

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE CROW TRIBE OF INDIANS, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| v. |) | Docket No. 54 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: May 9, 1962

OPINION ACCOMPANYING ORDER DENYING MOTION FOR
REHEARING ON DETERMINATION DISALLOWING EXPENSES
AND COSTS OF EXPERT WITNESSES

Watkins, Chief Commissioner, delivered the opinion of the Commission.

On May 4, 1962, counsel for the petitioner, The Crow Tribe of Indians, filed an instrument with the Commission entitled "Motion for Rehearing on Determination Disallowing Expenses and Costs of Expert Witnesses." There is no statement in the body of the document of a motion of any kind whatsoever. However, we take notice that it was intended to so state one for a rehearing and we will so consider it.

At this point we note the fact that the motion for rehearing should have been filed under our Rule 33 within 30 days from the entry of final judgment which occurred on February 12, 1962. Counsel seem to indicate they have been personally aggrieved in this matter so we waive the rule in order that they may present in their proposed appeal this motion and their reasons in support of it. We do this, not to set a precedent, but because of the importance of matters set forth in our Findings and Opinion, and for the additional reason just mentioned.

Counsel's principal reason as stated in their own words, for a rehearing is based on the allegation that the record "shows that not one

question was raised as to the value of the services of the experts. No notice was given to (a) counsel, (b) The Crow Tribe, or (c) Messrs. Saunderson and Burlingame, parties in interest, that in dispute was the question of whether the value and the extent of the services justified the requested award. . . . No evidence was adduced in the formal record or served upon the parties, except statements that the services justified the award. The sole question remaining at the close of the hearing seemed to be the legal question of public policy governing validity of deferred compensation contracts."

It would seem from the above contentions that counsel has failed to recognize that this Commission did conduct a hearing on a "Petition For Allowance of Reasonable Expenses Incurred by Attorney" on October 20, 1961; that the purpose of that hearing was to give petitioner an opportunity to establish the substance of allegations in said petition; that the principal allegations were . . . "The facts stated in the two said respective claims attached are substantially true and are hereby confirmed," and "In each instance the additional compensation sought is reasonable and just under the circumstances, in the opinion of the petitioner"; that petitioner had the burden of proving the allegations in said petition; and that it was the duty of the Commission to determine whether or not the petitions should be granted, based upon the evidence adduced from that hearing, as well as from all facts gleaned from the entire record touching upon the employment of these expert witnesses and the extent of the services they rendered to the tribal petitioner, and ultimately the value of those services.

Now the Commission is fully aware, and this writer particularly, that all counsel in this case are more or less specialists in Indian litigation. Their credentials bear the stamp of many years experience before this Commission in all phases of such litigation. Their performances at hearings conducted on petitions for attorney's fees and expenses ordinarily are most impressive and thorough. Nothing is taken for granted. Indeed it would be most presumptuous on the part of the Commission to suggest to them how to make their presentation in these matters.

Since we have been dealing with such experienced counsel, we are indeed taken back by counsel's suggestion in the present motion that no notice was given that the question of the value of expert witnesses' services was in "dispute." Again we ask, what was the purpose of the hearing if not, among other things, to adjudge the value of these services. Just because the government as nominal defendant in that particular hearing raised no objections to the additional amounts sought for these witnesses, this does not dissolve as an issue the value of the expert services rendered to the tribe.

The intent of counsel's argument seems to be that the Commission by its conduct waived the presentation of, and consideration of the matters just mentioned and narrowed the case to one point, i.e., that of whether or not the contracts of employment were invalid because they violated public policy. We do not agree.

Since our findings and opinion in this proceeding were so comprehensive and thorough, we feel it would be repetitive to do no more than call attention to a few items in the record that might possibly have been overlooked.

THE SCOPE OF THE HEARING

Transcript of October 20, 1961, p. 293

Mr. Wiggenhorn: I suppose you would like to have some proof on the expenses of experts.

Chairman Watkins: Yes. We would like to discuss it as a matter of law too.

Mr. Wiggenhorn: I don't know whether I need to be sworn for this purpose.

Chairman Watkins: You probably better be if you are going to testify.

Whereupon Mr. Wiggenhorn was duly sworn and proceeded to testify about the witnesses and the terms of their employment and the services rendered.

(Tr. pp. 293, 294, 295) The record shows conclusively that the Commission wanted the customary proof in support of the petition.

During the course of the hearings we did not express any views, one way or the other, concerning the value of the services of the expert witnesses. Indeed, under the circumstances it would have been quite premature. However, we did discuss with counsel, and in some detail, the legality and the propriety of the type of contingent arrangements under which these expert services had been rendered. In so doing we fail to see how, in the course of such a discussion, the petitioner could have lost sight of the fact that he still had the simple responsibility of proving his case.

MATERIAL TAKEN FROM OR INDICATED BY THE PETITION

Mr. Wiggenhorn, of counsel, signed the petition in this matter. Attached to and made a part of the petition were the sworn statements by the witnesses Mr. Saunderson and Mr. Burlingame. With reference to these statements Mr. Wiggenhorn said in the petition:

The facts as stated in the two said respective claims attached are substantially true and are hereby confirmed. Because of the limited finances of the Crow Tribe at the time, the attorneys for the tribe were not able to engage qualified experts for the prosecution of said case except upon the terms as set forth in the attached claims. In each instance the additional compensation sought is reasonable and just under the circumstances in the opinion of the petitioner.

Mr. Wiggenghorn also attached to the sworn statements of each of the witnesses a certificate of approval of each of the claims. These vouchers of the witnesses filed with the Indian Bureau were in effect made a part of the petition by Saunderson's reference to them.

Significant and material to the present discussion are the last two paragraphs of Mr. Saunderson's sworn statement:

I worked on this assignment for approximately twelve months up to the time of the hearings before the Indian Claims Commission, held at Billings, Montana in May of 1956. Up to the time of these hearings the Crow Tribe paid me a total amount of \$13,750.00 for my services. Since that payment represents about half of my usual full work rate for the twelve months of time, I hereby request an additional payment of \$12,500.00 in full settlement of the account.

The information concerning payments made to me for services and expenses are contained in three vouchers bearing the Billings, Montana Area Office of the Bureau of Indian Affairs voucher designation 250-C-507; 250-C-975; and 250-C-160. (Underscoring supplied)

It is hardly necessary for us to point out that these paragraphs as a part of the petition specifically called attention to the history of these claims. The second paragraph, which designated the vouchers (and their numbers) which had been used in securing the payment from the Bureau of Indian Affairs of Mr. Saunderson's claim, directed the Commission to where

the supporting evidence could be found. It was an open invitation to check those vouchers, and an offer of them in support of his claim.

Incidentally, the claim of Mr. Burlingame filed with the Indian Bureau was also with the photostatic report of the Indian Bureau which was supplied to the Commission along with the information on the Saunderson claim. It is set forth in our Findings as is the record of Mr. Saunderson's claim as presented to the Indian Bureau.

The Commission firmly believes that, on the date of the hearing on the petition for the allowance of the additional compensation for expert witnesses, all the interested parties had as much opportunity to present their views on the record as could be afforded to anyone. No restrictions whatsoever were imposed. We are also firmly convinced that the petitioner herein is charged with the sole responsibility of bringing to the Commission's attention in its petition and the accompanying sworn statements of the expert witness, those very factual matters, of which he had prior knowledge, and of which he now complains that the Commission utilized without giving proper notice to the petitioner. In this connection we note that the factual matters complained of were found in official public records of which this Commission had a perfect right to take judicial notice.

It is our considered judgment that the Commission's final determination on the question of awarding additional compensation to the expert witnesses is firmly based on carefully prepared facts which are fully supported by the evidence directly presented by the petitioner, by that evidence adduced at the hearing on the petition, and from the pertinent evidence found in the entire record of this case.

Accordingly, the Commission will enter an order denying the petitioner's motion for a rehearing.

Arthur V. Watkins
Chief Commissioner

I concur:

T. Harold Scott
Associate Commissioner

Commissioner Holt did not participate because he is out of the city at this time.