

BEFORE THE INDIAN CLAIMS COMMISSION

TILLAMOOK TRIBE OF INDIANS, et al.,)
)
 Plaintiffs,)
)
 vs)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 239

Decided: February 6, 1959

Appearances:

Joseph W. Creagh, with
 whom was E. L. Crawford
 Attorneys for Plaintiffs

Walter A. Rochow, with whom
 was Mr. Assistant Attorney
 General Perry W. Morton,
 Attorney for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission

We have for consideration application filed herein for the allowance of attorneys' fees, reimbursable costs and expenses of the litigation paid or incurred by the attorneys, and the compensation of the witness E. O. Fuller.

Attorneys' Fees

On June 17, 1958 we made the plaintiff the final award of \$416,240.85. Under the contract between the tribe and the attorney E. L. Crawford, it was provided that the attorney should receive for legal services 10 per cent of any and all sums or of the value of any and all property recovered. And the claim for attorneys for the amount of \$41,624.03 is 10 per cent of the net judgment recovered, and is

in accordance with the terms of the aforesaid approved contract and is therefore approved and allowed in said amount. It is shown by approved assignment and transfer from Attorney E. L. Crawford that the said Crawford and Joseph W. Creagh became the sole attorneys for the tribe and therefore award of the aforesaid attorneys' fees is made to E. L. Crawford and Joseph W. Creagh. The said Crawford and Creagh can apportion the fee between themselves in accordance with their agreement therefor.

Reimbursable Expenses -- Attorneys

In connection with the original contract of employment E. L. Crawford was paid by the plaintiff Indians the sum of \$2,000 as provided for in the contract for use as expenses in the prosecution of the claims of the tribes. Mr. Crawford presented a detailed statement of expenditures in this litigation in the total amount of \$901.85, with the request that same be approved. We allow all of the items claimed except \$5.68, excess amount charged for a roomette on July 24, 1953, and the amount of \$19.18 charged for letterheads and copy sheets on December 4, 1953. These items are not thought to be proper expenses and therefore not chargeable to the tribe and when deducted from \$901.85 leaves an expense disbursement of \$876.99, which we approve. The balance of the \$2,000 fund deposited with the attorney by the tribe is alleged to have been expended on another claim, which expense charges are not before us in this case.

Mr. Crawford asks for an allowance for expenditures from his own funds in the prosecution of this litigation in the amount of \$1,283.95. We allow this except the item of \$7.00 charged on June 4, 1951 for fourteen Certificates of Contract, and the amount of \$6.65 for eleven copies of Certificates of the Department relating to contracts on August 3, 1951, a total of \$13.65 which

we think, are not proper charges. After deducting the \$13.65, a balance of \$1270.30 remains as personal expenses for which Attorney Crawford claims reimbursement, and which we approve and allow as such.

The amounts allowed above have been approved by the Commissioner of Indian Affairs.

Claim of \$750 in Behalf of Dorothy Crawford, a Stenographic Employee.

The Attorney's Contract provides that he may employ stenographic assistance as expense incidental to his employment. The work done by Mrs. Crawford seems partly to have been research work and other work not ordinarily done by a regular attorney's secretary and partly work that should be furnished by an attorney for the compensation received by him. We feel that \$375 should be adequate for the work done that is properly chargeable to the tribe and therefore this claim in behalf of Mrs. Crawford is allowed in the amount of \$375.

Total Allowed Attorneys

(1) To E. L. Crawford and Joseph W. Creagh for professional services	\$41,624.08
(2) To Cash Advanced by E. L. Crawford	1,270.30
(3) Services Rendered by Dorothy Crawford	375.00
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TOTAL	\$43,269.38

Witness Fees

Witness E. O. Fuller was employed by Attorney E. L. Crawford to do research work and appraise the value of the property involved and has made claim for a total of \$9,550 for his services; \$7,500 is claimed on a basis of per diem

charge of \$50 per day for time alleged to have been given to the research and other services performed, including reports made and introduced as evidence as plaintiff's Exhibit Nos. 5, 6 and 7; and for additional minor active services and for what the witness calls his "stand-by readiness" for a period of forty-one months a claim for \$2,050 is made; the two charges aggregating the total amount of \$9,550. The Bureau of Indian Affairs objects to the item of \$2,050 claimed by Mr. Fuller for "stand-by and minor active services" and contends that it does not appear to be a proper expense and should be disallowed. The Department of Justice concurs in that recommendation. This Commission is of the opinion that no such obligation was assumed in the contract made with Mr. Fuller and that no substantial services are shown to have been performed under this claim and therefore we disallow said charge of \$2,050.

With respect to the \$7,500 claimed by Mr. Fuller, neither the Bureau of Indian Affairs nor the Department of Justice makes any recommendation as to the same, but the plaintiff tribe protested the payment of same in full and expresses the opinion that such charge should not be more than \$5,000.

This Commission in its Opinion in Docket No. 239, Vol. 4 I.C.C., pp. 54-55, Finding 33, says this about services of witness Fuller:

Plaintiffs' witness, Mr. E. O. Fuller, has made an appraisal of the lands in question based upon speculative, theoretical, and improper factors in that he has relied almost entirely upon current values as evidenced by sales in this area occurring between 1940 and 1954. These current sales he has converted to 1894 values by discounting the 1954 dollar value to its value in 1894. He has made six separate appraisals of the various so-called amenities of the lands in question and totalled these appraisals to arrive at his final appraisal value. No allowance has been made for any change in economic conditions in the intervening period although harbors have been improved by the army engineers, roads and highways have been built in this area, the State has grown tremendously in population, and the logging truck has come into extensive use since about 1930 making timber like that on this land more accessible than at the time of the cession.

Such a method for determining the fair market value of these lands in 1892 or 1894 cannot be accepted. The value must be determined for the

lands as a unit with all amenities appurtenant thereto. Separate values cannot be placed upon the growing timber, the fish in the stream, the harbors along the coast, the scenery, the logged-off or bare lands, and other subsistence resources as was done by plaintiffs' appraiser. Furthermore, none of the sales in recent years concerning which evidence was introduced by plaintiffs and upon which plaintiffs' appraiser relied, can be made the basis of value in 1892 in the way applied by him.

The Department of Justice in its comments on the work of Mr. Fuller stated:

Although the method of appraisal adopted by Mr. Fuller was too speculative and theoretical to be worthy of much consideration by this Commission in arriving at the fair market value of the lands involved in this case, considerable information that was undoubtedly helpful to the Commission was included in Mr. Fuller's appraisal report. Much of the historical information in his report, however, was undoubtedly in Mr. Fuller's possession when he started work upon this case since he has been similarly employed only a few years before in appraising the neighboring lands in Alcea Band of Tillamooks v. United States. Although the valuation date in the Alcea case was 1855 and in the present case 1894, the Alcea investigation and appraisal unquestionably lessened the time required by Mr. Fuller for the present appraisal.

The record shows that Mr. Fuller was at the time of testifying in the case 79 years of age -- that he belonged to no real estate or similar type of land organization, and that among expenses for which he was reimbursed there were several items for moneys paid out by him for research by employees.

There is no basis for determining the amount of time used by Mr. Fuller in doing the work, for which he charges \$7,500, except his own statement that it took him 149-1/8 days of eight hours per day. It is the opinion of this Commission that not more than 100 days could possibly have been given by a competent appraiser to the securing of the information to which the Commission gave any consideration and by reason of which the plaintiff received any benefit. In this connection, attention is called to the fact that Mr. Fuller had testified in other Indian claims before the Court of Claims and this Commission, and should have known the type of information to which these tribunals gave consideration in

determining market value.

It should also be taken into consideration that in the instant case the value of only 191,798 acres (a small acreage for an Indian claim) was involved.

Taking into consideration the matters herein mentioned, together with the charges made for similar work in other cases, we feel that we must allow no larger fee to Mr. Fuller than \$5,000. We, therefore, disallow all the charge as made by Mr. Fuller except in the amount of \$5,000, which we allow.

Edgar E. Witt
Chief Commissioner

Concurring:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner