

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA,)	
also known as THE MIAMI TRIBE,)	Docket No. 67
)	
Petitioners,)	
and)	
)	
HARLEY T. PALMER, FRANK C. POOLER)	
and DAVID LEONARD, as representa-)	Docket No. 124
tives of THE MIAMI TRIBE and all)	(Consolidated)
of the members thereof,)	
)	
Petitioners,)	
)	
vs.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 15, 1965

Appearances:

Edwin A. Rothschild, with whom was Louis L. Rochmes, Attorneys for Petitioners in Docket No. 67

Walter H. Maloney and Walter H. Maloney, Jr., Attorneys for Petitioners in Docket No. 124

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

OPINION OF THE COMMISSION

PER CURIUM. We have for consideration two applications for reimbursement of attorneys' expenses, one filed by the law firm of Sonnenschein, Levinson, Carlin, Nath & Rosenthal who are attorneys for the Miami Tribe of Oklahoma, petitioners in Docket No. 67, and the other filed by Walter H. Maloney, attorney for the Miami Tribe of Indiana, petitioners in Docket No. 124.

The two cases involved the same claim so they were consolidated and the final award was made to petitioners in the two cases jointly as representatives of the Miami Tribe as it existed in 1818. The attorneys' fees have been heretofore allowed by our order of May 24, 1963.

Hearings were held on October 28 and 29, 1964, on both applications for reimbursable expenses.

Docket No. 67

We consider first the application of the attorneys in Docket No. 67. Their attorneys' contract made with the Miami Tribe of Oklahoma on January 28, 1947, as modified and approved by the Commissioner of Indian Affairs on May 10, 1948, provided that said attorneys were to receive 10% of any and all sums recovered or procured for said Indians "plus reasonable expenses incurred in the prosecution of the claims," and that "all expenses shall be allowed and reimbursed out of recovery only." The contract also provided that such expenses be paid only on approval by the Commissioner of Indian Affairs. This was changed by an amendment approved by the Commissioner of Indian Affairs on December 4, 1956, to provide that reimbursement of expenses incurred by said attorneys in the prosecution of any claim or claims of the Tribe shall be determined by this Commission as provided in Section 15 of the Indian Claims Commission Act.

In the application the total sum of \$50,016.59 is claimed as expenses incurred between May 10, 1948 and July 31, 1963, in all the

claims cases of the Miami Tribe, except those incurred in Docket 251 for which the attorneys were heretofore reimbursed out of the recovery in that case. The expenses here claimed are classified in the application by tribal dockets as follows:

A. Docket 67 -- General expenses	\$ 6,409.61
B. Docket 67 -- Expenses incurred after consolidation on January 4, 1953, of Docket 67 with the Wea Tribe, Docket 314, and the Delaware Tribe, Docket 337 in establishing title and value of Royce Area 99 in the total sum of \$56,400.81 expended by applicant. Of this sum 61%, or \$34,404.50, is claimed to be chargeable to the Miami Tribe, 11.6%, or \$6,542.49, to the Wea Tribe and 27.4%, or \$15,453.82, to the Delaware Tribe	<u>34,404.50</u>
Total Expenses in Docket 67	\$40,814.11
<u>Expenses in Miami Cases Other than Docket 67</u>	
C. Docket 76	121.17
D. Docket 252	79.35
E. Docket 253	187.37
F. Docket 253 -- Proportionate share of expenses incurred after consolidation on April 21, 1953 with Wea Tribe in Docket 314-D	653.11
G. Docket 254	984.92
H. Docket 255	141.63
I. Docket 256	<u>7,034.93</u>
Total	\$ 9,202.48

It is noted that the only recovery for the Miami Tribe of Oklahoma, other than the one in Docket 67, was the award in Docket 251. In that case the attorneys did not seek reimbursement out of that award for any expenses other than those directly pertaining to that docket. They say that was because Docket 251 involved the only claim which arose after the Indiana Miami and the Miami of Oklahoma became separated and concerned only the Miami Tribe of Oklahoma as it existed in 1854, thus making it improper to charge the Miami of Oklahoma alone with expenses incurred for the benefit of all Miami claimants.

The attorneys now take the position that since the award in Docket 67 is one for the benefit of the entire Miami Tribe as it existed in 1818, it is appropriate that all expenses incurred on behalf of said tribe in other dockets totaling \$9,202.48 should now be reimbursed out of the award in Docket 67.

