



INTERIOR BOARD OF INDIAN APPEALS

Alaska Native Disenrollment Appeals of James Edward Scott, Sr.,
and Robert Charles Scott

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ALASKA NATIVE DISENROLLMENT APPEALS OF:

JAMES EDWARD SCOTT, SR.

AND

ROBERT CHARLES SCOTT

IBIA 79-9-DE

Decided June 21, 1979

79-10-DE

Appeals from a decision of an Administrative Law Judge declaring appellants were improperly enrolled under the Alaska Native Claims Settlement Act.

Affirmed in part and reversed in part.

1. Alaska Native Claims Settlement Act: Enrollment: Metlakatla Natives

The appearance of one's name on the Metlakatla Indian community rolls of the Annette Islands Reserve in 1976 in itself is not conclusive of membership status. However, that fact considered in conjunction with other evidence indicating active involvement and contact with the community over the years including the year 1970 does not constitute continuous absence from the community.

2. Alaska Native Claims Settlement Act: Enrollment: Metlakatla Natives

Absent active involvement and contact and continuous absence of 2 years prior to Apr. 1, 1970, by a minor born outside the Metlakatla community and having never resided therein constitutes forfeiture of membership in the community, derived solely through a parent member of that community.

APPEARANCES: Peter A. Danelo, Esq., Preston, Thorgrimson, Ellis, Holman & Fletcher, Seattle, Washington, for James Edward Scott, Sr., and Robert Charles Scott, appellants; Bruce Schultheis, Esq., Assistant Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the United States of America, appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

Pursuant to complaints filed by the United States of America through the Bureau of Indian Affairs, hereinafter referred to as appellee, on March 1, 1978, under the provisions of 43 CFR Part 4, subpart K, which alleged that James Edward Scott, Sr., and Robert Charles Scott, hereinafter referred to as appellants, were improperly enrolled under the Alaska Native Claims Settlement Act, a consolidated hearing on the complaints was held on May 4, 1977, in Seattle, Washington, by Chief Administrative Law Judge L. K. Luoma.

Thereafter, Judge Luoma in his decision of December 4, 1978, concluded that the appellee had met its burden of proof that appellants were members of the Metlakatla community as of April 1, 1970, and that they were therefore improperly enrolled under sections 3, 5, and 19 of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688 (43 U.S.C. § 1601 (1976)), and ordered appellants' names stricken from the roll of Alaska Natives.

A timely appeal was filed by appellants on January 3, 1979, with the Director, Office of Hearings and Appeals. The Director, under the authority of 43 CFR 4.1010 and 4.704 designated the Board of Indian Appeals to decide these cases along with all other Alaskan Native disenrollment appeals on an ad hoc basis.

Appellants in support of their respective appeals allege as follows:

(1) The complaints should have been dismissed under 25 CFR 43(h).15(e) because there was no mention in the complaints of membership in the Metlakatla community as of April 1, 1970, and no timely amendment was made of the complaints.

(2) James E. Scott, Sr., forfeited his membership in the Metlakatla community through his continuous absence from the community prior to April 1, 1970.

(3) Robert C. Scott's rights under the Act were unfairly made to depend solely on the membership of his father in the Metlakatla community; moreover, Robert C. Scott had forfeited his membership in the community through his continued absence from the community prior to April 1, 1970.

The dispute as we see it focuses around the interpretation of Article 2, section 6 and Article 2, section 4, Part 5 of the constitution and bylaws of the Metlakatla Indian Community. 1/ and 2/ More particularly does it involve the interpretation of the word "continuous" as it appears in the constitution and bylaws.

1/ Article II, section 6, provides in relevant part: "Continuous absence from Annette Islands Reserve for two years or longer, unless the member so absent shall notify the Council in writing, within such two-year period, of his intention to return, shall constitute forfeiture of membership in the community."

2/ Article II, section 4, part 5 provides: "Minor children of persons so admitted shall be members of the community, but upon attaining their majority they shall, in order to continue their membership, proceed as set forth in Paragraph 3 above." (Paragraph 3 referred to above reads as follows: "In the presence of the Mayor and Council, the declaration in section 2 of this Article shall be read to the applicant, and he or she shall sign a copy of the declaration before two witnesses.")

We find no merit in appellants' first contention regarding dismissal of the complaints. Under the amended regulations (25 CFR 43(h).15(e), July 20, 1978) the appellee had the burden of proving enrollment in the community on April 1, 1970. The appellee at the hearing alleged and produced evidence that appellants were enrolled in the community as of April 1, 1970, and that the complaint was therefore considered amended and in conformity with the new regulations.

Concerning appellant James Scott's contention as set forth in item 2 above, we find for the reasons hereinafter set forth that he was a member of the community as of April 1, 1970.

[1] The fact that James Scott's name appeared on the community's rolls in 1976 in itself is not conclusive of his membership status. However, that fact considered in conjunction with other evidence indicating his active involvement and contact with the community over the years since his enrollment in 1965, including the year 1970, did not in our opinion constitute continuous absence from the community, notwithstanding his residence in the State of Washington during those years. Accordingly, being a member of the community as of April 1, 1970, he was ineligible for enrollment under the Act as found by Judge Luoma whose finding to that effect is affirmed.

[2] Contention 3 regarding Robert Scott presents an altogether different situation from that of his father, James Scott. Robert Scott's purported membership in the community derives solely from his being the minor child of a member, pursuant to the community's constitution and bylaws. ^{3/}

It is the contention of appellant, Robert Scott, an adult since November 11, 1976, that his rights under the Act were unfairly made to depend solely on his father's membership in the community; moreover, that he had forfeited his membership in the community through his continuous absence from the community from prior to April 1, 1970. Robert Scott was born in the State of Washington on November 11, 1959, and has resided there ever since. Unlike his father, Robert Scott has not been actively involved or in contact with the community. For the foregoing reasons we are in agreement with his contention that his membership in the community was forfeited by his continuous absence prior to April 1, 1970. Accordingly, we find that Robert Scott was properly enrolled under the Act and Judge Luoma's finding to the contrary must be reversed.

NOW THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals and pursuant to 43 CFR 4.704, it is hereby ordered that the order of December 4, 1978, insofar as it pertains

^{3/} See footnote 2, supra.

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to James Edward Scott, Sr., is affirmed, and as to that part that pertains to Robert Charles Scott is reversed, and Robert Charles Scott's name is ordered reinstated on the roll of Alaska Natives.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Chief Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge