

SPECIFIC CLAIMS TRIBUNAL

B E T W E E N:

PAUL FIRST NATION

SPECIFIC CLAIMS TRIBUNAL	
TRIBUNAL DES REVENDEICATIONS PARTICULIÈRES	
F I L E D	D E P O S É
March 6, 2020	
Guillaume Phaneuf	
Ottawa, ON	1

Claimant

v.

HER MAJESTY THE QUEEN IN THE RIGHT OF CANADA
As represented by the Minister of Crown-Indigenous Relations and Northern Affairs

Respondent

DECLARATION OF CLAIM
Pursuant to Rule 41 of the
Specific Claims Tribunal Rules of Practice and Procedure

This Declaration of Claim is filed under the provisions of the *Specific Claims Tribunal Act* and the *Specific Claims Tribunal Rules of Practice and Procedure*.

March 6, 2020

Date

Guillaume Phaneuf

Registry Officer

TO: Assistant Deputy Attorney General, Litigation, Justice Canada
Bank of Canada Building 234 Wellington Street East Tower
Ottawa, Ontario K1A 0H8
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I. Claimant (R. 41(a))

1. The Claimant, the Paul Band (hereinafter “First Nation”) confirms that it is a First Nation within the meaning of s. 2(a) of the *Specific Claims Tribunal Act*, by virtue of being a “band” within the meaning of the *Indian Act*, R.S.C. 1985, c. 1-5, as amended, and within the meaning of Treaty No.6 (hereinafter “Treaty 6”). The First Nation is located in central Alberta.

II. Conditions Precedent (R. 41(c))

2. The following conditions precedent as set out in s. 16(1) of the *Specific Claims Tribunal Act*, have been fulfilled:

16(1) A First Nation may file a claim with the Tribunal only if the claim has been previously filed with the Minister and

(a) the Minister has notified the First Nation in writing of his or her decision not to negotiate the claim, in whole or in part.

3. The First Nation filed a claim with the Minister of Indian Affairs and Northern Development in November 2004 in respect of various alleged breaches by the Respondent (hereinafter “Canada” or the “Crown”) with respect to the alleged expropriation of reserve land for the purposes of a railway. In December 2010, Canada advised the First Nation that Canada would not negotiate the Claim.

III. Claim Limit (Act, s. 20(1)(b))

4. The First Nation does not seek compensation in excess of \$150 million for the Claim.

IV. Grounds (Act, s. 14(1))

5. The following are the grounds for the specific claim, as provided for in s. 14 of the *Specific Claims Tribunal Act*:

14(1) Subject to sections 15 and 16, a First Nation may file with the Tribunal a claim based on any of the following grounds, for compensation for its losses arising from those grounds:

(b) a breach of a legal obligation of the Crown under the *Indian Act* or any other legislation – pertaining to Indians or lands reserved for Indians – of Canada or of a colony of Great Britain of which at least some portion now forms part of Canada;

(c) a breach of a legal obligation arising from the Crown’s provision or non-provision of reserve lands, including unilateral undertakings that give rise to a fiduciary obligation at law, or its administration of reserve lands, Indian money or other assets of the First Nation;

(d) an illegal lease or disposition by the Crown of reserve lands; and

(e) failure to provide adequate compensation for reserve lands taken or damaged by the Crown or any of its agencies under legal authority.

V. Allegations of Fact (R. 41(e))

6. Treaty 6 was signed at Fort Carlton and Fort Pitt on August 23, 1876 and September 9, 1876. On August 21, 1877, Chief Alexis signed an adhesion to Treaty 6 at Edmonton.
7. At the time of Treaty signing, a group of Indians led by Ironhead were residing at White Whale Lake and were considered to be members of the Alexis Band. By 1886, the Department of Indian Affairs officially recognized Ironhead and his followers as a distinct band. Following the death of Ironhead, the White Whale Lake Band eventually became known as the Paul’s Band or Paul Band.
8. IR’s 133A and 133B were surveyed for the Paul’s Band by J.C. Nelson, Dominion Land Surveyor in November and December of 1891. IR 133A consisted of 32.7 square miles and IR 133B, surveyed as a fishing station for the use of the Paul’s Band, consisted of 635 acres.
9. IR’s 133A and 133B were confirmed by Order in Council 1633 on June 16, 1892.
10. In November of 1905, J.A. Markle, Inspector, reported that the Canadian Northern Railway (“CNR”) were grading a line “between the reserve and Edmonton” which was “likely to pass very near” the marl deposit on the Paul Band’s reserve.
11. On June 3, 1906, the Indian Agent for the Edmonton Agency, James Gibbons, informed J.D. McLean, Secretary of the Department of Indian Affairs that the construction of the CNR line was rapidly approaching the Paul Band’s reserve. Secretary McLean responded

- on June 13, 1906 stating that as the CNR had not filed its plan for the right of way, the CNR could not commence construction through the reserve.
12. On June 13, 1906, Secretary McLean wrote C.R. Stovel, Right of Way Agent for the CNR, suggesting that the railway company file the usual plan, duly certified by the Chief Engineer of Railways and Canals, together with an offer of the sum of money the CNR was willing to pay for the right of way and damages.
 13. On June 16, 1906, Indian Agent Gibbons informed Secretary McLean that his estimate of the compensation for the land needed by the CNR for the right of way through Paul Band's reserve was \$25.00 per acre. Gibbons added that the Band would not be satisfied with less.
 14. Inspector J.A. Markle reported to the Secretary of the Department of Indian Affairs on June 26, 1906 that he was asked by the Paul Band his opinion on the advisability of surrendering a portion of their reserve that lies north of the projected CNR line.
 15. On July 5, 1906 local real estate agent, A.W. Taylor, wrote to the Superintendent General of Indian Affairs, stating that the proposed railway line would divide the reserve and that the Band would consent to the sale of a portion of their reserve. Taylor asked the Department to place a valuation on the land lying to the north and east of the CNR line and offered to find a purchaser.
 16. Secretary McLean informed Taylor on July 16, 1906 that as the CNR had not filed its plans for a right of way, the Department was not in a position to deal with the matter.
 17. On July 31, 1906, Secretary McLean wrote Indian Agent Gibbons to inquire as to whether the Band would surrender the northwest corner of their reserve. Gibbons purportedly held a conference with Band members on August 14, 1906 and reported that the majority were willing to surrender the land in question, on the condition that it be sold for their benefit as a townsite or resort.
 18. The Band purportedly surrendered Indian Reserve 133B on September 11, 1906. The surrender of IR 133B, consisting of 635 acres, was confirmed by Order in Council on September 27, 1906.
 19. The CNR did not file its plan for the right of way before the purported surrender of IR 133B on September 11, 1906. The 1906 Kapasiwin Surrender and the mismanagement of the sale of the lands are the subject of a separate claim.

20. On October 13, 1906, the CNR submitted its application for a right of way through the Paul Band's reserve and inquired as to the cost per acre the Department required to grant title for the right of way. The Assistant Secretary of the Department of Indian Affairs, S. Stewart, responded on October 24, 1906 and stated that the right of way had been valued by Indian Agent Gibbons at \$25 per acre. Stovel, CNR Right of Way Agent argued that the rate of \$25 per acre was excessive, indicating that the land was worth \$10 to \$12 per acre.
21. On November 7, 1906, Assistant Secretary Stewart instructed Indian Agent Gibbons to send a revised valuation of the land required for the CNR right of way.
22. On November 7, 1906, Stewart informed Stovel, Right of Way Agent for the CNR that the Department desired a station grounds to be located on the block of land purportedly surrendered in 1906 for townsite purposes.
23. On November 17, 1906, CNR sent the Department of Indian Affairs a cheque of \$422.35 to cover the deposit for the 84.47 acre right of way through the Paul's reserve.
24. On November 20, 1906, William Black, writing on behalf of Indian Agent Gibbons, recommended to the Department that the land required for the right of way be offered at \$15.00 per acre.
25. By June 19, 1907, the Secretary of the Department of Indian Affairs wrote to the CNR asking what action the CNR proposes to take in the matter of the right of way through the Paul's reserve. Stovel, Right of Way Agent for the CNR responded on June 27, 1907 stating that the Company had not yet come to a final decision regarding their right of way and station grounds.
26. By 1907, the Grand Trunk Pacific Railway (the "GTP") had also expressed an intention to secure a right of way to run a line through the Paul's reserve and raised the possibility of building a station grounds on the land purportedly surrendered in 1906.
27. In December 1907, S. Bray, Chief Surveyor of the Department of Indian Affairs, recommended to the Deputy Minister that the GTP's application be accepted, noting that the CNR application had been dormant for a year.
28. On January 4, 1908, the Deputy Superintendent General of Indian Affairs drafted a memorandum to the Governor General in Council indicating that the GTP had applied for a right of way through the Paul Band's reserve. The Deputy Superintendent noted that the

GTP's application included a certificate of the Chief Engineer of the Department of Railways & Canals stating that the land was required for railway purposes and that the Company should be allowed to acquire the right of way under the provisions of Section 46 of the *Indian Act*.

29. On January 8, 1908, Order in Council P.C. 36 authorized the sale of 184.06 acres of land on 133A and 133B to the GTP, with specific reference to section 46 of the *Indian Act*.
30. Following the correction of acreage calculations, the final total for lands required for railway purposes was 151.54 acres from IR 133A valued at \$15.00 per acre and 16.26 acres in the townsite on the lands surrendered from IR 133B, valued at \$120.00 per acre. The full amount of \$4,227.10 was paid by the GTP on March 14, 1908.
31. On July 28, 1908, the Chief and a Principal Man of Paul's Band consented to give to the GTP one block of land (3 acres) for station grounds as well as a one quarter interest in their townsite provided the GTP agree to locate a station within Section 6, Township 53, Range 3. The station was never built because of the alleged steep gradient of the land.
32. Attached hereto as Schedule "A" is a copy of a 1906 Dominion Land Survey Map of the boundaries of IR 133A and 133B, which illustrates both the planned but not constructed CNR rail line and the constructed GTP rail line that passes through IR 133A and 133B.
33. Even after mid-1909, when the Department of Railways and Canals had granted approval of CNR's application, concerns about the track location of the two railway company lines forced the CNR to postpone construction. By 1911, the CNR abandoned all plans to run part of their line through the reserve.
34. In 1919, GTP was placed under the control of the newly created Canadian National Railway ("CN") and was amalgamated with CN in 1923.
35. On February 4, 1960, CN received letters patent which certified it as the owner of an estate in fee simple of the land taken in 1908 for Right of Way of the GTP.

VI. The Basis in Law on Which the Crown is said to have failed to meet or otherwise breached a lawful obligation:

36. In relation to IR 133A, the Crown lacked lawful authority when it transferred the right-of-way by Letters Patent to the Canadian National Railway in 1960. Section 46 of the *Indian*

Act alone was not sufficient to expropriate reserve lands. Both the *Railway Act* and the *Indian Act* had to be complied with in order to expropriate reserve lands.

37. In relation to IR 133B, these lands were not properly surrendered in 1906; therefore, they remained reserve lands. The expropriation provisions of the *Indian Act* were not applied, rendering the purported 1908 expropriation null and void.
38. When letters patent were finally issued to the CN in 1960, there was no statutory authority to do so since section 46 of the *Indian Act* no longer existed. The Order in Council P.C. 36 that authorized the expropriation was specifically tied to section 46. Accordingly, there was no legal basis to issue the letters patent.
39. In the alternative, if no statutory breach is found, the Crown breached its fiduciary duties by failing to obtain adequate compensation for the taking of the First Nation's Claims lands.
40. By transferring a fee simple interest in the Claims lands, the Crown breached the fiduciary duty to minimally impair the First Nation's interest.

VII. Relief Sought

12. Therefore, the First Nation seeks the following relief:
 - i. Compensation for the current unimproved market value and loss of use of the Claim lands;
 - ii. Compensation for the cost to remediate damaged Claim lands and/or the cost of replacement lands;
 - iii. Compensation for damages for injurious affection;
 - iv. Equitable interest;
 - v. An Order that any interests conveyed to CN are limited to a statutory easement, and such interests revert to the Crown on behalf of the First Nation when the lands are no longer required for railway purposes, and that the underlying mineral rights remain vested in the Crown on behalf of the First Nation;
 - vi. An Order rescinding the February 4 1960 Letters Patent rectifying all Land Titles and other government records for those lands referenced in the Letters Patent;

- vii. An Order of solicitor-client costs in relation to the specific claim and this proceeding; and
- viii. Such other relief as this Honourable Tribunal deems just.

Dated this March 6, 2020 at the City of Calgary in the Province of Alberta.

MAURICE LAW



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SCHEDULE A

