BEFORE THE INDIAN CLAIMS COMMISSION

MARGUERITE J. UNDERWOOD, on the Relation of an Identifiable Group of Choctaw and Chickasaw Petitioners, et al., Plaintiffs,	)	
vs.	)	Docket No. 39
UNITED STATES OF AMERICA, Defendant.	)	

Appearances: Marguerite J. Underwood for herself and other Choctaw and Chickasaw Petitioners, et al., Plaintiffs.

Ralph A. Barney and Julius Martin II, with whom was Mr. Assistant Attorney General A. Devitt Vanech, attorneys for Defendant.

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OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission:

This claim is presented by Marguerite Underwood on the relation of 375 persons alleged to be Chickasaw Indians by blood, which Indians are alleged to be an identifiable group and the descendants of Elizabeth Stewart Holder and Bledso Holder.

The petition sets out a lengthy history of the efforts of claimants to secure enrollment as members of the Chickasaw Tribe and, thereby, to

secure individual allotments of land and other benefits provided by the Congress for enrolled members of the Chickasaw Tribe. It is unnecessary in this opinion to describe these efforts. It is sufficient to say that the basis of petitioners' claim is the contention that they were wrongfully denied enrollment and thereby the rights and benefits provided by the Congress to enrolled members of the Chickasaw Tribe.

Plaintiffs pray for a judgment in the amount of (a) "$1,041.28 for each plaintiff," with interest, as the appraised value of 320 acres of "allotable land which was allotted to each member of the Choctaw and Chickasaw Tribe under an Act of July 1, 1902 (32 Stat. 641)"; (b) "$1,075.00 for each plaintiff" as being the total amount of payments made to the Choctaw and Chickasaw Indians since 1904, with interest; (c) $310.00 for each plaintiff, "being the share of each" in $3,500,000 alleged as being or to be appropriated to the Choctaw and Chickasaw Indians for the purchase of coal and asphalt lands from them by the United States under Public Law 754.

The respondent has filed its motion to dismiss the petition on the main ground that the Commission lacks jurisdiction for the reason that petition asserts claims of individuals and not "claims against the United States on the behalf of any Indian tribe, band, or other identifiable group," as contemplated and required by Section 2, Indian Claims Commission Act, approved August 13, 1946.

The respondent's position is that, under the allegations of the

petition, the recoveries sought are amounts which it is claimed petitioners are severally entitled to receive by reason of their claim of right to enrollment as members of the Chickasaw Tribe, and, by reason thereof, their rights and benefits as allottees.

This question resolves itself into whether the claims asserted herein are those of a group with common rights, which common or group rights are alleged to have been violated; or is the claim one of separate and individual claimants whose individual rights are alleged to have been violated, who have joined their individual claims in a common suit. It is apparent from the allegations of the petition that the claims are on behalf of only those members of the Chickasaw Tribe who have failed to secure enrollment and by reason thereof have failed to receive, as individuals, the allotments and other benefits they would have received as individuals had they been enrolled.

It is also urged by respondent that the allegations in the petition and the litigation there described show that the question of whether or not petitioners are entitled to enrollment has been determined adversely to claimants by the Act of July 2, 1902 (32 Stat. 641) and the opinion of the Supreme Court sustaining same. (Wallace v. Adams, 143 Fed. 716; 204 U.S. 415).

It is obvious that under the allegations of the petition this Commission would have to determine the right of each individual claimant to enrollment, and if so entitled then the amount each is entitled to receive

by reason thereof. This clearly shows that the claims asserted are the personal, individual claims of each claimant and that the claim is, in fact, not one common to the group, but is simply a common suit for individual claims.

The question raised by motion of the respondent in this case is the same as that raised in the case of Creek Freedmen Association v. United States of America, Docket No. 25, and what was said in the opinion in that case applies to this case and need not be repeated.

In view of our determination that the claims being asserted here are not common group claims, but, instead, are independent, individual claims which this Commission does not have jurisdiction to entertain under the Indian Claims Commission Act, it becomes unnecessary to decide whether or not these claimants constitute an identifiable group, as contemplated by the Act, or whether or not the rights of claimants to citizenship have been heretofore finally determined.

The motion of the respondent to dismiss must be sustained.

Commissioners O'Marr and Holt concur in the above opinion.

Oct. 28, 1949