

BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE, ET AL.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 22-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 3, 1972  
FINDINGS OF FACT ON ALLOWANCE OF  
ATTORNEYS' EXPENSES

Upon consideration of the petitions for allowance of certain expenses incurred by counsel for the Jicarilla Apache Tribe, et al., plaintiffs herein, and the evidence in support of the petitions, including the entire record and all proceedings in this case, the Commission makes the following findings of fact:

1. The attorneys representing plaintiffs herein under contracts, more particularly discussed hereafter, filed petitions with the Commission in this case on the following dates and in the following amounts:
  - a. Roy T. Mobley filed an amended petition on October 5, 1971, through counsel, Kenneth Simon, in the amount of \$21,266.90.
  - b. Guy Martin of Martin, Kunen & Whitfield, formerly Martin, Whitfield & Thaler, filed a petition on July 21, 1971, in the amount of \$4,077.58.
  - c. Robert J. Nordhaus of Nordhaus & Moses, filed a petition on July 21, 1957, with supplemental affidavits executed on December 16, 1971, and January 3, 1972,

claiming expenses of \$11,491.77, as corrected herein by addition to \$11,461.13. Thereafter, by letter of April 21, 1972, Mr. Nordhaus reduced his claim for two expense items in 1959 from \$270.94 and \$26.00 to the sums of \$135.47 and \$13.00, respectively, resulting in an amount claimed of \$11,312.66, as corrected and amended herein.

- d. Richard M. Davis of the law firm of Davis, Graham & Stubbs, formerly Lewis, Grant & Davis, filed a petition on July 21, 1971, in the amount of \$7,733.43, as corrected herein to \$7,732.66. Subsequently, Mr. Davis eliminated an item of \$279.12 and reduced an item of \$190.00 to the sum of \$95.00, resulting in an amount claimed of \$7,358.54, as corrected and amended herein.

2. A Final Award, based on a compromise settlement, was entered on April 21, 1971, by the Commission, and a final net judgment of \$9,150,000.00 was made in favor of the plaintiff. Funds to cover the award were appropriated on May 25, 1971 (85 Stat. 40). Thereafter, on August 27, 1971, the Commission issued an Order whereby the aforesaid counsel were granted attorney fees in the total amount of \$915,000.00, representing 10% of the aforesaid judgment.

3. The claims asserted and settled in this case were prosecuted under two contracts.

The first contract was entered into under contract No. I-1-ind. 42081, dated October 15, 1947, with attorneys James E. Curry and Roy T. Mobley representing the plaintiff. This contract was approved on August 8, 1948, for a period of ten years, beginning with the date of approval. Later, by letter of August 1, 1951, the Secretary of the Interior terminated the contract.

The second contract, No. I-1-ind. 42530, dated March 5, 1951, was entered into by the plaintiff with attorneys Roy T. Mobley and Guy Martin. It was approved on August 1, 1951, for a period of ten years, beginning with the date of approval, effective only as to the services of Mr. Martin. A later approval, dated June 16, 1952, was made as to Mr. Mobley which was to become effective upon severance of his employment with the United States Government. Termination of such employment with the Federal Government occurred on July 4, 1952, the effective date of Mr. Mobley's resignation. This contract was extended five times, each period being of two year duration. The last extension was approved on July 30, 1969, for a period of two years, beginning August 1, 1969.

An agreement dated March 1, 1957, provided for the association of Messrs. Robert J. Nordhaus and Richard M. Davis, under contract No. I-1-ind. 42530. This agreement was approved on April 29, 1957. Among other things, this agreement also provided for services to be rendered by the attorneys, either individually or through the law firms with whom they were associated.

The 1951 contract provided that the attorneys would diligently prosecute the claim against the United States and provided for reimbursement of attorney expenses; that collection of expenses would be contingent upon a recovery for the tribe (plaintiff); and that the amounts allowed should be determined either by a Court, the Indian Claims Commission or the Commissioner of Indian Affairs in the same manner as other compensation or fees to the attorneys.

The 1957 agreement among the attorneys provided that Mr. Nordhaus and Mr. Davis would advance or pay Mr. Mobley certain amounts as might be necessary to cover his out-of-pocket office and travel expenses. Further, the agreement provided that attorney Mobley must support his claim for such expenses by the submission of itemized statements, whether incurred before or after funds had been advanced to him to cover such expenses. The petitions of Mr. Nordhaus and Mr. Davis, under consideration herein, include claims for reimbursement of expenses in the amounts of \$878.64 and \$1,028.64, respectively, for a total sum of \$1,907.28, which petitioners assert were paid to Mr. Mobley pursuant to the agreement.

4. On July 23, 1971, copies of the four petitions for reimbursement of attorney expenses were forwarded to the Department of Justice, representing the defendant in this matter, and to the Commissioner, Bureau of Indian Affairs, as well as to the Tribal Council of the Jicarilla Apache Tribe, the plaintiff.

By letter of March 9, 1972, the Department of Justice replied to the letter of the Commission stating that it had not examined the various petitions and that no position had been taken with respect to approval or disapproval of the petitions for reimbursement of expenses of the attorneys in this matter. However, with the letter of above date, the Department of Justice forwarded a Memorandum dated February 2, 1972, from the Commissioner of Indian Affairs to the Solicitor of the Department of Interior wherein certain comments were made concerning the four petitions of counsel for the plaintiff, as discussed hereafter. No response has been received from the Jicarilla Apache Tribe.

In brief, the Bureau of Indian Affairs indicated that the items of expense claimed by attorneys Martin, Nordhaus and Davis were, in general, proper and reasonably well supported by documentation, including canceled checks, statements or receipts and that attorneys Nordhaus and Davis had paid Mr. Mobley a total of \$1,817.28, pursuant to the 1957 agreement. This sum was later corrected by the Office of the Bureau of Indian Affairs to reflect a total of \$1,907.28, including the sum of \$878.64 paid by Mr. Nordhaus to Mr. Mobley and the sum of \$1,028.64, paid Mr. Mobley by Mr. Davis. Such sums are in conformance with those sums set forth in the petitions of Messrs. Nordhaus and Davis.

The report further stated that attorney Mobley had also worked on claims asserted by other tribes against the United States and made certain pro-rated allocations in his amended petition and that Mr. Mobley had also served part of the time as general counsel for several tribes,

other than the plaintiff. The report stated that ". . . Because he rendered various legal services for more than the Jicarilla Apache Tribe at the same time, we believe there is a need for an explanation on pro-rating joint expenses with regard to many items included in his expense petition . . . ." The comments made by the Commissioner of Indian Affairs on the expense petition of attorney Mobley were based upon a partial research, and an additional report will be furnished upon completion of further examination of the petition and evidence in the files of that agency.

5. Thus, based upon available information, partial in nature, the Commission finds that there is insufficient information and evidence in clarification of the petition of Roy T. Mobley upon which findings or a determination can be based at this juncture.

In this connection, the evidence of record, including the petitions of attorneys Nordhaus and Davis, disclose that on the following dates certain sums were paid by these petitioners to Mr. Mobley as reimbursement for expenses, as provided in their 1957 agreement:

<u>Nordhaus</u>		<u>Davis</u>	
<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
5/11/57	\$ 87.08	5/ 2/57	\$ 87.08
1/ 2/58	141.70	1/ 3/58	41.70
5/ 3/58	99.68	6/19/58	99.68
9/ 9/58	85.14	10/ 6/58	85.14
12/ 5/58	200.35	1/23/59	390.09
6/26/59	13.75	4/ 1/59	60.26
12/ 9/59	32.09	7/17/59	218.85
	<u>\$878.64 (Total)</u>	9/ 9/59	13.75
		11/ 9/59	<u>32.09</u>
			<u>\$1,028.64 (Total)</u>

6. Thus, based upon available evidence, the record indicates that expenses incurred by Mr. Mobley, and in part reimbursed by Messrs. Nordhaus and Davis, may possibly have been incurred in cases other than the one under consideration herein or, that insufficient prorating of expenses has been effected to clearly establish those expenses incurred by Mr. Mobley in the instant claim. In similar situations, the Commission has denied such items in petitions for reimbursement of expenses. See Miami Tribe v. United States, Docket No. 67, et al., 14 Ind. Cl. Comm. 6CS (1965). However, since the record shows that such items are subject to further clarification by Mr. Mobley for submission to the Commission or other interested agencies, these portions of the petitions of Messrs. Nordhaus and Davis will be held in abeyance for future consideration in conjunction with the petition of Mr. Mobley.

7. Accordingly, the petitions for reimbursement of expenses are adjusted to exclude sums paid Mr. Mobley by Messrs. Nordhaus and Davis. As adjusted, the remaining petitions indicate the following amounts now claimed and under consideration by this Commission.

<u>Attorney</u>	<u>Claimed</u>	<u>Adjusted</u>
Guy Martin	\$ 4,077.58	\$ 4,077.58
Robert J. Nordhaus	11,312.66	10,434.02
Richard M. Davis	7,358.54	6,329.90


8. In conclusion, the evidence of record establishes that the aforesaid sums are proper and supported by statements, receipts or explanations in substantiation of the claimed expenses. The Commission allows the following sums to these attorneys as reimbursement for their expenses in this matter:


RECAPITULATION


Guy Martin	\$ 4,077.58
Robert J. Nordhaus	10,434.02
Richard M. Davis	6,329.90

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner