

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF)
 THE COLVILLE RESERVATION)
 as the representative of the)
 JOSEPH BAND OF THE NEZ PERCE)
 TRIBE, ET AL,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Respondent.)

Docket No. 179

Decided: May 27, 1952

Appearances:

David Cobb, with whom were
 James E. Curry, Lyle Keith,
 and I. S. Weissbrodt,
 Attorneys for Petitioners.

John D. Sullivan, with whom
 was Mr. Assistant Attorney
 General Wm. Amory Underhill,
 Attorneys for Respondent.

O P I N I O N

PER CURIAM. The claims involved in this proceeding are asserted in behalf of the Joseph Band of the Nez Perce Tribe, by the Confederated Tribes of the Colville Reservation, and by Charles E. Williams, et al, as the representatives of the Joseph Band for alleged breaches by the respondent of its alleged fiduciary obligations to the petitioners.

The respondent filed on November 21, 1951, a motion to dismiss, said motion being based on the contention of the respondent that none

of the claims asserted in the petition is a claim against the United States "on behalf of any Indian tribe, band, or other identifiable group of American Indians," as contemplated and required by Section 2 of the Indian Claims Commission Act.

The petitioners, controverting the motion of respondent, alleges that the claims being urged are those of "the Joseph Band of the Nez Perce Tribe"; that said band is alleged to be "a tribe, band or identifiable group of Indians residing on the said Colville Reservation," and that said Confederated Tribes of the Colville Reservation has authority as the representative of the said Joseph Band to assert the claims; or if said tribes have not such authority, then the individual petitioners as members of said Joseph Band are authorized to bring the claims as the representatives of all the members of said band.

Petitioners allege that the respondent "wrongfully has refused to pay and has never paid to Joseph's Band, or any of the members thereof, its pro rata share in the trust funds and properties of the Nez Perce Tribe"; also, that respondent "in violation of law and in breach of its fiduciary obligations wrongfully has refused to and has never made any allotments of lands of the Nez Perce Tribe to Joseph's Band or any of the members thereof."

As reason of such alleged wrongful acts the petitioners pray "that the respondent be required to render a full and complete accounting with respect to trust properties alleged to have been under its control," and that respondent be required to "pay to Joseph's Band such an amount

as is revealed by such an accounting to be due and unpaid, together with interest."

The respondent in support of its motion to dismiss contends that the claims asserted are "on behalf of certain members of the tribe rather than the tribe, namely, members who claim to be also members of the Joseph Band."

The respondent urges in support of its motion to dismiss that the claims of the petitioners are based on the contention that the individual members of Joseph's Band did not get their pro rata share of the trust funds and properties of the Nez Perce Tribe and that they did not get any individual allotments of lands of the Nez Perce Tribe, and that therefore the only recovery that could be had, if any at all, would be by reason of wrongs suffered by the individual members of the petitioner band rather than a wrong suffered by the Band as a Band. In the determination of the question here involved the allegations contained in the petition must be considered as true. (See opinion of this Commission in the Loyal Creek case, Docket No. 1).

The petition alleges that Joseph's Band as a member of the Nez Perce Tribe had rights, interest and claims in certain specified properties and funds of the Nez Perce Tribe and that as to such interest as a band they have suffered wrongs at the hands of the respondent. As to whether or not these rights rested upon the individual claims of members in the Joseph Band -- as the respondent infers as the purpose of its motion, is a question that can only be determined after hearing

the evidence that may be introduced in support thereof. As stated by the Court of Claims in its opinion in the Indians of California case (Indian Claims Commission, Docket No. 31) "for jurisdictional purposes, which relate only to the authority to entertain the petition and to hear and determine claims, the merits and the nature of the proof that will be required to establish the claims, are not involved." As the petition asserts a tribal claim and requests tribal relief, respondent is not entitled to its motion for dismissal on the pleadings alone. Also see McGhee, et al v. United States, 121 C. Cls. _____, decided May 6, 1952. In our opinion evidence is required in order that the question of whether or not the claims asserted are tribal claims or are individual claims to be determined. Therefore it follows that the respondent's motion must be overruled; same to be without prejudice, however, to the right of the respondent to urge the same defense upon the trial of the case on its merits.

May 27, 1952