

BEFORE THE INDIAN CLAIMS COMMISSION

THE SEMINOLE NATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 247
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 24, 1972

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. Plaintiff is a tribe of American Indians, residing within the territorial limits of the United States.

2. The Seminole Nation by a treaty with the United States dated March 21, 1866, 14 Stat. 755, ratified July 19, 1866, and proclaimed August 16, 1866, was granted a tract of land in Indian Territory which was to be the "national domain of the Seminole Indians." Id. at 756.

Article V of the treaty provided in part:

The Seminole nation hereby grant a right of way through their lands to any company which shall be duly authorized by Congress, and shall, with the express consent and approbation of the Secretary of the Interior, undertake to construct a railroad from any point on their eastern to their western or southern boundary * * *. And the Seminoles agree to sell to the United States, or any company duly authorized as aforesaid, such lands not legally owned or occupied by a member or members of the Seminole nation lying along the line of said contemplated railroad, not exceeding on each side thereof a belt or strip of land three miles in width, at such price per acre as may be eventually agreed upon between the Seminole nation and the party or parties building said road - subject to the

approval of the President of the United States:
Provided, however, That said land thus sold shall not be reconveyed, leased, or rented to, or be occupied by, any one not a citizen of the Seminole nation, according to its laws and recognized usages * * *. (Id. at 757-58)

3. By Act of February 18, 1888, 25 Stat. 35, Congress authorized the Choctaw Coal and Railway Company, a Minnesota Corporation, to construct and operate a railroad through the Indian Territory,

* * * with the right to construct, use, and maintain such tracks, turnouts, branches, and sidings and extensions as said company may deem it in their interest to construct along and upon the right of way and depot ground herein provided for. (Id. at 36)

This act further provided, in pertinent part, as follows:

SEC. 2. That said corporation is authorized to take and use for all purposes of railway, and for no other purpose, a right of way one hundred feet in width through said Indian Territory for said main line and branch of the Choctaw Coal and Railway Company; and to take and use a strip of land two hundred feet in width, with a length of three thousand feet, in addition to right of way, for stations, for every ten miles of road, with the right to use such additional ground where there are heavy cuts or fills as may be necessary for the construction and maintenance of the road-bed, not exceeding one hundred feet in width on each side of said right of way, or as much thereof as may be included in said cut or fill: Provided, That no more than said addition of land shall be taken for any one station; Provided further, That no part of the lands herein authorized to be taken shall be leased or sold by the company, and they shall not be used except in such manner and for such purposes only as shall be necessary for the construction and convenient operation of said railroad, telegraph, and telephone lines; and when any portion thereof shall cease to be so used, such portion shall revert to the nation or tribe of Indians from which the same shall be taken. (Id. at 36)

* * * * *

SEC. 5. That said railway company shall pay to the Secretary of the Interior, for the benefit of the particular nations or tribes through whose lands the said railway may be located, the sum of fifty dollars, in addition to compensation provided for in this act, for property taken and damages done to individual occupants by the construction of the railway; for each mile of railway that it may construct in said Territory, said payments to be made in installments of five hundred dollars as each ten miles of road is graded: Provided, That if the general council of either of the nations or tribes through whose lands said railway may be located shall, within four months after the filing of maps of definite location as set forth in section six of this act dissent from the allowance hereinbefore provided for, and shall certify the same to the Secretary of the Interior, then all compensation to be paid to such dissenting nation or tribe under the provisions of this act shall be determined as provided in section three for the determination of the compensation to be paid to the individual occupant of lands, with the right of appeal to the courts upon the same terms, conditions, and requirements as therein provided: Provided further, That the amount awarded or adjudged to be paid by said railway company for said dissenting nation or tribe shall be in lieu of the compensation that said nation or tribe would be entitled to receive under the foregoing provision. Said company shall also pay, so long as said Territory is owned and occupied by the Indians, to the Secretary of the Interior, the sum of fifteen dollars per annum for each mile of railway it shall construct in the said Territory. The money paid to the Secretary of the Interior under the provisions of this act shall be apportioned by him, in accordance with the laws and treaties now in force, between the United States and said nations and tribes, according to the number of miles of railway that may be constructed by said railway company through their lands: Provided, That Congress shall have the right, so long as said lands are occupied and possessed by said nations and tribes, to impose such additional taxes upon said railroad as it may deem just and proper for their benefit; and any Territory or State hereafter formed, through which said railway shall have been established, may exercise the like power as to such part of said railway as may lie within its limits. Said railway company shall have the right to survey and locate its railway immediately after the passage of this act.

