

BEFORE THE INDIAN CLAIMS COMMISSION

THE STILLAGUAMISH TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.) Docket No. 207
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: October 17, 1968

Appearances:

Warren J. Gilbert and
Frederick W. Post, Attorneys
for Petitioner.

Craig A. Decker, with whom was
Mr. Assistant Attorney General
Clyde O. Martz, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Commissioner Kuykendall delivered the opinion for the Commission.

On June 19, 1968, the above petitioner filed a "Motion For Re-hearing" the purpose of which is to set aside this Commission's Interlocutory Order previously entered herein on February 26, 1965 (15 Ind. Cl. Comm. 1).

The defendant duly responded in opposition to petitioner's motion on July 5, 1968, and on August 30, 1968, petitioner further replied to defendant's opposition.

The filing of "Motions for rehearing and for amendment of findings" is governed by the provisions of Rule 33 of this Commission's General Rules

of Procedure. There it clearly states that a motion for rehearing must be made "within 30 days from the time the final determination of the Commission is filed with the clerk." Certainly the petitioner's motion is far from timely, some 40 months having elapsed between its filing date and the Commission's 1965 decision. The rule sets forth three grounds upon which such a motion can be granted; namely, an "error of fact", an "error of law", or "newly discovered evidence." Where an error of fact is charged, then the movant must specify "with minuteness" the fact or facts erroneously found or omitted to be found by the Commission.* Alleged errors of law must be specified in like manner with reference to the authorities in support of said motion.

If we understand petitioner's motion correctly, the rehearing is sought on the following grounds:

1. The petitioner's attorney was unable to effect a settlement of petitioner's claim.

2. Because the Act of April 11, 1967 (81 Stat. 11), changed the composition of the Commission from three to five members, the result being that three new appointments have been made to the Commission, it necessarily follows that "...the newly appointed Commissioners cannot properly exercise their judicial duties and sign a final judgment unless they review all the evidence in support

* There is no need to elaborate on the question of "newly discovered evidence" since no such allegation appears in this motion.

of the judgment entered."

3. The Commission failed to consider evidence of Stillaguamish use and occupancy of land outside of the area awarded to the tribe under the Commission's 1965 interlocutory award.

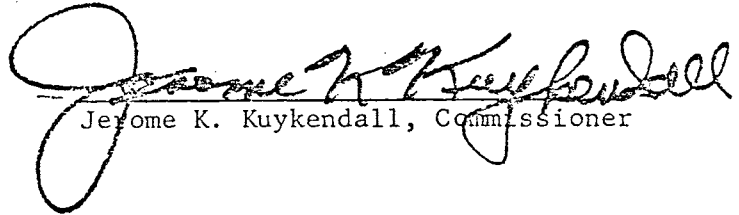
4. The Commission failed to consider the testimony of petitioner's expert witness Sally Snyder, with respect to Stillaguamish use and occupancy.

We find no merit in petitioner's motion. First of all, we are not persuaded that the fact that petitioner's counsel was unable to effect a compromise settlement of the instant claim supports a motion for rehearing under our rules of procedure, or at all. Of equal merit is the petitioner's second contention that the Act of April 11, 1967, created a "new" Indian Claims Commission and that it is the responsibility of this "new" Commission to confirm all past acts or judgments of the Commission as it existed prior to April 11, 1967, less they be found invalid. There is no "new" Commission. The Indian Claims Commission is and has been a continuing quasi judicial body. It is performing the same functions it did when it was first organized over twenty-two years ago. There is nothing in the language of the Indian Claims Commission Act or its legislative history that even remotely suggests that a change in the composition or in the individual membership thereof impairs its judicial functions. Only the lack of a quorum can suspend its operations.

Of the remaining two grounds that petitioner urges upon the Commission, the fourth appears to be but a refinement of the third, although both allege acts of omission with respect to evidentiary findings. Petitioner's singular charge that the Commission failed to consider the testimony of petitioner's expert witness, Sally Snyder, relative to Stillaguamish use and occupancy is not borne out by the record in this case. A simple reading of the Commission's findings of fact beginning at 15 Ind. Cl. Comm., 6, and particularly Findings 8 through 11, and Finding 15, shows on its face that Miss Snyder's testimony was given ample consideration but found wanting in many respects.

Finally, petitioner's broad attack on the Commission's interlocutory decision in this case is nothing more than an empty challenge. Nowhere in the petitioner's motion do we find even one of the Commission's prior findings of fact or conclusions cited as not being supported by substantial evidence. This lack of specificity is fatal to petitioner's motion, and it is akin to the type of indiscriminate broadside attack on a prior decision of this Commission that was condemned by the Court of Claims in the Nooksack case when the Commission's findings of fact in that case were challenged on appeal. The Nooksack Tribe of Indians v. United States, (1963), 162 Ct. Cl. 712, 718. Nevertheless, in considering petitioner's motion, the Commission has necessarily reviewed the proceedings to date in this case, but in so doing, it has not found any basis for granting petitioner's motion.

The Commission therefore concludes that petitioner's "Motion For Rehearing" should be denied, and an order will be entered accordingly.




Jerome K. Kuykendall, Commissioner

Concurring:



John T. Vance, Chairman



Richard W. Yarbrough, Commissioner