

BEFORE THE INDIAN CLAIMS COMMISSION

THE WASHOE TRIBE OF THE STATES OF	)	
NEVADA AND CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 288
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 6, 1971

FINDINGS OF FACT ON ALLOWANCE OF EXPERT  
WITNESS FEES AND EXPENSES

UPON CONSIDERATION of the petition, filed June 28, 1971, by Nicholas E. Allen, Attorney of Record for the plaintiffs herein, for reimbursement of the expenses incurred by him and other contract attorneys in the prosecution of the above cited case, the supporting affidavits and documentary evidence filed concurrent therewith, the provisions of the contracts of employment respecting the payment and reimbursement of expenses, and the remainder of the record herein, the Commission makes the following findings of fact:

1. The original contract, entered into by the Washoe Tribe with its attorney,\* provides;

" . . .[S]aid attorney, party of the second part, may employ such technical or stenographic assistance in respect of his obligations under this contract as he may deem necessary, same to be paid as expenses incidental to his employment thereunder, . . ."

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\* See Order Allowing Attorneys' Fee, 26 Ind. Cl. Comm. 1, 2.

and

"The attorney, party of the second part, shall also be allowed and reimbursed from the amount of any judgment received such actual expenses incurred by him as may be fixed by the Indian Claims Commission, pursuant to Section 15 of the act of August 13, 1946, Public Law 72."

Assignments, amendments and extensions of this agreement, and association agreements by other attorneys with Mr. Wright carried forward or acknowledged the provisions for reimbursement of monies expended by the attorneys in connection with the prosecution of the case.

2. Of the total sum claimed as reimbursable expense \$25,000.00 is for advances made by the attorneys to experts employed by the Washoe Tribe as follows:

- a. To Noble T. Murray, King's Beach, California, general appraiser, who was employed under contract 14-20-0650 No. 1101, to appraise the plaintiffs' aboriginal lands as of the dates of taking as established by the Commission, to prepare an evaluation report and appear before the Commission, the sum of \$10,000.00.
- b. To Philip J. Shenon and Roy P. Full, Salt Lake City, mining geologists, who were employed under contract 14-20-0650 No. 1021, to appraise the subsurface mineral resources located on plaintiffs' lands, to prepare an evaluation report and appear as expert witnesses, the sum of \$10,000.00, and
- c. To Myron S. Wall, Jr., Tahoe City, California, appraiser, who was employed under contract 14-20-0650 No. 1020, to make an evaluation of the timber resources on plaintiffs' lands, to prepare a report thereon and to appear as an expert witness, the sum of \$5,000.00.

Evidence presented herein establishes that the sums claimed have been disbursed to the above mentioned persons. The Commission finds that the advances made by the attorneys for the procurement of expert technical assistance are reasonable expenses incurred in the prosecution of the claim herein, for which such attorneys are entitled to be reimbursed. The claim of the attorneys for the sum of \$25,000.00 for reimbursement of advancements made for expert assistance is therefore approved and allowed.

3. The attorneys, in addition, employed other appraisers and experts and under oral contracts paid for services and expenses which totaled as follows:

- a. Arthur W. Reber, appraiser, the sum of \$1,430.85,
- b. Omer C. Stewart, anthropologist, the sum of \$2,667.10,
- c. Agnes R. Barr, expert on transcontinental railroads, the sum of \$500.00,

or a total of \$4,597.95.

The Commission finds that the compensation paid to the persons indicated above to be reasonable for the services rendered, which services contributed to the successful conclusion of this case. The attorneys are entitled to be reimbursed for the expenses in the sum of \$4,597.05 for the employment of additional experts.

4. The attorneys employed court reporters who reported and made transcripts of the hearings. The cost of reporting and preparing the transcripts in this case amounted to \$3,466.99, which amount was paid by the attorneys herein. We find this expense to be reasonable

and, accordingly, reimbursement of this sum is approved and allowed.

5. The attorneys assert miscellaneous expenses were incurred for:

a. Printing of briefs, proposed findings, etc.	\$1,806.67
b. Purchase of exhibit materials	93.26
c. Telephone and telegrams	116.10
d. Photocopying	198.31
e. Postage	50.03
f. Notary	<u>2.00</u>
Total	\$2,266.37

Of this sum, the sum of \$196.54 were expenses incurred after the entry of the final award. The journal entries do not relate any of these expenses to matters pending in the case. In the absence of evidence to show that such expenditures were made incidental to the prosecution of the case, reimbursement for these expenditures is not allowable and therefore they are denied. The balance of the miscellaneous expenses, \$2,069.83, is allowed and approved as reimbursable expenses.

6. The Department of Justice, in its August 12, 1971, response to the petition, did not adopt a position with respect to the reimbursement of expenses. The Department of Interior, while not interposing an objection to the petition, forwarded a copy of a memorandum from the Commissioner of Indian Affairs stating some items of expense were

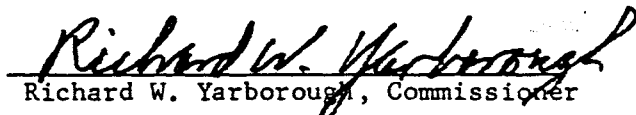
incurred subsequent to the date funds were appropriated to cover the award.

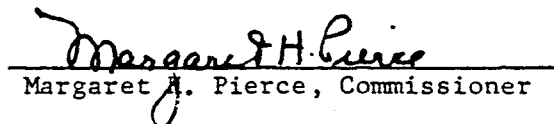
7. Notice of the filing of the petition for reimbursement of expenses was duly sent to the Chairman of the Washoe Tribal Council on June 29, 1971. A communication addressed to the Attorney of Record, dated September 30, 1971, from its secretary advised that the council, by a resolution made September 17, 1971, had approved the reimbursement of the expenses as herein claimed.

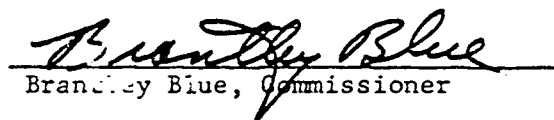
8. The attorneys in this case are entitled to be reimbursed from the final award made herein in the sum of \$35,134.77 for the attorneys' expenses incurred by them in the successful prosecution of this case.

  
Jefome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret A. Pierce, Commissioner

  
Brandley Blue, Commissioner