This Commission appreciates the fact that the attorneys have expended many dollars of their own funds in the prosecution of Miami claims other than Docket 67. However, to allow such expenses in other cases out of the award in Docket 67 would ignore the governing principle of jurisdiction. In the matter of reimbursement of expenses, this Commission is strictly limited by the provisions of Section 15 of the Indian Claims Commission Act (25 USC 70n).

The pertinent part of Section 15 of the Act which refers to the attorney fees and reimbursable expenses reads as follows:

Sec. 15. Each such tribe, band, or other identifiable group of Indians may retain to represent its interests in the presentation of claims before the Commission an attorney or attorneys at law, of its own selection, whose practice before the Commission shall be regulated by its adopted procedure. The fees of such attorney or attorneys for all services rendered in prosecuting the claim in question, whether before the Commission or otherwise, shall, unless the amount of such fees is stipulated in the approved contract between the attorney or attorneys and the claimant, be fixed by the Commission at such amount as the Commission, in accordance with standards obtaining for prosecuting similar contingent claims in courts of law, finds to be adequate compensation for services rendered and results obtained, considering the contingent nature of the case, plus all reasonable expenses incurred in the prosecution of the claim; * * * (Emphasis supplied)

The language of the Act regarding allowance of attorney fees refers to "the claim in question," and to expenses "incurred in the prosecution of the claim." Thus it seems clear that the singularity of language "the claim" applies with equal force to attorney fees and to expenses. That is, the parallel wording "the claim" must be read with provisions for attorney fees and for expenses, and given the same implementation in both. The juxtaposition of the word "claims" indicating plurality in the number of cases in which the attorneys may act for a tribe with the word "claim" indicating singularity with regard to a matter wherein this Commission may allow attorney fees or reimbursable expenses provides no jurisdiction to the Commission to allow attorney fees or expenses except on a case-by-case basis.

For the reasons outlined above, we conclude that the words "the claim" in Section 15 of the Act regarding reimbursable expenses gives the Commission jurisdiction to allow only expenses incurred in the

prosecution of the claim in Docket 67. Therefore, we have jurisdiction to allow reimbursement against the award in Docket 67 only for those expenses properly and reasonably incurred in the prosecution of Docket 67, and the Commission is without jurisdiction to allow out of the award in Docket 67 the \$9,202.48 of expenses incurred in the prosecution of the other Miami claims which are hereinabove set forth under the "C" through "I" series. This interpretation of Section 15 of the Act is in accord with our decision in the Northern Paiute Nation v. United States, Docket 87, 10 Ind. Cl. Comm. 361, wherein the provisions of Section 15 and its legislative history were considered at length.

Expenses in Docket 67 Shown by "A" and "B" Series

The "A" series, shown by vouchers A-1 through A-145 totaling \$6,409.61, are expenses claimed to have been incurred in Docket 67 before it was consolidated on January 4, 1953, with the Wea Tribe, Docket 314, and the Delaware Tribe, Docket 337, on claims to Royce Area 99. Also included are expenses incurred after consolidation relating solely to the Miami Tribe.

The "B" series, shown by vouchers B-1 through B-316, are expenses claimed to have been incurred after the consolidation with the Wea and Delaware claims in establishing title and value of Royce Area 99 in the total sum of \$56,400.81 expended by the applicant attorneys. It appears that after consolidation counsel for the Miamis, the Weas and the Delawares agreed that the attorneys for the Miami in Docket 67 were to assume the burden of advancing the funds to pay the expenses to be

incurred in establishing title and value of all Area 99, with counsel for the Weas and the Delawares each agreeing to reimburse them for their proportionate share of such expenses according to the acreage established as owned by each tribe. This Commission has held that Area 99 contained 7,036,000 acres of land valued at \$1.15 per acre, of which the Delaware Tribe owned 1,929,500 acres, or 27.4%; the Wea Tribe owned 815,000 acres, or 11.6%; and the Miami Tribe 4,291,500 acres, or 61%. We consider the percent agreed to be charged each of the three tribes of the "B" series found to be reasonable expenses, is a fair division of such expenses.

Counsel for the Miami have been paid \$6,542.49 by counsel for the Wea Tribe and \$15,453.82 by counsel for the Delawares, leaving \$34,404.50, or 61% of the "B" series expenses chargeable to the Miami.

Every item of expense claimed under the "A" and "B" series was supported by contemporaneous records made in the usual course of business. Every item questioned by the Interior Department or the Department of Justice was fully explained at the hearings, and the Department of Justice withdrew its objections to the "A" and "B" series of expenses.

The Miami Tribe of Oklahoma has examined the application for reimbursement of expenses together with the vouchers supporting statements and other documents. By resolution unanimously adopted on October 26, 1963, the Miami Tribe of Oklahoma approved "in all respects the said application of its tribal attorneys for reimbursement of their expenses."

The Commission has examined all the evidence submitted in substantiation of the claimed reimbursable expenses in the "A" and "B" series, and, with the few exceptions set forth below, the remaining expenses in said "A" and "B" series are allowable reimbursable expenses.

"A" Series

The gross amount claimed		\$6,409.61
The disallowed items are as follows:		
A-107 - Personal, laundry service	\$ 3.15	
A-118 and 119 - Travel and expense connected with attendance at a meeting of the Detroit Anthropological Association	<u>62.74</u>	
Total disallowed		<u>65.89</u>
The net reimbursable Series "A" expenses		\$6,343.72

"B" Series

The gross amount claimed		\$56,400.81
The disallowed items are as follows:		
B-40 - Personal, valet service	\$ 1.50	
B-64 - Ring binder	2.86	
B-93 - Payment of employment agency fee for researcher	75.00	
B-139 - Personal, valet service	9.75	
B-183 - Error (\$183.21 carried over as \$183.61)	.40	
B-205 - Book (one-half of \$8.50 book)	4.25	
B-213 - Book	8.00	
B-264 - Payment to colleague of expert witness for substitution	30.00	
B-268 - Brief bag purchased for expert witness	30.80	
B-292 - Cab fare for attorney's secretary, working on Docket 253	<u>1.20</u>	
Total amount disallowed		<u>163.76</u>
The net reimbursable series "B" expenses		\$56,237.05

As to the "B" series reimbursable expenses, the Miami tribal attorneys are entitled to 61%, or \$34,304.60; the Delaware Tribe in Docket 337 is chargeable with 27.4% thereof, or \$15,408.95, and the Wea Tribe in Docket 314 is chargeable with 11.6% thereof, or \$6,523.50.

Combining the "A" and "B" series of reimbursable expenses, the Miami tribal attorneys in Docket 67 are entitled to the following amounts:

"A" series	\$ 6,343.72
"B" series	<u>34,304.60</u>
Total reimbursable expenses	\$40,648.32

Docket No. 124

We next consider the application of Walter H. Maloney. He has a contract dated October 31, 1949, made with the Miami Indians of Indiana, which contract and extensions thereof to June 6, 1966, were duly approved by the Department of the Interior as provided by law. The contract, as amended, provided that the attorney be reimbursed all reasonable and proper expenses in the prosecution of the claim or claims, to be paid only upon approval or order of the Indian Claims Commission.

In said application the total sum of \$2,347.06 is claimed as expenses incurred after May 11, 1962, in all the claims cases of the Miami Tribe. The applicant has presented 43 vouchers covering the \$2,347.06 claimed. Of the 43 such vouchers, the only ones showing expenses incurred in Docket 124 are as follows:

No.	2	5/29/64 and 6/2/64	Stencil and Mimeograph	\$40.60
No.	3	2/15/62	Printing 50 copies Brief on Appeal	46.00
No.	7	10/13/62	Three books on Miami	9.00
No.	9	6/8/63	Kappler Vol. II Book	25.00
No.	11	6/20/63	Xerox copies	<u>3.71</u>
Total				\$124.31

Of the claims in Docket 124, voucher No. 7 for \$9.00 and voucher No. 9 for \$25.00 are not proper expenses and are disallowed. The remaining 38 vouchers totaling \$2,222.75 of the amount claimed cover expenses incurred in Miami claims other than Docket 124.

The Commission's opinion on the allowance of expenses incurred in other claims of the Miami out of the recovery in Docket 67, set forth in some detail in the above discussion of the application in Docket 67, applies here. In our opinion, this Commission has jurisdiction to allow reimbursement against the award in Docket 124 only for those expenses properly and reasonably incurred in the prosecution of Docket 124. Therefore, the \$2,222.75 of expenses incurred in other Miami cases will not be allowed out of the award in Docket 124.

Recapitulation

Allowed as reimbursable expenses, Sonnenschein, Levinson, Carlin, Nath & Rosenthal -- Docket No. 67	\$40,648.32
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Allowed as reimbursable expenses, Walter H. Maloney	90.31
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Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner