

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: December 19, 1972

SUPPLEMENTAL FINDINGS OF FACT ON ALLOWANCE
 OF ATTORNEYS' EXPENSES

Preliminary Statement

Petitions for allowance of reimbursable expenses were filed by the following attorneys for the plaintiff in connection with expenses incurred in the performance of legal services on the plaintiff's behalf in the above-captioned case:

1. Roy T. Mobley	\$ 21,266.90
2. Guy Martin	4,077.58
3. Robert J. Nordhaus	11,312.66
4. Richard M. Davis	7,358.54

On May 3, 1972, the Commission issued findings 1 through 8 on Allowance of Attorneys' Expenses, 28 Ind. Cl. Comm. 1, wherein facts concerning the contracts under which the attorneys were retained in prosecution of the claim, the Final Award (April 21, 1971), and the order for payment of attorneys' fees (August 27, 1971) were discussed.

As set forth in our findings 1 through 8, copies of the four petitions for reimbursement of expenses were forwarded on July 23, 1971, to the Department of Justice, representing the defendant in this matter, and to the Bureau of Indian Affairs, as well as to the Tribal Council of the plaintiff. The Department of Justice replied by letter of March 9, 1972, stating that it had not examined the petitions and took no position with respect to approval or disapproval of the expenses in question. A memorandum dated February 2, 1972, from the Commissioner of Indian Affairs to the Solicitor of the Department of the Interior, was forwarded by the Department of Justice wherein comments were made concerning the petitions in question herein, as discussed hereinafter. No response was received at that time from the Jicarilla Apache Tribe.

With respect to the petition of Mr. Mobley, the report from the Bureau of Indian Affairs stated that Mr. Mobley had worked on claims asserted by other tribes and had been employed as general counsel for several tribes; that because he had performed various legal services for other tribes at the same time there was a need to further explain the prorating of joint expenses with regard to many items in the expense petition; that the report was based on a partial examination and research into the merits of the petition; and that the Bureau of Indian Affairs would submit an additional report upon further examination of the petition, supporting evidence and files of that agency.

Based upon the evidence of record at that time the Commission ordered that out of the funds appropriated to satisfy the final

judgment in the above entitled case there be disbursed to the following attorneys certain sums for their allowable reimbursable expenses incurred in prosecution of the claim under Docket 22-A:

- | | |
|-----------------------|-------------|
| 1. Guy Martin | \$ 4,077.58 |
| 2. Robert J. Nordhaus | 10,434.02 |
| 3. Richard M. Davis | 6,329.90 |

The Commission determined that the record at that time contained insufficient information and evidence to clarify and establish the petition filed by Roy T. Mobley and his petition was deferred pending the submission of additional supporting data. Additionally, certain sums paid to Mr. Mobley by Messrs. Nordhaus and Davis between May 1957, and December 1959, pursuant to their agreement of March 1, 1957, (Contract No. I-1-ind. 42530), in the amounts of \$878.64 and \$1,028.64, respectively, were also deferred pending further clarification.

The Commission makes the following findings of fact which are supplemental to findings numbered 1 through 8, 28 Ind. Cl. Comm. 1 (1972):

9. Petition of Roy T. Mobley. The original petition of Mr. Mobley, filed in the amount of \$25,263.43, on June 21, 1971, was amended by petition of October 5, 1971, to the sum of \$21,266.90, as listed above. Corrections to the petition were filed on January 21, 1972, and July 20, 1972, whereby various deletions were made and the

amount claimed was reduced to \$17,293.86.

By letter of May 11, 1972, to the Commission, the Department of Justice reiterated that it took no position concerning the amended petition of Mr. Mobley and forwarded a copy of a letter of May 2, 1972, from the Associate Solicitor of the Department of Interior, with a memorandum from the Commissioner of Indian Affairs, dated April 25, 1972. The Bureau of Indian Affairs stated that it did not regard the resolution of ambiguities in the petition of Mr. Mobley as its responsibility and stated that research into the petition had been concluded. Also attached to the letter of the Associate Solicitor was a letter to the Bureau of Indian Affairs dated April 12, 1972, from Charlie Vigil, President of the Jicarilla Apache Tribe, indicating that he was trying to arrange a meeting of the tribe with the attorneys herein, and requesting that the petition of Mr. Mobley not be approved without further investigation.

10. Hearing - Petition of Roy T. Mobley. On May 30, 1972, counsel for Mr. Mobley requested a hearing before the Commission on the petition of Mr. Mobley for payment of expenses incurred in this matter. On June 7, 1972, the matter was scheduled for hearing on July 20, 1972, and notice of such hearing was duly given to the aforesaid attorney petitioners, the Department of Justice, the Bureau of Indian Affairs and the Jicarilla Apache Tribe.

A hearing was held on July 20, 1972, at which time Mr. Mobley testified in clarification and support of his petition. No representative of the tribe was present, and the defendant, represented by the Department of Justice, took no position in the proceedings.

11. Correction of Amended Petition. On November 29, 1972, a further correction to the amended petition was filed whereby the amount of claimed reimbursable expenses was reduced to \$13,649.66. On the same date copies of the correction of amended petition for reimbursable expenses of Roy T. Mobley were forwarded to the Department of Justice, the Bureau of Indian Affairs, and the Tribal Council of the Jicarilla Apache Tribe. No response has been received with respect to the correction.

12. Expenses Incurred Subsequent to March 1964. A question has been presented as to the compensable nature of expenses incurred by Mr. Mobley subsequent to March 1964. An agreement between the attorneys for the plaintiff dated March 1, 1964, provided that Mr. Martin would provide assistance and the facilities of his Washington office; that Messrs. Nordhaus and Davis would primarily perform all duties pertaining to the Spanish-Mexican land claims, the date of taking and valuation of the subject property; and that Mr. Mobley would not be required to work on these aspects of the claim or incur further expenses therefor. However, the contract also provided that Mr. Mobley thereafter would ". . . consult and advise all other parties hereto in all matters relating to the further prosecution of the claim but

shall not be required (as between the parties) to contribute further services or expenses therefor."

At the hearing Mr. Mobley testified that he incurred expenses in 1967 in the amount of \$776.82 in research and preparation of claim exhibits and expenses involving work with the tribal claims committee, Stanford Research Institute and others. He testified that the expenses arose solely in prosecution of the Jicarilla Apache land claim.

The Commission finds that while certain primary duties were assigned to co-counsel, Mr. Mobley did perform valuable services and incur expenses in fulfilling his general contract obligations to the plaintiff and such expenses are proper and reimbursable.

13. Allowable expenses.

The Commission finds that the claimed expenses in a total amount of \$13,649.66 do not include expenses incurred by Mr. Mobley either as general counsel for the Jicarilla Apache Tribe or in connection with legal services rendered for other Indian tribes. The claimed expenses were incurred after the approval of Mr. Mobley's contract with the plaintiff tribe, and no expenses have been included for the period when he was employed by the Federal government.

The Commission finds that the claimed expenses are proper and supported by statements or receipts. Accordingly, expenses in the amount of \$13,649.66 are allowable items for reimbursement.

14. Items in Petitions of Messrs. Nordhaus and Davis. Certain items included in the petitions of Robert J. Nordhaus and Richard M. Davis involved sums paid to Mr. Mobley, as provided in their 1957

agreement. These items, listed hereinafter, were previously deferred for additional consideration, as discussed in the Commission's findings of fact entered on May 3, 1972, and are as follows:

<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	218.85	4-1-59	60.26
8-26-59	13.75	7-17-59	218.85
12-9-59	<u>32.09</u>	9-9-59	13.75
	\$878.64	11-9-59	<u>32.09</u>
			\$1,028.64

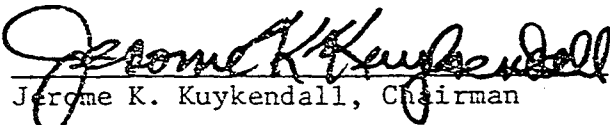
The Commission finds that the evidence of record establishes that the aforesaid sums are proper and supported by statements, receipts or detailed explanations in substantiation of these claimed expenses. With respect to the sums paid by counsel to Mr. Mobley in December 1958, or January 1959, the Commission finds that consultation with, and the appearance of, Mr. Mobley at the hearing on the claim was necessary in the orderly prosecution of the claim; and that all other sums listed above were expended by Messrs. Nordhaus and Davis for Mr. Mobley in the further prosecution of the subject claim.

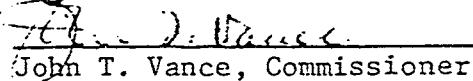
Based upon the entire record, the Commission finds that such sums paid by Messrs. Nordhaus and Davis to Mr. Mobley are proper reimbursable expenses.

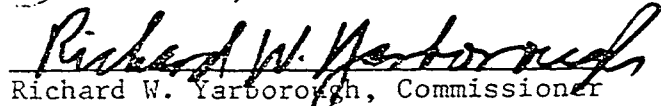
15. Conclusion. In conclusion, the evidence of record establishes that counsel expended certain sums, as listed hereinafter, and such expenses are supported by statements, receipts or explanations in clarification and support of the claimed expenses. The Commission allows the following sums to the attorneys as reimbursement for their expenses in this matter.

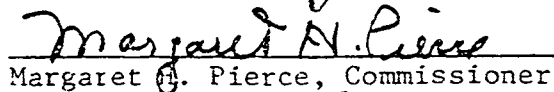
RECAPITULATION

Roy T. Mobley	\$ 13,649.66
Robert J. Nordhaus	878.64
Richard M. Davis	1,028.64


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret M. Pierce, Commissioner


 Brantley Blue, Commissioner