

BEFORE THE INDIAN CLAIMS COMMISSION

THE NOOKSACK TRIBE OF INDIANS)	
ON RELATION OF JOSEPH LOUIS,)	
CHAIRMAN OF THE GENERAL COUNCIL,)	
)	
Claimant,)	
)	
v.)	Docket No. 46
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Dated: October 22, 1964

FINDINGS OF FACT IN THE MATTER OF APPLICATION BY ATTORNEY
FOR ALLOWANCE OF ATTORNEY FEE AND EXPENSES
INCURRED IN THE PROSECUTION OF THE CLAIM

The Commission makes the following findings of fact:

1. The contract attorney for the claimant tribe seeks an award by the Commission of compensation for services in the amount of \$4,938.35 based on ten percent of the final judgment of \$49,383.50 entered in the above-entitled case; and also an allowance of \$1,375.08 in reimbursable expenses incurred by him in the prosecution of the claim. A hearing on this matter was held before the Commission on October 1, 1964.

2. The attorneys' contract between the claimant Nooksack Tribe and Frederick W. Post and Kenneth J. Selander was approved by the Assistant Commissioner of Indian Affairs for a period of six years from September 28, 1948. On September 25, 1950, all interest of Mr. Selander in said contract was assigned with the approval of the Commissioner of Indian Affairs to Frederick W. Post who assumed the sole representation of the claimant tribe. On April 18, 1956, the Acting Commissioner of

Indian Affairs approved an agreement between the Nooksack Tribe and Frederick W. Post whereby the employment of Mr. Post as attorney was continued for a period of ten years to September 28, 1964, and Mr. Post is now the sole contract attorney for claimant and entitled to the attorney fee in this case.

3. The approved attorney contract, as extended, provides that the compensation to be received by the attorney shall be wholly contingent upon a recovery for the tribe and shall not exceed ten per cent of such recovery. The contract also provides for the reimbursement to the attorney of expenses incurred by him in the prosecution of the tribe's claim.

4. The attorney contract imposed upon the attorneys the responsibility of investigating, formulating and prosecuting to a final conclusion the claim of the tribe against the United States. The claim which was instituted and prosecuted by the attorney in this case was for payment for lands of the claimant tribe in the present State of Washington which lands were included in a cession made under the Point Elliott Treaty of January 22, 1855.

5. The litigation in this case has consumed sixteen years. The first phase of this case was the trial and determination with respect to the issue of the extent and boundaries of the lands aboriginally owned by the claimant tribe, and other hearings with respect to the value of such lands. At each of these trials numerous exhibits were received in evidence and the testimony of expert witnesses was taken. The issues of defendant's claimed counterclaims and offsets were resolved based

upon a stipulation of compromise settlement negotiated by the attorney, entered into by the parties approved by the Bureau of Indian Affairs, and approved and adopted by the Indian Claims Commission.

6. A final judgment was entered in the case on February 9, 1962, adjudging that the claimant tribe should recover from the defendant the sum of \$49,383.50. The claimant tribe appealed the case to the Court of Claims and on July 12, 1963 (Appeals No. 1-62) that Court affirmed the determination of the Indian Claims Commission. At the request of the claimant tribe, the attorney prepared and filed a petition in the United States Supreme Court for a writ of certiorari. On January 20, 1964, that Court denied said petition.

7. The Commission having considered the services performed by the attorney, the amount of recovery, the time spent on the case, and the contingent character of the fee, finds that the attorney has earned and is entitled to the full sum allowed by his contract with the claimant tribe, namely, ten percent of the recovery in this case, or \$4,938.35.

8. The attorney incurred expenses on the case up to and including August, 1955, in the sum of \$820.91, which expenses were itemized and presented by voucher for approval, and on November 6, 1956 the Bureau of Indian Affairs approved the attorney's voucher for the payment of \$500.00 previously paid by the claimant tribe, leaving \$320.91 for consideration after recovery by the claimant tribe. The attorney incurred additional expenses on the case between May 1, 1956 and April 15, 1957 in the sum of \$531.04, of which \$500.00 has been paid under a voucher

which was approved by the Bureau of Indian Affairs on June 4, 1957, leaving \$31.04 for consideration by the Indian Claims Commission when a favorable judgment was obtained. The attorney is entitled to the balance of the expenses approved under the two vouchers above set forth in the sum of \$351.95.

9. After April 15, 1957, the attorney incurred additional expenses in the prosecution of the claim amounting to \$773.13. We find these items of expense totaling \$773.13 are allowable as reimbursable expenses incurred by the attorney.

10. The attorney for the claimant tribe employed Dr. James E. Crutchfield as an expert witness on the value of the claimant's lands, and who testified on such value at the trial thereon before the Commission. The attorney testified at the hearing on his petition for payment of attorney's fee and expenses held October 1, 1964, that he was personally committed to pay Dr. Crutchfield a fair and reasonable fee for his services which he considered to be five hundred dollars. The attorney has paid Dr. Crutchfield \$250.00 as part of his witness fee. We consider the fee of \$500.00 for Dr. Crutchfield reasonable and the \$500.00 is therefore allowed the attorney as an expense incurred by him in the prosecution of the claim.

11. Accordingly, the attorney, Frederick W. Post, is entitled to an attorney fee of \$4,938.35 and in addition thereto, the sum of

\$1,375.08 as reimbursable expenses incurred in the prosecution of the claimant's claim, and it will be so ordered.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner