

BEFORE THE INDIAN CLAIMS COMMISSION

THE SISSETON AND WAHPETON BANDS )  
 OR TRIBES, ETC., )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 142

Decided: April 9, 1969

Appearances:

Marvin J. Sonosky,  
Attorney of Record

Jess Larson, on behalf of  
the Heirs of Kelly Brown, Esquire,  
and Wesley Disney, Esquire.

John D. Sullivan, with whom was  
Mr. Assistant Attorney General Clyde O. Martz,  
Attorneys for the Defendant

OPINION OF THE COMMISSION

Vance, Chairman, delivered the opinion of the Commission.

The matter now before us is the disposition of \$64,569.28 worth of attorney fees that was withheld from an overall fee award made under the Commission's prior order of July 19, 1968. The amount so withheld is the result of a stipulation entered into between the attorneys representing the heirs of attorneys Wesley E. Disney and Kelly Brown, claiming an interest therein, and the petitioners' attorneys, Marvin J. Sonosky and Emerson Hopp, denying in toto any such interest.

It is the position of the Disney-Brown heirs that these two original contract attorneys performed valuable services for the Sisseton-Wahpeton tribal petitioners under their contract, and that they are entitled to compensation for these services despite the fact that both attorneys subsequently withdrew from this case after the petition was filed. The heirs contend that the Disney-Brown withdrawal herein was done with the approval of the tribal petitioners and the Secretary of Interior, and not in violation of the provisions of their contract. They further contend that attorneys Disney and Brown in their lifetime never disclaimed any fee interest in this case.

While conceding that Messrs. Disney and Brown did perform some service to the tribal petitioners in the preparation and filing of the original petition in this case, the petitioners' attorneys oppose the awarding of any compensation to these heirs on the grounds that attorneys Disney and Brown, without justification or the consent of the tribal petitioners, voluntarily withdrew from this case prior to any final adjudication thereof, and as a result they have forfeited any fee interest.

The Commission is in agreement with the petitioners' attorneys that Messrs. Disney and Brown performed some service under their contract for the Sisseton and Wahpeton Indians in this case. However, we do not agree that their subsequent withdrawal was without the consent of the tribal petitioners and that they have forfeited a fee interest under their

attorney contract with these Indians. The sequence of events as set forth in our findings belies any contention that the Sisseton and Wahpeton petitioners did not consent in fact to their withdrawal.

As we view the situation, Mr. Disney was the first to make his withdrawal intentions known both to the Sisseton-Wahpeton Indian Agent and to their tribal council in March of 1952. The Indians never protested Mr. Disney's actions in this regard and they never demanded that he carry out the terms of his contract. Instead the tribal leadership went about its business of obtaining new counsel for the tribes in the persons of attorneys Sonosky and Hopp.

Petitioners' attorneys' efforts in the summer of 1952 to speed up the termination of the Disney-Brown contract are clearly shown in the letter of August 12, 1952, from Mr. Sonosky to Mr. Disney. Apart from advising attorney Disney of his pending contract with the Sisseton-Wahpeton tribes and the tribal council's resolution requesting the Secretary of Interior to accept Mr. Disney's withdrawal and to terminate Mr. Brown's contract, Mr. Sonosky apparently requested attorney Disney's assistance in getting Mr. Brown to withdraw from this case and to disclaim any fee interest therein. Mr. Brown, who had shown some reluctance to withdraw, did so shortly thereafter but he never disclaimed any fee interest in the case. There is no evidence that Mr. Disney ever disclaimed any fee interest.

We find further that the action of the Commissioner of Indian Affairs

in officially terminating the Disney-Brown contract on December 31, 1952, was done pursuant to the provisions of the said contract and this preserved any fee claims these attorneys might have in the event this law suit was brought to a successful conclusion.

Attorneys Disney and Brown did, of course, prepare and file the original petition in this docket and while their efforts in this regard may appear minimal in comparison to the overall services rendered by petitioners' attorneys in successfully terminating this litigation, nevertheless, the services rendered by attorneys Disney and Brown do qualify under our Act as "...services rendered in prosecuting the claim in question."\* We therefore conclude that the heirs of Disney and Brown are eligible to claim fee compensation in the case.

However, as to any fee division between the parties the Commission is loath to test its jurisdictional limitations where attorney fee apportionment matters are involved. Many years ago the Court of Claims had occasion to comment on the jurisdictional aspects of apportioning attorney fees where said fees were being contested. It stated,

" . . . to undertake to adjudicate upon the conflicting claims legal and equitable, of attorneys and others among themselves would be to invade the jurisdiction of other courts established to try issues between parties where the United States are not concerned, a jurisdiction never intended to be conferred on the Court of Claims. . ." \*\*

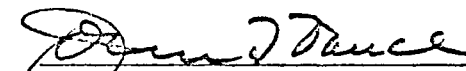
And more recently in the case of the Chickasaw Nation v. United States, 121 Ct. Cl. 41, 44, (1951), an attorney fee dispute that originated in the Commission, the Court was very explicit when it said:

\* 60 Stat. 1049, 1053.


\*\* Beddo v. United States, 28 Ct. Cl. 69, 76 (1893)

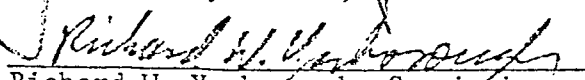
"Neither the Indian Claims Commission nor this Court has jurisdiction to apportion fees among disputing attorneys or to make allowance for fees for anyone except the attorneys of record."

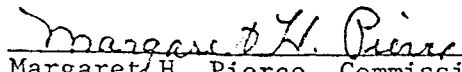
In light of these pronouncements and precedents, this Commission will issue an order releasing the \$64,569.28 to the parties in hopes that amicable settlement can be reached without resort to further proceedings in some other forum.

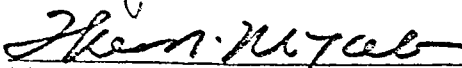
  
John T. Vance, Chairman

We concur:

  
Jerome K. Kuykendall, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Theodore R. McKeldin, Commissioner