BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT BELKNAP INDIAN COMMUNITY,)
THE BLACKFEET AND GROS VENTRE )
TRIBES OF INDIANS, )
Plaintiffs,)
)
v. ) Docket Nos. 250-A and 279-C
)
THE UNITED STATES OF AMERICA, )
)
Defendant. )

Decided: February 24, 1978

Appearances:

John M. Schiltz, Attorney for Plaintiff Assiniboine Tribe of Fort Berthold Indians.

Jerry C. Straus, Attorney for Plaintiff Blackfeet and Gros Ventre Tribes, Wilkinson Cragun and Barker, Patricia L. Brown and Joseph P. Markoski were on the briefs.

Marvin L. Schneck, with whom was Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION ON DEFENDANT'S MOTION TO STRIKE PLAINTIFFS' RESPONSE TO DEFENDANT'S OBJECTIONS TO PLAINTIFFS' FINDINGS OF FACT ON FISCAL MATTERS.

Blue, Commissioner, delivered the opinion of the Commission.

Defendant has moved to strike the part of plaintiffs' submission on fiscal claims entitled "Plaintiffs' Response to Defendant's Objections to Plaintiffs' Findings of Fact on Fiscal Matters." If we deny the motion, defendant asks permission to respond to plaintiffs' objections to defendant's proposed findings. Defendant contends that the material it asks us to strike is in violation of Rule 29 (b), Indian Claims Commission General Rules of Procedure, which reads as follows:

> (b) Statements of fact or propositions of law presented in defendant's brief as matters of defense, and not properly within the scope of plaintiff's original brief, may be discussed by plaintiff in a reply brief, but matters within the proper scope of plaintiff's original brief shall not again be discussed in a reply brief.

In an earlier motion, filed July 20, 1977, defendant asked us to prohibit plaintiffs' from filing the material they now ask us to strike. In the earlier motion they argued that Rule 29 makes no provision for a reply to objections to findings. Feeling incapable of determining that a document not yet in existence was going to violate our rules, we denied the motion without discussion.

Defendant now contends that some of the material plaintiffs have actually filed is "a continuation of a discussion of the materials found in their original brief", not a reply to new material.

It is true that Rule 29 makes no express provision for responses to objections to proposed findings. Neither does it make express provision for the objections themselves. We believe the proper interpretation of Rule 29 is that it permits a reply to any new contention of fact or law made by defendant in the papers by which it submits the case for decision after trial, regardless of what title or titles it puts on those papers. Thus a reply to new material in "Objections" is just as proper as a reply to new material in the "Brief." By the same token, repetition or paraphrase of material already presented by the plaintiff in its opposition is not a reply.

So much for the law. We have a practical question before us. What possible good will it do at this stage of the case to take the time for the

careful consideration of the suspect 224 pages of plaintiffs' reply necessary to determine how much, if any, is response to new material and how much is rehash of contentions previously made? We assume, by submitting its motion, that defendant trusts our ability to ignore the possible prejudicial effect of the 224 pages if we should find them improper and grant the motion to strike. We believe we can do the same thing with a substantial saving of time, by simply disregarding, the redundant material.

As to defendant's alternative motion, that we let it file another booklet if we deny the motion to strike, we need only state we are persuaded by reason, not repetition. If plaintiffs have been excessively long-winded, they have harmed only themselves. Due process does not require us to let everyone weary us equally.

The motion will be denied.

Brantley Blue

Brantley Blue, Commissioner

We concur:

Jerome K. Kuykendall

Jerome K. Kuykendall, Chairman

John T. Vance

John T. Vance, Commissioner

Richard W. Yarborough

Richard W. Yarborough, Commissioner

Margaret H. Pierce

Margaret H. Pierce, Commissioner