

BEFORE THE INDIAN CLAIMS COMMISSION

SHAWNEE TRIBE OF OKLAHOMA,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 64, 335 and 338
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 28, 1978

FINDINGS OF FACT AND ORDER ALLOWING ATTORNEYS' EXPENSES

Upon consideration of the petition for reimbursement of expenses filed May 15, 1978, by Rodney J. Edwards, contract attorney, on behalf of himself and James R. Fitzharris, attorney of record for the plaintiff in Docket 64; the entire record in the case; and the attorneys' contracts of employment; the Commission finds and orders as follows:

1. Award. On June 3, 1977, the Commission entered a single final award in the amount of \$1,745,146.86 in favor of the Eastern Shawnee Tribe of Oklahoma and the Absentee Shawnee Tribe of Oklahoma, plaintiffs in Dockets 335 and 338, and Shawnee Tribe of Indians of Oklahoma, plaintiffs in Docket 64, on behalf of the Shawnee Tribe as it existed in 1795, 40 Ind. Cl. Comm. at 173. The final award was entered upon the joint motion therefor pursuant to a stipulation of all the parties for the entry of final judgment. Funds to satisfy the judgment have been appropriated by Public Law No. 95-240 (March 7, 1978).

2. Application. The petition herein was filed May 15, 1978, by Rodney J. Edwards, contract attorney on behalf of James R. Fitzharris, attorney of record. It seeks reimbursement for costs and expenses incurred by them in the prosecution of this case in the amount of \$7,158.96, expended as follows:

Compensation and expenses of experts & witnesses	\$3,407.49
Duplication of exhibits and printing	622.86
Long distance telephone	87.04
Travel expenses of attorney	2,738.73
Transcripts	<u>302.84</u>
Total	\$7,158.96

3. Attorneys' Contract. Contract I-1-ind. 42267 was entered into between authorized tribal representatives of the Shawnee Tribe of Indians of Oklahoma and Charles B. Rogers on January 27, 1950. A 50 percent interest in the contract was assigned on January 31, 1950, by Attorney Rogers to Arthur B. Honnold and thereafter the agreement was approved on April 13, 1950, for a period of 10 years beginning with the date of its approval. By an assignment, dated August 10, 1953, and approved May 27, 1955, Attorneys Rogers and Honnold assigned a 60 percent of their interest in the contracts pertaining to Docket 64 to an attorney group consisting of Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, Denis McGinn, James R. Fitzharris and O. R. McGuire.

Contract I-1-ind. 42267 was amended on February 6, 1977, approved March 1, 1977, making it retroactive to April 13, 1960, and extending its term through March 1, 1980.

The initial attorneys' contract provided the attorney should receive from the amount of any judgment, inter alia, ". . . such actual expenses as are strictly necessary and proper . . . including travel expenses . . . ; provided that all such expenditures shall be itemized and verified . . . and . . . accompanied by proper vouchers" The March 1, 1977, amendment to contract I-1-ind. 42267, provided, inter alia, that reimbursement for expenses should include meals and lodging ". . . or \$12.00 per diem in lieu of subsistence. . . ."

4. Notice to the Parties. Pursuant to the Commission's rules, notice of the filing of the petition for expenses was mailed by the Clerk of the Commission on July 21, 1977, to the following:

Jerome Shawnee, Chairman
Shawnee Tribe of Indians of Oklahoma
4959 North St. Louis
Tulsa, Oklahoma 74126

Rodney J. Edwards, Esq.
Edwards, Edwards & Bodin
800 First National Bank Bldg.
Duluth, Minnesota 55802

James R. Fitzharris, Esq.
Fitzharris & Wayne
205 South 10th Street
Escanaba, Michigan 49829

Honorable Raymond Butler
Acting Commissioner
Bureau of 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
Land and Natural Resources Division
Attn: D. Lee Stewart, Attorney
Indian Claims Section
U.S. Department of Justice
Washington, D. C. 20530

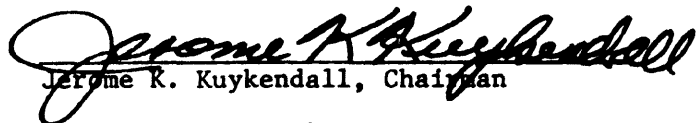
The Commission requested the interested parties to make such comments or give such information they felt the Commission should consider before making its determination regarding the petition herein.

5. Responses of the Parties. No reply was received from the tribal representative. The Department of Justice responded by letter dated September 14, 1978, concurring with the objection to the petition set forth by the Assistant Secretary, Indian Affairs, Department of Interior in a memorandum dated August 23, 1978. The Assistant Secretary objected to the claim of attorney James R. Fitzharris for per diem expense of \$25.00 per day. Except as herein mentioned, no other objection was made to the claim for reimbursement of expenses as presented by the petitioning party.

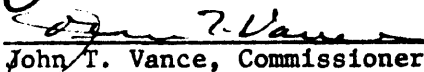
6. Determination of Reimbursable Expenses. The Commission, after the examination of the contract provisions, the vouchers, invoices and other supporting documents, concludes that it was the intent of the parties that the sum of \$12.00 per day should be paid in the absence of vouchers or other evidence substantiating the amount actually paid for lodging of meals. The Commission therefore concludes the petitioner is entitled to reimbursable expenses in the amount alleged except for the sum of \$208.00 claimed by attorney James R. Fitzharris which is in excess of the agreed allowable per diem expense.

7. Conclusion. 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 of fact entered herein, the employment contracts between the parties, and the entire record of expenditures incurred in the prosecution of the claims presented in these dockets, the Commission concludes that the sum of \$208.00 claimed in excess of the agreed allowable per diem expenses in lieu of actual subsistence, is disallowed. The balance of the expenses claimed herein in the amount of \$6,950.96 are reasonable and proper for reimbursement.

IT IS THEREFORE ORDERED that out of the funds appropriated to pay the award in Dockets 64, 335 and 338, there be disbursed to James R. Fitzharris, attorney of record in Docket 64, the sum of \$6,950.96 as reimbursement in full for expenses incurred in the prosecution of Docket 64, said sum to be disbursed by him to all parties having an interest in this application.



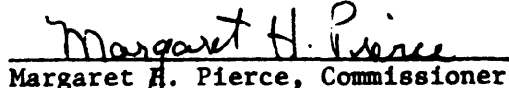
Jerome R. Kuykendall, Chairman




John T. Vance, Commissioner



Richard W. Yarbrough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner