



INTERIOR BOARD OF INDIAN APPEALS

Roy T. Mobley v. Commissioner of Indian Affairs and Jicarilla Apache Tribe

4 IBIA 1 (04/04/1975)

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# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF ROY T. MOBLEY

v.

COMMISSIONER OF INDIAN AFFAIRS AND

JICARILLA APACHE TRIBE

IBIA 75-3-A

Decided April 4, 1975

Appeal from an administrative decision denying claims for professional services rendered.

Reversed in Part and Affirmed in Part.

1. Indian Tribes: Attorneys: Fees

In the absence of an approved contract as required by 25 U.S.C.  
§ 476 fees for legal services allegedly performed during the interim  
will not be allowed.

APPEARANCES: Kenneth Simon of Taylor, Ferencz and Simon, for appellant, Roy T. Mobley;

Solicitor, Division of Indian Affairs,

Department of the Interior, for Commissioner, Bureau of Indian Affairs; and Nordhaus, Moses and Dunn, for the Jicarilla Apache Tribe.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The above-entitled matter comes before this forum on an appeal by Roy T. Mobley, hereinafter referred to as appellant, through his attorney, Kenneth Simon of the law firm of Taylor, Ferencz and Simon, from a decision of the Commissioner of Indian Affairs dated May 13, 1974, affirming the Albuquerque Area Director's decision denying appellant's claims for legal services.

The dispute centers around appellant's claims totaling \$6,265.10 for attorney fees and expenses for services performed for the Jicarilla Apache Tribe, hereinafter referred to as Tribe, during the years 1958, 1959, and 1960. The total claim is broken down into the following three categories:

(1) \$1,303.12 is claimed for services for the period January 1, 1958, to June 7, 1960, in resisting efforts of Neil S. Stull to have certain lands removed from the jurisdiction of the Tribe and to obtain oil and gas leases thereon.

(2) \$2,331.25 is claimed for special services rendered to the Tribe during the period January 16, 1959, to November 30, 1960, to obtain a permit from the Federal Communications Commission to operate a television booster station.

(3) \$2,161.20 in fees and \$469.53 for expenses is claimed for general counsel services provided the Tribe for the period April 1, 1960, through December 20, 1960.

The record indicates appellant under dates of August 4, 1960, and June 7, 1961, submitted itemized vouchers in support of his claims to the Bureau of Indian Affairs for consideration and payment. The record does not indicate that any definitive action was taken on the vouchers at that time. The record indicates that it was not until December 1, 1972, that any action was taken on the claims. No explanation appears in the record for the long interim delay.

For the first time, in response to a letter dated August 2, 1972, from appellant's counsel, the Area Director of the Albuquerque office of the Bureau of Indian Affairs on December 1, 1972, finally took action on the appellant's claims. The Area Director on that date denied all categories of appellant's claims.

The Area Director denied category (1) of the claims on the grounds that there was no agreement for additional compensation for

work on the Stull claim and that appellant's report covering his work for the Tribe for the period in question did not appear to reflect any court proceedings in the matter.

Category (2) of the claims was denied by the Area Director on the grounds that it involved a matter which was neither a case to be litigated in court nor was it in the nature of a court proceeding.

Category (3) was denied by the Area Director on the grounds that appellant's general counsel contract with the Tribe was not effective for the period April 1, 1960, to December 20, 1960.

On February 1, 1973, the Area Director, acting on the appellant's December 21, 1972 request for reconsideration, reaffirmed his decision of December 1, 1972.

The appellant on February 8, 1973, appealed to the Commissioner from the Area Director's decision. The Acting Deputy Commissioner of Indian Affairs on May 13, 1974, affirmed the Area Director's decision as to all three categories by denying the same.

In support of his denial, the Acting Deputy Commissioner concluded (a) that the Stull claim (Category 1) was not handled in the nature of a court proceeding; (b) that the television booster claim (Category 2), although the nature of employment

seemed to qualify for additional compensation under appellant's general counsel contract with the Tribe, could not be paid because appellant had not sought to reach agreement with the Tribe as to the amount to be paid for the service rendered; and (c) that the general counsel fees and expenses for April 1, 1960, through December 20, 1960, could not be paid because there was no effective general counsel contract for the period. In addition to the foregoing conclusions, the Acting Deputy Commissioner referred to the statute of limitations for the State of New Mexico but disposed of the appeal without regard to its possible effect. However, subsequently, the Commissioner concurred with the Tribe in its position that the appellant's claims were barred by the six (6) year statute of limitations provisions of sections 23-1-1 and 23-1-3, New Mexico statutes annotated (1953 compilation).

The appellant in support of his appeal contends:

(1) that from January 1, 1958, to June 7, 1960, he performed services in the Stull matter (Category 1 of claims) and the television booster station matter (Category 2 of the claims) for which he is entitled to receive additional compensation to the \$250 per month retainer allowed to him by the Tribe as general counsel under an approved contract. In short, appellant contends that the Stull and television booster station matters were in "the nature of

a court proceeding" and that he was entitled to additional compensation for such services under the additional compensation part of the general counsel contract which in pertinent part provided:

Compensation: the attorney shall receive the following compensation:

1. \* \* \* for general legal services \* \* \*

2. For each case litigated in court or of the nature of a court proceeding as directed by the tribe, such additional compensation that may be agreed by the tribe and attorney with the approval of the Commissioner of Indian Affairs.  
(Emphasis supplied)

Moreover, the appellant in further support of his appeal and claim for additional compensation cites and relies on the following Tribal Resolutions which provided:

58-387, adopted March 12, 1958 -- "RESOLVED that Mr. Mobley represents the Tribe on mineral rights and school claim for the old railroad right of way."

59-368, adopted April 10, 1959 -- "RESOLVED, That the Representative Tribal Council hereby authorizes and directs Roy T. Mobley, Tribal Attorney, to represent the Tribe in proceedings to obtain from the Federal Communications Commission of Washington, D.C. permission to install and operate a Television Booster or Translator station for the purpose of rebroadcasting television programs at

Dulce, New Mexico, and to the surrounding area, the fee of the said attorney to be determined upon the basis of services rendered from time to time as approved by the Commissioner of Indian Affairs or his authorized representative. The Executive Committee is authorized to advance or reimburse the attorney for all necessary expenses incurred in this matter."

(2) that his general counsel contract was extended past March, 1960, by Tribal Resolution 60-216, adopted March 4, 1960, and an extension agreement signed by the Tribe and appellant and that the action or inaction of the Department of the Interior thereon led the parties to believe that the extension agreement was in effect until December 20, 1960, when appellant was finally advised by the Department that his proposed renewal of his general counsel contract was being returned without approval.

At the outset, it is noted that no place in the record does the Commissioner, the Area Director, or the Tribe allege or deny that the services set forth in categories (1) and (2) were not performed. Therefore, it must be concluded that the services itemized in the vouchers for which the claims are based were performed by the appellant. It must then follow that the allowance of categories (1) and (2) of the claims focuses around the question as to whether the services performed thereunder were covered by the general legal

services provision (\$250 per month) or by the additional compensation provision of the general counsel contract.

Tribal Resolutions 58-387 and 59-368, supra, although brief and somewhat general, adequately identify and authorize the appellant to represent the Tribe in the Stull and television booster station matters. The Board cannot perceive of any valid reasons why the Tribe would have gone to the unnecessary time and effort of passing the resolutions in question if it had considered the services to be performed thereunder were to be covered under the general legal services clause rather than the additional compensation clause of the general counsel contract. Nor can we see why the services rendered thereunder cannot be considered as being in the nature of court proceedings in view of the specialized work involved. Accordingly, the Board finds that the services set forth in categories (1) and (2) of appellant's claims are reasonable and compensable under the additional compensation provision of the general counsel contract.

With regard to the final category of appellant's claims for services rendered as general counsel and expenses incurred subsequent to March 31, 1960, we are constrained to sustain and affirm the Commissioner's decision thereon.

The record indicates that proposed renewal of appellant's general contract beyond March 31, 1960, was never approved by the

Secretary or his authorized representative as required by 25 U.S.C. 476. The foregoing statute clearly requires approval of such contracts by the Secretary or his authorized representative.

[1] In the absence of an approved contract, fees for general counsel services allegedly performed and expenses incurred in connection therewith by the appellant during the interim cannot be allowed and must be denied.

Regarding the Tribe's contention, concurred in by the Commissioner, that the appellant's claims are barred by the New Mexico six (6) year statute of limitation, sections 23-1-1 and 23-1-3, the Board finds the statute, supra, inapplicable in the appeal herein. The record clearly indicates the appellant filed his vouchers for the services rendered with the Bureau of Indian Affairs in the years 1960 and 1961 well within the period provided by the statute, supra. We make no finding as to the application of the New Mexico statute in this case. Even if it were applied, the time could not have begun to run until December 1, 1972, which was the date of the first definitive action taken on the vouchers which had been held in the government files since the 1960 and 1961 filing.

In view of the reasons hereinabove set forth, the decision of the Commissioner, Bureau of Indian Affairs, dated May 13, 1974,

denying appellant's claims for legal fees for services rendered and expenses incidental thereto should be reversed as to categories (1) and (2) of the claims and affirmed as to category (3) of the claims.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, and 211 DM 13.7 issued December 14, 1973, the decision of May 13, 1974, of the Commissioner, Bureau of Indian Affairs, in denying appellant's claims for legal services rendered to the Jicarilla Apache Tribe of New Mexico and for expenses incurred in connection therewith is (a) REVERSED as to categories (1) and (2) of appellant's claims and the claims represented thereby in the amount of \$3,634.37 are ALLOWED and payment therefor shall be made at the earliest date possible, and (b) AFFIRMED as to category (3) of appellant's claims.

This decision is final for the Department.

Done at Arlington, Virginia.

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//original signed  
Alexander H. Wilson  
Administrative Judge

We concur:

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//original signed  
Mitchell J. Sabagh  
Administrative Judge

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//original signed  
David J. McKee  
Chief Administrative Judge