

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA, AND AMOS LAMSON,)
CHARLES J. SPRINGER, JOHN F. TURNER AND)
HENRY F. FREEMONT, EX REL. OMAHA TRIBE OF)
NEBRASKA, OMAHA TRIBE AND NATION INCLUDING)
ALL GROUPS, BANDS AND MEMBERS OF SAID OMAHA)
TRIBE AND NATION,)

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Dockets No. 225-A,
No. 225-B, No. 225-C,
No. 225-D, to be
known as No. 225
Consolidated

Decided: February 11, 1960

Appearances:

I. S. Weissbrodt, with whom
were David Cobb and Abe W.
Weissbrodt, Attorneys for
Plaintiffs.

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

OPINION OF THE COMMISSION

Watkins, Commissioner, delivered the opinion of the Commission.

The proceeding before the Commission is a joint motion by the
Plaintiffs and Defendant for approval of the proposed compromise agree-
ment designated, "Stipulation of Settlement" which is set forth in full
in the Findings.

The agreement is intended to settle Plaintiffs' claims against the United States set forth in Dockets numbered 225-A, 225-B, 225-C, and 225-D. For the purpose of this present consideration the compromise settlement proceeding is designated Docket No. 225 Consolidated.

Since this is the first compromise that the Commission has been called upon to approve covering the primary or basic claims of Indian claimants against the United States pursuant to the Indian Claims Commission Act, it seems appropriate and timely to make some observations on the Commission's responsibility and the procedures which it shall follow with respect to consideration of compromise settlements.

The last paragraph in Section 15 of Public Law 726 (79th Congress, 2nd Session), establishing this Commission reads as follows:

The Attorney General or his assistants shall represent the United States in all claims presented to the Commission and shall have authority, with the approval of the Commission, to compromise any claim presented to the Commission. Any such compromise shall be submitted by the Commission to the Congress as a part of its report as provided in section 21 thereof in the same manner as final determinations of the Commission, and shall be subject to the provisions of section 22 hereof.

Pertinent provisions of section 21 of the Act as far as this discussion is concerned are:

In any claim, after the proceedings have been finally concluded, the Commission shall promptly submit a report to Congress. The Report to Congress shall contain (1) the final determination of the Commission; (2) * * *, and (3) a statement of how each Commissioner voted upon the final determination of the claim.

According to section 19 of the Act, "The final determination of the Commission shall be in writing * * * and shall include (1) its finding of facts upon which its conclusions are based; (2) a statement

1) whether there are any just grounds for relief of the Claimant, and if so, the amount thereof; (b) whether there are any allowable offsets, counterclaims, or other deductions, and, if so the amount thereof, (3) a statement of its reasons for its findings and conclusions."

These are pertinent provisions of the Act which in our opinion govern the procedures with respect to the disposal of claims which have been filed with the Commission whether they are to be litigated to a conclusion or concluded by way of compromise settlement. No matter how the final determination is arrived at, whether by a contest or by an approved compromise, it has to be reported promptly to the Congress after the proceedings have been finally concluded; and it is provided in section 22 of the Act that:

Sec. 22. (a) When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims, and there is hereby authorized to be appropriated such sums as are necessary to pay the final determination of the Commission.

But no specific procedures governing the presentation of compromises of claims to the Commission, or how it shall proceed to a determination of compromises when they are presented are outlined in the Act or in the General Rules of Procedure adopted by the Commission.

In view of the legislative history of the Act creating the Commission it appears that we must give more than a perfunctory consideration to proposed compromises; a mere rubber stamping of the agreements will not do. Also, it is conceivable that there may be some compromises which the Commission would feel duty bound to disapprove.

It is not our purpose in this opinion to review at length the legislative history of the Act; but to point out that the primary objective of the Act was to provide a tribunal where and by which all of the claims against the United States, based on grounds defined in the Act, on behalf of any Indian tribe, band, or other identifiable group of American Indians residing within the territorial limits of the United States or Alaska, would be fairly heard and determined finally and for all time.

The claims were to be those which occurred prior to and including the date the Act became effective, and appeals from the decisions of the tribunal could be taken to the Court of Claims and by a writ of Certiorari to the Supreme Court from any decision of the Court of Claims.

The adoption of an act of the kind finally enacted in 1946 had been advocated for many years principally by Indians and numerous Indian rights associations to right the wrongs which the Indians claimed they had suffered in their dealings with the United States, dating back to the early days of this Republic. These claimed wrongs run all the way from securing of treaties and contracts with Indians by fraudulent or forceful means, failure to pay a fair price for lands taken from Indians either by treaty or by force, failure to properly and fairly adjudicate Indian claims by some of the Committees, Boards, or Commissions which had been created over the years to help adjudicate Indian claims, trespass on Indian lands by United States agents or by its white citizens, failure to give an honest accounting for monies or other property held in trust by the United States for Indians,

failure on the part of the United States in its negotiations with Indians to deal with proper representatives of the Indian tribes in question, to general claims based on the alleged failure of the United States to deal honorably, fairly, and equitably with Indians.

The Act of 1946 permits the adjudication of substantially all types of claims enumerated in the preceding paragraph, in addition to some others not enumerated, even to the extent of allowing recovery on moral grounds.

Typical grounds for recovery under the act are asserted in the original petition in Docket No. 225 in the instant case in paragraphs 14, 15, and 16, (later the claims in Docket 225 were separately stated by the order of the Commission, in Dockets 225-A, 225-B, 225-C, and 25-D):

14. Upon information and beliefs plaintiffs allege that defendant procured the execution of said treaties by misrepresentation and fraud:

(a) By failing to disclose and explain the true meaning of the language used in the treaties to those executing the same on behalf of the Indians, those executing the same on behalf of the Indians being unlettered and unfamiliar with the use of the English language and not comprehending the full meaning of the language used.

(b) By secret instructions given to the Commissioner sent to negotiate treaties.

(c) By special inducements of lands and goods.

(d) By promise given to the Indians that they would be permitted to remain in possession of the lands described in the treaty.

(e) By promises to permit them to continue to hunt and fish in ceded territory.

(f) By making consideration payable at the will and pleasure of the President and Congress.

(g) The treaties were negotiated with and signed by persons who were not duly chosen and recognized leaders of the Plaintiff tribe but were persons designated by the defendant for the purpose of negotiating the treaties of cession for the reason that the proper leaders had refused to treat with defendant for a cession of said lands. The parties executing said treaties were without authority of the tribe and acted contrary to the wishes and intentions of the authorized leaders and members of the tribe.

15. Upon information and belief plaintiffs allege that defendant procured the execution of said treaties through dealings as aforesaid which were not fair and honorable.

16. The consideration promised to be paid to the Indians for their cessions amounted to a small fraction of the value of the lands ceded and constituted and was an unconscionable consideration and represented a taking contrary to the Constitution and laws of the United States.

In this case, as in others before the Commission, some of the charges of fraud on the part of agents of the United States in the negotiations of treaties with Indians having to do with the cession of Indian lands, have been found to be true, and recovery has been allowed on that basis.

Situations of this kind raise problems in connection with the approval of compromise settlements - settlements which in some respects resemble treaties. These problems are among those with which we have to deal in this kind of a proceeding.

There is also the question of whether or not, in view of the long and unfortunate history of Indian claims, there is any real substance to the fear that no matter how many times the claims are adjudicated they never will be permanently settled.

This thought was expressed by the late President Franklin D. Roosevelt in a letter to the late Secretary of Interior, Harold Ickes, in 1941 when the Indian Claims legislation was before Congress.

Said Mr. Roosevelt:

If Indian claims could be disposed of with finality through the establishment of an Indian Claims Commission, my attitude might be somewhat different. The past history, however, of these claims demonstrates the futility of any hope that this purpose would be thus accomplished. Final action by the Claims Commission would be no bar to the representation of the claim to the Congress by the dissatisfied Indians or their attorneys.

The contrary view was adopted by the Congress when it enacted the Indian Claims Commission Act. In order to do everything possible to satisfy the ends of justice and to bring to an end the long drawn out Indian claims litigation, Congress enumerated a wide range of grounds on which recovery could be allowed by the Commission which was set up for the purpose of making investigations, holding hearings, and finally adjudicating these claims.

To make sure there would be no legitimate Indian claim left without its day in court, a new ground for recovery was added as a catch-all; that ground encompassed all "claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity."

And again, to make sure that the Commission would have ample powers to fairly, justly, and finally render judgment on these claims, the Commission was authorized to investigate claims on its own initiative through an investigation division which it was directed to establish. The evidence gathered by this division was for the use, not only of the

Commission, but it was to be made available to the Indians concerned and to any interested federal agency. (Sec. 13(b) of the Act.)

The Commission claims no prophetic powers, but it does believe if the claims are fairly and carefully tried when they are litigated, or if they are settled by compromise, and all reasonable safeguards are placed around the compromise negotiations and proceedings to see to it that the agreements are fair, understood, and approved by a majority of the Indian tribe members, that the Indians will accept the final judgments in good faith.

But if the Commission has done its full duty and the right to review on appeal the final determination has been exhausted, then if the Indians should still be dissatisfied, there is little likelihood that their claims will receive further consideration. As a matter of law they should be estopped; and the conscience of the American people will at last feel the Indians have been fairly treated and the matter should be closed. These are our beliefs and our hopes.

Compromise settlements of controversies have historically been favored in this country as a matter of public policy. With this policy we are in full agreement. In fact, compromises are the best hope for the early settlement of hundreds of claims still pending before the Commission after nearly thirteen years of activity.

Indian claims, many of which originated more than a century ago, are difficult to prepare for presentation to the Commission, and it is almost as difficult to prepare a defense against them. Then there are the matters of trial, preparation of briefs, consideration by the

Commission, rendering of judgments, possible appeals, perhaps retrial if the Commission is reversed, or at least additional hearings, etc. All these activities are time consuming and require large expenditures of money. The most unfortunate part of all is the long delay in bringing these claims to a conclusion. Many of the original petitioners in claims filed, as well as some of the attorneys involved, have passed on to their eternal rewards before their claims were finally adjudicated. The legal maxim that, "justice delayed is often justice denied," seems appropriate at this point.

With all this in mind we urge that more compromises be entered into in situations where they are possible of accomplishment.

We now come to the application of our observations to the motion for approval of the "Compromise Stipulation" in Docket No. 225 Consolidated. When the "Compromise Stipulation" was filed with the Commission counsel for the petitioners and the defendant were advised of the views of the Commission with respect to safeguards which should be used in connection with compromises through their various stages from negotiations to final approval by the Commission. Counsel gave excellent cooperation in carrying out our suggestions for which we commend them.

A hearing on the record of the joint motion praying for approval of the compromise settlement was held by the Commission at which oral and documentary evidence was received in support of the compromise. The Chairman, Vice Chairman and the Secretary of the Omaha Tribe of Nebraska were among the witnesses. The Findings of Fact outline all the evidence received.

Having heard and considered the evidence submitted and the arguments made by counsel in Docket No. 225-A, which was carried to a decision, the Commission became informed with respect to the facts and the law involved in Docket No. 225-A and to a limited extent with respect to Docket numbers 225-B, 225-C and 225-D.

In the instant case all requirements we have laid down elsewhere in this Opinion with respect to compromises have been complied with by the parties to this litigation.

Under these circumstances and in view of the Findings of Fact entered herein, we are of the opinion that the compromise settlement is fair to all the parties of this action now denominated No. 225-A Consolidated.

With all the foregoing discussions, law, and background in mind, the following steps and requirements in general should be followed, until such time as the Commission has indicated otherwise, in the matter of the approval of compromise settlements:

No. 1.

On the Part of the Petitioners:

The original compromise agreement should be signed by the Tribal Council Chairman or other officials properly designated to do so, by individual petitioners who are acting in a representative capacity, by all attorneys whose contracts of representation with petitioners have been approved by the Secretary of Interior and who have a contingent interest for attorney fees in the compromise settlement. Signed duplicates of the original agreements by individual petitioners and attorneys, and officials of organized tribes may be substituted as evidence of approval.

When the petitioners are all individuals acting in a representative capacity, and one or more of them become unable to act, either by death or for other reasons, then upon proper application the Commission will allow the substitution of new petitioners who have been properly nominated by the Indian tribe involved. In the event one individual is the petitioner in a representative capacity, these procedures may be modified to meet that situation.

Deceased attorneys of record should be represented by their duly appointed legal representatives. (Surviving attorneys of record should anticipate the necessity of meeting this requirement either before negotiations for settlement are begun or soon thereafter. This requirement should not work a hardship because distributions of the attorney fees and allowable expenses in any event are ordinarily paid only to the estate of the deceased attorney through the legal representative.)

On the Part of the Defendant:

Compromise agreement should be signed by the Attorney General or someone acting in his behalf.

No. 2. Filing with the Commission a joint motion of the parties together with the original compromise settlement, praying for the approval of the compromise and for the setting of a date for hearing the motion.

No. 3. On the date set an open hearing will be held by the Commission.

No. 4. At the hearing both oral and documentary evidence will be received by the Commission.

The Petitioners should present as witnesses: If an organized tribe is appearing as petitioner, the Tribal Chairman, the Secretary of the

Tribe or Tribal Council, and in addition, any other Tribal members the petitioners desire to have testify. If petitioners are individual Tribal members who appear in behalf of the tribe, at least two should attend as witnesses.

The Commission will require evidence from these witnesses of what has been done by them or the attorneys for petitioners to acquaint tribal members with the provisions of the compromise agreement. Other appropriate information may be required.

The attorneys for petitioners and the defendant will be required to make appropriate statements with respect to the settlement.

Documentary evidence required will consist of resolutions from both the Tribe and Tribal Council approving the proposed compromise settlement; and authorizing their Chairman or other officials to sign and execute the compromise in their behalf. All proceedings connected with the calling and holding of the meetings of the Tribe and the Tribal Council shall be fully authenticated, as shall be the signatures of the necessary officials signing the resolutions and the compromise agreement.

A letter of approval of the Compromise Agreement signed by the Secretary of the Interior or by someone duly authorized to act for him is required.

The same procedures should be followed with respect to compromises of offsets when sums involved are substantial.

The foregoing outlined steps and requirements seem to be basic and necessary to carry out fully the purposes of the Act, but unusual and unexpected circumstances may exist, not anticipated at this time, which

conceivably could cause undue hardships to the parties to a compromise agreement, if these procedures were rigidly enforced. If any such situations should occur, the Commission will hear counsel for the parties with respect to any modifications that may properly be allowed.

Based on the foregoing, a final order of determination will be entered in conformity thereto.

Arthur V. Watkins
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner