

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE OF)
 OKLAHOMA (on behalf of the)
 SHAWNEE NATION),)
)
 Plaintiff,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 334-B

Decided: May 19, 1971

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

On April 14, 1971, the plaintiff and the defendant herein filed a Joint Motion for Approval of Proposed Compromise Settlement based on a Stipulation for Entry of Final Judgment, filed with said motion.

The matter having come on for hearing before the Commission on May 7, 1971, and the Commission having considered the record and the evidence presented, both written and at the hearing, does hereby make the following findings of fact which are supplemental to the findings numbered 1 to 17, inclusive, heretofore made in this docket at 12 Ind. Cl. Comm. 180 (1963), and findings of fact numbered 18 to 21, inclusive, heretofore made on this docket at 22 Ind. Cl. Comm. 18, 25 (1969).

22. On September 2, 1970, Jack Joseph, attorney of record for the plaintiff, directed a letter to the Honorable Shiro Kashiwa, Assistant Attorney General and attorney for the defendant herein, containing the following proposai:

This is to advise that, subject to the conditions set forth below, the petitioners are willing to accept by way of compromise a net judgment in the amount of \$300,000.00 in full satisfaction of the claim being prosecuted under the petition in said Docket 334 B.

It is understood that this figure includes settlement for all credit which might be due the United States by reason of offsets that could be asserted against a judgment obtained upon a trial of the cause, for the period from May 10, 1854 to June 30, 1970 (specifically including but not limited to the value of property conveyed to certain of the petitioners under Public Law 88-421, 88th Congress, August 11, 1964), and that upon acceptance of this settlement, any offsets which could so have been asserted will be deemed fully satisfied.

It is further understood that the settlement proposed herein is subject to approval by the undersigned's clients; that it is subject to the approval of the Commissioner of Indian Affairs and that it is subject to approval by the Indian Claims Commission.

Upon your acceptance of the proposed settlement, the undersigned will undertake to request approvals from the foregoing.

23. On October 8, 1970, Walter Kiechel, Acting Assistant Attorney General, conditionally accepted the settlement proposed in the aforesaid letter of September 2, 1970, as follows:

The offer to settle the claim asserted and being prosecuted under the petition in Absentee Shawnee Tribe of Oklahoma (on behalf of the Shawnee Nation) v. United States Docket No. 334-B, before the Indian Claims Commission, for the sum of \$300,000, including all offsets to which the United States might be entitled from May 10, 1[8]54 to June 30, 1970, as set out in your letter of September 2, 1970, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution by the governing body of the Absentee Shawnee Tribe of Oklahoma as representatives of the Shawnee Nation and on behalf of said Shawnee Nation;

2. That the approval of the settlement, as well as the resolution of the Absentee Shawnee Tribe, be secured from the Secretary of the Department of the Interior or his authorized representative;

3. That responsible officials and representative members of the Absentee Shawnee Tribe be present to testify in behalf of said tribe and as representatives of the Shawnee Nation on the compromise settlement before the Indian Claims Commission.

24. Pursuant to the foregoing exchange of correspondence, the proposed settlement was taken to the Absentee Shawnee Tribe. A meeting was duly called for November 7, 1970, in the Tecumseh City Hall, Tecumseh, Oklahoma. The meeting was called as provided in the tribe's approved organizational document, and in addition, notices were published in two newspapers that serve the area where many of the Absentee Shawnee Indians live. Also, a notice was posted in the Shawnee Agency.

25. On November 7, 1970, a meeting of the Absentee Shawnee Tribe was held in the Tecumseh City Hall, Tecumseh, Oklahoma. The meeting was attended by representatives of the Bureau of Indian Affairs, by the tribe's attorney of record and by 75 adult members of the tribe. The meeting lasted approximately four hours. Mr. Joseph, attorney of record, explained the proposed settlement and recommended that it be approved. An interpreter was used for those who may not have had a good understanding of the English language. A recess was called during which the Indians could discuss the proposed settlement among themselves. Upon reconvening the members present proceeded to vote by secret ballot, either to reject or accept the proposed settlement. The resolution was adopted by a vote of 38 for, 15 opposed, and was duly signed by the Chairman and other tribal officials.

26. On November 11, 1970, the Business Committee of the Absentee Shawnee Tribe convened with a quorum present and by vote of five for and none against adopted Resolution No. AS-70-6, accepting the proposed settlement, thus supporting the views expressed by the General Council on November 7, 1970.

27. Although the acceptance of the settlement was not conditioned upon the approval of any other group, Mr. Joseph, who is also attorney of record for the Eastern Shawnee Tribe of Oklahoma, a part of the Shawnee Nation and one of the beneficiaries of the judgment herein pursuant to the decision of the Court of Claims of April 17, 1964, Absentee Shawnee Tribe v. United States, 165 Ct. Cl. 510, presented the proposed settlement to the Eastern Shawnee Council and Business Committee of the Eastern Shawnee Tribe. A meeting of the General Council was duly called and held on November 8, 1970, in the Seneca Indian School near Wyandotte, Oklahoma, to consider the proposed settlement. Mr. Joseph explained the proposed settlement and answered all questions. Thereafter, on motion duly made, the settlement was accepted by a vote of 17 for and one opposed. Subsequently, the Business Committee met formally and adopted a resolution accepting the proposed settlement.

