

BEFORE THE INDIAN CLAIMS COMMISSION

THE PRAIRIE BAND OF THE POTAWATOMI)	
TRIBE OF INDIANS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 15-C
)	(Consolidated with Dockets
THE UNITED STATES OF AMERICA,)	29-A and 71)
)	
Defendant.)	

Decided: July 19, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEY'S EXPENSES

UPON CONSIDERATION of the petition for allowance of attorney expenses filed May 8, 1978, by Robert S. Johnson, attorney of record for the plaintiffs in Docket 15-C, together with the vouchers and other documentation accompanying said petition, and the contract under which the claims in said Docket 15-C were prosecuted, the Commission finds as follows:

1. Award. On June 23, 1976, the Commission entered a final award in Dockets 15-C, 29-A and 71, entitling the plaintiffs in said dockets to recover from the defendant the sum of \$4,239,200.00. 38 Ind. Cl. Comm. 389. The Commission's award was affirmed by the Court of Claims, 564 F.2d 38 (Ct. Cl. 1977). Funds to pay the award are included in funds appropriated under section 1302 of the Supplemental Appropriation Act, 1957, 31 U.S.C. §724a, as amended by Title II, section 201, of the Supplemental Appropriations Act, 1978 (92 Stat. 107, 116-117).

2. Attorney's Contract. By its order of May 4, 1978, allowing attorney's fees in Dockets 15-C, 29-A and 71, the Commission entered

finding of fact No. 3(a) concerning the attorney contract under which the claims in Docket 15-C were prosecuted. 41 Ind. Cl. Comm. 295, 296. Said finding is incorporated herein by reference. The terms of the contract between plaintiffs and petitioner provide for reimbursement of reasonable expenses incurred in the prosecution of claims before this Commission.

3. The Application. The petitioner requests that the Commission enter an order for payment to him of the sum of \$11,780.33 as reimbursement for litigation expenses related to Docket 15-C. An itemized list of expenses and supporting vouchers accompanied the petition. This petition does not cover expenses related to Dockets 71 and 29-A, consolidated for trial with Docket 15-C. Attorney expenses were previously awarded in Docket 71, by the Commission's Order dated June 28, 1978. 42 Ind. Cl. Comm. 174. An application for expenses related to Docket 29-A is pending before the Commission.

4. Notice to the Parties. Pursuant to Sec. 34b of the Commission's Rules of Procedure, 25 C.F.R. §503.34b as amended 39 Fed. Reg. 41173 (1974), notice of the filing of the petition for expenses was mailed by the Clerk of the Commission on May 8, 1978, to the following:

Camilla Wishkeno, Chairperson
Prairie Band of Potawatomi
P. O. Box 8
Holton, Kansas 66436

Honorable Forrest Gerard
Assistant Secretary of the
Interior for Indian Affairs
Attn: Louise Perkins, Tribal Operations
U. S. Department of the Interior
1951 Constitution Ave., N. W.
Washington, D. C. 20240

Honorable James W. Moorman
Acting Assistant Attorney General
Attn: A. Donald Mileur, Chief
Indian Claims Section
Land and Natural Resources Division
U. S. Department of Justice
Washington, D. C. 20530

5. Response of the Parties. No response was received from the tribal representatives. The Department of Justice takes no position on the allowance of attorney expenses in this docket, as indicated in its letter of July 5, 1978. Enclosed with the letter of the Department of Justice was a letter dated June 22, 1978, from the Acting Associate Solicitor, Division of Indian Affairs, Department of the Interior, and a memorandum dated June 19, 1978, from the Assistant Secretary, Bureau of Indian Affairs, Department of the Interior. The June 19 memorandum states that most items claimed in the petition for reimbursement appear to be reasonable and fall generally into categories proper for reimbursement, excepting ten items listed in the memorandum by date of voucher.

6. Petition Adjustments. Upon examination of the petition and the documents filed in support thereof, the memorandum submitted by the Department of the Interior, and the records of the Commission, the Commission determines the following:

(1) Washington 15-C et al. Political Entity Hearing, expenses during trip, voucher dated 1/20/64 indicates \$293.75 as the total, but a \$6.60 arithmetic error was noted. The Commission has included \$300.35 as the correct figure in its total of awarded expenses.

(2) Milwaukee Public Museum, voucher dated 2/4/64, \$4.10 for the book, Social Organization of the Central Algonkian Indians. There was no indication of the

value of this book in the prosecution of the claims in Docket 15-C, as noted by the Department of the Interior memorandum. The Commission has deleted \$4.10 from its total of awarded expenses.

(3) Kansas Academy of Science, voucher dated 10/15/64, \$1.25 for an Academy publication. There was no indication of the value of this publication in the prosecution of the claims in Docket 15-C, as noted by the Department of the Interior memorandum. The Commission has deleted \$1.25 from its total of awarded expenses.

