

## BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS, )  
 )  
 Plaintiff, )  
 )  
 v. ) Docket No. 175-B  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Decided: Nov. 1, 1972

## Appearances:

Charles A. Hobbs, Attorney for  
 Plaintiff. Wilkinson, Cragun &  
 Barker, and Donald C. Gormley  
 were on the brief on remand from  
 the Court of Claims.

John D. Sullivan, with whom was  
 Mr. Assistant Attorney General  
 Kent Frizzell, Attorneys for  
 Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This claim is once again before the Commission on remand from the Court of Claims. The claim involves the Nez Perce Tribe's reservation lands which it ceded to the United States by the Agreement of May 1, 1893, ratified August 15, 1894, 28 Stat. 286, 326-32. Under the agreement, part of the tribe's reservation was allotted to individual Indians, part was allotted to the tribe for trust lands, and the remaining 549,559 acres were ceded to the United States for a purchase price of \$2.97 per acre. The Nez Perce Tribe has claimed additional compensation for the ceded lands.

In its initial decision the Commission found that the 1894 fair market value of the ceded area could not have exceeded an average of \$4.00 per acre. The Commission concluded that the discrepancy between such value and the price agreed upon was not so gross as to be unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, and that, therefore, the tribe could not recover under the Act. 13 Ind. Cl. Comm. 184 (1964). On appeal by the tribe the Court of Claims disagreed with the Commission's conclusion as to the unconscionability of the consideration as applied to the facts and circumstances of this case, and the case was reversed and remanded for further proceedings. 176 Ct.Cl. 815 (1966), cert. denied, 386 U.S. 984 (1967). The court also concluded, after considering all the facts, that the \$4.00 per acre figure was supported by the evidence as a minimum figure only. Determining that a \$4.00 maximum figure was unsupportable, the court suggested that the Commission reconsider the evidence and look to "some higher, unstated value in resolving the 'unconscionable consideration' issue." 176 Ct. Cl. at 828.

The Commission, in compliance with the remand, reconsidered the evidence and, after carefully considering the Court of Claims' opinion and all of the various factors set forth in the Commission's previous opinion and findings, concluded that the fair market value of the subject area averaged \$5.50 per acre. The Commission also determined that the difference between the \$5.50 per acre value and what was actually paid (\$2.97) was so gross as to be unconscionable, and, therefore, pursuant to clause 3, section 2 of the Act, supra, the tribe was entitled to

recover additional consideration in the principal amount of \$1,387,911. A majority of the Commission also found that the tribe was entitled to recover interest on the principal amount at the rate of five percent per annum from August 15, 1894, the date the lands were originally ceded by the tribe to the defendant. 22 Ind. Cl. Comm. 53 (1969).

Once again the case was appealed to the Court of Claims, this time by the defendant. There was no cross-appeal by the tribe. The defendant's appeal was directed to the determination that the Nez Perce Tribe was entitled to interest on the principal sum of the award and to the method by which the Commission arrived at the \$5.50 per acre valuation. The court reversed the Commission on the interest question and remanded the case with instructions to supply specific findings or reasons in support of the Commission's conclusion with respect to the \$5.50 valuation figure. 194 Ct. Cl. 490 (1971).

In findings 1 through 25 entered in this case on April 7, 1964, 13 Ind. Cl. Comm. 184-235, the Commission made basic or evidentiary findings dealing with the valuation issue. We believe that those findings adequately and accurately reflect the evidence in this case and the conditions which existed in 1894 with respect to the market value of the ceded lands. The Court of Claims has not indicated any area of disagreement or dissatisfaction with those findings. In fact the substance of those findings are summarized by the court in its statement of the pertinent factors bearing on market value. We therefore reaffirm findings 1 through 25.

Finding 26, as amended on November 14, 1969, 22 Ind. Cl. Comm. 53, set forth the Commission's ultimate finding of value. The Court of Claims likewise had no disagreement with the \$5.50 per acre valuation. However, the court perceived a gap between the first 25 findings and the ultimate conclusionary finding. Missing, admonished the court, were specific findings or reasons which lead to the ultimate conclusion. Without a more detailed and specific display of analysis the court found itself unable to determine if the ultimate conclusion was supported by substantial evidence.

We shall now supply the specific analysis by which the Commission reached its decision. As previously stated, findings 1 through 25 deal with the basic facts in this case. That portion of the accompanying opinion which relates to those 25 findings sets forth the Commission's analysis of the evidence and indicates the weight which we believe should be accorded that evidence.

As indicated in the initial decision, the principal evidence on value was supplied by the parties' two expert witnesses. The plaintiff's expert was William C. Brown, and in findings 14 through 23, 13 Ind. Cl. Comm. at 199-229, we set forth the important details of his appraisal of the Nez Perce tract. We likewise entered detailed findings concerning the appraisal presented by defendant's expert, Dr. Homer Hoyt, 13 Ind. Cl. Comm. at 229-35. Concluding that plaintiff's expert was overly optimistic while defendant's expert was overly pessimistic, we rejected both expert opinions and looked to the basic data which they supplied and upon which

they relied. We considered a great variety of factors, all of which have been detailed in our previous decision. But the most important evidence in this case centered around the "comparable sales" data. The sales data compiled by Mr. Brown was, in our opinion, more meaningful, and we chose it as our starting point in determining the tract's fair market value.

While we used Mr. Brown's sales data as our takeoff point, we found that the sales were of lands which were not strictly comparable to the subject area. As detailed in our previous findings and opinion there were transactions in well settled areas involving lands of better quality and in more favorable locations. There were sales of highly improved farms and transactions which even included stock and farm implements. The timberland and grazing land sales did not reflect the values of such land in its raw condition. Some sales included valuable agricultural land, some with improvements, and the accessibility factors were not comparable to the subject area. Therefore we found it necessary to adjust or discount the sales data to relate them to a fair market value of the 549,559 acre Nez Perce tract.

We considered the sales data in each of the three categories of land use, i.e., for agriculture, for timber operations, and for grazing. Mr. Brown used 411 straight sales and some mixed sales to compute his estimated value of \$15.42 per acre for unimproved agricultural land in the tract. His agricultural sales, after the "time adjustment" for sales made before and after the valuation date, averaged \$19.18 per acre.