SEC. 6. That said company shall cause maps showing the route of its located lines through said Territory to be filed in the office of the Secretary of the Interior, and also to be filed in the office of the principal chief of each of the nations or tribes through whose lands said railway may be located; and after the filing of said maps no claim for a subsequent settlement and improvement upon the right of way shown by said maps shall be valid as against said company: Provided, That when a map showing any portion of said railway company's located line is filed as herein provided for, said company shall commence grading said located line within six months thereafter, or such location shall be void; and said location shall be approved by the Secretary of the Interior in sections of twenty-five miles before construction of any such section shall be begun. (Id. at 37-38)

* * * * *

SEC. 8. That the United States circuit and district courts for the western district of Arkansas and the northern district of Texas, and such other courts as may be authorized by Congress, shall have, without reference to the amount in controversy, concurrent jurisdiction over all controversies arising between said Choctaw Coal and Railway Company, and the nations and tribes through whose territory said railway shall be constructed. Said courts shall have like jurisdiction, without reference to the amount in controversy, over all controversies arising between the inhabitants of said nations or tribes and said railway company; and the civil jurisdiction of said courts is hereby extended within the limits of said Indian Territory, without distinction as to citizenship of parties, so far as may be necessary to carry out the provisions of this act. (Id. at 38)

4. During the years 1889 and 1890 the Choctaw Coal and Railway Company constructed its railroad across Seminole lands within the 100 foot right-of-way granted under section 2 of the Act of February 18, 1888, supra Finding No. 3. ^{1/} The Choctaw Coal and Railway

^{1/} There is conflicting evidence in the record regarding the actual mileage across the Seminole lands. However, the actual mileage is not an issue in the case.

Company was later succeeded by the Choctaw, Oklahoma and Gulf Railway Company and subsequently by the Chicago, Rock Island and Pacific Railway (the Rock Island) which currently operates the line.

5. Insofar as pertinent to plaintiff's suit herein, two other railroad companies constructed lines on Seminole lands under authority of acts of Congress. The St. Louis, Oklahoma and Southern Railway Company, under authority of the Act of March 30, 1896, 29 Stat. 80, constructed 5.12 miles of line on Seminole lands in 1900 and 1901. This company was succeeded by the St. Louis and San Francisco Railroad (the Frisco) which currently operates the line. The Texas and Oklahoma Railroad Company (successor to the Enid and Anadarko Railway Company) under authority of the Act of February 28, 1902, 32 Stat. 43, constructed 19.3 miles of line across Seminole lands in 1905 and 1906. This line is currently part of the Atchison, Topeka and Santa Fe Railway (the Santa Fe).

The acts authorizing construction of these lines are substantially the same as the Act of February 18, 1888, supra Finding No. 3, which authorized construction by the Choctaw Coal and Railway Company.

Although plaintiff's claims relate to all three railroads, for the purpose of determining the issue of liability herein counsel for both parties have agreed to present the facts relative only to the Rock Island (formerly the Choctaw Coal and Railway Company), reserving to plaintiff the right to present the facts pertaining to the other two railroad companies should the issue of liability be determined by the

Commission in favor of the Seminole Nation. Furthermore, the facts relative to only one of the Rock Island's station reservations (namely that at Seminole, Oklahoma) were presented, with the same rights reserved as to other station reservations of the three railroad companies.

6. In 1893, the United States discontinued its policy of isolating the Seminole Nation and the other of the Five Civilized Tribes in Indian Territory, and by Act of March 3, 1893, 27 Stat. 612, 645, Congress provided that the President would appoint three commissioners (the Dawes Commission) to negotiate with the Five Civilized Tribes towards the cession to the United States or the allotment in severalty of the tribal lands of said tribes for the ultimate purpose of creating a state or states out of the Indian Territory.

7. On December 16, 1897, the Dawes Commission entered an agreement with the Seminole Nation regarding the allotment of Seminole lands. The Seminole Agreement, which was ratified by the Act of July 1, 1898, 30 Stat. 567, provided that all lands belonging to the Seminole Nation were to be allotted as equally in value as possible among the members of the tribe. The final Seminole tribal roll was approved by the Secretary of the Interior on April 5, 1901. Land allotments commenced on June 1, 1901, and were completed by June 30, 1908.

