

BEFORE THE INDIAN CLAIMS COMMISSION

LINCOLN BURDEN, WILLIE HANEY, AND)
BUDDIG LITTLE, FOR THEMSELVES AND)
AS MEMBERS AND REPRESENTATIVES OF)
THE LOYAL SEMINOLE GROUP OF)
AMERICAN INDIANS,)

Petitioners,)

vs.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 121

Decided: February 27, 1958

Appearances:

Guy Martin, with whom was
George E. Norvell, Attorneys
for Petitioners.

Keith Browne and Ralph A.
Barney, with whom was Mr.
Assistant Attorney General
Perry W. Morton, Attorneys
for Defendant.

OPINION OF THE COMMISSION

Holt, Commissioner, delivered the opinion of the Commission.

The claim in this case is asserted by three individuals as members and representatives of the Loyal Seminole Group of American Indians to recover an additional amount for alleged losses sustained by their ancestors during the Civil War. The claim is now before the Commission on the defendant's motion for summary judgment based on the following grounds:

1. The petition fails to state a claim against the United States and in favor of the petitioners, or either, or any of them.
2. The issues involved have been heretofore determined and the matter is res judicata by reason of the award of the United States Senate under the agreement with petitioners of July 1, 1898.
3. The Indian Claims Commission lacks jurisdiction of the subject matter.

The pertinent allegations of the petition are:

6. By Article 3 of the Treaty of March 21, 1866, 14 Stat. 755, the Seminole Indians who had remained loyal to the United States during the Civil War were to be reimbursed for their losses due to such loyalty in a total amount not exceeding \$50,000.00, with interest thereon at the rate of five per centum per annum from the date of the execution of the said treaty.
7. J. Tyler Powell and J. W. Caldwell, commissioners appointed to determine the amount of such losses, reported on November 26, 1867, that they had determined the total amount of losses sustained by the loyal Seminoles to be \$213,888.95.
8. Thereafter, fifty thousand dollars was paid to the said Loyal Seminoles.
9. By the Agreement between the Commission to the Five Civilized Tribes, commonly known as the Dawes Commission, on behalf of the United States, and the Seminole Nation of Indians, ratified by the United States Senate on July 1, 1898, 30 Stat. 567, it was provided that the Loyal Seminole claim should be submitted to the United States Senate, which was to determine the same finally, and provide for the payment of any amount sustained within two years.
10. The Appropriations Act of May 31, 1900, 31 Stat. 240, provided for the payment of \$186,000.00 in full settlement of the said claim.
11. Section 9 of the Act of April 26, 1906, 34 Stat. 140, ratified the disbursement of \$186,000.00 to the Loyal Seminoles in accordance with the provisions of the Act of May 31, 1900, aforesaid.

12. The provisions of the Acts of Congress of May 31, 1900, and of April 26, 1906, aforesaid, providing that the said payments should be in full settlement of the claim of petitioners, are not binding on petitioners for the reasons that petitioners were given no opportunity to, and in fact could not, effectively object to the said provisions, and further the petitioners did not in fact consent to the extinguishment of their claim.

On the basis of these allegations, the petitioners pray the Commission:

(1) To give judgment for petitioners in the amount of \$213,888.95, with interest thereon from March 21, 1866, at the rate of five percentum per annum, deducting therefrom the payments of \$50,000.00 and \$186,000.00 made by respondent.

(2) For such other and further relief as to the Commission may seem just and proper in the premises.

In their petition the loyal Seminoles seek payment of \$213,888.95, plus interest, less payments made by the United States totalling \$236,000.00, to compensate them for losses suffered during the Civil War. The petition states that such claim is a claim in law and equity as well as a claim based on fair and honorable dealings that is not recognized by any existing rule of law or equity. However, in its argument in reply to the defendant's motion for summary judgment, the petitioners have stated that the claim is asserted under the fair and honorable dealings provision of Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049) and, during oral argument on the motion, the petitioners' attorney stated that this action is not predicated on any rule of law or equity. Further, in the argument presented by the petitioners in opposition to the defendant's motion, no reference is made to payment of interest, but rather the petitioners state that they are asserting this claim on the ground that any amounts which were

heretofore paid by the United States are insufficient to satisfy the principle of fair and honorable dealings. While it is not clear to the Commission upon what theory the petitioners are basing their claim, no purpose will be served by speculation concerning the petitioners' theory or upon the sufficiency of the allegations contained in the petition since the Commission's decision on the primary defense of res judicata is determinative of the entire matter.

The defendant relies on the award of the Senate of the United States under the Agreement of July 1, 1898, in invoking the defense of res judicata. It contends that that action by the Senate determined all issues arising from the Civil War claim of the loyal Seminoles and that its decision as an arbitrator had the same operation and effect, as against the parties, as a judgment of a court of last resort. Accordingly, the Government argues, the petitioners are prevented by the doctrine of res judicata from once again litigating the same claim.

The petitioners argue that the present cause of action arises from clause (5) of Section 2 of the Indian Claims Commission Act, which provides that the Commission shall hear and determine "claims based on fair and honorable dealings that are not recognized by any existing rule of law or equity." The petitioners allege that this section of the Act created a new cause of action and that any amounts previously paid to the petitioners were insufficient to satisfy the principle of fair and honorable dealings as recognized by Section 2 of the Act.

Under the Treaty of March 21, 1866, a sum not to exceed \$50,000 was to be paid to the loyal Seminoles to reimburse them for their Civil

War losses. In order that the sum might be apportioned among the individual members of the loyal Seminoles, a commission was set up to determine the amount of each individual claim. The aggregate amount of the individual claims so determined by that commission was \$213,888.95. The \$50,000 was then paid by the United States to the loyal Seminoles, thereby conforming to the provisions of the Treaty and satisfying in full the obligations of the United States arising under the Treaty. There was no agreement to pay all the losses which the loyal Seminoles had suffered during the Civil War and the taking an account of the actual losses of individuals raised no implied promise to pay the whole amount but was only for the purpose of ascertaining the proportionate amount due each one. cf. Thomas Connor, et al. v. U. S., 19 C. Cls. 675.

Thereafter, the Seminole Nation and the United States entered into an Agreement, incorporated into the Act of July 1, 1898, under the terms of which both parties agreed that "the loyal Seminole claim shall be submitted to the United States Senate, which shall make final determination of same, and, if sustained, shall provide for payment thereof within two years from date hereof." The Senate then referred the loyal Seminole claims to its committee on Indian Affairs for investigation and recommendations. That committee submitted its report to the Senate in which it stated that it disagreed with the conclusion of the commission under the Treaty of March 21, 1866, that the aggregate of all claims was \$213,888.95. The Senate committee recommended reduction of that amount by 45%. From the remainder they recommended subtraction of the \$50,000 previously paid and the addition of 5%

interest from August 16, 1866. That resulted in a recommendation that the sum of \$177,085.00 should be paid to the loyal Seminoles in full settlement of their Civil War claims. The Senate adopted the recommendation.

Notwithstanding the determination by the Senate, the House of Representatives initially refused to appropriate that amount. However, the Senate and the House of Representatives finally agreed on the sum of \$186,000, which amount was included in the Appropriations Act of May 31, 1900, and its disbursement to the loyal Seminoles was ratified by the Act of April 26, 1906 (34 Stat. 140).

It is clear that the parties to the Agreement of July 1, 1898, are the same as the parties now before this Commission. Likewise the subject matter in this action is identical with the subject matter referred to in the Agreement, i.e., the loyal Seminole claims for damages suffered during the Civil War.

The Senate, in its actions taken under the provisions of the Agreement of July 1, 1898, was not acting in its legislative capacity but rather as an arbitrator, and its determination that the sum of \$177,085 should be awarded to the loyal Seminoles to compensate them for their Civil War losses constituted an award by an arbitrator. Loyal Creek Indians, et al., v. The United States, 118 C. Cls. 373.

It is well established in the law that the award of an arbitrator, acting within the scope of its authority, determines the rights of the parties as effectually as a judgment by a court. An arbitrator's decision on matters of fact and law is conclusive, and all matters in the award are thenceforth res judicata, on the theory that the matter

has been adjudged by a tribunal which the parties have agreed to make final -- a tribunal of last resort for that controversy. United States v. Gleason, 175 U.S. 588; Burchell v. Marsh, 17 How. 344; 3 Am. Jur. 951.

Clearly, then, whether it be a judgment by a court of law or an award by a duly authorized arbitrator, the judgment or award is final and conclusive as to every matter which was or could have been offered and received to support the claim. The Senate award was final and conclusive as to the Civil War claims of the loyal Seminoles. The Agreement submitting the Civil War claims to the Senate for arbitration was broad. It did not impose any conditions, limitations, or restrictions upon the Senate or require it to abide by any rules of law or equity in making its determination. In fact the Senate award was not based on any legal claim since none existed. It was an award based, as it was stated in a similar award to the loyal Creeks, on the "strong equities" involved. There is nothing for this Commission to consider which the Senate could not have considered in reaching its determination.

The question of pleading a claim for the payment of interest under the "fair and honorable dealings" clause has been discussed at length in previous decisions of this Commission and the Court of Claims. In Western Cherokee Indians, et al., v. United States, 116 C. Cls. 665, the Court of Claims said, at page 678:

* * * Clause (5) was intended, as its language clearly shows, when considered in the light of its history and other provisions of section 2, to cover only moral claims based on justice and fair dealings or broad principles of equity and justice, with respect to which no court had theretofore made a determination on the merits, or could have made such a determination under the terms of prior jurisdictional acts. * * *

The United States Senate had no restrictions placed on it in considering the Civil War claims of the loyal Seminoles and any claim now presented for payment of interest is an attempt to relitigate an element of the previously adjudicated claim. In Loyal Creek, et al., v. United States, 118 C. Cls. 373, the Court rejected the plaintiff's claim for interest under the "fair and honorable dealings" clause for the further ground that the Government is immune from the burden of interest unless it is specifically agreed upon by contract or imposed by legislation.

It is our conclusion that, since the Senate award adjudicated the claim, the defense of res judicata must prevail. The payment by the United States in 1906 of an amount in excess of the award, satisfied the claim and any action on it is barred. Accordingly, no actionable claim was in existence prior to the passage of the Indian Claims Commission Act of August 13, 1946, and, under the provisions of Section 2 of the Act, this Commission does not have jurisdiction of the subject matter.

The defendant's motion for summary judgment will be sustained and an order entered dismissing the petition.

Wm. M. Holt
Associate Commissioner

I concur:

Louis J. O'Marr
Associate Commissioner