

BEFORE THE INDIAN CLAIMS COMMISSION

PAWNEE INDIAN TRIBE OF OKLAHOMA,)	
consisting of the four con-)	
federated bands of Pawnee Indians,)	
namely: Chaui or Grand Pawnee,)	
Kitkehahki or Republican Pawnee,)	
Pitahauerat or Tappage Pawnee,)	
and Skidi, Loup or Wolf Pawnee,)	
)	
Petitioner,)	
)	
v.)	Docket No. 10
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 15, 1963

Appearances:

John W. Wheeler, John Wheeler, Jr.,
and Robert L. Wheeler,
Attorneys for Petitioner.

Sim T. Carman, with whom were Ralph A. Barney
and Mr. Assistant Attorney General Ramsey Clark,
Attorneys for Defendant.

OPINION

PER CURIAM: By order dated September 28, 1962, the Commission allowed the fees of the petitioner's attorneys. The Commission now has before it the matter of the attorneys' claimed reimbursable expenses, and this is the sole remaining matter now before this Commission.

The original attorneys' contract was made with Arthur B. Honnold who, on November 19, 1954, assigned a one-fourth interest therein to the law firm of Wheeler and Wheeler. Thereafter, Honnold having died on May 13, 1955, a supplemental attorneys' contract dated August 25, 1956,

was made with John M. Wheeler, John Wheeler, Jr., and Robert Wheeler, attorneys at law doing business under the firm name of Wheeler and Wheeler. All of the attorneys' contracts have been approved as provided by law and are in effect at the present time. Arthur B. Honnold died on May 13, 1955, and letters of administration were issued by the County Court of McClain County, Oklahoma, to his widow, Georgia W. Honnold, who continues to serve as executrix of the estate. John M. Wheeler is now deceased, and his last will was admitted to probate on May 6, 1963, in the County Court of Tulsa County, Oklahoma, and his son, John Wheeler, Jr., was duly appointed and is now acting as executor of the estate of John M. Wheeler, deceased.

The petition for reimbursable expenses was filed on July 20, 1962, and was supplemented by a petition filed on July 25, 1962. In an amended reply filed November 28, 1962, an additional item of expenses was claimed. The defendant has filed responses to the attorneys' petitions and objected to the allowance of certain items. There have been extensive replies to those objections. Hearings have also been held on this matter on September 14, 1962, October 24, 1962, and May 9, 1963.

In the original petition the following reimbursable expenses were claimed:

Expenses of Wheeler and Wheeler:

Cash expenses	\$17,319.97 ^{1/}
To Chief Sun Eagle for investigation	3,000.00
To Francis Flora for extra secretarial work on briefs	538.75
Advanced to appraisers Hitchings and Horton	10,000.00
Telephone expense	<u>598.80</u>
Total	\$31,457.52

^{1/} The listing of expenses in Addendum "A" to the original petition does not total this amount because of certain omissions and errors in the recorded figures. However, the vouchers and receipts submitted do total \$17,319.97.

Expenses of Arthur B. Honnold \$21,147.71
 (This total includes \$15,000.00
 advanced to appraisers Hitchings
 and Horton)

In the supplemental petition the following expenses were claimed:

Wheeler and Wheeler \$ 730.56
 Witness fees of John R. Houser 10,000.00

In an amended reply the following expense item was claimed:

Wheeler and Wheeler \$ 268.75

In the aggregate the claims total \$63,604.54

The defendant has objected to the allowance of certain items claimed as reimbursable expenses. In detail those items are as follows:

Supplemental Petition of Wheeler and Wheeler

(1) July 19, 1962, travel -- \$312.48

The defendant has no objection to the allowance of \$294.48 but protests the allowance of \$18.00 which represents taxi service expenses. At the hearing held on May 9, 1963, Mr. John Wheeler, Jr., testified that that this item represented expenses incurred on a trip to Washington which was made by airplane. The \$18.00 represented payments for taxi service required at Tulsa, Oklahoma, and in Washington, D. C., to and from the airport. Mr. Wheeler testified that the taxi expense in Tulsa is \$5.00 each way and that the fare in Washington, D. C., is \$4.50 each way. The Commission is of the opinion that the \$18.00 item should be allowed and therefore we have allowed this entire item as a reimbursable expense.

(2) July 24, 1962, photographs of documents, etc. for collection of attorneys' fees -- \$164.78

The charges incurred under this item represent the expenses of compiling information in connection with the attorneys' petition for allowance

of expenses. The Commission is of the opinion that these expenses are not proper charges against the judgment in this case and this item is disallowed as a reimbursable expense.

- (3) June 11, 1962, telephone to Washington, D.C. -- \$3.30

At the hearing on May 9, 1963, the defendant withdrew its objection to this item and the Commission allows this as a reimbursable expense.

- (4) July 23, 1962, expenses of computations prior to settlement of case -- \$250.00

The defendant has withdrawn any objections to allowance of this item and the Commission has found that this is an allowable item of expense.

- (5) 1959 - Witness fees of John R. Houser -- \$10,000.00
and
(45) (Original petition of Wheeler and Wheeler)
August 18, 1958; September 18, 1958; December 15, 1958,
advance for fees to appraiser for claimants -- \$25,000.00
(\$15,000.00 advanced by Honnoid; \$10,000.00 advanced by
Wheeler and Wheeler)

Item No. 5 (Witness fees of John R. Houser -- \$10,000.00) and Item No. 45 of the original petition of Wheeler and Wheeler (Advance for fees to appraiser for claimants -- \$25,000.00) will be considered together because they are both for the allowance of attorney expenses for expert witnesses under the Claims Act. In one case the claim (No. 5) is for fees due a witness under the claim that the petitioning attorneys had committed themselves to pay these fees regardless of the outcome of the case, and the other (No. 45) is for advances made to expert witnesses by the attorneys for which they now claim compensation out of the judgment.

- (5) 1959, Witness fees of John R. Houser - \$10,000.00

This claim (5) as an attorney's expense, which the petitioning attorneys feel they should be compensated for under Section 15 of the

Claims Act, is based on the employment of Mr. John R. Houser, an economist, by Arthur B. Honnold, the first contract attorney who represented the Pawnee Tribe of Oklahoma in Docket No. 10. At that time Mr. Honnold did not have any associates. He employed Mr. Houser to do research and testify as an expert witness in the valuation state of the claim. Mr. Houser did some research and also made a deposition. Later the petitioning attorneys in this matter were employed as associates to assist Mr. Honnold. Following Mr. Honnold's death the case was carried on by the petitioning attorneys to its conclusion. They decided that some changes in attitudes relating to valuation had occurred and that Mr. Houser might be helpful as a witness. He was given some new directions with respect to his preparation for testifying. This matter is covered in the testimony of Mr. Houser, who appeared before the Commission in the present proceeding and testified with respect to his employment, the terms on which it was based, and other matters relative to the claim for compensation. His testimony, covering his employment by Mr. Honnold down to the time when he testified before the Commission, is set forth in the transcript of the hearing of September 14, 1963. We quote the following pertinent material from the record:

Examination by John Wheeler, Jr. (Transcript Sept. 14, 1962)

Q. Will you tell the Commission, please, what, if any arrangement or understanding you had with Mr. Arthur B. Honnold, during his lifetime, with reference to work to be done on the Pawnee case?

A. Mr. Honnold asked me if I could make such a study. He asked me for my advice and ideas on it, and said that if I did come up with a theory of valuation and some data -- he agreed that I would be paid a reasonable fee for my services and that the Commission undoubtedly would accept that fee, and I said that I would be willing to do that work on that basis.

Chief Com'r. Watkins: Who would pay for it?

The Witness: Mr. Honnold would be responsible for paying it. My agreement was with him.

Chief Com'r. Watkins: Did he say that he would pay it?

The Witness: Yes, sir.

By Mr. Wheeler, Jr.:

Q. Now, sir, did you do any work following that agreement with Mr. Honnold?

A. Yes, sir, I did.

Q. Will you outline, very briefly, what it was that you did, the time involved, and the like.

A. I began this thing in December of 1952, or January of 1953 -- about that time.

The first thing I did was to examine the data, of which Mr. Honnold had a large volume, looking for the type of testimony that had been given in other cases, the theories and the concepts of valuation that had been employed.

I examined the data which he had and discussed with him at length the material that he had, and then undertook to prepare an objective economic valuation.

I did prepare it, and gave a deposition on that in January of 1954.

Q. Now, sir, that was at a time before Mr. Honnold's demise, was it not?

A. Yes, sir.

Q. And at a time when my firm was in the case?

A. Yes, sir.

Q. After Mr. Honnold's death, did you have any further agreement or understanding?

A. Yes, you came to me in 1959 and advised me at that time that there had been a number of decisions of the Commission which, one might say, had clarified various premises that could not be included in valuation studies, and you asked me to augment my work and prepare a new study, which I did.

Q. Did you have any meeting with the councils of the Pawnee Tribe with reference to your employment?

A. I met in your office, in the presence of four members of the Pawnee Tribe and two appraisers of another firm -- the appraisers had developed a great deal of new data, specifically sales data.

Q. Was that Messrs. Horton and Hitchings?

A. Yes, sir, it was. They had developed a great deal of new material with which to work -- you might say, original or prime source material.

I went over the material that they had, in discussion with these people, including the tribal members, and you then instructed me to go forward with the work.

Q. You say "tribal members." Were they council members?

A. It is my understanding that Mr. Roberts was president of, I believe, the business council.

Q. That was Mr. George Roberts?

A. Yes, sir. There was a second man that, I believe, was Secretary of that council, and I think his name was Mr. Morris.

In addition to those two -- I am mistaken, Mr. Morris was a member of the Nasharo council -- there was Chief Sun Eagle, who is; or was until his recent death, I believe -- his title was -- Chief or President of that council; and Mr. Pratt, who was the secretary, I believe, of the business council.

Q. Lester Pratt?

A. Yes.

Q. On that occasion, was there a discussion about your continued work in the case, and your compensation?

A. I believe there was. There certainly was with you, and they in turn were aware of it because I had discussed with them what I proposed to do, and they were in agreement that I do it, and you advised me to go ahead, on behalf of the council.

Q. Do you recall that those councils retired from our presence.

A. Yes, sir, they did.

Q. And come back with instructions to go ahead?

A. Yes, sir.

Q. Now, what was the amount of your compensation discussed, if any?

A. Again, it was the reasonable value of my services.

Q. Do you remember a limitation being placed on it?

A. Yes. \$10,000.00

- Q. Now, following that agreement, did you do further work?
A. I did. I made a complete new study.
Q. And you did testify in the case, didn't you, Mr. Houser?
A. Yes, in April --
Q. And you did prepare a report?
A. Yes.
(Tr., pp. 30-34)

Mr. Houser's report, Exhibit No. 226, and two other exhibits, Nos. 224 and 225, which he had prepared to illustrate and summarize his findings were offered in evidence. They were objected to by the defendant. The Commission requested briefs on the matter, which were presented. Upon consideration of the objections, the points raised, and the arguments presented, the Commission ruled that the objections should be sustained, and that the exhibits and the theory of valuation presented by the witness should be rejected.

In its ruling the Commission stated:

The Commission has thoroughly examined Mr. Houser's report (Exhibit 226) and the graphs (Exhibits 224 and 225), which are enlargements of the two graphs following page 9 of his report, and finds that his novel, theoretical method of determining land value is unacceptable as a basis upon which this Commission could base its conclusions of value of the lands in question.

* * *

Mr. Houser's report is merely a series of mathematical and statistical computations which have no judicially accepted basis for valuing land. It, by his own admission, a theoretical approach to the problem by the application of various economic principles. On its face the report of Mr. Houser has failed to take into consideration the recognized factors which bear on market value, as set forth by the courts and this Commission. Otoe and Missouri Tribe of Indians v. The United States of America, 131 C. Cls. 593; Nooksack Tribe of Indians v. The United States of America, 6 Ind. Cl. 578; Osage Nation of Indians v. The United States of America, 3 Ind. Cl. Comm. 217.

His strong reliance on U. S. Census figures as to the value of lands places his entire report on weak ground, and

the further application of factors based on assumption and speculation render his ultimate conclusions valueless in arriving at a determination of the value of the Pawnee lands. As we stated in The Snake or Piute Indians of the Former Malheur Reservation in Oregon v. United States of America, 7 Ind. Cl. Comm. 526, 569, "such mathematical processes cannot provide a judicially acceptable basis for arriving at the fair market value . . . Ascertainment of value in cases of this type cannot be made by such artificial rules. The problem of evaluating land on the frontier of the United States . . . is not subject to solution by application of formulas and equations.

Mr. Houser testified at the valuation hearings in Docket 10 that he was appearing on behalf of the claimant tribe; that he was to receive a fee for his study and the testimony he would give; and that the fee was not in anywise contingent upon the outcome of the litigation. He volunteered to further details at that time and he was not cross examined on this statement. (Tr., April 22, 1955, pp. 529-530)

The present members of the Council of the Pawnee Tribe opposed the approval of the Houser item of the attorney's claim. They denied that the tribe's council had approved the employment of Mr. Houser. Their spokesman, Albert W. Horse Chief, Jr., Chairman of the Pawnee Business Council, in stating their opposition made this statement:

We have a contract on the advice of our attorneys here, for \$125,000, which involves appraisers.

This contract was approved by the Secretary of the Interior and it looks like our attorney would be recklessly using tribal moneys on this claim in asking this gentleman to come along when we already have appraisers at such a very high amount * * *. (Tr., p. 40)

It should be noted here that the contract of employment of appraisers T. C. Hitchings and Edward B. Horton, Jr., mentioned by Mr. Horse Chief,

was a written contract between the Pawnee Tribe of Indians, the law firm of John M. Wheeler, John Wheeler, Jr., and Robert L. Wheeler, and the above named appraisers, and had the approval of the Secretary of the Interior through the Commissioner of Indian Affairs. The effective date of the contract was July 7, 1958. Claim No. 45 is based on this same contract.

Section II-A of the contract reads as follows:

In accordance with the contract between Attorneys and the Tribe, by the terms of which attorneys are empowered to employ technical assistance in preparing for trial, the costs and expenses of which shall be paid by the Tribe to the Appraisers, Attorneys and the Tribe do hereby employ Appraisers to appraise the lands embraced within said claims as of the dates of taking and do agree to pay Appraisers the sum of One Hundred Twenty-Five Thousand and no/100 (\$125,000.00) Dollars in cash, upon allowance by the Indian Claims Commission, and from the funds recovered in said claims by the Tribe.

Notwithstanding the provisions of said Section II-A that the attorneys were bound with the tribe to pay the appraisers out of the tribe's claim money, it was provided in Section XIII of the same contract that, "In no event will the attorneys become liable for the payment of any part of the amounts set forth in paragraphs II-A and II-B." Such provisions prove one thing certain, that the attorneys were not bound to advance anything out of their own pockets, but at best would be agents between the appraisers and the tribe.

The Hitchings-Horton agreement seemed to establish a policy between the Indians and their attorneys with respect to the employment of expert witnesses, and it must have been in the minds of both these parties when Mr. Houser was employed; and particularly when in the presence of members of the governing Indian council a discussion was had with Mr. Houser

and the attorneys about the terms of his employment. Mr. Houser was the only one present to testify as to what happened. Significant then was the statement he made under examination by Mr. John Wheeler, Jr., "and you advised me to go ahead on behalf of the council." (Underscoring supplied.) From this the conclusion seems justifiable that both the attorneys and the Indians, as far as the law would permit the Indians to do so, employed Mr. Houser, and that he would be paid out of the funds recovered in said claim by the tribe, and as in the Hitchings-Horton witness contract, it would be "upon the allowance of the Commission" but within the special provision that the amount not to exceed \$10,000.00 would be determined by the Commission. The first contract was in writing, signed by the attorneys for the tribe and the tribe, and approved according to law by the Secretary of the Interior. But the Houser agreement was oral and did not have the specific approval of the Secretary. It should also be noted that both these agreements were entered into several years prior to the Commission's ruling in The Northern Paiute Nation v. United States, Docket 87, 10 Ind. Cl. Comm. 361.

Clearly their claim No. 45 for \$25,000.00 (\$10,000.00 for themselves and \$15,000.00 for their associate, Arthur B. Honnold, now deceased) advanced to appraisers Hitchings and Horton, does not come within our jurisdiction for allowance out of the award to the tribe. Our decision in The Northern Paiute Nation v. United States, supra, certainly governs this situation. Any advance by the attorneys, including Mr. Honnold, was voluntary on their part and they will have to look elsewhere to recover the money advanced the witnesses.

The defendant has also opposed the Houser item. It takes the position that the contract of employment of Mr. Houser was not a firm commitment of the attorneys; that it provided for an unliquidated sum, and the Commission does not have the power nor jurisdiction to approve it under Section 15 of the Act.

Upon consideration of the foregoing and the whole record in this proceeding, we conclude:

1. The employment agreement between Mr. Houser and the attorneys for the Pawnee Tribe, for and in behalf of said tribe, was oral and its terms were not made known to the Commission until after an award had been made to the said Indian tribe.

2. The agreement was substantially as follows: Mr. Houser agreed to study the valuation of the subject lands and if he came up with a theory of valuation he would testify before the Commission at the valuation hearings for the tribe. He then would be paid such fees for his services as the Indian Claims Commission would allow on the basis of what would be a reasonable value for such services, but not to exceed \$10,000.00. The Commission would be required to make that determination before any payment would be made.

3. Mr. Houser made a study as agreed, which required considerable time and effort, and he testified at the valuation hearings in behalf of the Pawnee Tribe. His three exhibits, which included his report and illustrations thereof, and his theory of valuation, were rejected by the Commission and were not given consideration by the Commission in making the award.

4. The evidence as to who was bound to make the payment under the circumstances of this case, including the somewhat conflicting and indefinite

statements of Mr. Houser, is such that it is difficult to make a definite finding on this point. Our statement is also based on the fact that Mr. Houser in his testimony relative to his understanding with Attorney Honnold did not at first say who would pay the fee. He testified that he and Mr. Honnold had agreed, "I would be paid a reasonable fee for my services and that the Commission undoubtedly would accept that fee, and I said that I would be willing to do the work on that basis." In testifying as to what took place at a meeting with the present attorneys for the Indians and with members of the Pawnee Tribal Council, he declared that Mr. John Wheeler, Jr., had discussed the matter of his compensation with him and "they (the Indians) in turn were aware of it because I had discussed with them, what I proposed to do, and they were in agreement that I do it, and you advised me to go ahead on behalf of the council." (Parenthetical material supplied) It was only when pressed by the Commission as to who was liable to pay him that Mr. Houser said Mr. Honnold (who is not here to give his version) said that he would pay him. Mr. John Wheeler, Jr., when asked by the Commission, admitted that the attorneys were obligated - whether an award was made to the Indians or not - to pay the witness, but only for the amount that the Commission would find was a reasonable value for his services.

5. The employment agreement with respect to compensation was contingent in the following particulars:

a. Whether or not there would be a fee fixed depended on what action the Commission would take. First, there would be a possibility that the

Commission would rule that it did not have the jurisdiction under the circumstances to evaluate the witnesses services at all. Second, if it did rule that it had jurisdiction in the matter, there was the possibility that the services would be held to be of no value.^{2/} Third, assuming the Commission found it had jurisdiction and the services were of some value, there would still be uncertainty because the value of the services could be fixed at any amount from \$1.00 to \$10,000.00.

The claimed agreement carried to its logical conclusion envisions a possibility that the Pawnee Indians might not receive an award, and this possibility could have happened; but even so, under the attorney's contentions, that they were bound to pay regardless of the outcome of the case, we logically would have to make a finding of the value of Mr. Houser's services, so that the attorneys could pay him, and this would be so even if the claim had been denied and the petition dismissed. It seems beyond argument that the Indian Claims Commission Act gives no such authority or jurisdiction to the Commission, nor does the Commission have the authority to fill in such a "skeleton contract" as to what the fee should be now that the Indians have succeeded in receiving an award.

We recently held, in Northern Paiute Nation et al., v. United States (supra) that we do not have jurisdiction to approve claimed expenses of an attorney under Section 15 of the Claims Act, unless he has paid or

^{2/} The excerpt from the ruling by the Commission on the admissability of Mr. Houser's thesis on valuation previously quoted, shows that in rejecting the thesis the Commission actually said it was "valueless" from the standpoint of proving the fair market value of the subject lands.

firmly committed himself to pay them regardless of the outcome of the case.* In this proceeding we have been unable to determine the intent of the parties to the agreement as to whether the attorneys, or the Indians, or both, bound themselves to pay for the services of the witness. However, the agreement, in any event, is not a firm commitment on the part of the attorneys or the Indian tribe to pay because the agreement is for an unliquidated amount and the payment is also conditioned on other contingencies which we have found to exist. Therefore, we are without jurisdiction to allow the claim designated No. 5, and for reasons previously given, we are without jurisdiction to allow Claim No. 45.

Original Petition of Wheeler and Wheeler

(1) February 2, 1962, travel - \$300.00

Receipts have been filed totaling \$139.50, and the defendant has no objection to the allowance of this amount as a reimbursable expense. No receipts have been furnished with respect to the remaining \$160.50. As Mr. Wheeler testified, the itemization for this \$300 item where receipts

*This appears to be the first petition to come before the Commission for allowance of attorney expenses out of a judgment in which it is claimed the Indian attorneys are under a firm contractual obligation to pay the fees of a witness irrespective of the outcome of the case. Because of the importance of this ruling to Indian litigants who may be affected by it in the future, we have gone into considerable detail in making this ruling. The situation found to exist suggests the necessity of having agreements between attorneys and witnesses, or others furnishing services or supplies for use in Indian claims litigation, reduced to writing. These agreements should be made known in advance of a final decision on the claim. Our decision in this proceeding is not intended to affect in any way the right of the witness or attorneys involved to seek relief before any other judicial tribunal or the Secretary of the Interior.

were not available was reconstructed from memory "and experience" and the figures are purely arbitrary, representing the attorney's best judgment as to what the items were.

The General Rules of Procedure for this Commission provide that applications of attorneys for reimbursable expenses shall contain an itemization showing the time, place, purpose and amount of each item incurred or paid by the attorney and that there shall be filed with the petitions for allowance of reimbursable expenses, receipt or other evidences of payment (25 CFR 503.34b (a)). We recognize that in certain instances there are small disbursements made for such things as meals or taxi expense for which a formal receipt may not be obtained. In such instances this Commission would be inclined to accept any memorandum itemizing the time, place, purpose and amount of such small items where that memorandum or itemization is prepared by the attorney at a time contemporaneous with the expenditure. The only itemization furnished by the attorneys for this expenditure was prepared at the time of the filing of the amended reply of the attorney on November 28, 1962, and merely lists "food, various restaurants in Washington--\$65.07; taxi, transportation to and from airport--\$45.00; secretarial service (name unknown--Hay-Adams Hotel) for purpose of dictating outline, notes for use in presentation of argument to Court of Claims--\$50.00." The Commission cannot accept an itemization such as this which is admittedly reconstructed from "memory and experience" and the figures are "purely arbitrary."

The Commission concludes that the expenditure of \$139.50 under this category is an allowable item of expense but that the remaining expenditures totaling \$160.50 cannot be allowed as reimbursable expenses.

(2) April 18, 1962, travel -- \$200.00

No receipts have been filed itemizing these expenditures. The expenditures have been itemized as follows: Hotel, 3 days, 2 rooms--\$96.00; food--\$28.88; taxis, airport transportation--\$43.00; cash expended on trip not specifically itemized \$32.12. These "reconstructed" figures were based on the attorneys' judgment and memory and comparison with known trips. Mr. Wheeler could not state that each and every item was correct and accurate but did testify that every dollar was spent on his trip to Washington, D. C. We are unable to accept this type of evidence as sufficient to support the petition for reimbursable expenses and the entire amount of \$200.00 is, accordingly, disallowed.

(3) February 27, 1961, travel -- \$10.00

The defendant does not object to the allowance of this item which was expended for meals while on a trip to meet with the Pawnee Council. This item is allowed.

(4) March 3, 1961, travel - \$30.00

This item is also listed as expenditures for meals for three persons on a trip to meet with the Pawnee Council. Defendant has objected to the allowance of \$20.00 since it was not shown why the charges for meals should have exceeded those on the previous trip, referred to in item No. 3. Mr. Wheeler has testified that this amount of \$30.00 rather than \$10.00 because on that occasion they took several members of the Pawnee

Council to lunch. The Commission believes that the attorneys have adequately explained this expenditure, and it is allowed as a reimbursable expense.

(5) & (6) April 3, 4, 1961, travel -- \$580.90

Defendant has made no objection to the allowance of \$380.90 of this item. The remaining \$200.00 is covered only by the attorneys' general itemization reconstructed from memory and unsubstantiated by any receipts. The Commission allows the sum of \$380.90 as a reimbursable expense and disallows the remaining \$200.00.

(7) December 9, 1961, travel -- \$200.00

This item is supported only by the attorneys' estimated itemization and is unsupported by any receipts. The entire sum of \$200.00 is disallowed as a reimbursable expense.

(8) December 9, 1961, travel -- \$203.83

The attorneys agree that \$45.54 of this claimed item should be disallowed. The sum of \$158.29 is allowed as a reimbursable expense, and the sum of \$45.54 is disallowed.

(9) February 5, 1960, travel -- \$500.00
February 15, 1961, travel -- \$205.00

These items totaling \$705.00 are supported only by a general estimated itemization and Mr. Wheeler testified that he could not say that it was true and accurate but that he could state that the money was spent on this case. However, for the individual items, it was merely his best judgment, memory and estimate. The Commission disallows the entire \$705.00.

(10) & (11) March 10, 1960, travel -- \$150.00
March 10, 1960, travel -- \$ 65.00

These two items totaling \$215.00 are supported only by a receipt for \$60.47 to which the defendant has no objection. The remaining charges are

supported only by a general itemization estimated by the attorneys from memory. The sum of \$60.47 is allowed, and the sum of \$154.53 is disallowed.

(12 & (13) April 14, 1960, travel -- \$ 20.00
April 8, 1960, travel -- \$100.00

These two items totaling \$120.00 are supported by receipts totaling \$49.69. The additional amount is supported only by a general itemization based on the attorneys' estimate from memory. The sum of \$49.69 is allowed, and the sum of \$70.31 is disallowed.

(14) May 10, 1960, travel -- \$200.00

This item is supported only by a general itemization based on the attorneys' estimates from memory, and it is disallowed as a reimbursable expense.

(15) September 16, 1960, travel -- \$300.00

This item is covered only by a general itemization based on the attorney estimates and reconstruction of the expenses. No receipts have been filed. The entire sum of \$300.00 is disallowed as a reimbursable expense.

(16) September 16, 1960, travel -- \$384.40

Defendant has objected only to the allowance of \$67.82, and the attorneys have conceded that this was erroneously included. The remaining sum of \$316.58 is allowed as a reimbursable expense, and the sum of \$67.82 is disallowed.

(17) June 16, 1959, travel -- \$79.41

Defendant originally objected to the allowance of this entire item on the ground that it was unsupported by any voucher or receipt. The attorneys have submitted a statement from the Town House Motel (dated May 13,

1959) indicating that room 307 was occupied at a cost of \$56.20 and room 104 at a cost of \$70.60. The defendant has now removed its objection to allowance of \$56.20 of the claimed amount.

However, the motel bills for room 307 (\$56.20) and room 104 (\$70.60) are already included as supporting vouchers for a claimed \$500.00 expense on April 15, 1959. (See Check No. 603, April 15, 1959, for \$500.00 with supporting vouchers -- objection number 23 and 24.) These vouchers provided part of the substantiation of the \$214.49 allowed in items 23 and 24 below.

We are unable to accept the attorney's explanation of this dual charge for the rooms. We note also that in the \$500.00 item in paragraph 23 and 24 below there is another hotel bill for \$79.41 which (although not marked paid) has been accepted (minus a \$5.56 laundry charge) as part of the \$214.49 allowed.

(18) & (19) February 18, 20, 1959 -- travel \$350.00

The defendant had no objection to the allowance of \$25.17 for which receipt has been filed. The additional amount of \$324.83 is substantiated only by the attorney's estimated itemization based on reconstruction. The Commission finds that the sum of \$25.17 should be allowed, and the balance of \$324.83 is disallowed.

(20) March 3, 1959, travel -- \$150.00

The only evidence in support of this item is the attorneys' estimate from memory. This item is disallowed as a reimbursable expense.

(21) & (22) March 20, 25, 1959. travel -- \$45.00

The only evidence in support of these items is an estimated general itemization furnished by the attorneys. This \$45.00 item is disallowed as a reimbursable expense.

(24 & 24) April 10, 15, 1959, travel -- \$1,025.00

The defendant has conceded that its original recommendation for disallowance of these items included a \$500.00 duplication. The defendant has no objection to the allowance of \$214.49 covered by receipts. The remaining \$310.51 is supported only by a general itemization based upon the attorneys' estimates. The sum of \$714.49 is allowed, and the sum of \$310.51 is disallowed as a reimbursable expense.

(25) June 5, 1959, travel -- \$30.80

Petitioner has stated that this item has not been claimed as a reimbursable expense, and it is therefore not in issue.

(26) May 22, 1959, travel -- \$200.00

Petitioner has conceded that the sum of \$62.27 should be disallowed. The defendant has no objection to the allowance of the remaining \$137.73. The sum of \$137.73 is allowed, and \$62.27 is disallowed as a reimbursable expense.

(27) May 5, 1958, checking maps -- \$40.00

Defendant has removed its original objection to the allowance of this item. The Commission finds that the sum of \$40.00 is an allowable reimbursable expense.

(28) May 5, 1958, meals with Pawnee Indians -- \$67.50

The defendant has removed its objection to the allowance of this item, and the Commission finds that the sum of \$67.50 is an allowable reimbursable expense.

(29) February 2, 1958, travel and clerk hire -- \$500.00

The defendant does not object to the allowance of \$145.19 which is covered by receipts. The defendant objects to one item of \$2.25 for parking, although a receipt has been submitted, on the ground that this is a

personal expense. It appears that the charges under this item were incurred in Washington, D. C., and the attorneys have testified that they had driven to Washington. The Commission finds that this item of \$2.25 should be allowed. The remaining sum of \$352.56 is supported only by a general itemization based on the attorneys' estimates. Included in such estimated charges is one item of \$112.00 for clerical services for which no receipt has been submitted. The Commission finds that the sum of \$147.44 is allowable, and the sum of \$352.56 is disallowed as a reimbursable expense.

(30) May 9, 1958, travel -- \$50.00

The only evidence in support of this item is a general itemization based upon the attorneys' estimates, and the Commission finds that this is not allowable as a reimbursable expense.

(31) July 2, 1958, travel -- \$10.00

The defendant has removed any objection to the allowance of this charge, and the Commission finds that this item is allowable as a reimbursable expense.

(32) August 22, 1958, travel and duplication of documents -- \$650.00

One item included in this category was \$115.00 for duplicating documents for which no receipt has been submitted. The remaining items are supported only by a general itemization based upon the attorneys' estimates. Mr. Wheeler testified the itemization was his best judgment but he couldn't say "each item was so much." The Commission finds that the entire \$650.00 item is not allowable as a reimbursable expense.

(33) September 8, 1958, travel -- \$250.00

The defendant has no objection to the allowance of \$65.59 supported by a receipt. The remaining \$184.41 is supported only by a general itemization based upon the attorneys' estimates. The Commission finds that

the sum of \$65.59 is allowable, and the sum of \$184.41 is disallowed.

(34) January 8, 1957, travel -- \$15.00

The defendant has no objection to the allowance of \$10.00 of this amount on the basis that that sum was expended on February 27, 1961, for meals while on a trip to meet with the Pawnee Council (see item 3 above). However, the defendant has objected to the allowance of \$5.00 of this amount since this item exceeds the 1961 expenditure of \$10.00 for meals on a trip to meet with the Pawnees. The Commission does not consider that the reason advanced by the defendant is sufficient to warrant disallowance of \$5.00 of the claimed amount. The Commission finds that \$15.00 is an allowable reimbursable expense.

(35) January 23, 1957, travel -- \$300.00

This item is not covered by any receipts, and the attorneys have furnished only a general itemization based on their own estimates. The entire sum of \$300.00 is disallowed as a reimbursable expense.

(36) February 28, 1957, travel -- \$11.00

The defendant objects to the allowance of \$1.00 of this item since it exceeds by that amount the \$10.00 expended in 1961 for meals while on a trip to meet with the Pawnee Council. For the same reasons as set forth in item No. 34 above the Commission finds that the entire \$11.00 is an allowable reimbursable expense.

(37) March 11, 1957, travel -- \$10.00

The defendant has removed its objection to the allowance of this item, and the Commission finds that it is an allowable reimbursable expense.

(38) November 5, 1957, travel -- \$200.00

The defendant has no objection to the allowance of \$31.57 which is covered by receipts. However, the remaining balance of \$168.43 is not covered by any receipts, and the only evidence in support of this sum is the attorneys' general itemization by estimate. The sum of \$31.57 is allowed, and the sum of \$168.43 is disallowed as a reimbursable expense.

(39) November 17, 1957, travel -- \$25.00

This item represents expenses for meals while on a trip to meet with the Pawnee Council. Defendant objects to the allowance of \$15.00 of this item on the basis that the attorneys expended only \$10.00 for an identical purpose in 1961. For the same reasons as set forth in item No. 34 above the Commission finds that this item is allowable as a reimbursable expense.

(40) October 11, 1956, travel -- \$10.00

The defendant has removed its objection to the allowance of this item, and it is allowed as a reimbursable expense.

(41) October 19, 1956, travel -- \$350.00

No receipts have been submitted in support of this item. The only evidence submitted is a general itemization based upon the attorneys' estimates. The entire sum of \$350.00 is disallowed as a reimbursable expense.

(42) February 4, 1955, travel -- \$200.00

The defendant has no objection to the allowance of \$27.60 covered by a receipt. Objection is made to the allowance of the remaining \$172.40 on the basis that it is not supported by any receipts, and the only evidence

submitted consists of a general itemization based on the attorneys' estimates. The sum of \$27.60 is allowed, and the sum of \$172.40 is disallowed as a reimbursable expense.

(43) January 5, 1954, travel -- \$10.00

The defendant has removed its objection to the allowance of this item, and it is allowed as a reimbursable expense.

(44) February 3, 1954, travel -- \$298.00

Defendant has objected to the allowance of this item on the ground that more than one person made the trip and that in the absence of the names of the persons traveling to Washington this item should not be allowed. Mr. Wheeler testified that the trip was either made by himself and his father or himself and his brother. The Commission finds that this item is allowable as a reimbursable expense.

(45) August 18, 1958; September 18, 1958; December 15, 1958, advance for fees to appraiser for claimants -- \$25,000.00 (\$15,000.00 advanced by Honnold; \$10,000.00 advanced by Wheeler and Wheeler)

This item has been discussed under the combined items (5) and (45) above and, as previously indicated, we are without jurisdiction to allow this claim.

(46) January 11, 1956; February 3, 1958, to James Sun Eagle, investigation, etc. -- \$3,000.00

The defendant objected to the allowance of this item on the ground that it was not supported by vouchers or statements showing the time, place and services rendered. The attorneys have submitted cancelled

checks showing payments totaling \$2,750.00 of the claimed \$3,000.00 item. Mr. Wheeler testified that there was one check for \$250.00 which he could not find, and no evidence of such \$250.00 payment has been submitted. He testified that the services rendered by Chief Sun Eagle extended over a period from January, 1953, until the hearing on the liability phase of this case which was held in about February, 1957. Mr. Wheeler testified that Chief Sun Eagle rendered valuable services in connection with the prosecution of the claim. He was a full-blood Pawnee and was engaged to talk to the full-blood Indians, to make out reports, and to investigate the existence of an ethnological report by Professor Throburn. The Commission finds that the sum of \$2,750.00 is an allowable item of reimbursable expense, and the sum of \$250.00 is disallowed.

(47) January 31, 1953, to May 22, 1953, secretarial -- \$538.57

This item represents payments made during the four month period for secretarial services required in preparing proposed findings of fact. The Commission believes that this is work normally performed by the attorney for which compensation is included within the fees. This item is not allowed as a reimbursable expense.

Claim for Additional Expenses

(1) August 14, 1962, travel -- \$268.75

The defendant has objected to the allowance of any of the expenses included in this item contending that the trip to Washington in August, 1962, was unnecessary to the prosecution of the case. The Commission believes that the trip was made in connection with services rendered by

the attorneys for the Pawnee Indians, and that those items which appear reasonable and amply supported should be allowed as reimbursable expenses.

Included in the itemization are the following:

Insurance -- \$5.61
Long distance and local calls -- \$18.25
Taxis in Washington -- \$19.50

The Commission considers that the item for insurance represents a personal item and is not an allowable reimbursable expense. We have noted that there are phone charges appearing on the hotel bill. In addition there is a general listing of long distance and local calls totaling \$18.25 for which there is no explanation. In the absence of any explanation the Commission finds that this item cannot be allowed as a reimbursable expense. In addition to taxi charges of \$6.80 and \$2.10, both of which appear to be reasonable, there is a lump sum charge under the itemization taxis in Washington of \$19.50. In the absence of any explanation for this large charge for taxis, the Commission finds that this cannot be allowed as a reimbursable expense. The Commission finds that those items totaling \$53.36 referred to above are not allowable as reimbursable expenses. The remaining \$215.39 is allowed.

CLAIM FOR EXPENSES OF ARTHUR B. HONNOLD

(1) March 25, 1949, travel -- \$300.00

This claim has not been supported by any receipts or vouchers and is covered only by a general itemization based on estimates. The Commission finds that this sum is not allowable as a reimbursable expense.

(2) May 6, 1949, Elco Greenshields -- \$5.00

The defendant has removed any objections to the allowance of this

item and the Commission finds that it is allowable as a reimbursable expense.

(3) August 12, 1949, travel -- \$110.00

This item is supported only by a general itemization based on estimates and is not allowed as a reimbursable expense.

(4) 1949, travel -- \$304.40

The defendant has no objection to the allowance of \$111.04 of this item. The remaining \$193.36 is supported only by a general itemization based on estimates. The Commission finds that the sum of \$111.04 is allowable as reimbursable expense, and the remaining \$193.36 is disallowed.

(5) 1949, travel and miscellaneous -- \$409.65

The defendant has no objection to the allowance of \$169.64 of the claimed amount. The remaining \$240.01 is supported only by a general itemization based on estimates. The Commission finds that the sum of \$169.64 is an allowable reimbursable expense. The sum of \$240.01 is disallowed.

(6) 1950, miscellaneous -- \$1,000.00

Of this claimed amount the only itemization which has been furnished concerns a total sum of \$110.00 paid to June Ahrens or Mrs. J. L. Ahrens for stenographic purposes in connection with the Pawnee case. The Commission finds that this explanation is not adequate for the \$110.00 expenditure, and the entire \$1,000.00 item is disallowed as a reimbursable expense.

(7) February 9, 1951, travel -- \$150.00

Receipts totaling \$42.55 have been filed in support of this item.

The defendant has no objection to the allowance of this sum. The remaining \$107.45 is covered only by a general itemization based on estimates. The Commission finds that the sum of \$42.55 is allowable as a reimbursable expense. The sum of \$107.45 is disallowed.

(8) 1951, secretarial -- \$15.00

No explanation has been furnished as to the time and nature of the secretarial services rendered. In the absence of any showing that such services were beyond those usually performed as part of the compensation included within the attorneys' fees, this item cannot be allowed as a reimbursable expense.

(9) 1951, travel -- \$150.00

Receipts have been filed totaling \$57.34, and the defendant has no objection to the allowance of this sum. The balance of \$92.66 is supported only by an estimated itemization based on estimates. The Commission finds that the sum of \$57.34 is allowable as a reimbursable expense. The sum of \$92.66 is disallowed.

(10) 1952, travel -- \$200.00

The only evidence in support of this item was a general itemization based on estimates. The Commission finds that this entire sum of \$200.00 must be disallowed as a reimbursable expense.

(11) 1952, travel -- \$200.00

The only evidence in support of this category was a general itemization based on estimate. The Commission finds that the entire sum of \$200.00 is disallowed as a reimbursable expense.

(12) 1953, rent and miscellaneous -- \$49.14

This charge represents one-half the rent of an apartment while Mr. Honnold was living in Washington. The Commission finds that there has not been a sufficient explanation for the necessity of Mr. Honnold's residence in Washington during the week claimed. This item is disallowed as a reimbursable expense.

(13) 1954, travel and living expenses -- 7½ months in Washington, D. C. -- \$1,473.83

The Commission finds that there is not a satisfactory explanation for the necessity for Mr. Honnold to live in Washington for 7½ months in connection with the prosecution of the Pawnee claim, and this entire amount is disallowed as a reimbursable expense.

(14) 1958, paid to Wheeler & Wheeler for advancement of appraisers' fees -- \$15,000.00

This is discussed under items (5) and (45) of the Wheeler & Wheeler claims. We are without jurisdiction to allow this claim.

In summary our decision with respect to the claimed expenses is as follows:

Claimed expenses of Wheeler and Wheeler

Claimed	\$31,457.52
Not allowed by this Commission	<u>-16,292.09</u>
Total allowed	\$15,165.43

Claimed expenses of Arthur B. Honnold

Claimed	\$21,147.71
Not allowed by this Commission	<u>-18,981.45</u>
Total allowed	\$ 2,166.26

<u>Claimed expenses of Wheeler and Wheeler</u>	
(supplemental petition)	\$10,730.56
Not allowed by this Commission	<u>-10,164.78</u>
Total allowed	\$ 565.78
<u>Additional claimed expenses of</u>	
<u>Wheeler and Wheeler</u>	\$ 268.75
Not allowed by this Commission	<u>-53.36</u>
Total allowed	\$ 215.39

Recapitulation

Allowed as reimbursable expenses,
Wheeler and Wheeler, John Wheeler, Jr.,
Robert Wheeler and John Wheeler, Jr.,
as Executor of the Estate of John M.
Wheeler, deceased - \$15,946.60

Allowed as reimbursable expenses,
Arthur B. Honnold (to be paid to
Georgia W. Honnold, as Executrix of
the Estate of Arthur B. Honnold,
deceased) - \$ 2,166.26

/s/ Arthur V. Watkins
Chief Commissioner

/s/ Wm. M. Holt

/s/ T. Harold Scott
Associate Commissioner