8. In sections 13 through 23 of the Act of February 28, 1902, 32 Stat. 43, 47-51, Congress enacted laws applicable to all railroad construction within Indian Territory. The following portions of said act are relevant to the claims raised here:

SEC. 13. That the right to locate, construct, own, equip, operate, use, and maintain a railway and telegraph and telephone line or lines into, in, or through the Indian Territory, together with the right to take and condemn lands for right of way, depot grounds, terminals, and other railway purposes, in or through any lands held by any Indian tribe or nation, person, individual, or municipality in said Territory, or in or through any lands in said Territory which have been or may hereafter be allotted in severalty to any individual Indian or other person under any law or treaty, whether the same have or have not been conveyed to the allottee, with full power of alienation, is hereby granted to any railway company organized under the laws of the United States, or of any State or Territory, which shall comply with this Act.

SEC. 14. That the right of way of any railway company shall not exceed one hundred feet in width except where there are heavy cuts and fills, when one hundred feet additional may be taken on each side of said right of way; but lands additional and adjacent to said right of way may be taken and condemned by any railway company for station grounds, buildings, depots, side tracks, turnouts, or other railroad purposes not exceeding two hundred feet in width by a length of two thousand feet. That additional lands not exceeding forty acres at any one place may be taken by any railway company when necessary for yards, roundhouses, turntables, machine shops, water stations, and other railroad purposes. And when necessary for a good and sufficient water supply in the operation of any railroad, any such railway company shall have the right to take and condemn additional lands for reservoirs for water stations, and for such purpose shall have the right

to impound surface water or build dams across any creek, draw, canyon, or stream, and shall have the right to connect the same by pipe line with the railroad and take the necessary ground for such purposes; and any railway company shall have the right to change or straighten its line, reduce its grades or curves, and locate new stations and to take the lands and right of way necessary therefor under the provisions of this Act.

SEC. 15. That before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in the preceding section, full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the individual owner, occupant, or allottee of such lands, and to the tribe or nation through or in which the same is situated: Provided, That correct maps of the said line of railroad in sections of twenty-five miles each, and of any lands taken under this Act, shall be filed in the Department of the Interior, and shall also be filed with the United States Indian agent for Indian Territory, and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated. (Id. at 47)

* * * * *

SEC. 16. That where a railroad is constructed under the provisions of this Act there shall be paid by the railway company to the Secretary of the Interior, for the benefit of the particular tribe or nation through whose lands any such railroad may be constructed, an annual charge of fifteen dollars per mile for each mile of road

constructed, the same to be paid so long as said lands shall be owned and occupied by such nation or tribe, which payment shall be in addition to the compensation otherwise provided herein; * * * (Id. at 48)

* * * * *

SEC. 22. That any railway company which has heretofore acquired, or may hereafter acquire, under any other Act of Congress, a railroad right of way in Indian Territory may, in the manner herein prescribed, obtain any or all of the benefits and advantages of this Act, and in such event shall become subject to all the requirements and responsibilities imposed by this Act upon railroad companies acquiring a right of way hereunder. (Id. at 50)

9. On April 26, 1906, Congress enacted legislation entitled "An Act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," 34 Stat. 137. The Act contained the following provisions as they relate to the plaintiff's claims:

SEC. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. (Id. at 141)

* * * * *

SEC. 14. That the lands in the Choctaw, Chickasaw, Cherokee, Creek, and Seminole nations reserved from allotment or sale under any Act of Congress for the use or benefit of any person, corporation, or organization shall be conveyed to the person, corporation, or organization entitled thereto: Provided,

That if any tract or parcel thus reserved shall before conveyance thereof be abandoned for the use for which it was reserved by the party in whose interest the reservation was made, such tract or parcel shall revert to the tribe and be disposed of as other surplus lands thereof: Provided further, That this section shall not apply to land reserved from allotment because of the right of any railroad or railway company therein in the nature of an easement for right of way, depot, station grounds, water stations, stock yards or other uses connected with the maintenance and operation of such company's railroad, title to which tracts may be acquired by the railroad or railway company under rules and regulations to be prescribed by the Secretary of the Interior at a valuation to be determined by him; but if any such company shall fail to make payment within the time prescribed by the regulations or shall cease to use such land for the purpose for which it was reserved, title thereto shall thereupon vest in the owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality. (Id. at 142)

* * * * *

SEC. 18. That the Secretary of the Interior is hereby authorized to bring suit in the name of the United States, for the use of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole tribes, respectively, either before or after the dissolution of the tribal governments, for the collection of any moneys or recovery of any land claimed by any of said tribes, whether such claim shall arise prior to or after the dissolution of the tribal governments, and the United States courts in Indian Territory are hereby given jurisdiction to try and determine all such suits, and the Secretary of the Interior is authorized to pay from the funds of the tribe interested any costs and necessary expenses incurred in maintaining and prosecuting such suits: Provided, That proceedings to which any of said tribes is a party pending before any court or tribunal at the date of dissolution of the tribal governments shall not be thereby abated or in anywise affected,

but shall proceed to final disposition.

Where suit is now pending, or may hereafter be filed in any United States court in the Indian Territory, by or on behalf of any one or more of the Five Civilized Tribes to recover moneys claimed to be due and owing to such tribe, the party defendants to such suit shall have the right to set up and have adjudicated any claim it may have against such tribe; and any balance that may be found due by any tribe or tribes shall be paid by the Treasurer of the United States out of any funds of such tribe or tribes upon the filing of the decree of the court with him. (Id. at 144)

* * * * *

SEC. 28. That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until otherwise provided by law * * *. (Id. at 148)

10. Regulations authorized pursuant to section 14 of the Act of April 26, 1906, supra Finding No. 9, were promulgated on June 12, 1906. The pertinent portion of paragraph 1 of said regulations is as follows:

* * * * *

In accordance with the above provision of law the Secretary of the Interior hereby designates November 1, 1908, as the date prior to which any railroad or railway company holding title in the nature of an easement to lands in that part of the State of Oklahoma, formerly known as the Indian Territory, for rights of way, depots, station grounds, water stations, stock yards, or other uses connected with the maintenance and operation of such railroad, may acquire title to such lands, as provided in said Section 14; and if any railroad or railway company fails to purchase the land upon which it holds an easement prior to that date, such title will vest in the owner of the legal subdivision of which the land so abandoned is a part, except where lands are within a municipality when title will vest in such municipality.

* * * * *

The cut-off date of November 1, 1908 was later extended to March 1, 1909.

11. Pursuant to section 5 of the Act of February 18, 1888, supra Finding No. 3, the Choctaw, Oklahoma and Gulf Railway Company and its successor, the Rock Island, paid to the Secretary of the Interior for the benefit of the Seminole Nation the following amounts:

<u>Fiscal Year</u>	<u>Amount</u>	<u>Purpose</u>
1896	\$920.50	Charge of \$50 per mile for line constructed through the Seminole Nation.
1897	288.00	Annual Charge of \$15.00 per mile.
1898	288.00	"
1899	288.00	"
1900	288.00	"
1901	288.00	"
1902	288.00	"
1903	288.00	"
1904	288.00	"
1905	288.00	"
1906	288.00	"
1907	288.00	"
1908 (July 1, 1907 to Nov. 15, 1907) <u>2/</u>	108.00	"

12. On August 5, 1906, the Rock Island, pursuant to sections 14 and 15 of the Act of February 28, 1902, supra Finding No. 8, filed with the Department of the Interior a map designating an additional area of 13.76 acres on each side of the 100 foot right-of-way at Seminole, Indian Territory, as station grounds. Title to this acreage was not acquired by the Rock Island pursuant to section 14 of the Act of April 26, 1906, supra Finding No. 9, and the regulations promulgated thereunder, supra Finding No. 10, and no compensation was paid to the

2/ The amount of \$108.00 for the period July 1, 1907, to November 15, 1907, was paid pursuant to order of the United States District Court for the Eastern District of Oklahoma, issued on December 28, 1923, in a suit brought by the United States.

Seminole Nation for said lands.

Twenty-two tracts on these station grounds at Seminole are currently under lease by the Rock Island to private companies or individuals. The evidence before the Commission fails to disclose the earliest date at which said tracts were first so leased. One tract was leased to a private company effective October 1, 1944. See Plaintiff's Exhibit 34.

13. On February 2, 1910, the Secretary of the Interior issued an administrative decision, as a result of the refusal of the railway companies operating roads in the former Indian Territory to pay to the Five Civilized Tribes the \$15.00 per mile annual charge up to November 1, 1908. See 38 Decisions of Secretary of the Interior (Public Lands) 414. Some of the companies objected to the annual payments on the ground that upon the allotment to individual Indians the tribes no longer had any title while other companies objected on the ground that the right of the tribes to demand the annual payment ceased upon the admission of Oklahoma as a state on November 16, 1907.

The Secretary's determinations consisted of the following:

A) That while the lands through which the railroads constructed trackage were in tribal ownership, the respective railroad companies would pay an annual charge of \$15 for each mile thereof.

B) Congress, in providing for the termination of the affairs of the Five Civilized Tribes, decreed, by section 14 of the Act of April 26, 1906, supra, that title to the underlying fee of the right-of-way lands, station grounds and other lands could be acquired by the railroads pursuant to such regulations as the Secretary of the Interior

might prescribe. Upon failure by any company to conform thereto within the time prescribed, or to cease to use such land for the reserved and intended purpose, title would vest in the "*** owner of the legal subdivision of which the land so abandoned is a part, except lands within a municipality the title to which, upon abandonment, shall vest in such municipality."

C) The Secretary of the Interior on June 12, 1906, implemented the 1906 Act by promulgating a code of regulations governing the acquisition by the railroads of title to the underlying right-of-way fee. He designated November 1, 1908, (later extended to March 1, 1909), as the deadline for the acquisition of fee simple title.

D) After the admission of the State of Oklahoma, the tribes no longer exercised the functions of a political government and they ceased to own and occupy the lands as they had previously done.

E) The annual \$15 per mile charge was not compensation but was a franchise tax upon the business of the corporation which constructed or maintained the railroad and terminated upon the admission of the State of Oklahoma. Compensation to the tribes consisted of the \$50 per mile construction charge plus damages resulting from the right-of-way.

14. The Seminole Nation brought suit against the United States in 1926 under the special jurisdictional act of May 20, 1924, 43 Stat. 133, alleging that the United States had breached its obligation as guardian of its Indian wards in failing to collect those same amounts which it now claims in the instant suit before the Commission. The Court of Claims sustained a demurrer to the complaint on the ground that the

special jurisdictional act permitted actions brought on specific statutory or treaty pledges only, and not actions brought on a wardship theory. See Seminole Nation v. United States, 75 Ct. Cl. 873 (1932).

The Seminole Nation subsequently amended its complaint to conform with the requirements of the jurisdictional act, alleging that the railroads had not complied with the terms of the Treaty of March 21, 1866, supra, the Act of February 28, 1902, supra, and the Act of April 26, 1906, supra, in that they had taken and held certain station reservations unnecessary for railroad purposes for their own benefit, that they had received rents and profits from the use of these lands, and that they had failed to pay the annual mileage charge which they claimed was compensation for the use of the lands. The Seminole Nation alleged that in the treaty and statutes the United States had guaranteed to indemnify them for the losses claimed to have been suffered. The case was joined in the Court of Claims with a similar claim of the Creek Nation.

The Court of Claims, at 97 Ct. Cl. 723 (1942), sustained a demurrer to the second amended complaint and dismissed the petition on the basis of its companion decision in Creek Nation v. United States, 97 Ct. Cl. 591 (1942). In its opinion in the Creek case, which was dismissed on the ground that it did not state a cause of action, the Court of Claims held that by the Act of February 28, 1902, supra, the United States discharged whatever duties growing out of the construction of the railroads it may have owed the Indians because the statute

* * * made elaborate provisions, not only for the determination by duly appointed referees of the amount due the Indians for their land taken or used, but also for the enforcement of any payment specified by the statute and the settlement of any controversy in relation thereto by conferring jurisdiction on a local United States court over all of these matters. (97 Ct. Cl. at 601)

The Court of Claims further held that the Act of April 26, 1906, supra, did not require the Secretary of the Interior to bring suit for the use of the Indians for the collection of any moneys or for the recovery of any lands claimed by the Indians. This section ". . . merely authorized him to bring suit and makes no provision for liability on the part of the defendant in case he failed to do so." (97 Ct. Cl. at 599)

15. The Supreme Court, at 318 U.S. 629 (1943), affirmed the Court of Claims. The Supreme Court held that section 16 of the 1902 Act constituted,

* * * a direction to the Secretary to make the facilities of his office available for the payment of a form of tax. It provides that the railroads shall pay the tax to the Secretary, but puts no mandatory duty on the Secretary to do the work of collecting. * * * (Id. at 637)

The Supreme Court further held that under the Act of April 26, 1906, supra, the Indians retained their own independent remedy for wrongs done them, and that under section 18 of the 1906 Act the Secretary of the Interior was given wide discretion to determine what suits were worth bringing on behalf of the Indians.

