

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE, PEMBINA AND WHITE EARTH)	
BANDS, ET AL.,)	Docket No. 18-A
)	
TURTLE MOUNTAIN BAND OF CHIPPEWA)	
INDIANS,)	Docket No. 113
)	
THE LITTLE SHELL BAND OF CHIPPEWA)	
INDIANS, ET AL.,)	Docket No. 191
)	
Petitioners,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
Defendant.)	

ORDER ALLOWING ATTORNEYS' REIMBURSABLE EXPENSES

The Commission has before it the amended application of Messrs. Jay H. Hoag and Rodney J. Edwards, attorneys for the Red Lake and Pembina Bands of Chippewa Indians, petitioners in Docket 18-A, for an order allowing payment of their unreimbursed expenses incurred herein in the prosecution of the claims of the said bands.

The original application of Messrs. Hoag and Edwards for allowance of unreimbursed expenses was filed herein on January 4, 1965. The Defendant's response thereto transmitted a copy of a letter dated July 12, 1965 from the Deputy Solicitor, Department of the Interior, to Hon. Edwin L. Weisl, Jr., Assistant Attorney General, together with copies of a memorandum dated June 4, 1965 and its enclosures from the Commissioner of Indian Affairs that reported the results of an examination of the said application by the Bureau of Indian Affairs. In consonance with a recommendation in the Deputy Solicitor's letter, the defendant's response requested that this Commission consider the matters set forth in the memorandum of June 4, 1965 in determining the amount of expenses for which the attorneys should be reimbursed. The defendant's response, the letter and memorandum received therewith and the hearing mentioned below were also concerned with an expense application submitted by Mr. A. Blake MacDonald for the estate of Clarence G. Lindquist, deceased, that will be disposed of by a separate order herein.

A hearing on the aforementioned original application was held before the Commission on July 15, 1965. Subsequently, on August 26, 1965, Mr Hoag filed an amended statement of disbursements as a substitute for the summary of disbursements on pages 95 and 96 of the original application. The total of the unreimbursed expenses reflected by this statement was \$22,775.16.

On April 26, 1967 Mr. Hoag filed herein an amended application for reimbursement of expenses that superseded the aforementioned original application and the amendment thereof filed in 1965. The amended application is accompanied by a bound statement of some 40 pages entitled "Hoag & Edwards Claim For Reimbursement of Disbursements Red Lake and Pembina Bands Docket 18-A" that was prepared by the firm of Pedrizetti, Graving, Honigman, Grover & Lockhart certified public accountants in Duluth, Minnesota. Also accompanying the amended application are copies of claims for reimbursement of expenses previously submitted to the Bureau of Indian Affairs.

The defendant's response to the amended application submitted a copy of a letter dated May 25, 1967 from the Deputy Solicitor, Department of the Interior to Hon. Edwin L. Weisl, Jr., Assistant Attorney General, and a copy of a memorandum referred to therein dated May 17, 1967 from the Deputy Assistant Commissioner of Indian Affairs to the Solicitor, Department of the Interior. Inter alia, the memorandum mentioned that the amended application requested reimbursement of expenses totaling \$1,849.21 more than the \$22,775.16 claimed in the original petition as amended in 1965. It identified an item of \$1,430.00 for services of the above named accounting firm and \$328.72 added to claim No. 79 as constituting most of the increase and ended with the observation that the items making up the remaining difference of \$90.49 were not identified in the Bureau's general examination of the documents. The last part of the Deputy Solicitor's letter states: "Save for the item of \$1,430 for the services of a certified accounting firm rendered in the preparation of a statement in support of the amended petition for expenses, the Deputy Assistant Commissioner does not question the propriety of any of the items of expense claimed. We concur and recommend that your Department object only to the allowance of the \$1,430 item." The last two paragraphs of the defendant's response to the amended application read as follows:

"The defendant concurs in the views expressed by the Department of the Interior that the expenses incurred in hiring a certified public accountant to review the books and accounts of the attorneys is not a proper charge against the tribe and should be disallowed.

"As to the differences aggregating \$90.49 referred to by the Bureau of Indian Affairs, the defendant requests that the Commission require strict proof of the validity of such items as allowable reimbursable expenses."

On July 27, 1967 the applicants filed herein a statement prepared by the above named accounting firm that explained the difference of \$90.49. Our examination of this statement and comparison thereof with the original application as amended in 1965 and the amended application filed April 26, 1967 and their supporting papers revealed that all of the said difference (increase) of \$90.49 and the addition of \$328.72 to claim No. 79 were the result of proper corrections of mathematical errors in the 1965 version of

the applicants' claim. The only new item of expense found in the amended application was the above mentioned amount of \$1,430.00.

After filing the aforementioned statement, the applicants withdrew the following expense amounts from their amended application:

<u>Amount</u>	<u>Description & page of accountants' statement of applicants' claim</u>
\$ 4.81	Laundry charges included in the amount of 349.39 in claim No. 6, pages 2 and 5.
42.65	Part of 980.08 in claim No. 79, page 7, that paid for the printing of an amended complaint in Docket 189.
10.00	Charge for "Lunch - Delegation Red Lake Council to Duluth", January 19, 1962, in claim No. 79, page 7, that was lined out of the original copy of claim No. 79 and charged to miscellaneous expense on applicants' ledger.
1.00	Postage charge of January 16, 1948, page 8, that antedated the applicants' earliest contract with claimants in Docket 18-A.
1.62	Unsupported telephone toll charge of October 13, 1948, page 8.
1,430.00	Cost of the above named accounting firm's services in preparing the statement of applicants' claim that accompanied their amended application filed April 26, 1967, page 1.
149.00	Part of a charge of 155.25, on page 14, for services of Mabel P. Hoag that applicants intended to offset against the cost of her subsistence on Trip No. 18.
96.78	"Portion of Trip 26 chargeable to 18A", page 37. This amount includes a duplication of 68.12 listed for the same trip in claim No. 79, 4th item from the last on page 7. Applicants regard the balance of 28.66 as having been included in their claim in error. Their complete itemization of the costs of the trip reflects 68.12 as the portion allocable to 18A, and their ledger agrees with such allocation.
11.82	Adjusts automobile mileage charge in claim No. 79 for trip to Red Lake of June 11 and 12, 1958 to a rate of 5¢ per mile, page 6.
6.70	Adjusts automobile mileage charge in claim No. 79 for trip to Minneapolis of July 10 and 11, 1959 to a rate of 5¢ per mile, page 7.
52.80	Adjusts automobile mileage charge to a rate of 5¢ per mile for the round trip from Duluth to Washington of February 25 to March 12, 1951 (Trip No. 8), page 16.

List of withdrawn amounts continued:

Amount Description & page of accountants' statement of applicants' claim

- \$ 10.00 Adjusts automobile mileage charge to a rate of 5¢ per mile for the trip from Duluth to Minneapolis to Red Lake and return of August 30 and 31, 1951 (Trip No. 9), page 17.
- 15.69 Adjusts to a rate of 5¢ per mile the automobile mileage charge allocated to Docket 18-A for the round trip from Duluth to Washington of September 20 to October 19, 1953 (Trip No. 10), page 18.
- 54.10 Adjusts to a rate of 5¢ per mile the automobile mileage charge for the round trip from Duluth to Washington of January 8 to January 24, 1954 (Trip No. 11), page 18.
- 82.45 Part of the claimed cost of the round trip from Duluth to Washington of November 11 to December 15, 1954 (Trip No. 14), page 19, consisting of: 69.86 to adjust the automobile mileage charge to a rate of 5¢ per mile; 2.50 that appears to be a duplicate ferry charge; and 10.09 travel cost claimed in excess of the total cost entered to applicants' ledger for the trip.
- 2.32 Adjusts to a rate of 5¢ per mile the automobile mileage charge allocated to Docket 18-A (1/23rd) for the round trip from Duluth to Washington of November 25 to December 17, 1955 (Trip No. 17), page 24.
- 53.51 Part of the cost allocated to Docket 18-A of the round trip from Duluth to Washington of January 8 to May 2, 1959 (Trip No. 18), page 26, consisting of: 35.35 to adjust the allocated automobile mileage charge to a rate of 5¢ per mile; and 18.16 charge for 6 dinners for unidentified persons, 3 dinners on March 31 and 3 on April 1, 1959.
- 11.42 Adjusts to a rate of 5¢ per mile that portion of the automobile mileage charge allocated to Docket 18-A for the trip from Duluth to Montreal to Washington and return to Duluth of September 10 to December 11, 1959 (Trip No. 19), page 29, that is attributable to miles traveled through October 18, 1959, when the provision for such 5¢ rate in applicants' contract with the Pembina Band expired.

2,036.67 Total withdrawn from the amended application

After deducting the sum of the withdrawn expense amounts listed above, the unreimbursed expenses claimed in the amended application total \$22,587.70.

In his testimony before the Commission regarding the division of expenses, Mr. Hoag said, inter alia, that:

"They can be divided only on the basis of the division of the award.

"We did not do any work, or incur any expense or disbursements for just one group.

"It was for Red Lake and Pembina in Docket No. 18-A, so that we have no way of saying for the Pembina there was disbursed so much money, and for the Red Lake so much money." (Hearing Tr. July 15, 1965, p. 55)

In line with this testimony and consistent with the basic distribution ratio of the Commission's award herein, the applicants suggest that 2/3rds of the allowable expenses incurred herein in prosecuting the claims of the Red Lake and Pembina Bands be charged to the Red Lake Band and that 1/3rd of such expenses be charged to the Pembina Band. As to this suggestion, the above mentioned memorandum of June 4, 1965 from the Commissioner of Indian Affairs to the Solicitor, Department of the Interior, remarked that the proposed division was found to be based on the same treaty provision that was used for division of the recovery between the same bands and that "The ratio proposed by the attorney appears to be equitable and fair."

