



INTERIOR BOARD OF INDIAN APPEALS

Principal Chief, Muskogee (Creek) Nation v. Muskogee Area Director,
Bureau of Indian Affairs

18 IBIA 105 (01/17/1990)



United States Department of the Interior

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

PRINCIPAL CHIEF, MUSCOGEE (CREEK) NATION
v.
MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-87-A

Decided January 17, 1990

Appeal from an approval of an attorney contract for the Muscogee (Creek) National Council.

Dismissed.

1. Administrative Practice: Generally--Board of Indian Appeals:
Jurisdiction--Bureau of Indian Affairs: Administrative Appeals:
Generally--Indians: Attorneys: Contracts--Rules of Practice:
Generally

Under 25 CFR 88.1(c), a decision of a Bureau of Indian Affairs Area Director approving, disapproving, or conditionally approving a tribal attorney contract for one of the Five Civilized Tribes is final for the Department and is not subject to appeal within the Department.

APPEARANCES: Claude A. Cox, Principal Chief, Muscogee (Creek) Nation, pro se; Merritt E. Youngdeer, Muskogee Area Director, Bureau of Indian Affairs, pro se; Gregory R. Stidham, Esq., Checotah, Oklahoma, for the Muscogee (Creek) Speaker and National Council.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Claude A. Cox, Principal Chief of the Muscogee (Creek) Nation, challenges a March 23, 1989, approval of an attorney contract between the Muscogee (Creek) National Council and Gregory R. Stidham, Esq., by the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). For the reasons discussed below, the Board dismisses this appeal.

Background

On March 1, 1989, the Muscogee (Creek) National Council, 1/ through its Speaker, entered into an attorney contract with Gregory R.

1/ The National Council is the legislative body of the Muscogee (Creek) Nation.

Stidham, Esq., over the objection of appellant, who vetoed the authorizing legislation but whose veto was overridden by the National Council. ^{2/} The contract covered the period from March 1 through October 31, 1989, and was approved by the Area Director on March 23, 1989.

Appellant filed a notice of appeal and a statement of reasons with the Area Director, who transmitted them to the Washington, D.C., office of BIA by memorandum of June 12, 1989. The appeal was transmitted to the Board on August 23, 1989. ^{3/} The Board's notice of docketing established a briefing schedule and requested the parties to address the Board's decision in Welch v. Minneapolis Area Director, 17 IBIA 56 (1989), in their briefs.

Both appellant and the Area Director filed statements that they had no further arguments to make. The National Council requested the Board to follow the holding in Welch.

Discussion and Conclusions

In Welch, the Board held that, under 25 CFR 88.1(c), the decision of a BIA Area Director approving, disapproving, or conditionally approving a tribal attorney contract is final for the Department of the Interior. It held, accordingly, that the Board lacks jurisdiction over an appeal from such a decision. The threshold question in this appeal is whether the Muscogee (Creek) Nation is subject to 25 CFR 88.1(c).

25 CFR 88.1 provides in relevant part:

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended [(IRA)], may employ legal counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or

^{2/} Ordinance NCA 88-59, enacted on Sept. 24, 1988, authorized employment of legal counsel. The ordinance was vetoed by appellant on Oct. 4, 1988. His veto was overridden by a vote of 24-0 on Oct. 31, 1988.

^{3/} New appeals regulations for BIA and the Board took effect on Mar. 13, 1989. See 54 FR 6478 and 6483 (Feb. 10, 1989). Although the proper appeal procedures were not followed here, the Board accepted the appeal because appellant was not advised of the proper procedures.

conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

Subsections (a) and (b), between them, would seem to include all tribes. However, 25 CFR Part 89, Attorney Contracts with Indian Tribes, divides tribes into three categories, rather than two: (1) tribes organized under the IRA (sections 89.1-89.6); (2) tribes not organized under the IRA (sections 89.7-89.26); and (3) the Five Civilized Tribes (sections 89.30-89.35). ^{4/} It is conceivable that, since categories (1) and (2) in Part 89 correspond to subsections 88.1 (a) and (b), the Five Civilized Tribes were intended to be excluded from subsections 88.1(a) and (b) and, therefore, also from subsection 88.1(c).

Sections 89.30-89.35, concerning the Five Civilized Tribes, were added to Part 89, then Part 72, in 1972. The preamble to the Federal Register publication of the new sections stated:

Part [89] * * * is amended * * * by addition of [§ 89.26] under the center heading, "Tribes not Organized under the Indian Reorganization Act," * * *. Under a new center heading entitled "Five Civilized Tribes," there are added [§§ 89.30-89.35] containing regulations governing the negotiation, execution and approval of like contracts by the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or Nations of Indians which are known as the Five Civilized Tribes.

37 FR 10440 (May 23, 1972). The added sections contain approval provisions similar to those for attorney contracts of tribes not organized under the IRA. ^{5/}

In light of the apparent intent to treat attorney contracts of the Five Civilized Tribes more or less like those of tribes not organized under the IRA, it seems likely that the failure to amend section 88.1 to include a specific reference to the Five Civilized Tribes was either inadvertent or thought to be unnecessary because these tribes were already covered by subsection 88.1(b). In any event, there is no evidence that BIA intended to treat the Five Civilized Tribes any differently than other tribes with regard to finality of contract approval decisions.

The Board finds that attorney contracts of the Five Civilized Tribes fall within the scope of section 88.1 and that the Area Director's approval of the contract at issue here was therefore final for the Department of the Interior pursuant to subsection 88.1(c).

^{4/} The Muscogee (Creek) Nation is one of the Five Civilized Tribes. The others are the Cherokee, Chickasaw, Choctaw, and Seminole Nations.

^{5/} For instance, both section 89.7, relating to tribes not organized under the IRA, and section 89.30, relating to the Five Civilized Tribes, require that attorney contracts be in compliance with 25 U.S.C. § 81 (1982). There is no such requirement, however, in the provisions relating to tribes organized under the IRA.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the March 23, 1989, decision of the Muskogee Area Director is dismissed for lack of jurisdiction.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge