



each petitioner named is of one-fourth or less Omaha Indian blood, "being descendants of members of the Omaha Indian Tribe of Nebraska, known as the 'Barada-Peters' group" of the Omaha Tribe. The basis of the claim is the alleged failure of the Government to recognize that the petitioners or their ancestors were Omaha Indians, and therefore denying them the benefits that were granted to members of the Omaha Tribe.

The claim of petitioners, and each of them, consists of the following items: (1) compensation for the value of allotments of lands in the Omaha Tribe's reservation in Thurston County, Nebraska, which it is alleged they or their ancestors were entitled to receive as Omaha Indians; (2) for their share of annuity payments made to the Omaha Tribe, which they allege they or their ancestors should have received as Omaha Indians; and (3) for interest upon the monetary value of both of the foregoing claims. A fourth claim for compensation for the value of certain improvements made on lands occupied by petitioners has been eliminated by the admission of counsel for petitioners in their response to defendant's motion that this particular claim is not a "common claim" and, therefore, not within the jurisdiction of this Commission.

The petition alleges in substance that petitioners are descendants of one "Ta-ing-the-hae," a full blood Indian woman who married a Frenchman named Michael Barada, and especially from Antoine Barada and Margaret Barada Sloan, two of the children born of that marriage. That pursuant to the act of Congress dated August 7, 1832

(22 Stat. 341), and the Amendatory Act of March 3, 1893 (27 Stat. 630), the petitioners or their ancestors were entitled to allotments of land on the Omaha Tribe's Thurston County Reservation in Nebraska, and annuity payments by reason of their being of Omaha Indian blood. The petitioners living at the time of the foregoing enactments, and those since 1882 who have died, whose heirs are now petitioners, were not recognized as Omaha Indians and, therefore, were refused allotments and annuity payments. This refusal was based upon the alleged misunderstanding, animosity, unfair dealings, discrimination and prejudice of some of the Omaha Indian tribal council of that period, as well as of agents of the United States. The petition contains an extensive recital of these various acts of injustice, gross inequities and prejudices complained of by petitioners, and which they allege entitled them, and each of them, to a judgment to compensate for the loss sustained, and annuity payments due them and each of them.

The petition sets forth the names of the various petitioners and their ancestors in paragraphs 15 through 100 thereof, together with the amount they allege each individual petitioner is entitled to recover on the 1st claim for loss sustained because of the Government's failure to allot them lands in the Omaha reservation. They further state that the amount due each claimant as a share of the annuity payments is not known to them; however, there is set forth in paragraph 13 a statement of amounts payable to the Omaha Tribe under various treaties, totaling over a million dollars, of which payments they claim each petitioner is entitled to receive a share as

an Omaha Indian. The petitioners, and each of them, pray for loss of the value of the Thurston Reservation lands which they were denied, their share of annuity payments they or their ancestors should have received as Omaha Indians, and interest on the amount due on both claims.

The defendant does not question any of the alleged facts; but, in support of its motion to dismiss the petition, contends that the claim asserted therein is simply a common action of the individual petitioners who severally seek to recover for individual claims--and since the Indian Claims Commission Act does not confer jurisdiction on the Commission to hear and determine individual claims, the petition should be dismissed.

This Commission decided in the Loyal Creek case, Docket No. 1, the Creek Freedmen case, Docket No. 25, and the Underwood case, Docket No. 39, that the jurisdiction of this Commission does not extend to individual claims of Indians, but is limited to the consideration of claims of a tribe, band, or other identifiable group of Indians who have a common claim. The only question then for determination is the character of the claim presented here.

The petitioners urge that the petition does allege a common claim of an identifiable group of Indians known as the Antoine Barada-Peters family and who, as a group of mixed blood Omaha Indians, were denied recognition as members of the Omaha Tribe, and, therefore, the rights and benefits they were entitled to as Omaha Indians. While it may be true, as petitioners suggest, that it is possible to identify the

numbers of the Antoine Barada-Peters family, such identifiability is not in itself sufficient to create an "identifiable group" under the Indian Claims Commission Act and permit the prosecution of a group claim unless such a claim is common to the members of the group, and not simply a common suit for individual claims. Loyal Creek case, *supra*.

It appears that the provision for making allotments in severalty on a portion of the Thurston Reservation in Nebraska to the Indians of the Omaha Tribe was contained in the act of Congress of 1882 and the Amendatory Act of 1893, *supra*. By the act of 1882, as amended, it was provided, in effect, that, with the consent of the Omaha Tribe, the Secretary of Interior was authorized to allot the Indians of said tribe a quarter section of land in the Thurston Reservation to the head of a family, and to all the others a one-eighth of a section. Pursuant to the provisions of the above acts, allotments were made by the Secretary of the Interior to the Omaha Indians residing on the reservation in the tribal relation, with no distinction being made between those of the full blood and of mixed blood. In addition, allotments were made to such others of mixed blood as the Omaha Tribal Council recognized and declared to be members of the tribe entitled to share in the allotment of the tribal lands, but who were not residents, in the tribal relation, of the reservation at the time the acts were adopted by Congress. Petitioners, or their ancestors, come within this latter category, except they were among those mixed bloods not recognized as members of the Omaha Tribe, and were therefore refused

allotments, and annuity payments.

It will be observed that under the act of 1882, as amended, the right to an allotment in severalty of the Omaha tribal land was a personal right conferred upon the individual Indian, depending on whether said Indian was in fact a recognized member of the Omaha Tribe. Thus the wrongful failure or refusal of the Government to recognize that a mixed blood Omaha Indian was a member entitled to enrollment in the tribe, thereby denying such Indian the allotment of land and other benefits granted to members, would, in our opinion, be a violation of the personal right of the individual Indian concerned. It would follow that a claim for damages resulting from such violation would certainly be the personal claim of the individual Indian sustaining the loss, and would not be one in which other Omaha Indians with like claims would share a common interest.

Counsel for petitioners, relying upon the decision in the Loyal Creek case, *supra* (Doc. No. 1), contend that a group claim is asserted for the reason that it asks damages resulting from the failure through discrimination against petitioners as a group to include them as members of the Omaha Tribe, and, that while it might be necessary later to determine the amount of the recovery each individual petitioner was entitled to receive, this does not change the character of the claim. In the Loyal Creek case the claims were originally individual claims of those Creek Indians who remained loyal and as a result suffered the loss of their property during the Civil War, and we held that by various treaties between the Creek Nation and the United States

and certain acts of Congress, the Loyal Creeks were recognized by the Government as a group; that the Government by agreeing to submit their claims to the Senate of the United States for determination and pay the amount it found to be due had created a "common claim." The amount awarded by the Senate was but partially paid so the claim presented to this Commission was for the balance of the award made by the Senate, and so of course did not involve any question as to the validity of individual claims or the amounts each member of the group was entitled to receive.

It is clear that the decision in the Loyal Creek case does not apply here, for it is not shown in the present case that the Government has ever dealt with nor in any manner recognized petitioners as a group, and, of course, there has been no conversion of individual claims into a "common claim" as was done in the Loyal Creek case.

A question similar to the one under consideration was presented and considered by this Commission in the Underwood case (Doc. No. 39), decided October 18, 1949. In that case the plaintiffs were an alleged group of some 375 persons claiming to be Chickasaw Indians by blood by reason of being descendants of an Indian woman, and who asserted that they were wrongfully denied enrollment as Chickasaws, thereby being refused the benefits granted a member of the Chickasaw Tribe. In sustaining the Government's motion to dismiss on the ground the claims were individual and not within the jurisdiction of this Commission, it was pointed out in the opinion that "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." See also Creek Freedmen case, supra (Doc. No. 25).

We believe the petitioners in the present case, by the allegations and prayer of the petition, have asserted an individual obligation between the United States and each of the petitioners, and in considering the alleged claim it would be necessary for the Commission to first determine the validity of the claim of each petitioner, and if entitled to recover, then the amount of loss sustained. In our opinion this shows plainly that the claim asserted in the petition is not a common claim, but is a combination of personal, individual claims in a common suit, which this Commission does not have jurisdiction to determine.

For the above stated reasons, the Government's motion to dismiss for lack of jurisdiction is sustained and the petition dismissed.

It is so ordered.

Chief Commissioner Witt and Commissioner O'Marr concur in the above opinion.

December 19, 1951