

BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX NATION, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 74-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 13, 1972

Appearances:

Arthur Lazarus, Jr., William Howard Payne,
Marvin J. Sonosky, Attorneys for Plaintiffs.

Craig A. Decker, with whom was Mr. Assistant
Attorney General Kent Frizzell, Attorneys for
Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

The Commission has before it a motion filed by defendant to dismiss all claims but one in this docket for lack of jurisdiction. Defendant contends that in plaintiffs' original petition in Docket 74 three claims were presented: (1) A claim for the unlawful taking by the United States under the Act of February 28, 1877, 19 Stat. 254, of a 7,345,157 acre portion of the Great Sioux Reservation which plaintiffs designated as Class A lands; (2) A claim for the unlawful taking by the United States under the same act of a 25,858,594.95 acre tract designated by plaintiffs as Class B lands; and (3) A claim for the unlawful taking by the United States under the same act of the Sioux right to hunt in a 40,578,123.25

acre tract designated by plaintiff as Class C lands. Defendant's motion further contends that after trial on these claims the Commission dismissed the petition, and plaintiffs appealed the decision only with respect to the Class A lands. Defendant concludes that when the Court of Claims remanded the case to the Commission it remanded only the claim for the unlawful taking of the Class A lands, and that therefore the Commission does not have jurisdiction over any claim other than that for the Class A lands. For the reasons stated below we must deny defendant's motion.

On April 5, 1954, the Commission found plaintiffs' then theory of recovery to be without merit, and dismissed the petition in Docket 74. After rehearing was denied, and on June 5, 1955, the plaintiffs filed a notice of appeal. In their appeal plaintiffs limited their claim to the 7,345,157 acres of Class A land, more commonly known as the Black Hills. Sioux Tribe of Indians v. United States, 146 F. Supp. 229, 231 n. 1 (1956) (aff'g, Docket 74, 2 Ind. Cl. Comm. 646 (1954)). In an opinion dated November 7, 1956, the Court of Claims affirmed the decision of the Commission. Sioux Tribe of Indians v. United States, supra. Thereafter, after consideration of plaintiffs' subsequent motion for a new trial and to vacate judgment, the Court vacated its judgment of affirmance and remanded the case to the Commission with instructions that the Commission determine

(1) whether the claimant Indian tribes are entitled on the basis of the statements 1/ made in support of the above motions to have

1/ The statements which the plaintiffs made in support of their motion to vacate and remand to the Commission were (1) that because of ineffective and inadequate counsel their claims had been decided by the

the proof in this case reopened, and (2) if so, to receive the additional proof sought to be offered and on the basis thereof, together with the record already made, reconsider its prior decision in this matter.

Sioux Tribe of Indians v. United States, App. No. 4-55 (Ct. Cl., Nov. 5, 1958). In accordance with the Court's instructions, on November 19, 1958, the Commission decided to reopen the proof in Docket 74 and announced that it would reconsider its previous decision. Subsequently, on November 4, 1960, the Commission allowed the plaintiffs to amend their petition, with the result that the claims based on the Act of February 28, 1877, supra, were segregated into Docket 74-B.

The theory of defendant's motion is that when plaintiffs appealed the Commission's 1954 decision, jurisdiction over the Class A lands or Black Hills claim was transferred to the Court of Claims and at the same time jurisdiction over all other claims was somehow lost by the Commission. ^{2/} Thereafter, under defendant's theory, when the case was remanded to the Commission it acquired jurisdiction over the Class A lands only. A cursory examination of the Indian Claims Commission Act, however, indicates that defendant's theory is without merit. Under the act, once a claim is timely presented to the Commission, the Commission

^{1/} (cont.) Commission on the basis of an incomplete record, (2) that the Commission erred in not independently investigating their claims, (3) that some of the Commission's findings of fact were not supported by any evidence, and (4) that plaintiffs' rights should not be prejudiced by an erroneous concession of fact by plaintiffs' prior counsel.

^{2/} "Claims B and C were not appealed and accordingly jurisdiction to the latter claims were lost both by the Commission and by the Court of Claims." Defendant's Reply to Plaintiff's Answer to Defendant's Motion to Dismiss.

retains jurisdiction over the claim until either the claim is appealed to the Court of Claims under Section 20, 25 U.S.C. §70s (1970), or is reported to Congress under Section 21, 25 U.S.C. §70t (1970). If neither of these occur with respect to a certain claim, jurisdiction over that claim remains with the Commission. When the plaintiffs appealed to the Court of Claims with respect to the Class A lands in 1955, the Commission lost jurisdiction only over that portion of Docket 74. It retained jurisdiction over the remainder of the docket. When the Court of Claims remanded the Black Hills claim in 1958 the Commission again had jurisdiction over all of Docket 74. Nothing has occurred in Docket 74 between 1958 and 1960, or in Docket 74-B since 1960, which would divest the Commission of jurisdiction over any of the claims presented in Docket 74-B. We must therefore deny defendant's motion.

A statement made by plaintiffs in their answer to defendant's motion necessitates our making further comment. That statement is as follows:

The claims covered by the petition in this case are those causes of action upon which the facts pleaded and proved show the United States to be liable, including, in addition to the land claim to which Defendant refers, but not limited to, claims based upon the wrongful taking of minerals and the acquisition of rights-of-way through the Great Sioux Reservation without payment of compensation. (Emphasis added).

After examining the record in this docket the Commission has discovered that of the two claims specified in plaintiffs' statement, one--that based on the wrongful taking of minerals--is not before the Commission, and the other--that based on the acquisition of rights-of-way--although before the Commission, has never been prosecuted by the plaintiffs.

Plaintiffs' "Proposed Findings on Value and Brief," filed July 26, 1971, indicates that the claim for taking of minerals is based on the removal by trespassers of gold from the Great Sioux Reservation prior to the Act of February 28, 1877, supra. However, plaintiffs' amended petition in Docket 74-B does not expressly state a claim based on such alleged removals. All of the claims expressly stated in that petition are based on alleged wrongdoings by the United States under the Act of February 28, 1877. Furthermore, the Commission's order of October 29, 1968, which set the questions for determination in Dockets 74 and 74-B made no mention of a claim for removal of minerals.^{3/} Therefore, the claim for the removal of minerals from Sioux land prior to February 28, 1877, is not before the Commission, and the Commission cannot consider it unless and until plaintiffs' petition in Docket 74-B is amended

^{3/} That order set the following questions for determination in Docket 74-B:

1. What lands and rights did the United States acquire from the Sioux by the Act of February 28, 1877, C. 72, 19 Stat. 254, 1 Kappler 168, and what were the exterior limits (a) of the land so acquired and (b) of the area subject to the rights so acquired?
2. Was there any consideration for defendant's acquisition of lands and rights under the 1877 Act and, if so, what constituted such consideration?
3. If there was no consideration for defendant's acquisition of land and rights under the 1877 Act, was there any payment for such acquisition.

to include such a claim.^{4/}

Plaintiffs' amended petition, in paragraph 19, does state a claim based upon the acquisition by defendant of rights-of-way through the Sioux Reservation and the right to free navigation of the Missouri River. However, the Commission is unable to find in the record any indication that the plaintiffs have attempted to prove their allegation. Apparently the plaintiffs have attempted neither to establish that the United States actually used such rights-of-way and right of free navigation nor to prove that such rights, if used by the United States, damaged the plaintiffs.^{5/} Unless plaintiffs take some action to further their

^{4/} Nothing stated in this opinion is meant to indicate whether or not the Commission would rule favorably upon a motion for leave to amend their petition should plaintiffs choose to file one.

^{5/} Aside from the amended petition, the Commission has been able to find only the following references to the alleged rights-of-way and right of free navigation:

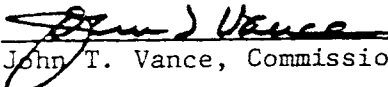
(1) A statement in a "Motion for Definition of Issues to be Tried at the Trial Scheduled for April 9, 1962," filed March 27, 1961, to the effect that Docket 74-B included a claim based on the acquisition by the United States of rights-of-way across and through the Great Sioux Reservation;

(2) A statement in a "Motion for Order Setting Down Questions for Determination," filed February 20, 1968, asserting that Article 2 of the 1877 Act authorized the construction of three "wagon and other roads" through the Great Sioux Reservation and also provided for free navigation of the Missouri River;


(3) A "Memorandum Defining Lands and Rights Acquired by the United States Under the Act of February 28, 1877," in which the statement was made,

. . . By virtue of Article 2 of the 1876 Agreement, the signatory Sioux purported to "agree and consent that wagon and other roads, not exceeding three in number, may be constructed and maintained, from convenient and accessible points on the Missouri River, through said reservation, to the country lying immediately west thereof * * *; and they also consent and agree to the free navigation of the Missouri River,

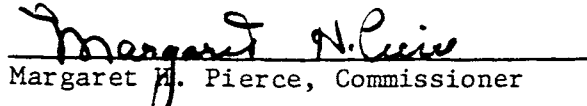
prosecution of this claim it will be impossible for the Commission to adjudicate it.


John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner

5/ (cont.) and the conclusion was made that the United States had obtained from the Sioux three rights-of-way and the right of free navigation along the Missouri River; and

(4) A statement in a "Memorandum Defining Consideration Paid by the United States Under the Act of February 28, 1877," that under the 1877 Act the United States had obtained three rights-of-way and the right of free navigation of the Missouri River.