

BEFORE THE INDIAN CLAIMS COMMISSION

THE MUCKLESHOOT TRIBE OF INDIANS	)	
on relation of Napoleon Ross,	)	
Chairman of the General Council,	)	
	)	
Claimant,	)	
	)	
v.	)	Docket No. 98
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 18, 1963

ADDITIONAL FINDINGS OF FACT

The Commission has heretofore made findings of fact numbers 1 through 43, and now makes the following additional findings of fact which are supplemental to those already made.

44. On July 17, 1958, the Commission entered an interlocutory order in the above-entitled case, which in pertinent part is as follows:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That the claimant Muckleshoot Tribe have and recover of and from the defendant the sum of \$86,377.00, less such offsets, if any, that may be allowable under the Indian Claims Commission Act.

45. On June 13, 1963, the parties herein filed with the Commission a Joint Motion For Entry of Final Judgment, without prejudice to the right of either party to appeal, pursuant to a stipulation filed with said motion. The motion and stipulation are executed and signed by Frederick W. Post, Counsel and attorney of record for petitioner, Ramsey Clark, Assistant Attorney General of the United States, and Walter J. Muir, attorney for defendant. The motion and stipulation were

withdrawn by the parties and were refiled on September 30, 1963, also signed by Bertha McJoe as Chairman of the Muckleshoot Tribe and of its Tribal Council. 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 \$86,377.00, subject to deduction of counterclaims and offsets to be thereafter determined (5 Ind. Cl. Comm. 608).

The parties to the present suit have, after negotiation and compromise, stipulated that the sum of \$6,000.00 shall represent counterclaims and offsets properly to be deducted from the interlocutory award of \$86,377.00. This stipulation has been approved by the Muckleshoot Tribe (Resolution dated November 15, 1960), by the defendant and by the Commissioner of Indian Affairs.

The stipulated sum of \$6,000.00 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 \$80,377.00, representing the net recovery after deduction of counterclaims and offsets in the sum of \$6,000.00.

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.

/s/ Frederick W. Post  
Frederick W. Post  
Counsel of Record for Petitioner

/s/ Ramsey Clark  
Ramsey Clark  
Assistant Attorney General

/s/ Walter J. Muir  
Attorney for Defendant

/s/ Bertha McJoe  
Chairman, Muckleshoot Tribe of  
Indians, and  
Chairman of Tribal Council

46. An attorneys' contract of employment by the Muckleshoot Tribe of Indians, together with the approval and extension thereof as provided by law, are on file with the Commission. These show Kenneth J. Selander and Frederick W. Post as the original attorneys employed in this case, however, on September 25, 1950, Mr. Selander assigned his interest in said contract, with the approval of the Commissioner of Indian Affairs, to Frederick W. Post who assumed the sole representation of the petitioner.

47. The attorneys' contract provides that the attorneys shall not make any compromise settlement or other adjustment of the matters in controversy except with the approval of the Commissioner of Indian Affairs and the tribe.

48. The petitioner has filed herein certain exhibits in support of the proposed compromise settlement of offsets and they are marked

as "Petitioner's Compromise Exhibits A through G," which exhibits are admitted in evidence and considered by the Commission.

49. Petitioner's Compromise Exhibit "A" is a Resolution of the Muckleshoot Indian Tribe adopted at a general meeting of the tribe held on November 15, 1960, approving the proposed settlement of the \$32,818.00 of defendant's claimed offsets for the sum of \$6,000.00 but without prejudice to the tribe's right to appeal from the final judgment, except as to offsets. The resolution also authorized and directed the Muckleshoot Tribal Council to execute the stipulation along with its attorney, and to submit the stipulation to the defendant for acceptance and then present same to the Indian Claims Commission for approval. The resolution is signed by Bernice White as Chairman and Olive Hungary as Secretary, who certifies that a quorum was present at the meeting and their signatures were certified by the Superintendent of the Western Washington Agency, Bureau of Indian Affairs.

50. Petitioner's Compromise Exhibit "B" is a Resolution of the Muckleshoot Indian Tribal Council adopted at a special meeting of the Tribal Council on November 15, 1960, authorizing and directing the Chairman of the Tribal Council to sign the stipulation for and on behalf of the Muckleshoot Tribe along with the Tribe's attorney, and then to submit the same to the United States Attorney for approval, signature and submission to the Indian Claims Commission for approval and entry of final judgment in accordance with said stipulation. The resolution is signed by Bernice White as Chairman and the Secretary, Olive Hungary, who certifies that a quorum was present at the meeting

and the resolution was unanimously adopted. Their signatures were certified by the Superintendent of the Western Washington Agency, Bureau of Indian Affairs.

51. An approval in accordance with the attorneys' contract of the proposed settlement of offsets is contained in a letter marked Petitioner's Compromise Exhibit "C". The letter dated August 25, 1961, is from Edward W. Fisher, Acting Solicitor, acting pursuant to delegation of authority by the Secretary of Interior, and addressed to Frederick W. Post, petitioner's attorney. This letter reviews the request for approval of the compromise settlement as required by the attorney's contract, and the terms of the settlement as set forth in the stipulation fixing the amount of defendant's offsets at \$6,000.00 and the entry of a final judgment in the net sum of \$80,377.00 without prejudice to petitioner's right to appeal except as to offsets, and then concludes as follows:

\* \* \* We have given careful consideration to the information furnished by you concerning the proposed compromise and have concluded that your request to enter into a compromise with the Department of Justice on offsets in the amount of \$6,000.00 in the Muckleshoot case, Docket 98, should be approved. Therefore, your proposal to compromise offsets in Docket 98 in the amount of \$6,000.00 with the Department of Justice is approved. In giving this approval, it is assumed, although it is not so stated in the copy of the proposed stipulation which has been furnished us, that the settlement will be made on the basis that the Government as well as the petitioner will be precluded from appealing on the question of setoffs.

52. Petitioner's Compromise Exhibit "E" is an affidavit of petitioner's attorney, Frederick W. Post, in which he states that he

reached an agreement with defendant's counsel to compromise and settle defendant's claimed offsets for \$6,000.00; that he attended the November 15, 1960 meeting of the Muckleshoot Tribe where he fully explained to the Indians the proposed compromise and they fully understood the same; that he recommended its acceptance to the tribe and considers said compromise to be fair and reasonable.

Petitioner's Compromise Exhibit "F" consists of five affidavits executed on May 18, 1963, by Annie Garrison, Bertha A. McJoe, Louis Star, Olive Hungary, and Harold Moses, who state they are members of the Muckleshoot Tribal Council and attended the meeting of the Muckleshoot Tribe held to consider the proposed compromise settlement of the Government's claimed offsets for \$6,000.00; and that the purpose of the affidavits is to advise this Commission as to the authorization by the Muckleshoot Tribe given to its officers and its attorney to settle said offsets. Each affiant states that the tribe's attorney fully explained the proposed settlement to the Tribe and that the tribe and its council fully understood the same and voted unanimously to accept the proposed settlement. Each affiant also states that the proposed settlement is fair and reasonable and requests that it be approved by the Commission.

53. The Petitioner's Compromise Exhibit "F" is the stipulation that was signed in November of 1960 by petitioner's attorney and Bernice White as Chairman of the Muckleshoot Tribe following the November 15, 1960 meetings of the Muckleshoot Tribe and its Tribal Council. The stipulation agreed to the settlement of defendant's claimed offsets for \$6,000.00, and provided that entry of final judgment be made

without prejudice to the right of petitioner to appeal upon any issue except offsets but no like provision was made for the Government so that stipulation was not signed on behalf of the defendant.

Petitioner's Compromise Exhibit "G" is a resolution adopted by the Muckleshoot Indian Tribal Council on September 12, 1963, signed by Bertha McJoe as Chairman, and Olive Hungary as Secretary. The resolution recognizes the omission of the provision from the aforesaid November 1960 stipulation giving the Government the same right as petitioner to appeal on all issues except offsets, and authorizes and directs the present Chairman of the Tribal Council to sign the stipulation containing such a provision, and submit the same to the defendant for approval, signature and submission to this Commission for approval and entry of final judgment in accordance with said stipulation, by signing a joint motion for entry of final judgment.

Accordingly, the motion and stipulation filed with the Commission on June 13, 1963, were withdrawn. The stipulation and motion were then signed by Bertha McJoe as Chairman of the Muckleshoot Tribe and of its Tribal Council, and refiled on September 30, 1963.

54. The recitals in the Petitioner's Compromise Exhibits "A" through "C", all of which are admitted in evidence, are factual and they are adopted as such by the Commission.

55. The Commission finds that the proposed compromise settlement of the defendant's claimed offsets for the sum of \$6,000.00 has been thoroughly and fairly presented and explained to the members and officials of the Muckleshoot Tribe; that they understood the terms of

the settlement and approved it without being subjected to pressure of any kind.

56. The Commission finds that said compromise settlement of the defendant's claimed offsets for the sum of \$6,000.00 is fair and just to the petitioner and the defendant and we approve and adopt the terms of the Stipulation of Settlement; that a final judgment be entered in favor of petitioner in the amount of \$80,377.00 against the defendant, 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 or offsets.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner