

BEFORE THE INDIAN CLAIMS COMMISSION

YANKTON SIOUX TRIBE,)	
)	
Plaintiff,)	
v.)	Docket No. 332-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 17, 1969

FINDINGS OF FACT ON ATTORNEYS' FEE

1. Claim Involved. The original petition was filed on August 10, 1951 as Docket No. 332. This petition was subsequently amended by order of February 13, 1958, and a separate amended petition limited to the Yankton land claims was filed as Docket No. 332-A. In addition to the land claims, the Yankton Tribe filed for an accounting claim which was severed and filed as Docket No. 332-B. Subsequently, pursuant to the Commission's order of December 8, 1968, separate amended petitions were filed for each of the Yankton land claims. The present claim, which is based upon the Yankton 1830-1837 cession of lands in Minnesota and Iowa, generally referred to as the Royce Cession 151 claim, was retained in Docket No. 332-A. The Yankton Tribe's claim based upon the Yankton 1858 Treaty cession of South Dakota lands (generally referred to as the Royce Cession 410 claim), the Yankton interest in the so-called "Sioux Laramie lands" and the other Yankton interests were designated as Docket No. 332-C. Although for most of the period covered by this petition Docket No. 332-A encompassed all

land claims, only work relating to the Royce 151 claim for which final judgment has been awarded is being considered here for the present attorney fee.

The Royce 151 claim was based on the theory that the Yankton Tribe held aboriginal Indian title to the area, or, alternatively, that the United States by the Treaty of Prairie des Chiens of August 19, 1825, 7 Stat. 272, 2 Kapp. 250, recognized the rights of the Yankton Tribe in the area north of the line defined in Article II of that Treaty, and that by the Treaties of July 15, 1830, 7 Stat. 328, 2 Kapp. 305, and October 21, 1837, 7 Stat. 542, 2 Kapp. 496, the United States obtained a cession of the Yankton title to that land for an unconscionable consideration.

2. Contractual Authority. The present claim was prosecuted under Contract No. I-1-ind. 17495, dated November 1, 1940, between the Yankton Sioux Tribe and attorney Ernest L. Wilkinson. This contract was approved by the Commissioner of Indian Affairs on January 17, 1941 for a period of ten years beginning with the date of approval. The contract was extended several times. The last extension, which was approved on September 9, 1969, was for a period of two years beginning September 17, 1969 to expire on September 16, 1971.

An assignment by Ernest L. Wilkinson of his interest in the contract to Wilkinson, Cragun & Barker effective as of January 31, 1964 was approved by the Commissioner of Indian Affairs on August 4, 1964.

3. Compensation under the contract. As to attorney fees, the contract provides in pertinent part that the attorneys shall receive:

"[A]s upon a quantum meruit, such sum as may be determined by the Court of Claims [or the Indian Claims Commission] to be equitably due ... but in no event shall the aggregate fee exceed ten per centum of any and all sums or of the value of all property recovered or procured for The Tribe through the efforts, in whole or in part, of The Attorney."

4. Award. Pursuant to the contract heretofore mentioned, the law firm of Wilkinson, Cragun & Barker prosecuted the claim of the Yankton Tribe arising out of the cession of Royce Cession 151 in the Indian Claims Commission and in the United States Court of Claims, with the result that on the 24th day of January, 1969 final judgment was entered in this case adjudging that the plaintiff Tribe should recover the sum of \$1,250,000.

5. Services. The petitioner attorneys have rendered valuable legal services in successfully prosecuting the claim and ultimately having it settled. Mr. John W. Cragun, now deceased, was the attorney of record primarily responsible for the prosecution of the claim. He was assisted by several members of the law firm and primarily by Mr. Richard Wilkins (also now deceased), Mr. Angelo A. Iadarola and Mrs. Frances L. Horn. Mr. Iadarola subsequently became attorney of record and has been assisted primarily by Mrs. Horn in the continued prosecution and conclusion of the claim.

The case presented many difficulties. At first it was not at all clear whether the Yankton Tribe held exclusive title to the Royce Cession 151 land north of the Article II line or whether the Tribe held an undivided interest in a much larger area of land together with the other bands of Sioux. Although it was ultimately decided that the

Yankton Tribe held exclusive recognized title to the area claimed, it was only after the attorneys had presented evidence of Yankton aboriginal occupancy of the area. There were difficulties encountered to determine boundaries between the Sioux Bands on the basis of Treaties which defined "Sioux" lands without distinguishing between the Bands. Because of the apparent overlap in claims of the Eastern Sioux and the Yankton Sioux, the Royce 151 claim was, by order of June 26, 1958, consolidated with Docket Nos. 142 and 359 through 363 for trial in the title phase in the case. On July 30, 1958 the Government moved for summary judgment against the Yankton Tribe questioning the validity of its claim. The motion was briefed by the parties, and on August 21, 1958, after oral argument, this Commission denied the motion from the bench. Subsequently, the consolidated claims proceeded on the merits and the trial was held on October 20 and 21 and December 8, 1958. The issues as between the Sioux Bands were settled by stipulation by the attorneys representing the Yankton and the Eastern Bands of Sioux, respectively, and accepted by this Commission in its decision in Sisseton and Wahpeton Sioux v. United States, 10 Ind. Cl. Comm. 137 (1962).

Further difficulties arose in the case because the 1825 Treaty, by its Article II, was not clear in its definition of the western terminus of the boundary which divided the Yankton Tribe from those lands held by the Tribes south of the Article II line. Accordingly, the attorneys for the Yankton Tribe intervened in the proceedings in consolidated Docket Nos. 11-A and 138 dealing with Tribes to the south

of the Article II line. Consolidation of Docket Nos. 332-A, 11-A and 138 was ordered for the limited purpose of determining the location of the line. On October 2, 1959 a hearing was held for this purpose, and on November 18, 1959 the Commission handed down a decision determining the location of the Article II line. The attorneys for the Yankton Tribe, unsatisfied with the Commission's determination, filed a motion for rehearing which was denied.

On January 12, 1962 the Commission dismissed the Yankton Royce 151 claim for procedural (jurisdictional) reasons (10 Ind. Cl. Comm. 137). Again, having been denied their motion for rehearing, the attorneys appealed the dismissal along with the issue on the location of the Article II line, to the United States Court of Claims.

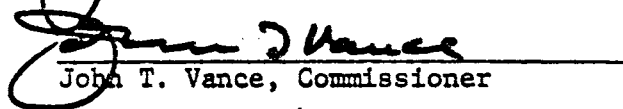
By its decision handed down May 13, 1966, 175 Ct. Cl. 564, the Court of Claims affirmed the Commission's definition of the Article II line but reversed the dismissal and remanded the case to the Commission to proceed on the merits of the claim. Upon remand, the defendant contended that the 1825 Treaty of Prairie des Chiens, supra, did not recognize title in the Yankton Tribe and that the Tribe, in any event, did not hold exclusive title to the area of Royce Cession 151 north of the Article II line. After further briefing by the parties and oral argument, the liability of the defendant in the Royce Cession 151 claim was finally established by a decision of this Commission handed down April 24, 1968 (19 Ind. Cl. Comm. 131). After this decision, negotiations between the petitioner attorneys and attorneys for the Government took place which eventually resulted in

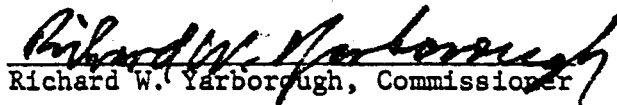
a stipulation for a compromised settlement. Obtaining the necessary approvals for the settlement required inter alia, attendance of Mr. Angelo A. Iadarola, attorney of record, at a meeting of the Yankton Sioux Tribe's General Council which approved the settlement and a hearing before the Commission on December 11, 1968 at which time members of the Tribe testified in connection with the settlement. Final judgment was handed down by this Commission on January 28, 1969 (20 Ind. Cl. Comm. 252).

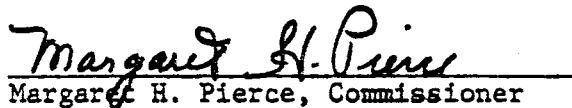
6. Fee Award. In response to the Commission's request for comments on the application of counsel filed herein, the Associate Solicitor, Indian Affairs, United States Department of the Interior, on August 28, 1969 forwarded a communication to Assistant Attorney General, Honorable Shiro Kashiwa, enclosing a memorandum of the Acting Deputy Commissioner of Indian Affairs to the Solicitor dated August 21, 1969 confirming the dates of the several contracts between the Yankton Sioux Tribe and attorney Ernest L. Wilkinson and stating that that office did "not have sufficient detailed information to make a recommendation as to the amount of compensation earned". On September 23, 1969 counsel for the defendant responded to the petition for the allowance of attorney fee, transmitting the communications of the Department of the Interior, and stating that "we have no objection to the allowance of the fee as claimed". We find that the attorneys for the Yankton Sioux Tribe undertook serious responsibilities and complex litigation under a contract

which made the payment of compensation entirely contingent, that they rendered services for over 20 years, that they have been burdened with substantial administrative responsibilities in addition to litigation and that they achieved results which were beneficial to the Tribe. Tested by the standards fixed in Section 15 of the Act (25 U.S.C. 70n), including those obtaining for prosecuting similar claims in courts of law, and considering the complex and contingent nature of this claim and the result obtained, the petitioner attorneys have earned and are entitled to an attorneys' fee of \$125,000, representing ten per cent (10%) of the award to the Yankton Sioux Tribe.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner