



INTERIOR BOARD OF INDIAN APPEALS

Benedict Jozhe and Fort Sill Apaches v. Commissioner of Indian Affairs

3 IBIA 266 (02/25/1975)



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
BENEDICT JOZHE AND FT. SILL APACHES
v.
COMMISSIONER OF INDIAN AFFAIRS

IBIA 75-28-A

Decided February 25, 1975

This is a combined appeal by Benedict Jozhe, Chairman of the Fort Sill Apache Tribal Business Committee, for Himself and the Other Protestants from the decisions of the Commissioner of Bureau of Indian Affairs issued September 13, 1974, affirming the decisions of the Acting Area Director at Anadarko recognizing a tribal meeting of the Ft. Sill Apaches held November 24, 1973, and a parallel decision refusing to recognize a meeting held March 23, 1974. Both were called to consider the formula for distribution of judgment funds awarded to the Apache Tribe.

Remanded to the Commissioner.

1. Indian tribes: Judgment Funds

The preparation of a plan providing for the use and distribution of judgment funds under the Act of October 19, 1973, (25 U.S.C. 1401 et seq., 87 Stat. 468) by the Secretary of the Interior to be submitted to the Congress for approval entails the exercise of the Secretary's discretion and is beyond the authority delegated to the Board of Indian Appeals in (211 D.M. 13.7) December 14, 1973.

APPEARANCES: For the Appellants, Houston Bus Hill, Attorney, 1376 First National Center, Oklahoma City, Oklahoma 73102, their attorney.

OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

The Apache Tribe was awarded a judgment for \$16,489,096 by the Indian Claims Commission in cases docketed as Nos. 30, 30-A, 48 and 48-A, affirmed by the Court of Claims on September 19, 1973.

An unorganized portion of the Apache Tribe is located at Ft. Sill, Oklahoma, and the question arose as to what portion of the fund was to be allocated to that group and what portion to the organized portion of the Tribe designated as the Mescalero Apache Tribe in New Mexico. The Secretary acting through the Superintendent of the Anadarko Indian Agency sought to form a plan as required by the Act of October 19, 1973 (25 U.S.C. 1401, 87 Stat. 466) for distribution of the judgment fund and called a meeting of the members of the tribe which was held November 24, 1973, at Ft. Sill. The action taken at that meeting was challenged by some tribal members and a second meeting was held by the challenging group on its own motion on March 23, 1974. The Commissioner on appeal affirmed the Area Director's recognition of the November 24, 1973, meeting and an appeal directed to the Secretary was transferred to this Board.

Since the Act of October 19, 1973, supra, does not provide that the desires of the Indians shall in any way be binding upon the Secretary in the formulation of the plan of distribution and use of judgment funds, the matter of adopting or rejecting the wishes of the Indians is discretionary. The delegation of authority by the Secretary on December 14, 1973, (211 D.M. 13.7) to the Board of Indian Appeals of the Office of Hearings and Appeals is limited to appeals “* * * involving determinations, findings, and orders [of administrative officials of the Bureau of Indian Affairs] protested as a violation of a right or privilege of the appellant * * * .” This delegation is not construed to include the power to exercise the Secretary's discretionary authority.

This appeal should be and accordingly it is hereby retransferred to the Commissioner of Indian Affairs for further disposition by him or the Secretary. The record on appeal is attached.

//original signed
David J. McKee
Chief Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge