

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 69
)	(Claims 1 through 6 and Claim 8)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: May 28, 1975

Appearances:

William C. Schaab, Attorney for the
Plaintiff.

Dean K. Dunsmore, with whom was
Assistant Attorney General Wallace H.
Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

The Commission has before it defendant's motion of February 5, 1975, for an order granting final judgment of dismissal of plaintiff's eighth claim in this docket. Plaintiff filed a response on March 3, 1975. The contentions of the parties are summarized hereinafter.

The eighth claim alleges that in 1886 plaintiff agreed with defendant to provide scouts and guides to defendant in order to assist defendant in its war against the Apache Tribe of Indians. Plaintiff further alleges that it entered into the agreement on condition that defendant return to plaintiff its homelands, described elsewhere in the petition, that defendant's officers, "purporting to act for and bind respondent," accepted

this condition, and that plaintiff fulfilled its part of the agreement in reliance on defendant's promise, but that defendant neither returned plaintiff's homelands to plaintiff in accordance with the 1886 agreement, nor compensated plaintiff for the value thereof.

In support of its motion, defendant states that plaintiff withdrew its eighth claim by its first amended petition, filed October 1, 1969; that plaintiff's motion to amend the petition requested reinstatement of claims 1 through 6 but not the eighth claim; and thus the Commission no longer has jurisdiction over the eighth claim. Earlier this year the Commission considered and disagreed with these contentions of defendant. See 35 Ind. Cl. Comm. 305. We determined that plaintiff's first amended petition did not delete the allegations of fact which were the substance of claims 1 through 6 and claim 8, and that plaintiff's seventh claim, which clearly remained after the 1969 amended petition was filed, stated that plaintiff "restates and reaffirms each and every allegation of fact" of the original petition. Id. We concluded that defendant's motion for dismissal of claim 8 should be denied. We adhere to our earlier ruling.

Defendant next argues that plaintiff's purported cause of action for the return of its homelands fails to state a cause of action upon which the Commission can grant relief, since the Commission has jurisdiction only to grant monetary relief. This contention is well founded. See Gila River Pima-Maricopa Community v. United States, Docket 236-G, 34 Ind. Cl. Comm. 290, 293 (1974).

Defendant further argues that, since the eighth claim is based on alleged promises made by defendant's military officers, it fails to state a claim for which defendant is liable. We agree that defendant's officers acting on their own authority could not bind defendant. See United States v. McDougall's Administrators, 121 U.S. 89 (1887); McCalib v. United States, 83 Ct. Cl. 79 (1936). However, plaintiff's claim implies that defendant's officers had authority to do so. If plaintiff can prove that defendant's officers had authority to make the alleged agreement on behalf of defendant, and did so, plaintiff may be entitled to a monetary recovery.

Finally, defendant argues that the cause of action for compensation for the value of plaintiff's lands which is set forth in plaintiff's eighth claim herein was litigated by the same plaintiff in Docket 229. See 23 Ind. Cl. Comm. 244 (1970). However, plaintiff's claim in Docket 229 was based on the Treaty of June 1, 1868, 15 Stat. 667. Plaintiff's eighth claim herein is a claim for breach of an agreement made in 1886, and thus is a different cause of action from that in Docket 229.

For the foregoing reasons, we conclude that defendant's motion for dismissal of plaintiff's eighth claim should be denied.

However, defendant's motion raises the inherent question of whether there is evidence to support this claim, since it is based on an alleged oral agreement made by defendant's military officers 89 years ago. Compare, Makah Indian Tribe v. United States, Docket 60-A, 34 Ind. Cl. Comm. 14, 19 (1974). In order to recover, it will be necessary for

plaintiff to prove that:

- (1) an agreement was made, by and between plaintiff and military officers of defendant, whereby plaintiff agreed to furnish guides and scouts to serve the defendant in its war against the Apache Tribe of Indians, in consideration of which defendant promised to return plaintiff's homelands to it; and
- (2) the military officers making the aforesaid promise for and on behalf of the defendant, had the authority to do so; and
- (3) plaintiff fully performed its agreement above set forth.


Under these circumstances, we will require plaintiff to make a written offer of proof of all substantive evidence it will present at trial and to submit said evidence in full with said offer of proof in accordance with the order we are issuing concurrently with this opinion.

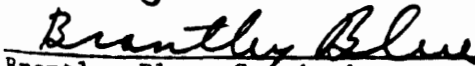

Jerome K. Kuykendall, Chairman

Concurring:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner