

BEFORE THE INDIAN CLAIMS COMMISSION

THE CADDO TRIBE OF OKLAHOMA, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 226
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 5, 1969

Appearances:

Rodney J. Edwards, Attorney for Plaintiffs.  
Jay H. Hoag was on the Brief.

Clifford R. Stearns, with whom was Mr.  
Assistant Attorney General Shiro Kashiwa,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the opinion of the Commission.

The Commission has before it plaintiffs' motion to vacate the order of March 1, 1955 which dismissed Counts II and IV of the petition in Docket No. 226. That dismissal upon the merits was ordered after plaintiffs informed the Commission that they had no evidence to offer in support of the allegations in Counts II and IV.

Count II alleged a lack of fair and honorable dealings by the government in its evicting plaintiffs from United States territory, and later, in its failing to protect plaintiffs upon the admission

of Texas into the Union. Count IV claimed that plaintiffs had aboriginal title to "additional area outside of that ceded by the treaty of July 1, 1835."

Plaintiffs contend that prior to the decision in Lipan Apache Tribes v. United States, 180 Ct. Cl. 487 (1967), "it would have been useless to submit the evidence offered or any other evidence of use and occupancy since the prevailing view of the Court and Commission was contrary to a finding of Indian title to Texas lands." The transcript of the 1955 hearing raises questions as to whether in fact this was the basis for plaintiffs' decision to offer no evidence on Counts II and IV at that time. (See Tr. 603-608, March 1, 1955.) Indeed, the Lipan case would not seem to bear upon the decision insofar as it related to lands in Oklahoma. Whatever plaintiffs' reasons were in 1955, they now feel that evidence is available to prove the dismissed claims.

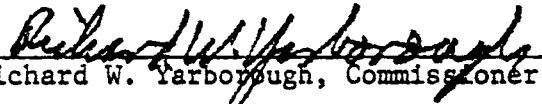
Although the Commission is reluctant to acquiesce in prolonging litigation, we find nothing in the Indian Claims Commission Act which would bar vacating our earlier order if justice requires it. It is not necessary for us to decide whether or not under Section 22 the consideration of a matter is barred after the Commission's final determination is reported to Congress pursuant to Section 21 since in this case we are only faced with the question of whether to exercise our discretionary power to reopen a claim in a docket still within our jurisdiction in order to insure that a correct result is reached.

This is not the first time that a claim has posed the difficult "conflict between the desirability for finality and the public interest in reaching what appears to be the correct result." Confederated Tribes of Warm Springs Reservation v. United States, 177 Ct. Cl. 184, 190-191 (1966). A situation very similar to the present one was presented to the Court of Claims in Otoe and Missouri Tribe v. United States, 131 Ct. Cl. 593, 131 F. Supp. 265 (1955), cert. den. 350 U.S. 848 (1955). The Commission had dismissed one cause of action for lack of proof. Plaintiffs filed a motion in the Court of Claims asking that the Commission's dismissal be vacated so that the Commission could consider evidence not previously introduced in that claim. The Court granted the motion, stating:

"If this were ordinary adversary litigation, we should be inclined to deny the motion. However... Congress was desirous that these claims be 'cleaned up' and decided on the fullest possible records\*\*\* It is true, as pointed out by the Government, that claimants could have, with the exercise of diligence, developed these facts and presented them to the Commission at the time of the trial, and we are not excusing counsel for failure to do so, but we cannot ignore the emphasis placed by Congress on the necessity that these cases be settled finally on the most complete records available to insure that at some later date the claimants will not again press Congress for special legislation to permit the litigation of matters not fully explored." 131 Ct. Cl. at 625-626, 131 F. Supp. at 286.

We agree that the intent of our Act is best served by determining claims on substantive grounds rather than procedural ones. Following the Otoe and Missouri case, we vacate our order of

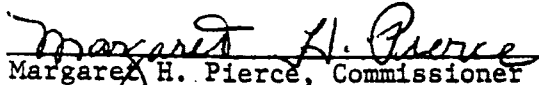
March 1, 1955. Plaintiffs are ordered to file within 30 days an amended petition which includes a statement setting out with particularity the extent of the lands claimed under Count IV.

  
Richard W. Yarborough, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner