

BEFORE THE INDIAN CLAIMS COMMISSION

CHEROKEE FREEDMEN, AND CHEROKEE)	
FREEDMEN'S ASSOCIATION, ex rel)	
EDWARD CURLS, RUTH CLAGGETT,)	
JACKSON SMITH, GLADYS LANNAGAN,)	
AND WILBERT ROGERS,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 123
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 28, 1961

Appearances:

Alan W. Farley, Attorney
for the Plaintiffs.

Frederick C. Ward, with whom
was Mr. Assistant Attorney
General Ramsey Clark,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Scott, Commissioner, rendered the opinion of the Commission.

This petition was filed by individuals who claim to be Cherokee Freedmen, an association they have formed for the purpose of this case, known as the Cherokee Freedmen's Association, ex rel Edward Curls, Ruth Claggett, Jackson Smith, Gladys Lannagan and Wilbert Rogers, against the United States and prays for judgment against defendant for "* * * the value of properties and moneys wrongfully withheld from them * * *", and for interest at the rate of 4% for the deprivation of "* * * the use of said properties and moneys * * *".

In the aftermath of the Civil War, when the Indian Territory of the

Cherokee Nation was virtually a conquered country and at the mercy of defendant, negotiations were entered into by the United States with these Indians with respect to post war problems. One of these involved the prospective rights and status of colored persons residing in the Cherokee Territory who had been free or had served as slaves to these Indians. As a result of these negotiations the defendant and the Cherokee Nation entered into a treaty dated July 19, 1866 (14 Stat. 799) and the Cherokee Nation amended its Constitution accordingly. Under this treaty these colored persons acquired new rights and status as citizens of the said Nation. It was provided that in order to qualify for such citizenship status and rights, the Cherokee Freedmen, of whom petitioners herein claim to be members, must have resided within the Cherokee Territory at the commencement of the War and continued to reside there as of the date of the treaty, or must have returned thereto within six months after that date.

There were no dealings between defendant and these Cherokee Freedmen in respect to this treaty. These Freedmen entered into no agreement with defendant. They were not parties to the treaty involved. They were, however, beneficiaries of the treaty.

Incident to the distribution of property of the Cherokee Nation after the date of the said treaty, there arose controversies and differences of opinion as to the extent and nature of the rights and status conferred upon these Freedmen. The Cherokee Indians took the position that the Freedmen were entitled only to political and civil rights as citizens of the said Nation. The Freedmen contended they were entitled to equal

rights of citizenship and division of property to those shared by native Cherokees.

Other than the determination of this basic difference between these people, the most important problem presented was that of determining who among the Cherokee Freedmen were entitled to be members of the tribe within the meaning of Article IX of the Treaty. As a result a long series of legislative, judicial and administrative actions developed; and several membership rolls incident thereto were established from time to time.

It was established by litigation resulting from a jurisdictional act passed in 1890 that qualified Cherokee Freedmen were not only entitled to civil and political rights equal to native Cherokees, but were equally entitled to per capita shares in tribal property.

Petitioners and/or their ancestors were listed on the Wallace and/or Kern-Clifton membership rolls. The original Wallace roll which had been prepared prior to the proceedings in the Court of Claims, which resulted from the jurisdictional act, was used by that Court as a guide in establishing a new roll. The Kern-Clifton roll which resulted was used for distribution of certain funds. In the meantime, Congress authorized allotments of Cherokee lands in severalty and established the Dawes Commission to prepare a final and corrected membership roll. Many persons, including petitioners and/or their ancestors and those which had been included on the Wallace and Kern-Clifton rolls, applied for inclusion on this corrected roll. Approximately 4000 of these were

approved. Approximately 1700 were not approved. Petitioners and/or their ancestors are those persons who so applied, but, based on facts presented to the Dawes Commission, were not found to qualify under the requirements of Article IX of the Treaty of 1866, supra.

Tentative allotments of land had been recorded for these individuals. These were cancelled after they were denied inclusion on the Dawes Commission roll and the United States Supreme Court upheld the validity of this exclusion. The effect of the decision was that the Kern-Clifton roll was a valid roll for the said distribution of funds theretofore accomplished; but in view of the necessity of making corrections in a final roll for the allotment of lands in accordance with the requirements of the said treaty, a requirement stressed by Congress when it made provision for the Dawes roll, the inclusion on the Kern-Clifton roll could not be taken as a guarantee of inclusion on the Dawes Roll.

This brief summary of the history of claims asserted and litigated by the Cherokee Freedmen brings us to the claim now before this Commission which was filed on June 13, 1951.

In 1952 defendant filed a motion to dismiss the petition on the ground that the claims asserted do not meet the requirements of our organic act, and, therefore, are not within the jurisdiction of the Commission. Defendant contended that (1) the petitioners do not constitute a "tribe, band or other identifiable group of American Indians", and (2) that the claims asserted are individual as distinguished from group or tribal claims. A third ground was asserted

based on the fact that at that time the Department of the Interior had not yet approved a duly filed attorney's contract.

We denied the motion to dismiss. As to the question of whether petitioners constitute a "tribe, band or other identifiable group of American Indians" contemplated for jurisdiction under the Indian Claims Commission Act, we held that on the basis of the pleadings it appeared that the treaties, and related litigation and statutes involved, referred to Cherokee Freedmen as a class to whom full citizenship rights were given, and that, therefore, plaintiffs have shown themselves to appear to be a group entitled to maintain the claim. Ruling was reserved on the questions raised as to the approval of the attorney's contract by the Interior Department. We were of the opinion that the questions raised as to whether these were merely individual claims could only be determined by proof adduced at a hearing.

After we denied this motion the original attorney for the petitioners secured approval of the Department of the Interior, but later withdrew from the case. The present attorney's contract has been approved by the Department of the Interior.

On September 22, 1960, the defendant filed a motion for summary judgment of dismissal on the stated grounds that "there is no genuine issue as to any material fact and that defendant is entitled to a judgment as a matter of law" since the issues raised had been previously adjudicated and the matter is res judicata and the Commission is without jurisdiction.

Shortly thereafter the matter was set down for trial. Hearings were held in Tulsa, Oklahoma, on November 14 and 15, 1960. Eighteen witnesses testified for petitioner. Seventeen of these were individuals who stated that either they or their ancestors were directly involved in prior proceedings, membership roll activities, receipt of funds pursuant to distribution under the Kern-Clifton roll, tentative allotments of lands and dispossession therefrom, all relating to the relevant treaty. The additional witness appeared and represented himself as a research expert in the problem subject matter. Documentary evidence received in the record consists of official papers relating to the basic treaty, litigation which resulted therefrom involving Cherokee Freedmen who sought to be included on Cherokee membership rolls, and administrative activities in establishing the membership rolls involved. The basic treaty is in the record from the pleadings.

Our findings numbered 1 through 25 in this matter are based almost entirely upon official documents, court records and decisions. These findings recite the legislative, judicial and administrative actions and decisions which were involved in an extensive series of efforts by Cherokee Freedmen who were established as citizens of the Cherokee Nation and petitioners and/or their ancestors who were not so successful to secure to themselves the results of new rights and status created by Article IX of the Treaty of 1866 between the United States and the Cherokee Nation. Insofar as we have found in these findings that petitioners and/or their ancestors were those involved in those efforts

we have relied upon the testimony of these witnesses, official records and the admissions of the defendant. We have believed it necessary to find the pertinent facts from these official documents and records in order that we might find further necessary facts from the testimony of petitioners herein which we have assessed in arriving at our Finding No. 26 that these are individual claims, and accordingly our decision herein.

The petition herein is based upon the failure of the Dawes Commission to enroll the ancestors of the petitioners during the course of carrying out the instructions of Congress as embodied in the Curtis Act (30 Stat. 495). Petitioners allege improper and illegal conduct, unlawful and fraudulent acts, and lack of fair and honorable dealings on the part of defendant through its agents and representatives. Defendant in turn denies these allegations and states affirmatively by way of defense that the petition fails to state a claim upon which relief can be granted, that the relief sought by the plaintiffs is beyond the jurisdiction of the Commission and that the claims asserted by the petitioners have heretofore been determined and that the matter is res judicata by reason of the decision of the Supreme Court in Cherokee Nation and The United States v. Whitmire, Trustee for Freedmen of the Cherokee Nation, 223 U.S. 108 (1912).

There have been several similar claims before this Commission and we have uniformly held that they constituted individual claims over which we could exercise no jurisdiction. The first of these cases was

that of the Creek Freedmen v. The United States, 1 Ind. Cl. Comm. 156 (1949), Dkt. No. 25, wherein the Creek Freedmen filed claim for the difference between the value of their allotment as made to them and the value as set by the original agreement between the Creek Nation and the United States. The same defense of lack of jurisdiction was interposed by the defendant and upheld by this Commission on the grounds that we would have to determine the amount due each individual claimant by adjusting the value of the allotment as received by an amount sufficient to make it equal the amount promised under the agreement. The following is at page 162 of our opinion:

"This clearly concerns the rights of each individual Freedmen who was allegedly denied the full value allotment promised him and constitutes his own personal individual claim which is separate and distinct from the other Freedmen who may have also been denied full allotments. All that has been done here is to combine the several individual claims into one action."

In the case of Mitchell v. United States of America, 1 Ind. Cl. Comm. 683, Dkt. No. 85, wherein certain Omaha Indians sued for the value of allotments to which they claimed their ancestors had been entitled but had not received, we made the following statement:

"It will be observed that under the Act of 1882 the right to an allotment in severalty of the Omaha tribal land was a personal right conferred upon the individual Indian, depending on whether said Indian was in fact a recognized member of the Omaha tribe. Thus the wrongful failure or refusal of the Government to recognize that a mixed blood Omaha Indian was a member entitled to enrollment in the tribe, thereby denying such Indian the allotment of land and other benefits

granted to members, would, in our opinion, be a violation of the personal right of the individual Indian concerned. It would follow that a claim for damages resulting from such violation would certainly be the personal claim of the individual Indian sustaining the loss, and would not be one in which other Omaha Indians with like claims would share a common interest."

In the case of The Fort Sill Apaches v. The United States of America, 1 Ind. Cl. Comm. 137, Dkt. No. 30, there was a claim for the alleged false arrest of all of the members of the Warm Springs and Chiricahua Bands of Apaches. Petitioners contended that the wrong had been committed against the bands themselves since the arrest was of the whole of each band. We held that while the same common incident had led to the injuries complained of, it could not convert what were individual claims into a group claim.

We are unable to draw a distinction between the Creek, Mitchell, and Fort Sill Apache cases and the one at bar. As in those cases it would be necessary, if we had jurisdiction, for us to determine the merits of the qualifications of each individual member of the Cherokee Freedmen's Association as measured by the requirements of Article IX of the 1866 Treaty. For example, we would be unable to come to any determination as to the qualifications of the witness Fred Martin which would be binding upon the witness Peter Adair, or any of the other witnesses who appeared before us.

From the cases cited above and the facts of the case at bar, it is our opinion that the claim asserted herein is in fact and law a class

action wherein the petitioners are representing a group with individual claims and that this Commission is without jurisdiction to take cognizance of them for the reasons stated in the cases cited.

Facts relative to the other issues presented are in the record. However, we believe it unnecessary for us to discuss these since we have found, and it is our opinion, that the Commission is without jurisdiction in this matter because our organic act does not provide for our jurisdiction over individual claims.

The decision, therefore, of the question as to lack of jurisdiction over individual claims adversely to the interests of the petitioners disposes of all of the other issues in the case. The petition must be dismissed. It will be so ordered.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner