

BEFORE THE INDIAN CLAIMS COMMISSION

THE NOOKSACK TRIBE OF INDIANS)
 ON RELATION OF JOSEPH LOUIS,)
 CHAIRMAN OF THE GENERAL COUNCIL,)
)
 Claimant,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 46

Decided: February 9, 1962

ADDITIONAL FINDINGS OF FACT

The Commission has heretofore made findings of fact numbers 1 through 35 and now makes the following additional findings of fact which are supplemental to those already made.

36. That on January 30, 1962, 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 case which is executed by Frederick W. Post, Attorney of Record for claimant, Ramsey Clark, Assistant Attorney General of the United States and Bernard M. Newburg, attorney for defendant. Said stipulation is set forth in words and figures as follows, to-wit:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

On July 17, 1958, the Commission determined that petitioner in the present suit was entitled to recover the sum of \$52,383.50, subject to deduction of counterclaims and offsets to be thereafter determined (6 Ind. Cl. Comm. 578).

The parties to present suit have, after negotiation and compromise, stipulated that the sum of \$3,000.00 shall represent counterclaims and offsets properly to be deducted

from the interlocutory award of \$52,383.50. This stipulation has been approved by the Nooksack Tribe (Resolution dated April 1, 1961), by the defendant and by the Commissioner of Indian Affairs.

The stipulated sum of \$3,000.00 shall be taken to include all counterclaims and offsets which defendant has asserted or could have asserted for the period March 8, 1859, to June 30, 1960 inclusive, but shall be without prejudice to any claim in any other suit or action between the parties relating to a period prior to March 8, 1859, or after June 30, 1960.

Therefore, it is hereby stipulated between counsel for the parties that final judgment be entered in the sum of \$49,383.50, representing the net recovery after deduction of counterclaims and offsets in the sum of \$3,000.00.

This stipulation shall be without prejudice to the right of either party to appeal on any issue of fact or law in the case other than the amount of counterclaims and offsets, but as to the amount of such counterclaims and offsets this stipulation shall be final and non-appealable.

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

37. A contract of employment of attorneys for the Nooksack Tribe of Indians together with the approval and extension thereof by the Commissioner of Indian Affairs acting for the Secretary of the Interior, are on file with the Commission. These show that Kenneth J. Selander and Frederick W. Post were the original attorneys for the Nooksack Tribe in this case, however, on September 25, 1950, all interest of Kenneth J. Selander in said contract was assigned with the approval of the Commissioner of Indian Affairs to Frederick W. Post who assumed the sole representation of claimant, and is now the attorney for claimant.

38. On November 16, 1961, six affidavits were filed on behalf of the claimant "in support of compromise and settlement of defendant's claim of set-offs against judgment," which affidavits are admitted in evidence and considered by the Commission. The six affidavits are:

- (a) Frederick W. Post, Attorney of Record for claimant;
- (b) Daniel Swanset, who states he is a member of the Nooksack Tribe and a member and Chairman of its Tribal Council;
- (c) Frank Reid, who states he is a member of the Tribe and a member and Vice-Chairman of its Tribal Council;
- (d) Beatrice Cline, who states she is a member of the Tribe and a member and Secretary of its Tribal Council;
- (e) Ben Cline, who states he is a member of the Tribe and a member and Treasurer of its Tribal Council; and
- (f) George Cline, who states he is a member of the Tribe and a member of its Tribal Council.

In the affidavit of claimant's attorney, Frederick Post, he states that the United States attorney has offered to settle its claim of set-offs in said case for the sum of \$3,000.00 after a trial of said issue on the merits; that he attended a meeting of the Nooksack Tribe and its council on April 1, 1961, at 2:00 o'clock P.M. and the same was attended by a quorum of the Tribe and a quorum of its Council; that he fully explained the Government's offer to the tribal members and members of the Council and recommended that the Government's offer be accepted because the Government might be able to prove more in the form of allotted land and possibly in other ways and to further litigate would occasion additional expenses to the tribe which would be saved by settlement;

that on said date, April 1, 1961, the tribe and council voted unanimously to accept said offer.

In the sworn statements of the five members of the Nooksack Tribe and its council, each affiant states that at the meeting held on April 1, 1961, at 2:00 o'clock P.M. at the Nooksack Methodist Indian Mission southeast of Emerson, Washington, there was a quorum of council members of the Nooksack Tribe and a quorum of the tribe present as required by the tribe's constitution and by-laws; and, that the tribe's attorney fully explained the said proposed compromise and settlement of the Government's claim to offsets which would reduce the judgment rendered in the amount of \$3,000.00 from \$52,383.50 to \$49,383.50; that a resolution was submitted to the tribal members to approve said compromise settlement of offsets which resolution was approved unanimously. Each of the affiants also state that as a council member and member of the tribe the proposed compromise and settlement is considered fair and reasonable and requests that the same be approved and entered by the Commission.

39. The attorneys' contract of employment provides that the attorneys shall be subject to the supervision of the Commissioner of Indian Affairs and they shall not make any settlement or other adjustment of the claims or matters in controversy except with the approval of the Commissioner of Indian Affairs and the Tribe. An approval in accordance with the attorneys' contract, and also as required by the Commission, of the proposed Stipulation for Entry of Final Judgment is contained in a letter dated January 30, 1962, and filed with the Commission on the same date,

from Edward W. Fisher, Deputy Solicitor for the Department of Interior and addressed to Hon. Ramsey Clark, Assistant Attorney General, Lands Division, Department of Justice, Washington, D. C. It reads in pertinent part as follows:

There have been submitted to this Department documents concerning a proposed compromise of offsets due the United States on the claim filed by the Nooksack Tribe in Docket No. 46 before the Indian Claims Commission.

The contract between the Nooksack Tribe and Frederick W. Post, Esquire, pursuant to which this claim is being prosecuted provides that no compromise, settlement or other adjustment of the matter in controversy shall be made unless approved by the Commissioner of Indian Affairs and the tribe. Since the 1960 delegation to the Solicitor of authority in respect to tribal attorney contracts, the Solicitor is authorized to give such approval, 210 IM 2.2A (9), 25 F. R. 831.

We have been advised that the Indian Claims Commission has determined that the Nooksack Tribe, petitioner in Docket No. 46, is entitled to the sum of \$52,383.50, less any offsets. You and the attorneys for the Nooksack Tribe now propose to compromise for \$3,000.00 any offsets due the defendant.

In this connection there has been furnished to us a copy of a stipulation executed by the attorney for the Nooksack Tribe and by the Assistant Attorney General on behalf of the Federal Government. This stipulation provides that offsets shall be allowed the defendant in the amount of \$3,000.00 and that the petitioner and the defendant shall have the right to appeal upon any issue of law or fact other than the issue of offsets but that the petitioner and the defendant are precluded from any appeal on the question of offsets. We note, incidentally, what may be a typographical error in that the stipulation provides a final judgment shall be entered in the sum of \$49,484.50.

Your letter of January 5 and its enclosures indicate the prior deficiencies in the settlement procedures prescribed for this case have been corrected.

We have given careful consideration to the information furnished us by Mr. Post concerning the proposed compromise, including evidence that the matter has been fully explained to the Indians and that they approve of the proposal. On this basis we have concluded that the request of the attorney to enter into a compromise with your Department on offsets in the amount of \$3,000.00 in the Nooksack case, Docket No. 46, should be approved. Therefore, the proposal to compromise offsets in Docket No. 46 in the amount of \$3,000.00 in the manner stated in the copy of the proposed stipulation furnished this office with your letter of January 5 is approved.

40. The Commission finds that the proposed compromise settlement of defendant's claim to offsets was understood by the members and officials of the Nooksack Tribe and that they approved it without being subjected to pressures of any kind; that said compromise settlement is fair and just to the claimant and the defendant and said stipulation should be approved and a final judgment be entered in favor of claimant in the amount of \$49,383.50 against the defendant.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner