August 8, 1974, from the Acting Deputy Commissioner of Indian Affairs to the Solicitor of the Department of the Interior. The said memorandum stated that expenses were claimed during a period prior to contract; that unsupported expenses were claimed for the period 1946 through 1953; that expenses for the period 1954 through 1965 were supported by cancelled checks only, with three listed exceptions; and that per diem was claimed, although applicant's contract No. I-1-ind. 42042 provided for reimbursement of actual expenses which were to be itemized and verified by the attorney.

By letter dated March 22, 1977, Mr. Bell furnished additional information which gave the purposes for certain of the claimed travel expenses and explained other items. He also filed copies of ledger sheets summarizing telephone expenses for the period from 1957 through 1972.

Subsequently, by letter dated June 14, 1977, Mr. Bell transmitted further documentation which included copies of day book entries for the years 1954, 1957 through 1962, and copies of calendar entries for the years 1968 through 1972. This documentation stated the purpose for some claimed travel expenses.

6. Petition for Allowance of Interest on Disbursements. By letter and petition, filed December 9, 1974, Mr. Bell requested reimbursement for interest expense incurred on amounts he borrowed for expenses advanced in this case.

On January 7, 1975, Simon Howard, a member of the Pillager Band, responded on its behalf in opposition to said petition.

Subsequently, in a letter received January 13, 1975, the Leech Lake Reservation Business Committee, by Harold R. Finn, Secretary-Treasurer, stated that it was also opposed to Mr. Bell's request for interest on his expenses in this case.

On February 12, 1975, the defendant filed its opposition to allowance of interest on attorney's expenses. Attached thereto was a letter dated February 4, 1975, from the Assistant Solicitor, Department of the Interior, transmitting a memorandum dated January 20, 1975, from the Acting Deputy Commissioner of Indian Affairs. It was the opinion of the Bureau of Indian Affairs, as well as the Department of Justice, that no interest should be allowed on attorney's expenses.

In its memorandum of January 20, 1975, the Bureau of Indian Affairs stated that it believed the same principle should apply to interest claimed on attorney expenses herein as governs the allowance of interest in tribal claims against the United States set out by the Court of Claims in United States v. Delaware Tribe, 192 Ct. Cl. 385, 392 (1970).

In the Delaware case, supra, the Court of Claims stated the well-recognized principle that the United States is not liable for interest in the absence of a contractual or statutory requirement to pay interest. The defendant and the Bureau of Indian Affairs would use this principle to extend such immunity to tribal funds. We do not agree that tribal funds have been accorded such immunity and cannot be subject to the payment of interest. On the contrary, when Congress established the revolving loan fund whereby funds were made available to Indian tribes in order

to obtain expert assistance for preparation and trial of claims pending before the Indian Claims Commission, it also provided that any such loan would bear interest and that both the loan and the interest would be repayable out of the proceeds of any judgment recovered by the tribe on its claim against the United States. See 25 U.S.C. §§70n-1, n-2.

We believe the language of the aforementioned statute manifestly demonstrates that the principle stated in the Delaware case, supra, is inapplicable to the issue of whether petitioner is entitled to be reimbursed for interest expense from funds awarded herein.

Another reason for the Bureau of Indian Affairs' opposition to the reimbursement for interest expense was that the contracts of employment under which Mr. Bell was authorized to prosecute claims in this docket and which provided for allowance of actual and necessary expenses contained no provision for allowance of interest on such expenses. We are in agreement with this position and believe the lack of such a provision is determinative of the interest issue.

That part of the contract between plaintiffs and petitioner which provides for the reimbursement of expenses is clear and unambiguous, and there is no provision for allowance of interest on such expenses. It is a well-established principle that a court may not rewrite a contract for the parties, nor is it the function of the judiciary to change the obligations of a contract which the parties have seen fit to make.<sup>3/</sup>

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<sup>3/</sup> Williston on Contracts §610A (3rd ed. 1961).

Accordingly, we find that the petition for allowance of interest should be denied.

7. Determination of Expenses. Pursuant to Section 15 of the Act, Rule 34b of the Commission's Rules of Procedure (25 CFR §503.34b), as amended, 39 Fed. Reg. 41173, (1974), the Commission's Policy Statement §102 issued July 15, 1968, and upon examination of the petition and the supplemental affidavit, the supporting documentation, and the entire record of expenditures incurred in the prosecution of this claim, the Commission concludes that the claimed expenses included in the supplemental affidavit filed on July 8, 1974, for the period 1946 through 1965 should be denied except for the amount of \$76.80. This sum represents travel expenses for five trips to Washington, D. C., as follows:

April 24, 1960	\$14.91
March 11, 1962	15.00
March 14, 1962	16.89
December 6, 1962	15.00
December 7, 1962	15.00

All of the remaining travel expenses are disallowed because Mr. Bell did not state the purpose for travel and/or did not furnish ticket stubs or other receipts for expenditures. The cancelled checks alone are not sufficient documentation for the claimed expenses. Petitioner also claimed per diem in the amount of \$594.00 for the 1946 through 1965 period. However, the contract with plaintiffs herein provides that the attorney is to be reimbursed for actual and necessary expenses, with all bills for expenses to be itemized and verified by the attorney. Therefore, claims for travel expenses computed on a per diem basis are not proper items for reimbursement.

With respect to the four non-travel items, there is no documentation for one of the items and only cancelled checks for the others. As stated above, cancelled checks alone are not sufficient documentation for claimed expenses.

Of the claimed expenses included in the supplemental affidavit, \$76.80 are allowed and \$2,426.29 are disallowed.

With respect to the expenses claimed in the initial petition, the Commission concludes that these expenses are reasonable and proper expenses of litigation and should be allowed with the exception of the following items:

<u>Ex. Page</u>	<u>Date</u>	<u>Amounts Claimed</u>	<u>Amounts Disallowed</u>	<u>Nature of Expenditure</u>	<u>Reason for Disallowance</u>
3	10/7/68	\$ 2.00	\$ 2.00	Ginn's	Items purchased not itemized; receipt is for \$.29
-	1968	55.00	55.00	Per diem - 5 days at \$11.00	Contract does not provide for per diem.
10	3/5/69	19.95	19.95	Eastern Air Lines - trip to Washington	Expense filed and allowed in <u>Miami v. U.S.</u> , 32 Ind. Cl. Comm. 242 (1973)
-	1969	22.00	22.00	Per diem - 2 days at \$11.00	Contract does not provide for per diem.
-	5/8/70	80.00	80.00	Parker-Duryee - Zerox.	No documentation and not identified as incurred in the prosecution of this claim.



<u>Ex. Page</u>	<u>Date</u>	<u>Amounts Claimed</u>	<u>Amounts Disallowed</u>	<u>Nature of Expenditure</u>	<u>Reason for Disallowance</u>
-	1970	\$ 40.00	\$ 40.00	Per diem - 3 days in Wash- ington	Contract does not provide for per diem
28	8/13/71	64.87	64.87	Canadian Border Lodge	Insufficient documentation. No itemization and no bill or receipt submitted.
23-29	8/14/71	50.00	50.00	Graystone Hotel	Insufficient documentation. Cash disbursements must be itemized, showing date and purpose.
23-29	8/16/71	67.49	50.00	Curtis Hotel	Hotel bill, Ex. 23, paid on 8/16/71 is for \$17.49. Check to hotel is for \$67.49 or an excess of \$50.00. Cash disbursements must be itemized, showing purpose and date.
-	8/21/71	150.00	150.00	Miscellaneous	No documentation or itemization by date and purpose. No receipt submitted.
30	8/27/71	14.30	14.30	Penn. Central Railroad	Insufficient documentation. No ticket stub or receipt submitted. Also, date of travel is shown as 8/27/71, but date of check is 8/31/71.
-	1971	34.00	34.00	Postage, parking, misc.	No documentation or itemization by date and purpose.

<u>Ex. Page</u>	<u>Date</u>	<u>Amounts Claimed</u>	<u>Amounts Disallowed</u>	<u>Nature of Expenditure</u>	<u>Reason for Disallowance</u>
-	1971	\$ 154.00	\$ 154.00	Per diem - 14 days at \$11.00	Contract does not provide for per diem.
66	3/14/72	207.84	207.84	Harlan Dixon-Witness fee.	Check shows this was for "Witness Expenses". Expenses were not itemized by date and no bills or receipts submitted.
44-66	3/14/72	110.50	33.15	Alban Tower Hotel - Mr. and Mrs. Harlan Dixon.	Claim reduced by 30% because Mrs. Dixon was not a witness.
47-48	5/21/72- 5/27/72	78.00	78.00	Mileage and tolls-round trip to Washington.	Purpose of travel not stated.
49-50	6/3/72- 6/13/72	74.00	74.00	Mileage - round trip to Washington.	Purpose of travel not stated.
49-50	6/3/72- 6/13/72	9.10	9.10	Tolls-round trip to Washington.	Purpose of travel not stated.
74	10/17/72	10.00	10.00	P. Sargent	Purpose of expenditure not shown. Payee on check is cash. No bill or receipt submitted.
-	1972	473.00	473.00	Per diem - 45 days at \$11.00.	Contract does not provide for per diem.

8. Recapitulation of the Claim. The following is a summary of the expenses claimed which the Commission concludes are reasonable and proper for reimbursement:

Supplemental Affidavit (1946-1965):

Amount Claimed	\$2,503.09	
Amount Disallowed	<u>2,426.29</u>	
Amount Allowed		\$ 76.80

Initial Petition (1968-1972):


Net Amount Claimed, as corrected	\$7,380.70	
Amount Disallowed	<u>1,621.21</u>	
Net Allowed		<u>\$5,759.49</u>
Total Allowed		\$5,836.29

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on October 25, 1973, there shall be disbursed to Robert C. Bell the amount of \$5,836.29 as reimbursement in full for his expenses incurred in prosecuting this claim.

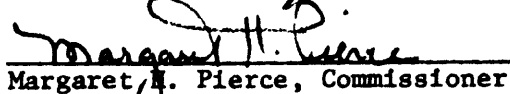
IT IS FURTHER ORDERED that Robert C. Bell's petition for allowance of interest on disbursements be, and it hereby is, denied.

Dated at Washington, D. C., this 22nd day of July 1977.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner