

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE BAND and PETER GRAVES,)	
JOSEPH GRAVES and AUGUST KING,)	
<u>ex rel.</u> RED LAKE BAND,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 189
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 28, 1975

FINDINGS OF FACT ON ALLOWANCE OF REIMBURSABLE EXPENSES

Upon consideration of the application for the reimbursement of attorneys' expenses filed herein on May 20, 1974, by Rodney J. Edwards, attorney of record in this docket, for himself and all attorneys entitled to participate in the sharing of the reimbursement; the response of the defendant to said application filed on July 29, 1974; the contracts under which counsel served the plaintiffs; and the supporting record herein; the Commission makes the following findings of fact:

1. Award and Attorneys' Fees. On August 9, 1973, the Commission ordered that the plaintiffs have and recover from the defendant the sum of \$1,843,038.50, plus simple interest at the rate of 5 percent per annum upon the principal sum of \$410,931.12 from March 31, 1973, until paid (31 Ind. Cl. Comm. 87). Payment of the judgment, in the amount of \$1,859,306.87, was made pursuant to Public Law 93-245, adopted January 3, 1974. The payment of attorneys' fees in Docket 189

was approved by order of the Commission dated April 19, 1974 (34 Ind. Cl. Comm. 3).

2. Expense Application. The application for the reimbursement of expenses was filed on May 20, 1974, by Rodney J. Edwards, attorney of record, Docket 189, on behalf of himself and all attorneys having an interest in this application. The application requests the allowance of expenses in the total amount of \$8,899.49 incurred in the preparation and prosecution of Dockets 189, 189-A, 189-B, and 189-C. The schedule of expenses accompanying the application discloses that of the total amount claimed, \$574.18 was incurred in Docket 189, and \$8,325.31 was incurred in the combined Dockets 189-A, 189-B, and 189-C, up to January 1974.

3. Status of the Claims. The several claims asserted in Docket 189 were included in the original complaint filed on August 2, 1951. A motion was filed by the plaintiffs on December 15, 1955, to sever from Docket 189 the accounting claims asserted therein. On December 29, 1955, an order to sever the cause of action was issued by the Commission. That order created Docket 189-A, an accounting action relating to certain proceeds from the sale of land and timber under the Act of January 14, 1889. The plaintiffs were also ordered to file a separate complaint for Docket 189-A, and to separate any causes of action remaining after the severance. Severed petitions were then filed in Docket 189-A on January 12, 1956, and in Dockets 189-B and 189-C on February 2, 1956.

As indicated in finding 1, supra, Docket 189 was concluded with entry of a final judgment on August 9, 1973. Dockets 189-A, 189-B, and 189-C, which have no direct bearing on the claim concluded in Docket 189, are pending before the Commission and still being prosecuted.

4. Attorneys' Contracts.

a. The general claims of the plaintiffs, including those originally asserted in Docket 189, were first initiated and prosecuted before the Commission pursuant to contract No. I-1-ind. 42012, made between the General Council of the Red Lake Band and attorneys Austin L. Lather, Jay H. Hoag, and Clarence G. Lindquist. That contract, dated February 13, 1948, was approved by the Commissioner of Indian Affairs on April 7, 1948, for a period of five years beginning February 13, 1948. An extension for an additional five years commencing February 13, 1953, was approved on August 11, 1954.

The terms of contract No. 42012 relating to expenses provided reimbursement to the attorneys for all reasonable expenses incurred in the prosecution of the claims from any recoveries had. The contract also permitted counsel to employ such technical or stenographic assistance as they deemed necessary, with the expenses thereof to be incidental to employment under the contract.

b. Contract 14-20-650, No. 599, dated June 12, 1958, between the Red Lake Band and attorneys Lather, Hoag, and Lindquist was approved on December 30, 1958, for a period of ten years commencing on February 13, 1958. This contract was specifically limited to claims represented by Dockets 189 and 189-A.

The terms of this agreement respecting expenses provided reimbursement, from the amount of any recovery, of such actual expenses incurred by counsel "as are necessary and proper" in connection with the performance of their duties under the contract and those incurred under the preceeding contract. Reimbursement of expenses was made wholly contingent upon recovery for the tribe "save that in the event the band so elects, and funds are available" reimbursement may be made out of such tribal funds.

c. The following numbered contracts, all dated May 8, 1968, between the plaintiffs and attorneys Jay H. Hoag and Rodney J. Edwards, were approved on June 20, 1968, for a period of ten years commencing on February 13, 1968:

No. F50C14200-378:	Docket No. 189
No. F50C14200-379:	Docket No. 189-A
No. F50C14200-380:	Docket No. 189-B
No. F50C14200-381:	Docket No. 189-C

Clauses 6 and 7 of the above contracts are identical in terms respecting expenses. Reimbursement of expenses was made wholly contingent upon recovery or, upon election of the band, from tribal funds, if available. In addition to reimbursement of reasonable expenses, including travel, the contracts allowed the attorneys the option to travel by personal automobile at a reimbursable rate of \$.10 per mile, with costs not to exceed those of available plane or train travel. In lieu of meals and lodging, counsel were also allowed a subsistence rate of \$14.00 per day within the vicinity of the Red Lake Reservation and adjacent areas, or \$25.00 elsewhere.

d. Since 1949 numerous assignments of various interests in the foregoing contracts have been approved. The details of these assignments were previously set out on April 19, 1974, in finding 6 on award of attorneys' fees in Docket 189 (34 Ind. Cl. Comm. 36). That finding is incorporated by reference herein.

5. Notice to parties.

a. Pursuant to Rule 34 b (c) of our General Rules of Procedure, notices of the filing of this application were sent to the Department of Justice, the Commissioner of Indian Affairs, and the plaintiffs' representative. No response to the notices has been received from the tribal representative.

b. On July 29, 1974, the Department of Justice filed a response in opposition to the petition for the reimbursement of expenses. The grounds for the objection were specifically set forth in a memorandum dated July 3, 1974, from Raymond V. Butler, Acting Deputy Commissioner of Indian Affairs and transmitted with a letter, dated July 18, 1974, from Reid Peyton Chambers, Associate Solicitor for Indian Affairs, United States Department of Interior. The objections relate to the inclusion of expenses incurred in other cases (Dockets 189-A, 189-B, and 189-C) than the one at bar (Docket 189), on the grounds that (1) the application herein as it relates to Dockets 189-A, 189-B, and 189-C is premature in that the claims therein are still active and pending, and the total expenses to be incurred cannot yet be determined, and (2) the attorneys, operating under separate contracts in each docket, with expenses governed by the contract

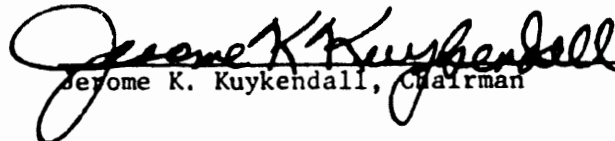
applicable to each, have no presently perfected contract right under which to claim expenses in the three pending dockets. Plaintiffs' counsel have not replied to the objections.

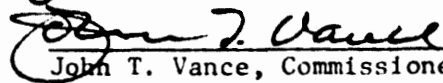
6. Determination of Expenses.

a. Dockets 189-A, 189-B, and 189-C. On the basis of our opinion in Miami Tribe of Oklahoma v. United States, Docket 76, et al., 26 Ind. Cl. Comm. 303 (1971), aff'd on other grounds, 200 Ct. Cl. 64 (1972), the attorneys are not entitled to recover at this time expenses in the amount of \$8,325.31 incurred by them in the preparation and prosecution of the claims in the above-named dockets. Awards may well result in said dockets from which counsel may properly recover reimbursable expenses, and it is therefore premature to award such reimbursement under this application. Section 15 of our act (60 Stat. 1049, 1053, 25 U.S.C. § 70n), moreover, provides jurisdiction to the Commission to allow "reasonable expenses" incurred in the prosecution of the claim. A determination of reasonableness cannot properly be made on a piecemeal basis and without the total of the expenses of litigation before us.

b. Docket 189. Pursuant to section 15 of the act, Rule 34b of the Commission's Rules of Procedure (25 C.F.R. § 503.34 (b)), as amended, 39 Fed. Reg. 41173 (1974), the Commission's Policy Statement § 102 issued July 15, 1968, and upon examination of the application, the supporting documentation, and the record of expenditures incurred in the prosecution of the claim in Docket 189, the Commission concludes that the claimed


expenses in this application relating to Docket 189 and totalling \$574.18, are reasonable and proper expenses of litigation and should be allowed.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner