

BEFORE THE INDIAN CLAIMS COMMISSION

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

ORDER DENYING DEFENDANT'S MOTION FOR CERTIFICATION

We have before us defendant's motion for certification, filed on April 1, 1975. The motion is filed pursuant to Section 20a of the Indian Claims Commission Act, 25 U.S.C. 70s(a). Defendant requests that the Commission certify to the Court of Claims the following question:

Whether after the plaintiff withdrew its first, second, third, fourth, fifth and sixth claims in Docket 69 in its First Amended Petition filed on October 1, 1969, the Commission may permit the plaintiff to amend its petition to reinstate said claims in 1975?

This question was raised before the Commission previously when we considered plaintiff's motion to reformulate claims 1 through 6 and claim 8, and defendant's motion to dismiss those claims. The Commission rejected defendant's arguments in its determination of January 23, 1975, to grant plaintiff's motion and to deny defendant's. 35 Ind. Cl. Comm. 305.

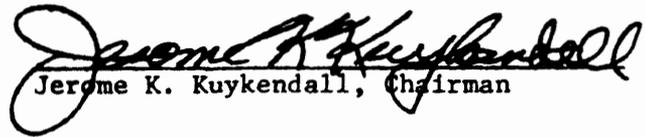
Certification is provided under section 20a for "any definite and distinct questions of law concerning which instructions are desired for the proper disposition of the claim. . . ." As we have already answered defendant's question of law, 35 Ind. Cl. Comm., supra, defendant in effect is seeking an appellate review of the aforesaid decision through the certification procedure. Congress, by section 20b of our act, limited the right to appeal to final determinations of the Commission, or interlocutory determinations establishing the liability of the United States. 25 U.S.C. 70s(b). See United States v. Fort Sill Apache Tribe, 202 Ct. Cl. 525, 481 F. 2d 1294 (1973). Inasmuch as our aforesaid decision concerning claims 1 through 6 and claim 8 was neither a final determination, nor an

interlocutory determination establishing the liability of the United States, defendant does not have the right to appeal our earlier decision. We will certify a question if in our judgment it will expedite the resolution of cases before the Commission. We conclude, however, that defendant's motion herein, designed to achieve by certification the same end as an appeal which would otherwise not be permitted at this stage, is inappropriate, and would not expedite this case. Wherefore,

IN CONSIDERATION of defendant's motion for certification, plaintiff's response, and defendant's reply, and being fully informed in the premises,

IT IS ORDERED that defendant's motion for certification be denied.

Dated at Washington, D. C., this 9th day of July 1975.

  
Jerome K. Kuykendall, Chairman

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John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner