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Nez Perce Tribe of Indians and the United States, dated June 11, 1855, by which the tribe ceded its lands located in the States of Idaho and Washington, reserving therefrom a reservation in the State of Idaho, and a claim arising out of the treaty between the same parties, dated June 9, 1863, involving said reservation. Thereafter, and on July 31, 1951, "Charles E. Williams, Joseph Redthunder, and Harry Owhi, as representatives of the Nez Perce Tribe," filed the petition herein for claims based upon the same treaties referred to above. The two claims are substantially the same insofar as those treaties are concerned, and both assert claims by, in Docket No. 175, and for, in Docket No. 180, the Nez Perce Tribe.

In Docket No. 180, the petitioners, in paragraphs 31 to 38, inclusive, state a claim which was not included in Docket No. 175, for trespasses upon the reservation lands of the Nez Perce Tribe. This claim is not directly involved here.

On July 25, 1952, the defendant filed a motion in each of said cases for an order requiring the consolidation thereof for the purposes of trial, and on July 30, 1952, the petitioner in Docket No. 175 filed a motion, the substance and effect of which was to require the attorneys for petitioners in Docket No. 180 to exhibit their authority or warrant of attorney to act on behalf of the Nez Perce Tribe, and in the event they had no such authority, to dismiss the petition in Docket No. 180. The motion of the defendant and the motion of the petitioner in Docket No. 175 were heard before the Commission on the 9th day of October, 1952, and taken under advisement.

The sole question to be determined is whether the attorneys for the petitioners in Docket No. 180 have a contract which enables them to present and prosecute the claim of the Nez Perce Tribe of Indians against the United States. In this connection, it may be said that the attorneys for petitioners in Docket No. 180 raise no question as to the right of the petitioner in Docket No. 175 to prosecute the claims here in question. In fact, they tacitly agree that such petitioner has a right to prosecute such claim, and that the attorneys representing the claimant have an approved contract therefor, but contend that they, too, have such right.

According to the evidence offered at the hearing, it appears that some 1261 enrolled members of the Nez Perce Tribe reside on the Nez Perce reservation in Idaho; that 15 enrolled members of the Nez Perce Tribe reside in the Colville Reservation in the State of Washington, and that there are 115 enrolled members of such tribe who reside on other reservations, or outside of Indian reservations.

The Colville Reservation was established in the State of Washington for the purpose of settling thereon a number of tribes, or perhaps the remnants thereof, as the Secretary of the Interior might place thereon.

According to petitioners' Exhibit No. 1 in Docket No. 180, we find that a constitution and bylaws for the Colville Reservation was adopted and the Preamble and Article I of the Constitution reads as follows:

PREAMBLE

We, the people of the Colville Reservation in the State of Washington, in order to form a recognized representative council to handle our Reservation affairs, and in order to improve the economic condition of ourselves and our posterity, do hereby establish this Constitution and Bylaws.

ARTICLE I - PURPOSE

The object and purpose shall be to promote and protect the interests of the Colville Indians and to preserve peaceful and cooperative relations with the Office of Indian Affairs, its officers and appointees.

It is apparent from the above-quoted provisions of the Constitution that the Indian people residing upon the Colville Reservation organized all of the Indians entitled to reside thereon, without regard to their previous connection with, or membership in Indian tribes or bands. This is further shown by the third amendment to the Constitution and Bylaws adopted on April 14, 1950, which limited the membership in the Confederated Tribes of the Colville Reservation to persons of Indian blood whose names appear as members of the Confederated Tribes on the official census of the Indians of the Colville Reservation, as of January 1, 1937, and the children of such members born after the date of such census. Moreover, it is shown that the Business Council of the tribe is elected from districts of the reservation, without regard to any tribal connection or descent.

Coming to the contract between the attorneys, James E. Curry, I. S. Weissbrodt, and Lyle Keith, upon which they depend for authority to represent the three individual Nez Perce Indians of the Colville Reservation in Docket No. 180, we find (petitioner's Exhibit No. 3, in Docket No. 175)

that at a general meeting of the "Confederated Tribes of the Colville Reservation," those Indians on October 15, 1949, adopted a resolution reciting in effect that the Confederated Tribes of the Colville Reservation have claims against the United States, which they desire to prosecute and for that purpose authorized certain named persons to enter into a contract, or contracts, with said attorneys for the prosecution of their claims, and the Business Council of said group ratified, confirmed and approved such contract by a resolution adopted on the 28th day of November, 1949, by unanimous vote.

Pursuant to such authority, such Business Council on the 28th day of November, 1949, entered into an agreement between "The Confederated Tribes of the Colville Reservation" (hereafter in said agreement called "The Tribes"), and said attorneys, which agreement was approved by the Secretary of the Interior.

A reading of the contract convinces us that it was intended to, and did cover only claims of the entity referred to in the Constitution and Bylaws above mentioned, the resolution of the General Council and the Business Council of that group, and the contract itself, namely, The Confederated Tribes of the Colville Reservation. Had it been intended to cover the claim here in question, very simple language could have been inserted to show that purpose. We must assume that the attorneys who are parties thereto, would have recognized the need of such language and would have inserted it had it been so intended.

In support of their position the petitioners in 180 refer to an instrument (Ex. 2 in 175) entitled "Claims authorization for the Joseph's Band Nez Perce Indian Tribe or Band." This instrument is signed by the three individual plaintiffs in 180, members of said Joseph's Band, and states that the contract of November 28, 1949, was intended to authorize said attorneys to represent said Joseph's Band and, therefore, they authorize said attorneys to present to the Indian Claims Commission the claims of the Joseph's Band and to be compensated for their services in accordance with the agreement of November 28, 1949. Here again is an authorization to prosecute the claims of a band, Joseph's Band, of the Nez Perce and it nowhere appears therein that authority is granted to prosecute a claim of the Nez Perce tribe, which is the claim pleaded in 180. Even if the "authorization" were considered a contract between the signers and the attorneys, it is still of no force because it was not approved by the Commissioner of Indian Affairs.

Section 81 of Title 25, U.S.C.A. (R.S. Sec. 2103) provides that no agreement shall be made with any tribe or individual Indian for the payment or delivery of any money or thing of value for services for said Indians relative to their lands, unless such agreement or contract shall be in writing and approved by the Secretary of the Interior and the Commissioner of Indian Affairs. The section also provides that all such contracts shall be null and void if made in violation of said section. This section is still in force and was construed and applied in the case of Pueblo of Santa Rosa v. Fall, et al., 273 U. S. 315; 71 L. Ed. 658,

wherein the court said:

But wholly aside from this, the conveyance and the power were both void by force of §§ 2103 and 2116, Revised Statutes, Comp. Stat. §§ 4087, 4100, 3 Fed. Stat. Anno. 2d ed. pp. 776, 794. The first of these sections provides that any agreement with any tribe of Indians for the payment or delivery of anything of value in present or in prospective in consideration of services for such Indians relative to their lands is void, unless, among other requirements, the agreement is in writing, executed before a judge of a court of record, bears the approval of the Secretary of the Interior and the Commissioner of Indian Affairs endorsed upon it, and contains the names of all parties in interest, their residence and occupation; and further that "if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically." * * * * * None of their requirements can be dispensed with, and it does not appear that in respect of most of them there was even an attempt to comply.

To the same effect, see *Tlingit and Haida Nations v. United States*, 102 C. Cls. 209.

Section 15 of the Indian Claims Commission Act (25 U.S.C.A. 70n) by this language makes the provisions of Sec. 81 of Title 25, U.S.C.A. (R.S. 2103), referred to above, applicable to and controlling the attorneys' contract here: "The employment of attorneys for all other claimants shall be subject to the provisions of sections 81 and 82-84, of this title."

Since the claim in No. 180 has been presented without a contract authorizing the attorneys to present the same, we have no alternative under the above statute and the decisions just referred to, but to dismiss the petition in 180.

We have stated above that in paragraphs 31 to 38, inclusive, in the petition in No. 180, there has been set forth a claim for trespasses

upon the reservation lands of the Nez Perce Tribe. Inasmuch as the reasons for the dismissal of the cause of action referred to above apply with equal force to the trespass claims, we see no reason for postponing action thereon, so the order which will be entered herein will dismiss the entire petition.

EDGAR E. WITT
Chief Commissioner

LOUIS J. O'MARR
Associate Commissioner

WM. M. HOLT
Associate Commissioner