

BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS, )  
 OR CHARLES E. WILLIAMS AND )  
 JOSEPH REDTHUNDER, as repre- )  
 sentatives of the NEZ PERCE )  
 TRIBE OF INDIANS, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 175-A

Decided: June 17, 1960

ADDITIONAL FINDINGS OF FACT

In this case the Commission has found and determined that the Nez Perce Tribe of Indians of the State of Idaho, aboriginally had Indian title to certain lands located in the states of Idaho, Oregon and Washington, and that by a treaty with the defendant dated June 9, 1863, the said tribe ceded to the United States 6,932,270 acres of said lands.

It was found that the consideration the petitioner received for the ceded lands was \$352,394.94; and that the value of said lands on April 17, 1867, the date said treaty was ratified by the United States Senate, was \$4,650,000.00.

The Commission then concluded that by reason of the disparity between the consideration paid for such lands and the value thereof, the consideration paid by the defendant was unconscionable. An Interlocutory Order to this effect was then entered by the Commission with the further provision that the allowable offsets, if any, under the Indian Claims Commission Act, should be deducted from the said value of the land and that the petitioner

should recover the difference from the defendant.

The proposed compromise settlement which is now before us for approval relates largely to the amount of offsets to be deducted. It also affects the status of a companion case, Docket No. 180-A, which also involves the Nez Perce tribe of Indians.

In this Docket Number this tribe sought to recover from the United States the value of gold removed by white miners who came on the Nez Perce reservation during the period from 1860 to 1861; and compensation for the use of parts of the reservation taken by non-Indian intruders during the same period of time. It was claimed that these trespasses were committed while the petitioners were still in rightful possession of the reservation lands.

On December 31, 1959, the Commission entered its Interlocutory Order which finds that there is due petitioner from defendant \$3,000,000.00.

The Commission has heretofore made findings of fact 1 through 40 in 175-A and now makes the following additional findings which are supplemental to those already made:

41. That on June 10, 1960, the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment based upon a Stipulation for Entry of Final Judgment in the above entitled Docket, executed by Donald C. Gormely, Attorney of Record for petitioner; Perry W. Morton, Assistant Attorney General of the United States; and John D. Sullivan, Attorney for defendant. Said stipulation is set forth in words and figures as follows, to-wit:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated between counsel for the parties that the above-entitled case shall be settled, compromised and finally disposed of by entry of final judgment as follows:

1. There shall be entered in the above-entitled case, after all allowable deductions, credits and offsets, a net judgment in the amount of \$4,157,605.06.

2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which petitioner has asserted, or could have asserted, with respect to the subject matter of this claim, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action.

3. Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands, payments on the claim counterclaims or offsets which the defendant has asserted, or could have asserted, against the petitioner under the provisions of section 2 of the Indian Claims Commission Act, (c. 949, 60 Stat. 1050), and defendant shall be barred thereby from asserting any such rights, demands, payments on the claims, counterclaims or offsets for the period July 1, 1861, through June 30, 1957, against petitioner in any future action. It is agreed that defendant shall not be barred by this stipulation or by entry of judgment pursuant hereto from claiming in any future action offsets arising prior to July 1, 1861, or accruing subsequent to June 30, 1957. This stipulation and final judgment would include all offsets, counterclaims, and payments on the claim, to which the United States may be entitled in the case of Charles E. Williams, Joseph Redthunder and Harry Cshi, as Representatives of the Nez Perce Tribe v. The United States of America, Docket No. 180-A, as well as those to which the United States would be entitled in the present case, Docket No. 175-A. The purpose of the inclusion in this case of settlement of offsets in Docket No. 180-A, is to permit the entry by the Commission of a final judgment in Docket No. 180-A, at this time. Either party in that case may then promptly appeal from the decision of the Commission in that case. It is, however, understood, that while the parties hereto waive appeal or further review in Docket No. 175-A, no waiver of appeal would be made by either party in Docket No. 180-A. It is understood that a separate stipulation may be agreed to by the parties in Docket No. 180-A permitting the Commission to enter a final judgment therein subject to right of appeal.

4. To the extent that the settlement of offsets includes disbursements for "Ware and Sale of Timber," the settlement is not intended to preclude, or otherwise impair, the separate right

asserted by the government to a deduction from the proceeds of timber sales of 10%, more or less, for administrative costs. In the same manner, neither is the settlement intended to prejudice the right of petitioner to claim that such deduction is invalid or otherwise improper, on grounds apart from this settlement.

5. The final judgment, entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission of either party for the purposes of precedent or argument, in any other case.

6. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination of the case by the Commission, and shall become final on the day it is entered, both parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

7. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

8. Attached to this stipulation and incorporated herein by reference are resolutions of the Nez Perce Tribal Executive Committee, Nez Perce General Council, Colville Business Committee and Colville General Council authorizing counsel for petitioner to enter into this stipulation on the basis outlined in paragraphs 1 through 5 hereof, and a copy of a letter approving the termination of the case by the Secretary of the Interior or his authorized representative.

Attached to said Stipulation were properly signed and executed approvals by the officials of the Indian organization representing the Nez Perce tribe of Indians, petitioner in both Docket Nos. 175-A and 180-A. The signatures on said authorizations of the Indian organizations were properly authenticated.

Also attached to said Stipulation were approvals by the heirs of Kenneth R. L. Simmons, deceased, who was at the time of his death one of the contract attorneys for petitioner, and Hazel Day Simmons, deceased; and there was also attached the approval of said Stipulation by the Law

Firm of Wilkinson, Cragun, and Barker (former named Wilkinson, Boyden and Cragun), contract attorneys in Docket No. 175-A, by right of assignment of an interest in said contract from Kenneth R. L. Simmons, esquire. Supporting document in evidence is Exhibit 1-A.

42. At an open hearing before the Commission on June 13, 1960, oral and documentary evidence was received showing approval of said Stipulation for Entry of Final Judgment by the petitioner at regularly called meetings of said petitioner and its governing bodies. Resolutions duly adopted, signed and authenticated authorizing its officials in behalf of said petitioner, to sign approvals of said Stipulation, were adopted and documentary evidence thereof was received in evidence in Exhibits 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, and 1-N.

43. Attorneys contracts of employment provide that the attorneys will be subject to the supervision of the Commissioner of Indian Affairs and they shall make no settlement or adjustment of the claims or matters of controversy except with the approval of the tribe and the Commissioner of Indian Affairs. An approval in accordance with the attorneys contracts - and also as required by this Commission - of the proposed Stipulation for Entry of Final Judgment is contained in a letter (Exhibit 1-B) dated June 14, 1960, from George W. Abbott, Solicitor for the Department of Interior, acting for the Secretary of the Interior and addressed to Wilkinson, Cragun, and Barker, attorneys at law, Washington, D. C. This letter reviews the request for the approval of the compromise agreement and matters connected with it. It reads as follows:

\* \* \*

This refers to your letters of May 5 and 16, 1960, concerning the proposed compromise of offsets in the cases entitled Nez Perce Tribe of Indians v. United States, Dockets Nos. 175-A and 180-A, before the Indian Claims Commission.

You request our approval of the compromise of the offsets and entry of final judgment without the right of appeal by either party in Docket No. 175-A, and the compromise to exclude any offsets in Docket No. 180-A, with the right of appeal by either party from the \$3,000,000 judgment entered in No. 180-A. Offsets, if compromised, would be deducted entirely from the amount awarded in Docket No. 175-A and not from 180-A. The compromise of offsets in the amount of \$140,000 without the right of appeal in Docket No. 175-A will leave a net judgment in favor of the Nez Perce Tribe of \$4,157,605.06. The proposed compromise to exclude any offsets in Docket No. 180-A would leave as just indicated, a \$3,000,000 judgment which could be appealed from immediately by either party.

Our approval of the two compromises is required in view of your attorney contract with the Nez Perce Tribe and the contract between the Confederated Tribes of the Colville Reservation and Cobb and Weissbrodt, and other attorneys. Both the Nez Perce contract and the Colville contract contain provisions to the effect that the approval of the Commissioner of Indian Affairs and/or the Secretary of the Interior and the tribe is required for the compromise, settlement or adjustment of any claim or matter in controversy. In addition, Assistant Attorney General Morton, in his letter of May 13, 1960, accepting your offer of compromise, a copy of which letter has been furnished us, has agreed to the proposed compromise on condition that it be accepted by appropriate and satisfactory resolutions of the Nez Perce Tribal Executive Committee, the Nez Perce General Council, the Colville Business Council, and the Colville General Council, and that all said resolutions be approved by the Secretary of the Interior or his authorized representative, and that the proposed compromise itself also be approved by the Secretary of the Interior or his authorized representative.

You have furnished us copies of the resolutions adopted by the two Indian tribes in general council and of the two governing bodies of the tribes accepting the proposed compromise. You have also furnished us copies of the minutes of the meetings of the different groups. Your letter of May 5 furnished us the reasons why you believe a compromise of the offsets in Dockets Nos. 175-A and 180-A in the amount of \$140,000 and the entry

of a final judgment in the amount of \$4,157,605.06 in Docket No. 175-A is advantageous to the Indian claimants and should be approved.

The Acting Area Director, Portland Area Office, Bureau of Indian Affairs, has reported that the proposed compromise was thoroughly and accurately explained to the Nez Perce and Colville Tribes by a representative of your firm and that it was approved by the tribes by formal resolutions. He believes that it is advantageous to both tribes to effect a settlement at this time and that the compromise is fair, just, and equitable and he recommends its approval. The Regional Solicitor at Portland has also considered the proposed compromise and advises that it appears meritorious and in the best interests of the Indians and recommends its approval. The Commissioner of Indian Affairs recommends acceptance of the proposed settlement of offsets and waiver of appeal in Docket No. 175-A and the stipulations to be entered into in Docket No. 180-A.

It appears from the information made available to this office by your firm and the Bureau of Indian Affairs that the proposed offer to compromise the offsets and waiver of appeal in Docket No. 175-A and entry of judgment in Dockets Nos. 175-A and 180-A were fully explained to the Indians. It also appears that the meetings were properly conducted and that the Indians fully understand the terms of the settlement. It also appears that the procedures outlined in the case of Omaha Tribe of Nebraska v. United States, 8 Ind. C. Comm. 392, 407, have been followed.

Upon full consideration of the information before this office and in the light of the approvals of the compromise given by the Nez Perce Tribe and the Colville Tribes and by the Commissioner of Indian Affairs, we hereby approve on behalf of the Secretary of the Interior the proposed compromise set out in your letter of April 18, 1960, to Assistant Attorney General Morton and the resolutions adopted on April 22, 1960, by the Nez Perce Tribal Executive Committee, the resolution adopted on April 23, 1960, by the Nez Perce General Council, the resolution adopted on April 27, 1960, by the Colville Business Council, and the and the resolutions adopted on April 27, 1960, by the Colville General Council, all resolutions approving on behalf of the Indian groups involved the proposed compromise as contained in the aforementioned letter of April 18, 1960.

Under an agreement approved by the Acting Commissioner of Indian Affairs on September 6, 1956, your firm was given the right to prosecute the claims of the Nez Perce Tribe in Docket No. 175-A. The Cobb and Weissbrodt firm was given the right to prosecute the claims of the Nez Perce Tribe in Docket No. 180-A. This

agreement also provides that any judgment will inure to the benefit of all Nez Perce Indians in Idaho, Washington, or wherever situated and the attorneys shall take such action as necessary to have the Commission or the courts to so order.

The report of the Commissioner of Indian Affairs and your letter of May 5, both refer to this 1956 agreement. A resolution was adopted by the Nez Perce Tribal Executive Committee on April 22, 1960, and one was adopted by the Colville Business Council on April 27, 1960, proposing to amend the 1956 agreement to divide the judgment fund between the Colville Tribe and the Nez Perce Tribe according to population. The Commissioner of Indian Affairs in recommending acceptance of the compromise of offsets and settlement of the cases recommended that the resolutions modifying the 1956 agreement be not approved. He recommends in this connection that the resolutions modifying the 1956 agreement not be approved until they have been amended to provide that all Nez Perce Indians wherever situated be allowed to participate in the judgments if otherwise qualified. For these reasons no action at this time is being taken on the resolutions to supplement the 1956 agreement.

44. Nez Perce Tribal officials and other Nez Perce Indians testified in substance as follows:

RICHARD A. HALFMOON of Lapwai, Idaho, is a full-blood Nez Perce Indian, 50 years of age. He attended Catholic parochial schools at Sikpo Mission in Idaho and at Pendleton, Oregon, graduating from High School during 1928. He spent a probational period for priesthood at College in Gonzaga, served about seven years as a United States Special Deputy and then four or five years with the Umatilla Ordnance Depot at Hermiston, Oregon, as a guard before entering the United States Army. Upon his discharge in 1945, he became and is yet employed as a security man with the Fire Department with the Potlatch Forest Lumber Mill in Lewiston, Idaho.

He has served on the Executive Committee of the Nez Perce Tribe since 1951, and as its chairman for the past five years, a position he now holds. The Executive Committee consists of nine members elected by



the tribal members at the annual General Council of the tribe.

At a meeting of the Executive Committee on April 22, 1960, with a quorum of eight present, the compromise of offsets in Docket No. 175-A was approved by a vote of 7 to 0, the Chairman being permitted to vote only in event of a tie.

At a meeting of the General Council called at Lapwai on April 23, 1960, attended by around 200 of the enrolled membership of 1886, of which over 700 are minors under 21 and not permitted to vote, 141 members voted in favor of the compromise and 1 voted against it. Fifty eight present did not vote. Notice of the meeting had been given all members. Eighty or ninety percent of the Tribe speak English; however an interpreter was used at the meeting to assure understanding by all. Halfmoon knows the matter had been discussed among members residing on the reservation, is familiar with each member and approves the settlement.

Each meeting was attended by Superintendent William E. Ensor, Jr., who did not participate or attempt to suggest how they vote, and by Attorney Donald C. Gormley. The minutes of that meeting as presented in evidence here are accurate.

HARVEY MOSES, of Nespelem, a full-blood Indian 39 years of age, is a rancher, a member of the Confederated Tribes of the Colville Reservation, has been a member of the Colville Business Council for six years, its Chairman for the past three. He graduated from High School during 1941, entered the Army that fall and served with Ordnance about  $3\frac{1}{2}$  years in the Pacific Theater.

There are 14 different tribes confederated into the Confederated

Tribes of the Colville Reservation, for which the Colville Business Council speaks. There are 319 Nez Perce Indians enrolled among them. All enrolled members over 21 years of age may vote at tribal meetings. None of the Council members needs an interpreter.

At a Council meeting held April 27, 1960, on the reservation, 13 of the 14 Council members were present. The compromise was approved by a vote of 11 to 1, the Chairman permitted to vote only in event of a tie and thus abstaining.

At a General Council held at Nespelem the same day, three interpreters speaking Nez Perce, Colville and Moses languages, interpreted to the Indians, as is customary at such council meetings. A vote favoring the compromise for 131 for and 19 against was taken. None of the voters voting against the compromise at either meeting was a Nez Perce Indian. There is a faction or group on the Reservation representing the original Colville Indians who have a claim pending before this Commission based upon the government having placed Nez Perce Indians and Moses Band Indians upon their reservation. These are the ones voting against the compromise because they think it may weaken their position on their claim.

These meetings were attended by Mr. Gormley, the local counsel, Mr. Keith, and the Superintendent, Mr. Miller.

FRANK W. PENNEY of Lapwai, Idaho, is an enrolled member of the Nez Perce tribe, 39 years of age. He graduated from High School in 1939, entered the Army Air Force in 1940, was captured at Bataan, released during 1946, attended North Idaho College of Education and the University





HARRISON LOTT, a full-blood Nez Perce Indian, testified that he is 69 years of age; that he attended school in Lapwai and the Carlisle, Pennsylvania, Indian College where he was a classmate of Jim Thorpe; that he farmed until the first World War, when he served in the heavy field artillery; tried farming and then became Assistant Farmer at the Indian Sanitarium at Lapwai for 12 or 13 years; thereafter he worked in the limestone mines at Mission. He has served on the Nez Perce Tribal Executive Committee for 17 or 18 years and was present at the meetings discussing this settlement. He understands they are giving up their right of appeal in Docket 175-A; understands the compromise agreement; believes the Nez Perce have had a fair day in court, approves the settlement, and that none of the officials or attorneys present at the meeting attempted to influence the Indians with respect to their vote on this compromise.

CHARLES E. WILLIAMS, a full-blood Nez Perce Indian, testified he is 65 years of age, an enrolled member of the Confederated Tribes of the Colville Reservation; that he went up to the ninth grade in the Cushman Indian School. He is a radio repairman and a fireguard, this being his 15th year with the Government, in Forest Service. He has served one term on the Business Council of the Tribe and one term on the local school board. He, a Mr. Owhi, who is now dead, and Mr. Redthunder are the petitioners named in Docket 180. He was working the day of the general meeting, April 27th, and attended only part of the meeting. He understands that \$140,000 are to be set aside from the judgment in 175-A, and that it cannot be appealed hereafter but that 180-A can be appealed. He