28. The representatives of the Bureau of Indian Affairs, who attended the aforesaid meetings of the Absentee Shawnee Tribe and the Eastern Shawnee Tribe of Oklahoma, in due course reported on said meetings to the Commissioner of Indian Affairs. After considering the said reports and other material matters, on March 10, 1971, the Honorable Louis R. Bruce, Commissioner of Indian Affairs, forwarded to the attorney of record a letter approving the

proposed settlement. The pertinent portions of Commissioner Bruce's letter are as follows:

You made an offer to the Assistant Attorney General on September 2, 1970, to settle Docket No. 334-B for \$300,000.00. Your offer was accepted on October 8, 1970, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate resolution by the governing body of the Absentee Shawnee Tribe of Oklahoma, as representative of the Shawnee Nation and on behalf of the Shawnee Nation and also that you obtain from the Secretary of the Interior, or his authorized representative, approval of the resolution and the proposed settlement.

Entry of final judgment in the amount of \$300,000.00 in favor of the petitioner Absentee Shawnee Tribe on behalf of the Shawnee Nation shall finally dispose of all rights, claims or demands which the petitioner has asserted or could have asserted in Docket No. 334-B. Entry of final judgment shall also dispose of all credits, payments on the claims, counter-claims or offsets which the United States has asserted or could have asserted in the case for the period from May 10, 1854, to and through June 30, 1970. All parties waive any and all rights to appeal from or otherwise seek review of the final determination.

You took the proposed settlement to the Absentee Shawnee Tribe. A meeting was duly called and held on November 7, 1970, in the Tecumseh City Hall, Tecumseh, Oklahoma. In addition to calling the meeting as provided in the tribe's approved organizational document, notices were published in two newspapers that serve the area where many of the Absentee Shawnee Indians live. Also, a notice was posted in the Shawnee Agency.

The meeting was attended by the tribe's claims attorney, Mr. Jack Joseph, by a representative of this Bureau, and by 75 adult members of the tribe. The Bureau's representative reported on the meeting. The number of Indians present was average for a general council meeting.

Mr. Joseph explained the proposed settlement to the Indians, giving pro's and con's, and making his views known to those present. He had a period during which he answered the questions asked by the Indians. The services of an interpreter were used for the benefit of those who may not have had a good understanding of the English language. A recess was called during

which the Indians could discuss the proposed settlement among themselves. Upon reconvening, the members present proceeded to vote by secret ballot either to accept or reject the proposed settlement. The proposed settlement was accepted by a resolution adopted by a vote of 38 for and 15 opposed. The resolution was duly signed by the Chairman and other Tribal officials. A few days later, the Business Committee of the Absentee Shawnee Tribe convened on November 11, 1970, with a quorum present. By a vote 5 for and 0 against, Resolution No. AS-70-6 was adopted accepting the proposed settlement, supporting the views expressed by the General Council on November 7, 1970. Resolution No. AS-70-6 was duly signed by the Chairman and other members of the Business Committee.

We are satisfied that the two meetings were duly called and conducted, that the members present reasonably understood the terms of the proposed settlement before voting, that those voting were representative of the tribe, and that the resolution adopted expressed the views of the membership of the Absentee Shawnee Tribe. The resolutions adopted by the General Council and the Business Committee of the Absentee Shawnee Tribe are hereby approved.

The proposed settlement provides that the final award be entered on behalf of the Shawnee Nation. Therefore, you also took the proposed settlement to the Eastern Shawnee Council and Business Committee of the Eastern Shawnee Tribe. The Eastern Shawnee Tribe has an approved organizational document. Pursuant thereto, a meeting of the General Council was duly called and held on November 8, 1970, in the Seneca Indian School near Wyandotte, Oklahoma, with a quorum present. In attendance also was Attorney Jack Joseph and a representative of this Bureau. The Bureau's representative reported on the meeting. Mr. Joseph explained the proposed settlement in detail and then conducted a "question and answer" period.

A motion was then made to accept the proposed settlement. The motion carried by a vote of 17 for and 1 opposed. The Business Committee then met formally and adopted a resolution accepting the proposed settlement. The resolution was duly signed by the Chief, Secretary-Treasurer, and two members of the Business Committee. We are satisfied that the meeting of the Eastern Shawnee General Council and the Business Committee were duly called and properly conducted, that the members present and voting were representative of the tribe, and that

the resolution adopted by the Business Committee reasonably represented the views of the tribal membership. The resolution is hereby approved.

In light of the information that you furnished to us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of Docket No. 334-B for a net final judgment \$300,000.00 on behalf of the Shawnee Nation, as set out in the proposed "Stipulation For Entry of Final Judgment", is hereby approved.

29. The Stipulation for Entry of Final Judgment into which the parties have entered and which has been made a part of the record herein, reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

The parties, by and through their respective counsel, hereby stipulate that the above-entitled case shall be settled, compromised and finally disposed of by entry of final judgment, as follows:

1. There shall be entered in the case, after all allowable deductions, credits and offsets, a net judgment for petitioner as representative and on behalf of the Shawnee Nation in the amount of three hundred thousand dollars (\$300,000.00).
2. Entry of Final Judgment in said amount shall finally dispose of all rights, claims or demands which the petitioner has asserted or could have asserted with respect to the subject matter of Docket No. 334-B, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action. The claim herein and petitioner's right to represent and claim on behalf of the entire Shawnee Nation is defined but not limited in Absentee Shawnee Tribe vs. United States, 165 C. Cls. 510, 518, 522-525 (1964).
3. Entry of final judgment in the aforesaid amount shall finally dispose of all credits, payments on the claim, counterclaims or offsets which the defendant asserted or could have asserted in this case for the period from May 10, 1854 and through June 30, 1970 and defendant is barred from asserting the same in any other action. Settlement of

offsets specifically includes (without limitation) the value of property conveyed to certain Shawnees under the Act of August 11, 1964, 78 Stat. 392. Defendant shall not be barred by this stipulation or by entry of judgment pursuant thereto from claiming in any future action offsets accruing before May 10, 1854, and after June 30, 1970.

4. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument, in any other case.

5. The final judgment of the Indian Claims Commission, pursuant to this stipulation, shall constitute a final determination by the Commission of the above-captioned case, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from or otherwise to seek review of such final determination.

6. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

7. Attached to this stipulation and incorporated herein by reference are minutes containing a resolution of the General Council of the Absentee Shawnee Tribe adopted on November 7, 1970, and also a resolution of its Business Committee of the tribe, its governing body, dated November 11, 1970, adopted at Tecumseh, Oklahoma, and both authorizing counsel for petitioner to enter into this stipulation on the basis set forth herein, and a copy of a letter approving settlement of this litigation by the Secretary of the Interior or his authorized representative.

DATED: This 14th day of April, 1971.

/S/ Shiro Kashiwa
SHIRO KASHIWA
Assistant Attorney General
of the United States

/S/ Jack Joseph
JACK JOSEPH
Attorney of Record for
Petitioner

/s/ W. Braxton Miller
W. BRAXTON MILLER
Attorney for Defendant

30. On May 7, 1971, the Commission held a hearing with respect to the settlement of Docket 334-B. Testimony of representatives of the Absentee Shawnee Tribe was taken and exhibits were received into evidence.

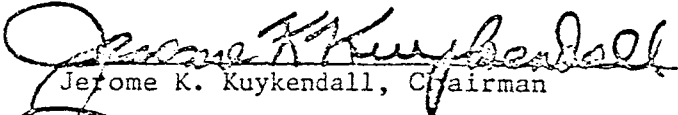
The tribal witnesses, who were designated by the Business Committee, were Lee Blanchard, Chairman of the Absentee Shawnee Tribe, Lois Arms, Secretary-Treasurer of the tribe, and Louis Blanchard, a member of the tribe.

The testimony of these witnesses confirmed that due notice of the meeting to consider the settlement had been published; that the attendance at the meeting was greater than the average attendance at tribal meetings; that the nature and terms of the proposed settlement and the background of the claim was carefully explained to the members of the Absentee Shawnee Tribe at the meeting; that the substance of the explanation was the same as had been contained in a written memorandum (Plaintiff's Settlement Exhibit 7) which was submitted prior to the meeting to the Business Committee; that interpreters were used for those members of the tribe who might not understand English well; that ample opportunity for questions to the tribal attorney was had and many questions were in fact asked; that a recess was called to permit the tribal members to discuss the settlement among themselves; that after a recess it was determined that a vote be taken, and that by secret ballot the settlement was thereupon approved.

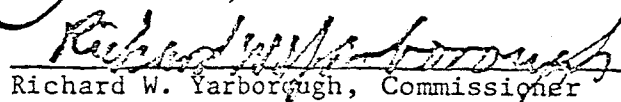
The tribal witnesses testified that they were satisfied that the members understood and agreed with the terms of the settlement.

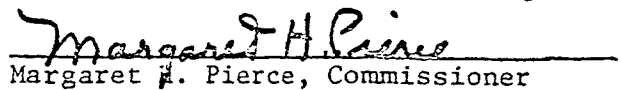
31. The Commission concludes, on the basis of the entire record and all of the evidence heretofore produced in these proceedings, that the Compromise Settlement is fair and just to the Shawnee Nation, including the Absentee Shawnee and Eastern Shawnee Tribes, and to the United States, and has been freely entered into by the parties and has been duly approved by the Commissioner of Indian Affairs.

Accordingly, final judgment shall be entered in favor of the plaintiff in the net amount of \$300,000.00, subject to the terms and provisions set forth in "Stipulation For Entry of Final Judgment".


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner