

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE OF)
 OKLAHOMA, THE EASTERN SHAWNEE)
 TRIBE OF OKLAHOMA, DAVIS TYNER)
 AND WOODROW SPYBUCK, ON BEHALF)
 OF THE BLACK BOB BAND,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 334-A

Decided: March 22, 1963

Appearances:

Jack Joseph and Louis L.
 Rochmes, Attorneys for
 Petitioner.

W. Braxton Miller, with whom was
 Mr. Assistant Attorney General
 Ramsey Clark, Attorneys for
 Defendant.

OPINION OF THE COMMISSION

Scott, Associate Commissioner, delivered the opinion of the Commission.

The petition in this claim was filed by The Absentee Shawnee Tribe of Oklahoma, and The Eastern Shawnee Tribe of Oklahoma, both having tribal organizations recognized by the Secretary of the Interior. Appearing also as petitioners are David Tyner and Woodrow Spybuck, both purporting to be members of the Black Bob Band, and appearing in a representative capacity for the band regarding any claim to which the Commission may determine the tribal organizations are not proper parties plaintiff.

The petitioning tribes allege that the Black Bob Band of Shawnee Indians does not have a tribal organization recognized by the Secretary of the Interior, and that these petitioning Tribes "have succeeded to all the tribal assets and rights of the Black Bob Band, including the claims asserted in the Petition."

The petitioners base their claim upon alleged violations of the defendant's fiduciary obligations to the Black Bob lands as well as violation of the standards of fair and honorable dealings - particularly in its failure to protect the Indians in peaceful enjoyment of their lands, its permission, condonation and encouragement of settlement by trespassers on the lands, dissipation of the lands, enactment of legislation to quiet title in grantees who obtained the land by fraud and for an inadequate consideration.

Section 2 of the Indian Claims Commission Act provides that it shall hear and determine five specified types of claims against the United States, on behalf of an Indian tribe, band or other identifiable groups of American Indians residing within the territorial limits of the United States or Alaska.

It is apparent from the language of that provision of the Act that the Commission has jurisdiction to entertain claims on behalf of three classes of claimants, i.e., a tribe, band, or other identifiable group. There is no grant of jurisdiction to hear claims on behalf of individual Indians and, considering the legislative history of the Act, this Commission does not believe that it was the intention of the Congress that this Commission should be given jurisdiction over

individual claims. When it is the intent of Congress to include individual claimants in jurisdictional acts, it, as a rule, expressly designates them as distinct from the tribes, bands or groups.

Blackfeather v. United States, 190 U.S. 368, 370.

Applying this to the facts in this claim, as set out in Findings of Fact Nos. 1 through 22, it is apparent that although members of a band of the Shawnee Tribe of Indians were involved, the incidents upon which the claim is based were all separate and distinct and constituted claims of individuals for alleged wrongful acts affecting them generally.

Under the Treaty of 1854, the Shawnee Indians ceded to the United States their lands in Kansas which had been ceded to them by the United States in 1825 and the United States receded an area consisting of 200,000 acres in the eastern 30 miles of the reservation.

Among the Shawnees was a group led by one named Black Bob who had expressed their desire to take their lands in common. Article 2 of the treaty provided inter alia for those Indians residing in Black Bob's settlement by specifically authorizing them to indicate their desire to continue to so live within 60 days after approval of the surveys. Thereafter, upon determination of the number desiring to be included, a tract equal to 200 acres for each Indian should be set aside.

Under the provisions of Article 4 of the Treaty of 1854, "those of the Shawnees" who had originally chosen to live in common, could, if they so desired, make separate selections at a later date, in conformity with the rule provided to govern "those who shall in the

first instance, make separate selections." The petitioners contend this applied to the Black Bob Band as a unit, and should not have been interpreted to extend this right of selection to individuals. On the other hand the Shawnees, as such, were entitled to make individual selections, and it does not follow in the opinion of this Commission that because a member of the Black Bob Band originally chose to take his land in common, he should be held to be forever foreclosed from exercise of individual choice or even until such time as all members of the Black Bob Band should decide to take in severalty.

Each selection of land and application for a patent was the act of an individual, exercised at a different time and affecting a separate and distinct tract of land. A lapse of more than two years appears between the forwarding of the first 69 and second 65 selections to the Commissioner of Indian Affairs, another year elapsed before 12 additional selections were made, and even more time before the 22 final selections were made. By no stretch of the imagination could it be held that this constituted one cause of action or that it involved the entire band. There was no concerted action on their part and each individual acted for himself to acquire a patent for himself to a tract of land which he himself hoped to either occupy in whole or in part, or to sell to others in order to better himself and acquire other lands.

In protection of the rights of these Indians in their lands, the defendant repeatedly advised trespassers of their status, conducted lengthy inquiries into the facts surrounding the selections, delivery

of patents, sales of the land, adequacy of consideration, payment of the consideration and good faith, or lack of it, on the part of those involved.

The Commission has had before it a number of similar claims, and it has consistently held that they constitute individual claims over which we have no jurisdiction. The earliest of these claims were Creek Freedmen v. United States (Dkt. No. 25), 1 Ind. Cl. Comm. 156, and Fort Sill Apaches v. United States (Dkt. No. 30), 1 Ind. Cl. Comm. 137.

As to petitioners' allegations that defendant permitted dissipation of the Black Bob lands in violation of its duties as guardian of the property, this Commission has found in other similar claims that such must be dismissed as a class action for individual claims over which the Commission has no jurisdiction. Ponca Tribe v. United States (Dkt. No. 323), 6 Ind. Cl. Comm. 409, and others.

This Commission has held, in the case of Mitchell v. United States, Dkt. No. 85, 1 Ind. Cl. Comm. 683, wherein certain Indians sued for the value of allotments to which they were entitled, but had not received, that by denying allotments of land and other benefits granted to other members of the tribe, the personal rights of the individual Indian had been violated, and that a claim for damages arising from such violation would be the personal claim of the Indian sustaining the loss.

As in the cases cited, it would be necessary, if we had jurisdiction for this Commission to determine the extent of injury to each individual

member of the Black Bob Band, to locate the particular tract of land which he selected, estimate its value in its natural state or at the time of the 1854 treaty, determine the consideration stated in the deed and, more important, if that consideration were paid him and in what form. Each claim would be different as to the date upon which it arose, the value of the land, the consideration and the amount in money which patentee received for his lands. This sort of an exercise, we believe, was never contemplated to be required of the Indian Claims Commission.

From the authorities cited, and from the facts in this claim, it is the opinion of this Commission that the claim asserted herein is in fact and in law a class action brought by the petitioners representing a group of individual claimants, and that this Commission is without jurisdiction for the reasons hereinbefore stated.

As to the facts pertinent to other issues, we believe it is unnecessary for the Commission to discuss them further since we have found, and it is our opinion, that the Commission is without jurisdiction over individual claims. The decision that this Commission lacks jurisdiction over individual claims disposes of all of the other issues raised in the case, and the petition must be and is dismissed. It is so ordered.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner