

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE)	
OF OKLAHOMA,)	
)	
Petitioner,)	
)	
v.)	Docket No. 334-B
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 29, 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 petitioner, The Absentee Shawnee Tribe of Oklahoma, filed its original petition in Docket 334 on August 11, 1951. This Commission, on December 21, 1956, issued an order severing from the original petition the "Third and Separate Cause of Action" and the "Fourth and Alternative Cause of Action" as Docket 334-B, which is the claim involved herein.

The petitioner generally claims that the defendant appropriated without compensation property which had been set aside within the Shawnee area in Kansas for the benefit of the Absentee Shawnee Tribe of Oklahoma contrary to the Constitution, laws and treaties of the United States, for which recovery is authorized under Clauses 1, 4 and 5 of Section 2 of the Act.

Under the provisions of Clauses (1) and (4) of Section 2 of the Act, petitioner prays for a determination granting just compensation for the property taken, judgment in that amount and further relief as may seem just to the Commission.

Under Clause 5 of Section 2 of the Act, petitioner prays for judgment in an amount equal to the value of the lands involved at the time of taking and an accounting of the proceeds from the sale of the property, together with interest thereon.

The defendant in reply contends that the petition fails to state a claim against the defendant upon which relief can be granted and that petition should be dismissed because the petitioner is not such a presently existing tribe, band or other identifiable group of Indians as contemplated in the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

As a further defense the defendant, while denying specifically any liability, alleges that if any claim or any right of recovery should exist, the Shawnee Nation, the Eastern Shawnee Tribe of Oklahoma and the Black Bob Band are proper and necessary parties hereto. Further, the defendant, while maintaining that the petition does not state a cause of action, further contends that if any sum should be found to be due petitioner, it is not entitled to any interest thereon.

This action is based upon provisions of the Treaty of May 10, 1854 (10 Stat. 1053), between the United States and certain delegates representing the bands of Shawnees who were parties to the treaties of November 7, 1825 and August 8, 1831, and who, prior to the Treaty of 1854, were united into one tribe.

The Treaty of 1854 made special provisions for certain Indians who were absent from the main body of the tribe then and had been since about 1840. After provision had been made for allotments in severalty out of the 200,000 acre tract for the main body of Shawnees in Kansas and for communal allotments to members of Black Bob's and Long Tail's settlements, the treaty stated that it was anticipated that there would be a surplus of land; that such surplus lands would be held intact for 5 years after proclamation of the treaty to be allotted to "some Shawnees who have been for years separated from the tribe" and to "such Shawnees as return to, and unite with the tribe." The treaty further provided that at the expiration of the first five year period, any surplus lands remaining unallotted should be sold, and the proceeds held in the United States Treasury for ten years from the date of the proclamation of the treaty. At the expiration of the ten year period, if the "absent Shawnees" had not returned and united with the tribe, all moneys then in the Treasury or received after that date as proceeds from the sale of such surplus lands should be used for, or invested for "such beneficial or benevolent objects among the Shawnees" (emphasis supplied) as the President of the United States, after consulting with the Shawnee Council, shall determine." The treaty further provides that if "any absent Shawnees return and unite with said tribe" after the expiration of the first five year period mentioned, and before the expiration of the ten year period, a proper share of the lands remaining unsold should be assigned to them. In the event all surplus lands have been sold at the time of their return, then equitable payments should be made to them from the money held by the Treasury.

From an analysis of these provisions, it is apparent that the treaty did not consider the "absent Shawnees" as an identifiable group in which rights were automatically vested to the surplus lands, but rather as individuals who for various reasons were absent from the main body of the Shawnees, and who could individually invoke freedom of choice as to returning to the united Shawnee tribe. However, it is equally apparent that in order to become entitled to his share in the Shawnee lands in Kansas, each "absent" Shawnee was bound to return to and unite with the tribe within a certain limited period of time, and failing to do so, he lost such benefits as might have inured to him under the treaty.

The absent group which was so provided for had never lived in Kansas, but had about 1840 moved westward into Indian Territory, settling on lands once occupied by the Creeks and Seminoles. However, there is no indication that they were considered a separate entity, but rather wanderers from the fold of the Shawnee tribe. That they still considered themselves a part of the Shawnee tribe is borne out by the fact that in 1862, when dispossessed by the fortunes of war, they returned to the protection of the Shawnee tribe proper, and the Shawnees shared their annuity with them.

In 1862, if not before, they were fully advised of their rights under the treaty and of the necessity to return to and unite with the tribe in order to benefit thereunder. Their failure to exercise their rights granted them under the treaty eliminated any individual interest in such benefits. This Commission has stated:

. . . a collection of individual rights are not converted into a tribal claim simply because it is asserted as a class action by a subsequently organized group claiming in a representative capacity. Indian Claims which are substantially individual claims are not triable before the Commission under the Indian Claims Commission Act . . . (7 Ind. Cl. Comm. 156, Docket 282)

As to whether the surplus lands and the monies realized from their sale were dealt with in accordance with the Treaty of 1854, the petitioner contends that the Absentee Shawnee are entitled to recover their share of the proceeds of the sales. Defendant, on the other hand, maintains that the proceeds were administered in accordance with the provisions and intent of the treaty, and to the satisfaction of the Shawnee tribe.

The treaty provides that all moneys received from the sales of such surplus land "shall be applied to, or invested for, such beneficial or benevolent objects among the Shawnees, (emphasis supplied) as the President of the United States, after consulting with the Shawnee Council, shall determine."

It is the opinion of this Commission that after the expiration of ten years, as provided in the treaty, the absent Shawnees had lost their right to "return to and unite with" the Shawnee tribe for the purpose of claiming their share of the surplus lands; that the Shawnee Council of necessity represented all those who wished to be a part of and identified with the Shawnee tribe; and, therefore, the decision of the Council as to recommendations it wished to make to the President as to the disposition of the funds in question was final, and binding upon all persons affected by the treaty.

Accordingly, it is the opinion of this Commission that the individual absent Shawnees by failing and refusing to comply with the conditions set forth in the Treaty of 1854 lost any right which they may have had to the surplus Shawnee lands in Kansas; that the proceeds of the sales of such surplus lands were expended in accordance with the provisions of the Treaty of 1854; that the Absentee Shawnee Tribe of Oklahoma is without a cause of action in the present proceeding, and the claim must be and is dismissed.

T. Harold Scott
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner