

BEFORE THE INDIAN CLAIMS COMMISSION

THE ABSENTEE SHAWNEE TRIBE OF)	
OKLAHOMA, on behalf of the Shawnee)	
Nation,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 334-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 20, 1971

FINDINGS OF FACT ON ALLOWANCE OF ATTORNEYS' FEE AND REIMBURSABLE EXPENSES

Upon consideration of the application of attorneys' fee and reimbursable expenses filed herein on July 14, 1971, by Jack Joseph, Esquire, Attorney of Record, for himself and the law firm of Brown, Dashow, Langeluttig, Arons and Doran, contract attorneys for the Absentee Shawnee Tribe of Oklahoma on behalf of the Shawnee Nation in Docket No. 334-B and the Eastern Shawnee Tribe of Oklahoma, the plaintiffs in a separate proceeding, Docket No. 334-A; the response of the defendant to the said applications filed on September 1, 1971; the contracts under which the attorneys served the plaintiffs; and the supporting record herein, the Commission makes the following findings of fact:

1. On May 19, 1971, in accord with the agreement and stipulation of the parties for a compromise settlement of the plaintiffs' claim, the Commission entered a final award herein which ordered that the Absentee Shawnee Tribe of Oklahoma, on behalf of the Shawnee Nation

"... have and recover from the defendant the sum of \$300,000.00."
(25 Ind. Cl. Comm. 311) Money to satisfy the judgment has not been appropriated therefor by the Congress.

2. The claim of the Absentee Shawnee Tribe in Docket No. 334-B was presented under Contract No. I-1-ind. 42278, dated April 24, 1950, between the Absentee Shawnee Tribe of Oklahoma and the law firm of Brown, Dashow, and Ziedman (now Brown, Dashow, Langeluttig, Arons and Doran), which was approved September 29, 1950, for a term of ten years beginning with the date of approval. The contract, as amended, has been extended twice. The last extension, which extended the term to September 29, 1975, was approved April 13, 1970. Attorney Jack Joseph was substituted as the Attorney of Record on September 5, 1957, and his association with the law firm was approved on April 13, 1970.

3. The claims of the Eastern Shawnee Tribe were pursued under contract No. I-1-ind. 42019, dated February 7, 1947, between the Eastern Shawnee Tribe of Oklahoma and the law firm of Henry J. and Charles Aaron which was approved May 7, 1948, for a period of ten years beginning with date of approval. The contract was assigned to Brown, Dashow and Ziedman (now Brown, Dashow, Langeluttig, Arons and Doran) on May 7, 1951, and has been extended twice. The last extension, which extended the contract to December 27, 1973, was approved on December 27, 1963. Attorney Jack Joseph was substituted as Attorney of Record on September 5, 1957 and by amendment to the contract dated September 9, 1969, approved November 13, 1969, Mr. Joseph was included as a contract attorney.

4. The contracts, as extended and amended, engaged the said attorneys to prosecute the claims of the Indian tribal plaintiffs against the United States and agreed that the compensation of the attorneys for services would be wholly contingent upon recovery and be a fixed ten percent (10%) of any and all sums recovered or procured through the efforts of the contract attorneys. The contracts also provide that the said attorneys are entitled to recover reasonable expenses incurred by them in the prosecution of the claims.

5. The petition of the Attorney of Record requests an attorneys' fee of \$30,000.00, an amount equal to ten percent (10%) of the aforementioned award in favor of the Absentee Shawnee Tribe in Docket No. 334-B. In the petition for reimbursement of expenses, the Attorney of Record claims reimbursement of those expenses incurred herein and in Docket No. 334-A and Docket No. 336, claims pursued jointly by the Absentee Shawnee Tribe of Oklahoma and the Eastern Shawnee Tribe of Oklahoma which were dismissed by the Commission.

6. The defendant's response to the petitions for attorneys' fee and reimbursement of expenses, in concurrence with the Department of Interior, interposed no objections to the requested allowance of attorneys' fee. The defendant, on the basis of the Commission's conclusions in Miami Tribe v. United States, Docket No. 67, et al., 14 Ind. Cl. Comm. 608 (1965), objects principally to the inclusion of expenses incurred in other cases than the one at bar or incurred jointly with another case without prorating the expenses applicable to this case.

7. The Absentee Shawnee Tribe of Oklahoma and the Eastern Shawnee Tribe of Oklahoma are branches of the Shawnee Nation of Indians (or the United Tribes of Shawnee Indians) which was the Indian party to the Treaty of May 10, 1854 (10 Stat. 1053). The common claims of the Absentee Shawnee Tribe and Eastern Shawnee Tribe were originally pleaded in Docket No. 334 with respect to this treaty. Docket No. 334 was subsequently separated in part by the Commission into Docket No. 334-A and Docket No. 334-B. Both branches of the Shawnee Nation are party plaintiffs in the aforementioned dockets and in Docket No. 336 or have an interest therein which was pursued for the mutual benefit of both segments of the nation. Since 1951, the law firm of Brown, Dashow, Langeluttig, Arons and Doran or its predecessor firm have represented both branches of the Shawnee Nation and the expenses in Docket No. 334-A, Docket No. 334-B and Docket No. 336 were incurred in the interest of furthering the common claims of their Indian clients.

8. Notices of the filing of the petitions for attorneys' fee and the reimbursement of allowable expenses were duly sent on July 16, 1971, to the Chairman of the Absentee Shawnee Business Committee and the Chief of the Eastern Shawnee Tribal Council. No response to these notices has been received.

9. The attorneys have rendered valuable legal services in the successful prosecution of the plaintiffs' tribal claim asserted in Docket No. 334-B and are entitled under the terms of the contracts aforementioned to an allowance of a fee in the requested amount of \$30,000.00.

10. The petition for reimbursement of allowable expenses totals expenditures amounting to \$5,800.19. We have examined the vouchers and, excepting as hereinafter noted, found them reasonably supported by documentation and have concluded that such expenditures are of a nature likely to be incurred in the prosecution of the claims herein.

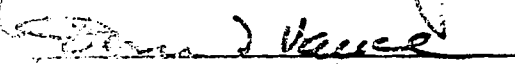
According to the statements of the parties, certain expenditures for which reimbursement is requested were incurred in the related Docket No. 334-A and Docket No. 336. Although certain items of expense attributable to the cases related to Docket No. 334-B have not been identified as to the particular docket in which the expense was incurred, the expense in Docket No. 334-A was incurred as a part of the prosecution of the claims originally presented in Docket No. 334 and materially contributed to the successful conclusion of that docket and Docket No. 334-B. On the basis of our opinion in Miami Tribe of Oklahoma v. United States, Docket No. 76, et al., 26 Ind. Cl. Comm. 303 (1971), attorneys are entitled to recover under their contract of employment all reasonable expenses incurred by them in the investigation, preparation and presentation of all claims in related dockets having the same Indian plaintiffs and that it is not required that the recovery of expenses be predicated upon an award on each claim prosecuted.

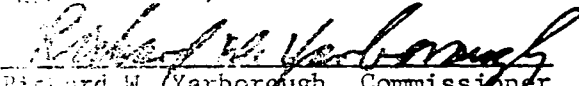
11. In the petition for reimbursement of expenses by the same attorneys in Docket No. 334 Amended, an item of expense claimed and

paid was for \$63.15 (Voucher No. 118) for the printing of the petition in Docket No. 336. Reimbursement is claimed for this item of expense in Voucher No. 125 of the present petition. In addition, in this docket, the items of expense represented by Voucher No. 1 for \$88.30, Voucher No. 2 for \$2.55, Voucher No. 80 for \$86.00 and Voucher No. 81 for \$5.10 were claimed as expenses incurred in Docket No. 334 Amended, and reimbursed upon a petition for expenses filed in that docket. Voucher No. 51 herein relates that one-half of the expense recounted thereon was incurred in connection with Dockets No. 335 and 338. Inasmuch as there has been a prior reimbursement for items of expense represented by Vouchers No. 1, 2, 80, 81 and 125 and reimbursement for expenses in Dockets No. 335 and 338 has been specifically disclaimed, the amount of the allowable expenses to be reimbursed to the attorneys herein is reduced by the sum of \$309.38.

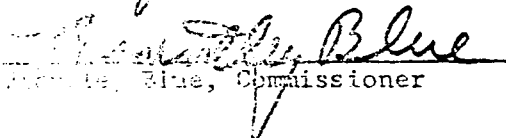
An order will be issued approving reimbursement of expenses in the amount of \$5,490.81.


 Jerome K. Kuykendall, Chairman


 H. T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Thelma Blue, Commissioner