

BEFORE THE INDIAN CLAIMS COMMISSION

THE POTTAWATOMIE TRIBE OF INDIANS,)
 THE PRAIRIE BAND OF THE POTTAWATOMIE)
 TRIBE OF INDIANS, et als.,)

Plaintiffs,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 15-B

and

CITIZEN BAND OF POTAWATOMI INDIANS)
 OF OKLAHOMA, AND POTAWATOMI NATION,)
 et als.,)

Plaintiffs,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 111

Decided: September 21, 1956

OPINION AND FINDINGS CONCERNING ATTORNEYS' FEES AND EXPENSES OF THE
ATTORNEYS REPRESENTING THE PRAIRIE BAND OF POTTAWATOMIE INDIANS

Due notice having been given, these consolidated dockets came on for hearing before this Commission on August 20, 1956, upon the Application for Allowance of Attorneys' Fees and for Reimbursement of Expenses Incurred by the Attorneys Representing the Prairie Band of the Pottawatomie Nation of Indians filed November 3, 1955, the Revisions and Supplement thereto and Answer of Counsel of the Prairie Band of Pottawatomie Nation of Indians Regarding Statement of Allowable Expenses filed March 20, 1956,

the Motion of Attorneys for the Prairie Band of the Pottawatomie Nation of Indians for Hearing and Allowance of their Fees and their Respective Claims for reimbursement of Expenses Incurred to July 7, 1955, filed June 18, 1956, and upon the Defendant's Response to Application for Allowance of Expenses of Attorneys filed August 13, 1956, and the Memorandum in Reply to Report of Commissioner of Indian Affairs filed August 15, 1956, the attorneys for the Prairie Band being represented by O. R. McGuire, attorney of record, and the defendant United States being represented by Sim T. Carman, Esquire.

At the conclusion of said hearing, said matters were taken under advisement by the Commission. Thereafter the Citizen Band and Prairie Band entered into a stipulation, which is now on file, providing that the attorneys' fees properly payable to the respective attorneys for each of said bands and the sums allowed said respective attorneys upon their claims for reimbursement of allowable expenses, shall be deducted from the respective shares of said bands in the final award heretofore entered in these consolidated dockets.

The record discloses that the services rendered and expenses for which reimbursement is sought, were rendered or incurred under a contract between the Prairie Band of Pottawatomie Indians and Messrs. Stone, McClure, Webb, Johnson, and Oman, dated October 22, 1947, approved by the Commissioner of Indian Affairs on December 19, 1947; that by subsequent assignments approved by the Commissioner of Indian Affairs the following persons possess the following interests in said contract, to-wit:

Robert Stone, 19%; Robert Stone Johnson, 19%; Beryl R. Johnson, 12%;
O. R. McGuire, 50%; and that said contract of employment reads in part:

It shall be the duty of said attorneys to advise and represent the said band of Indians in connection with properly investigating and formulating the claims of said bands against the United States with respect to the suits which said Indians are authorized to institute against the United States * * *.

* * * and to represent them before all courts, departments, tribunals, the Committees of Congress, and other Officers having any duty to perform in connection with the investigation, consideration, or final settlement of said claim and matters embraced in the suit authorized * * *.

It is agreed that the Compensation of the party of the second part for the services to be rendered under the terms of this contract is to be wholly contingent upon a recovery for the tribe. The party of the second part shall receive such compensation * * * as may be determined by said court or tribunal equitably to be due for the services theretofore rendered under this contract, but in no event shall the aggregate fee exceed ten per centum of any and all sums recovered or procured * * *

The attorneys * * * shall also be allowed and reimbursed from the amount of any judgment received such actual expenses incurred by them as may be fixed by the Indian Claims Commission pursuant to Article 15 of the Act of August 13, 1946, Public Law 726.

It is represented that the Application for Allowance of Attorneys' Fees and for Reimbursement of Expenses Incurred by Attorneys on Behalf of the Prairie Band contains in one tabulation all expense items incurred by O. R. McGuire, and that all expense items incurred by others interested in said contract of employment are thereafter set out under the name of Robert Stone in a second tabulation. It further appears from the record that as a result of the order of this Commission entered July 25, 1949, in original Docket No. 15 then pending before it,

the claimants, Prairie Band of Pottawatomie Indians, thereafter filed Dockets Nos. 15-A to 15-M, inclusive, with this Commission asserting in each docket a separate claim theretofore jointly plead in said original Docket 15, and the expense accounts presented by the attorneys include items incurred prior to such separation of causes of action. It is further apparent that while each item of expense was incurred in connection with the preparation and presentation of Pottawatomie Indian claims against the United States, that many of said items have application both to consolidated Dockets Nos. 15-B and 111 and other dockets, presenting other claims of said Prairie Band against the United States, and that a few such expense items have been incurred wholly with respect to dockets other than Nos. 15-B and 111. It is the Government's contention that the attorneys are entitled to recover from the present award for only such expenses as are shown to have been incurred after approval of the attorneys' contract by the Commissioner of Indian Affairs, and prior to July 25, 1949, and such expenses incurred thereafter as have relation to only Dockets 15-B and 111, and for only such services as were required in the proper preparation and presentation of said two dockets.

Under the wording of the contract as above quoted, and the provisions of Section 15 of the Indian Claims Commission Act, it appears that said attorneys are entitled to recover for all reasonable expense actually incurred by them in investigating, preparing and presenting all claims of said Pottawatomie Indians under the contract of employment of October 22, 1947, and that such right of recovery is contingent upon the recovery of an award on behalf of said Indians against the United States but not upon

a recovery for each claim which may have been honestly and conscientiously presented; and that in the determination and allowance of attorneys' fees and remuneration of expenses incurred, this Commission may take into consideration the services rendered by said attorneys under said contract, and expenses legitimately incurred by them in the proper, diligent and conscientious investigation, preparation and presentation of all claims of said claimant Indians.

The record and evidence disclose that after the interlocutory order of this Commission entered in these consolidated dockets on April 23, 1954, finding claimant Indians entitled to recover certain amounts from the defendant, subject to a subsequent determination of proper offsets, that said Prairie Band in general council, and its Board of Councilors and Business Committee, on May 15, 1955, each approved an attorneys' fee of 10% of the amount to be realized by said Band; and each also approved for payment from the sum to be realized by said Band the expense accounts of their said attorneys which have been presented to this Commission for allowance herein; and that under the final award entered in these consolidated dockets on August 8, 1955, the Prairie Band are entitled to receive a total sum of \$126,306.24; that said award was the result of services rendered by said attorneys under the contract of employment of October 22, 1947; that under the provisions of said contract and Section 15 of the Act of August 13, 1946, 60 Stat. 1049, said attorneys may receive a fee of not to exceed 10% of such recovery, or a total fee of \$12,630.62 and that said amount is a fair and adequate compensation to said attorneys for the services performed and the results obtained, and

said sum will be allowed as an attorneys' fee to the attorneys representing said Prairie Band of Pottawatomie Indians from the final award granted said Band as above recited.

Under the assignments of interest in the contract of employment said attorneys' fee is payable to the attorneys representing said Prairie Band of Pottawatomie Indians in the following sums, to-wit:

O. R. McGuire, 50% or	\$ 6,315.31	
Robert Stone, 19% or	2,399.82	
Robert Stone Johnson, 19% or	2,399.82	
Beryl R. Johnson, 12% or	<u>1,515.67</u>	\$ 12,630.62

The Commission finds that the itemized list of incurred expenses filed by O. R. McGuire properly totals \$11,345.60; that the following items included in said account are ordinary expenses incident to the practice of the legal profession and the maintenance and operation of a law office for the general practice of the law and are not properly allowable against and chargeable to the Prairie Band, to-wit:

Taxi fares paid for transportation within the District of Columbia where said O. R. McGuire maintains his business office, incurred between April 3, 1938, and July 7, 1955	\$ 22.90
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and that the said O. R. McGuire has requested that a duplicated item of \$94.47 be stricken from said account.

The Commission finds that said O. R. McGuire's account includes an item of \$3100.00 as deferred salary due one Ivy Lee Fuchanan on a time-and-half basis for stenographic and other services rendered by her to the said O. R. McGuire for the benefit of the Prairie Band after completion of her usual working hours under a contract of employment at eight hours per day, five days a week, in the office of the said

O. R. McGuire; that such services were distinct from the usual work of said Ivy Lee Buchanan and possible of performance during ordinary working hours; that the compensation therefor chargeable to the Prairie Band should not exceed a sum comparable to regular compensation for the time involved and services rendered, and that said item should be allowed in the total sum of but \$2,066.66.

The Commission finds that the expense account of Robert Stone (and others) filed herein is in the total sum of \$27,847.50; that the following items which are included therein represent personal expenses of the individual or individuals involved and in no manner contributed to the prosecution of the claims of said Prairie Band or toward obtaining the final award heretofore granted said Band, and remuneration for said items should be denied, to-wit:

October 12, 1948: Valet \$1.25, Laundry \$2.28, included in hotel bill of \$79.93	\$ 3.53
March 23 to April 1, 1949: Barber Shop \$1.00, Valet \$3.75, Laundry \$1.75, included in hotel bill of \$162.19	6.50
Trip Insurance on April 2, 1948	1.00
Trip Insurance on March 22, 1949	<u>3.50</u>
	\$ 14.53

The Commission finds that the expense account presented by Robert Stone includes an item of \$11,715.69 paid one W. D. Davis upon a statement of \$20,050.27 rendered for services performed and expenses incurred by said Davis at the request of Stone and other attorneys in connection with the preparation of the claims in these consolidated dockets and in

other dockets containing claims presented to this Commission in behalf of Pottawatomie Indians; that said \$11,715.69 item includes therein a payment of \$750.00 made to the said W. D. Davis upon his said account by Adams, Moses and Culver and a further payment of \$750.00 made to the said W. D. Davis upon his said account by Blake, Voorhees and Stewart, attorneys representing the Citizen Band of Potawatomi Indians; that said two firms have each filed expense accounts with this Commission seeking to recover for expenses incurred in the prosecution of the claims of said Citizen Band, and that said payments are included in those accounts; that the payments were made by said firms and not by Robert Stone, Robert Stone Johnson or Beryl R. Johnson; that said items are not properly allowable in the account of said Robert Stone.

It appearing from the affidavit of James N. Beery, attorney for the Administrator of the Estate of one Dorr E. Warner, deceased, photostatic copies of cancelled checks attached thereto, the itemized statement of W. D. Davis, and the record, that the said W. D. Davis operates under the firm name of Farm Management Company; and that said \$11,715.69 item in the expense account of Robert Stone contains three payments totaling \$2500.00 which were made to W. D. Davis to apply upon his account of \$20,050.27 by the said Dorr E. Warner, deceased, and not by the said Robert Stone; and said affidavit reciting that the estate of Dorr E. Warner, deceased, is not requesting the allowance of said item as an item of expense reimbursable from the final award heretofore granted the Prairie Band of Pottawatomie Indians in these consolidated dockets; the Commission therefore finds that \$2500.00 of said expense item of \$11,715.69

in the account of Robert Stone should be disallowed, said amount representing payments made upon the account of W. D. Davis by one Dorr E. Warner during his lifetime.

Upon disallowance of the items above specified, the Commission finds that the expense account of O. R. McGuire is properly allowable in the sum of \$10,194.89; that the expense account of Robert Stone (including expense items of Robert Stone Johnson and Peryl R. Johnson) is properly allowable in the total sum of \$23,832.97; that upon payment of said expense items of \$10,194.89 and \$23,832.97 to the persons entitled thereto and attorneys' fees in the sum of \$12,630.62 as hereinbefore apportioned, the balance of the final award heretofore granted the Prairie Band of Pottawatomie Indians is distributable to said Prairie Band.

Dated this 21st day of September, 1956.

Edgar E. Witt

Chief Commissioner

Louis J. O'Marr

Associate Commissioner

Wm. M. Holt

Associate Commissioner