The applicants acknowledge that they and their associates have been paid \$30,620.83 by the Red Lake Band on claims for reimbursement of expenses that were processed by the Bureau of Indian Affairs. The amended application, as filed on April 26, 1967, accounts for \$29,850.21 of such reimbursed amount. Additional reimbursements by the Red Lake Band totaling \$770.62 that make up the remainder of the \$30,620.83 were acknowledged by Mr. Hoag at the hearing on July 15, 1965 (Tr. pp. 47-48). The latter reimbursements are described in the last paragraph on page 2 of the above mentioned memorandum of June 4, 1965 from the Commissioner of Indian Affairs to the Solicitor, Department of the Interior. Copies of the vouchers on which they were paid are attached to the memorandum.

In a letter to the Commission dated October 3, 1967, that was accepted as an amendment to the amended application and entered herein on October 6, 1967, Mr. Hoag mentioned, inter alia, the said reimbursements totaling \$770.62 and indicated, as he did at the hearing on July 15, 1965, that this sum should be included in the total amount of expenses and in the total amount of reimbursements paid by the Red Lake Band and that 1/3rd of this sum should be charged to the Pembina Band.

The \$22,587.70 claimed for unreimbursed expenses in the amended application plus the \$30,620.83 in acknowledged reimbursements of expenses total \$53,208.53. Under the above mentioned ratio of division these amounts would be distributed as follows:

2/3rds of \$53,208.53 charged to Red Lake Band - - - - - \$ 35,472.35
 Less reimbursements paid by Red Lake Band - - - - - \$ 30,620.83
 Balance claimed from Red Lake Band- - - - - \$ 4,851.52

1/3rd of \$53,208.53 charged to Pembina Band - - - - - \$ 17,736.18

Unreimbursed balance claimed in amended application - - \$ 22,587.70

Having considered the above described original and amended applications and their supporting papers and accompanying copies of claims acknowledged therein as having been previously submitted to the Bureau of Indian Affairs, the above mentioned responses of the defendant and the letters and memorandums received therewith, the above mentioned explanatory statement filed by the applicants on July 27, 1967, the above listed amounts withdrawn from the amended application, the contracts under which the applicants served the Red Lake and Pembina Bands, and the rest of the record herein, the Commission finds that:

1. In compliance with the decision of the Court of Claims in Appeal No. 7-62 (164 Ct. Cl. 389), this Commission entered herein on April 24, 1964 an amended award that in pertinent part reads as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Commission that the petitioners herein for and on behalf of and for the benefit of the Red Lake and Pembina Bands, as such bands were constituted and recognized by the United States at the time of the Treaty of October 2, 1863, do have and recover of and from the defendant the sum of \$2,034,889.56, said sum to be divided as follows:

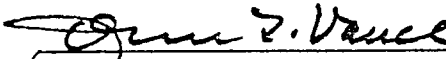
- (1) On behalf of and for the benefit of the Red Lake Band.....\$1,797,761.74
- (2) On behalf of and for the benefit of the Pembina Band\$ 237,127.82"

2. The unreimbursed expenses now claimed in the amended application of Jay H. Hoag and Rodney J. Edwards are reasonable and properly reimbursable out of the award herein.

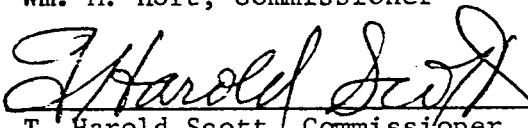
3. The above described proposal in the said application under which expenses totaling \$53,208.53 -- consisting of costs amounting to \$30,620.83 previously reimbursed to the attorneys for the Red Lake and Pembina Bands from funds of the Red Lake Band on vouchers approved by the Bureau of Indian Affairs, and unreimbursed expenses aggregating \$22,587.70 now claimed in the said application -- would be charged to the Red Lake and Pembina Bands according to the same ratio used for the division of the gross award herein, namely, 2/3rds to the Red Lake Band and 1/3rd to the Pembina band, is reasonable and fair and has the approval of this Commission.

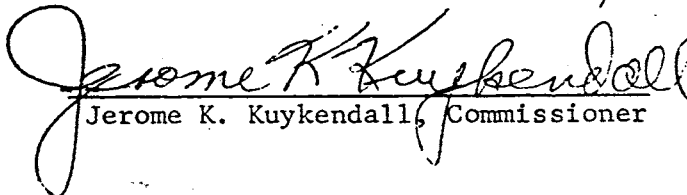
IT IS THEREFORE ORDERED AND ADJUDGED that there shall be disbursed to Jay H. Hoag and Rodney J. Edwards of Duluth, Minnesota, as payment in full of their unreimbursed expenses incurred herein, the sum of \$22,587.70, of which sum \$4,851.52 shall be disbursed out of the above mentioned award of \$1,797,761.74 for the benefit of the Red Lake Band and \$17,736.18 shall be disbursed out of the above mentioned award of \$237,127.82 for the benefit of the Pembina Band.

Dated at Washington, D. C., this 25th day of June, 1968.


John T. Vance, Chairman


Wm. M. Holt, Commissioner


T. Harold Scott, Commissioner


Jerome K. Kuykendall, Commissioner

Richard W. Yarborough, Commissioner