



In the Matter of:

**CHEROKEE NATION OF OKLAHOMA,**

**ARB CASE NO. 98-153**

**COMPLAINANT,**

**(Formerly CASE NO. 98-031)**

**v.**

**ALJ CASE NO. 97-JTP-12**

**UNITED STATES DEPARTMENT OF  
LABOR,**

**DATE: February 12, 1999**

**RESPONDENT,**

**and**

**DELAWARE TRIBE OF INDIANS,**

**PARTY-IN-INTEREST.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

James Hamilton, Esq., William J. Mertens, Esq., Wilson K. Pipestem, Esq.,  
*Swidler Berlin Shereff Friedman, LLP, Washington, D.C.*

*For the Respondent:*

Michele W. Curran, Esq., Harry L. Sheinfeld, Esq., Charles D. Raymond, Esq.  
*U.S. Dept. of Labor, Washington, D.C.*

*For the Party-In-Interest:*

Gina J. Carrigan, Esq., *Tulsa, Oklahoma*

**ORDER OF DISMISSAL**

This case arises under the Job Training Partnership Act (JTPA), 29 U.S.C. §1501-1791 (1994) and implementing regulations at 20 C.F.R. Parts 626-638 (1998). The Cherokee Nation of Oklahoma (Cherokee Nation) initiated this action to reverse the Grant Officer's award of training funds to the Delaware Tribe of Indians (Delawares) to serve Delaware Indians in various Oklahoma counties where training grants previously had been administered by the Cherokee Nation. The

Cherokee Nation's challenge involved JTPA funding for program years 1997 (July 1, 1997 through June 30, 1998) and 1998 (July 1, 1998 through June 30, 1999).

The Cherokee Nation requested an administrative hearing to review: (1) whether language in the 1992 Department of the Interior Appropriations Act prohibited the Department of Labor from allocating JTPA funds to the Delawares;<sup>1/</sup> (2) whether the Department of the Interior's (DOI's) recognition of the Delawares as a federally recognized tribe was unlawful, in which case the Department of Labor (DOL) would be precluded from granting JTPA funds to the Delawares; and (3) whether the Delawares met DOL's criteria for JTPA funding of Indian training programs. Request for Administrative Hearing, May 16, 1997, at 4.

On November 14, 1997, the Administrative Law Judge (ALJ) issued an Order Granting Stay, effectively staying these proceedings until the United States District Court for the District of Columbia resolved the federal recognition status of the Delawares in *Cherokee Nation of Oklahoma v. Babbitt*, Civ. No. 96-2284 (TFH), on remand from the United States Court of Appeals for the District of Columbia Circuit, 117 F.3d 1489, 1503 (D.C. Cir. 1997). Following the Cherokee Nation's interlocutory appeal of the ALJ's stay order, we issued an Order on May 7, 1998, reversing the stay and remanding the case to the ALJ to consider the legal effect of the 1992 DOI Appropriations Act with regard to DOL's grant to the Delawares. Order at 3. Our order noted that the appropriations statute "appears to restrict any federal funding within the Cherokee Nation jurisdictional service area solely to the Cherokee Nation," *id.* at 2, in view of statutory language providing that "none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation." Pub.L. 102-154, Stat. 990, 1004 (Nov. 13, 1991).

On June 26, 1998, the ALJ issued his Decision and Order on Remand. The ALJ found in favor of the Grant Officer with regard to the appropriations act issue, construing the term "jurisdictional service area of the Cherokee Nation" in the 1992 DOI Appropriations Act to mean "only the area in which [the Cherokee Nation] distributes JTPA funds to the members of its own nation," and ordered the Grant Officer to distribute \$37,000 to the Delawares for the 1998 program year. ALJ Dec. and Ord. on Rem. at 5-6. The ALJ's decision did not address the two other issues raised in the Cherokee Nation's initial challenge, *i.e.*, whether the Delawares lawfully had been recognized as an Indian tribe and whether the Delawares met DOL's criteria for receiving a grant award.

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<sup>1/</sup> The Appropriations Act provides:

[U]ntil such time as legislation is enacted to the contrary, none of the funds appropriated in this or any other Act for the benefit of Indians residing within the jurisdictional service area of the Cherokee Nation of Oklahoma shall be expended by other than the Cherokee Nation

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Pub.L. 102-154, Stat. 990, 1004 (Nov. 13, 1991).

Pursuant to 29 U.S.C. §1576(b), the Cherokee Nation filed its Petition for Review of the ALJ's remand decision on July 27, 1998.<sup>2/</sup> The Grant Officer filed a Motion to Dismiss the petition on August 4, 1998, arguing that the petition's filing was untimely. On August 17, 1998, we asserted jurisdiction under 29 U.S.C. §§1501 and 1576, but specifically reserved consideration of the Grant Officer's Motion to Dismiss. Ord. Assert. Juris. and Estab. Brief. Sched., Aug. 17, 1998, at 1.<sup>3/</sup>

On November 9, 1998, the Grant Officer filed a second Motion to Dismiss, which argued that the case should be dismissed as moot because relief is precluded under 20 C.F.R. §632.12(a), which provides that "in the event the ALJ rules that the organization should have been designated . . . , the Department will designate the successful appellant organization and fund within 90 days of the ALJ decision unless the end of the 90 day period is within six months of the end of the two year designation period." Motion to Dismiss at 2-5. The grant that is the subject of this challenge is part of a two year program period that ends June 30, 1999.

On December 3, 1998, the Cherokee Nation replied to the Grant Officer's motion by requesting dismissal of its appeal, also on the grounds of mootness, but for reasons other than those argued by the Grant Officer, *i.e.*, because of (1) a recent legislative elimination of the funding restriction in the 1992 DOI Appropriations Act, and (2) the passage of time in the current funding period. Reply of Cherokee Nation to Grant Officer's Motion to Dismiss as Moot at 1-2.

Because the funding period expires in less than six months (June 30, 1999), we agree with the Grant Officer that this proceeding is moot under 20 C.F.R. §632.12(a). *North Dakota Rural Development Corp. v. U.S. Dept. of Labor*, 819 F.2d 199, 200 (8th Cir. 1987); *Campesinos Unidos, Inc. v. U.S. Dept. of Labor*, 803 F.2d 1063, 1067 (9th Cir. 1986); *State of Maine v. U.S. Dept. of Labor*, 770 F.2d 236, 239-40 (1st Cir. 1985); *Illinois Migrant Council v. U.S. Dept. of Labor*, Case No. 84-JTP-10, Sec. Fin. Dec. and Ord., July 17, 1986, slip op. at 6-8. In view of the mootness of

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<sup>2/</sup> Although "Administrative Review Board" is printed above the caption in the Petition for Review, the original and copies were not timely submitted to the Board's office, but were hand delivered on July 27, 1998 to the Office of Administrative Law Judges with a letter addressed to its Chief Docket Clerk. Copies of the petition were subsequently filed with the Board directly on August 11, 1998.

<sup>3/</sup> The Cherokee Nation argued that the ALJ's decision should be reversed because his interpretation of the 1992 appropriations act was erroneous and because he failed to consider its claim that the Delaware Tribe did not meet JTPA funding criteria under 20 C.F.R. §632.10. Cherokee petition at 7-21; reply brief at 1-6. Our May 7, 1998 remand order focused on the appropriations act as an issue for ALJ consideration; however, our order did not limit the ALJ's consideration to that issue. Thus, although we stated that "[r]esolution of this issue is critical to the timely instruction of the Grant Officer," *id.* at 3, the ALJ was not directed to disregard other issues in the case.

the case and the Cherokee Nation's request for dismissal, the ALJ's June 26, 1998 Decision and Order on Remand is hereby **VACATED** and this case is **DISMISSED**.

**SO ORDERED.**

**PAUL GREENBERG**

Chair

**E. COOPER BROWN**

Member

**CYNTHIA L. ATTWOOD**

Acting Member