(4) Statement of Jack Joseph, voucher dated 6/20/74, totaling \$710.64. This includes \$16.45 for photostats made for Docket 15-K. Since Docket 15-K is not consolidated with Docket 15-C the Commission has deleted \$16.45 and included \$694.19 as the corrected figure in its total of awarded expenses.

(5) Statement of Jack Joseph, voucher dated 3/7/75, claims \$117.11. But since \$76.92 was incurred for Dockets 15-L and 216, and \$20.70 was incurred for Dockets 15-K and 15-M, the Department of the Interior recommends that this sum be disallowed. The Commission agrees and has deleted \$97.62 from its total of awarded expenses.

(6) Expenses for travel to Washington for settlement conference, voucher dated 12/1/76, \$316.83. The Department of the Interior has called our attention to the expenses related to this trip. Since the conference was called at the suggestion of the Commission, the Commission has included \$316.83 in its total of awarded expenses with the requirement that no portion of this expense may be claimed for reimbursement under other docket numbers.

(7) Expenses for travel to Washington for settlement conference, voucher dated 1/30 and 2/1/77, \$299.89. The Department of the Interior has called our attention to the expenses related to this trip. Since the conference was called at the suggestion of the Commission, the Commission has included \$299.89 in its total of awarded expenses with the requirement that no portion of this expense may be claimed for reimbursement under other docket numbers.

(8) Statement from Russell, Johnson and Johnson, voucher dated 2/2/78, \$5.05 for phone tolls and photocopies. The Department of the Interior notes that these charges were incurred after the final award in Docket 15-C was reported to Congress. The Commission agrees and has deleted \$5.05 from its total of awarded expenses.

(9) Statement from Russell, Johnson and Johnson, voucher dated 3/2/78, \$10.82 for phone tolls and photocopies. The Department of the Interior notes that these expenses were incurred after the final award in Docket 15-C was reported to Congress. The Commission agrees and has deleted \$10.82 from its total of awarded expenses.

(10) Statement from Russell, Johnson and Johnson, voucher dated 4/4/78, \$5.58 for phone tolls and photocopies. The Department of the Interior notes that these expenses were incurred after the final award in Docket 15-C was reported to Congress. The Commission agrees and has deleted \$5.58 from the total of awarded expenses.

(11) Statement from Russell, Johnson and Johnson, voucher dated 5/2/78, \$2.80 for phone tolls and photocopies. The Department of the Interior notes that these expenses were incurred after the final award in Docket 15-C was reported to Congress. The Commission agrees and has deleted \$2.80 from the total of awarded expenses.

(12) Photocopies of expense vouchers, voucher dated 5/4/78, \$22.20. The Department of the Interior notes these expenses were not related to the litigation of the claims in Docket 15-C but were instead for the benefit of petitioner. The Commission agrees and has deleted \$22.20 from its total of awarded expenses.

A summary of the claimed expenses, as adjusted, is as follows:

(a) Expert assistance, research and related expenses	\$ 6,938.36
(b) Travel expenses	2,128.74
(c) Printing of briefs and petitions	1,911.12
(d) Reproduction of exhibits	355.33

(e) Long distance telephone	\$ 235.57
(f) Postage, filing fee and miscellaneous	<u>51.94</u>
Total expenses	\$11,621.06

7. Determination of Reimbursable Expenses. Pursuant to Section 15 of the Indian Claims Commission Act, 25 U.S.C. §70n, and Rule 34b of the Commission's Rules of Procedure, 25 C.F.R. §503.34b, as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement §102, issued July 15, 1968, the findings of fact entered herein, the employment contract between the parties, and the entire record of expenses incurred in the prosecution of the claims presented in Docket 15-C, the Commission concludes that items claimed in the petition as adjusted are reasonable and proper for reimbursement in the amount of \$11,621.06.

IT IS THEREFORE ORDERED that out of funds appropriated to pay the award in Dockets 15-C, 29-A and 71 there shall be disbursed to Robert S. Johnson, attorney of record in Docket 15-C, the sum of \$11,621.06 as reimbursement in full for expenses incurred in the prosecution of the claims of the Prairie Band of the Potawatomi Tribe of Indians, plaintiffs in Docket 15-C, said sum to be disbursed in turn by Robert S. Johnson to all parties having an interest in this application.

Margaret H. Pierce
Margaret H. Pierce, Commissioner

Brantley Blue
Brantley Blue, Commissioner

Jerome K. Kuykendall
Jerome K. Kuykendall, Chairman

John T. Vance
John T. Vance, Commissioner

Richard W. Yarborough
Richard W. Yarborough, Commissioner