

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF)	
THE STATE OF OKLAHOMA)	
THE WARM SPRING BAND OF APACHES,)	
EX REL. SAM HAOZOUS)	
THE CHIRICAHUA BAND OF APACHES,)	
EX REL. JAMES KAYWAYKLA, SR.)	
THE FORT SILL APACHES,)	
EX REL. BENEDICT JOHZE,)	
)	
Petitioners,)	
)	
v.)	Docket No. 49
)	
THE UNITED STATES OF AMERICA)	
)	
Respondent.)	

Appearances:

Mr. Grady Lewis, with whom
was Mr. I. S. Weissbrodt,
Attorneys for Petitioners.

Messrs. Leland L. Yost and
Frederick B. Ugast, with
whom was Mr. Assistant Attorney
General A. Devitt Vanech,
Attorneys for Respondent.

OPINION OF THE COMMISSION

PER CURIAM: The petition in this case is filed by four petitioners,
The Fort Sill Apache Tribe of the State of Oklahoma; The Warm Spring
Band of Apaches, on the relation of Sam HAOZOUS; The Chiricahua Band
of Apaches, on the relation of James Kaywaykla, Sr.; and The Fort Sill
Apaches, on the relation of Benedict Johze. The petition alleges that

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each of the four above named petitioners is an identifiable group of American Indians. It is further alleged that, of the four petitioner groups named, only "The Fort Sill Apache Tribe of the State of Oklahoma" has an existing tribal organization recognized with authority to represent it, and that the other three groups are each represented by an individual member thereof who brings this proceeding as the representative of all the members of his particular group.

The claims asserted in the petition are based upon the alleged wrongful removal by the respondent of the Warm Spring Band of Apaches and the Chiricahua Band of Apaches from their respective ancestral homes and reservations established therein for them, and the subsequent wrongful arrest and imprisonment of the Warm Spring and Chiricahua Bands and 450 of their members (being all the members of said bands known to respondent) for a period of 27 years.

The respondent has filed a motion requesting the Commission to enter an order: (1) severing from this proceeding, and from each other, the claims based on the alleged wrongful removal of the Warm Spring Band of Apaches and the Chiricahua Band of Apaches, and requiring that the statement of each claim be set forth in separate petitions, on the grounds that the claims asserted in the petition are separate claims which cannot be joined in one action; and (2) dismissing from this proceeding all of the above named petitioner groups except "The Fort Sill

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Apache Tribe of the State of Oklahoma," on the grounds that they are improper parties petitioner.

In support of its motion as to a severance of claims, the respondent contends the Chiricahua Band of Apaches and the Warm Spring Band of Apaches are shown by the allegations of the petition to have been separate bands of Indians occupying separate ancestral homes at the time of their alleged wrongful removal therefrom; and that each of the transactions or occurrences on which the claims asserted in the petition are based--the removal of each of the two bands, and the later arrest and imprisonment of both bands collectively--took place at a different time and at a different place, so the claims are improperly joined in one petition.

We agree that it is apparent from the allegations of the petition the Warm Spring and Chiricahua Bands were independent bands of Apache Indians occupying different areas of land as ancestral homes at the time the alleged wrongful removal claims arose. Therefore, one band would not have any interest in the other band's claim for injuries sustained by it. It follows that the petitioners are not entitled as a matter of right to join in one petition the separate claims for wrongful removal with the claim for unlawful arrest and imprisonment, which occurred at a still later time and at a different place. However, joinder of parties and claims is now treated by the courts more as a trial problem and not a pleading problem, and permissive joinder

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of plaintiffs and their claims in one action against a single defendant is generally allowed when it is for trial convenience in disposing of claims.

We think the facts alleged in the petition show that the claims asserted, although claims of different bands of Indians, do arise out of a series of similar acts and occurrences more or less related, and we believe they can well be determined by the Commission in a single trial.

We now come to the second portion of respondent's motion, requesting the dismissal of all petitioners except "The Fort Sill Apache Tribe of the State of Oklahoma."

It is the contention of the respondent that neither the Warm Spring Band of Apaches nor the Chiricahua Band of Apaches is a presently existing identifiable tribe, band, or group on whose behalf a representative action may be maintained under Section 10 of the Indian Claims Commission Act (25 U.S.C. 70i), and, therefore, any claim on behalf of either band may be maintained only by a successor, if any exists.

The respondent would justify its contention that neither the Warm Spring nor Chiricahua Bands is a presently existing tribe, band, or group, upon a statement made at a prior oral hearing in this proceeding by one of petitioners' counsel: " * * * As we have pleaded, there was an utter destruction of the two bands * * *." In this connection, we note that the statement had reference only to the question of whether in case

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of recovery it would be a general recovery for the two bands. The use of the quoted statement in the course of an oral argument made in answer to an unrelated question does not, in our opinion, indicate that counsel intended to abandon the allegations made in the petition that each of the petitioners in question is an identifiable group of Indians.

The reason advanced by respondent in its brief for the dismissal of the petitioner, "The Fort Sill Apaches," is that it is not an existing group of Indians constituting a separate entity from "The Fort Sill Apache Tribe of the State of Oklahoma," and it is argued that if it is such an existing group, the relator, Benedict Johse, is not entitled to bring a representative suit on behalf of its members since he is a member of the Fort Sill Apache Tribe of the State of Oklahoma, the petitioner group alleged to have an existing tribal organization recognized with authority to represent it. In this connection, it must be admitted that the real parties in interest in the claims presented are the Warm Spring and Chiricahua Bands of Apaches. That neither band has an existing tribal organization is shown by the allegations of the petition. So it is apparent from the petition that members of the two bands and their descendants have been set up therein as petitioner groups in alternative capacities. This is admitted by counsel for petitioners in their brief.

We think the question, then, is whether such groups of Indians as

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the Warm Spring Band of Apaches and the Chiricahua Band of Apaches do in reality exist and are capable of being identified, and if not, does there exist a legal successor or successors to said bands, such as "The Fort Sill Apaches" or "The Fort Sill Apache Tribe of the State of Oklahoma," who would have authority to present the claims on behalf of the two bands. These are issues of fact which we believe can only be determined after a full and complete hearing of the evidence bearing on such issues, and, in our opinion, the petitioners should be afforded the opportunity of establishing by proof which of the alleged petitioner groups, or group, may maintain this action before any of the petitioner groups are dismissed.

On the basis of this opinion the motion of respondent will be overruled.