BEFORE THE INDIAN CLAIMS COMMISSION

THE MINNESOTA CHIPPEWA TRIBE, et al., ON BEHALF OF THE CHIPPEWA INDIANS OF THE MISSISSIPPI AND LAKE SUPERIOR, Plaintiffs,	)	
v.	)	Docket No. 18-C
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: November 7, 1973

Appearances:

Rodney J. Edwards, Attorney for Plaintiffs. Marvin J. Sonosky was on the brief.

Bernard M. Sisson, with whom was Assistant Attorney General Kent Frizzell, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

The Commission has previously determined in this docket that plaintiffs were the owners by recognized title to lands in Minnesota and Wisconsin, designated as Royce Area 242, and that plaintiffs ceded said lands to the United States pursuant to the Treaty of July 29, 1837, 7 Stat. 536. 19 Ind. Cl. Comm. 514 (1968). Thereafter, the Commission determined that the fair market value of Royce Area 242 was $9,875,000, and that the 1837 Treaty consideration of $870,000 was unconscionable. 26 Ind. Cl. Comm. 22 (1971).

The claim is now before the Commission for determination of the amount of defendant's payments on the claim and of gratuitous offsets which may be deducted from the award.

On August 24, 1971, defendant filed an amended answer requesting that the Commission deduct $865,696.34 as payments on the claim and $5,177.69 as gratuitous offsets. On December 6, 1971, a hearing was held before the Commission on the matter. In its proposed findings of fact filed February 1, 1972, defendant states that $827,223.79 should be deducted from the final judgment in this case as payments on the claim, and $40,699.31 should be deducted as excess payments of consideration or gratuitous offsets. Defendant changed its position twice, first, in its brief, and then in its reply brief filed August 8, 1972. Defendant's final position is that $852,940.12 should be deducted from the final judgment as payments on the claim, but that the amount claimed for excess payments of consideration should be $12,756.22 and gratuitous expenditures should total $2,851.76.

Defendant has the burden of establishing the amounts of treaty consideration distributed to plaintiffs and others as payments on the claim. The Commission previously determined that consideration under the 1837 Treaty was $870,000. 26 Ind. Cl. Comm. 22, 54. Of this amount, $700,000 was to be paid plaintiffs in cash and goods as annuities for 20 years in installments of $35,000 annually, and $170,000 was to be paid to half-breeds and in settlement of claims against the tribe.

Defendant introduced in support of its claim a 1952 accounting report prepared by the General Accounting Office, hereinafter the GAO Report. It

was supplemented by disbursement schedules from an earlier, 1946 accounting report, which was used by the Court of Claims in Mole Lake Band of Chippewa Indians v. United States, 126 Ct. Cl. 596 (1953), and by an additional disbursement schedule, a gratuity report, and selected vouchers and receipts.

Plaintiffs argue that defendant has not proved payment of the claimed treaty consideration. We disagree. Introduction of the Mole Lake disbursement schedules, which is uncontroverted by other evidence, constitutes prima facie proof that treaty consideration was properly paid by defendant. Minnesota Chippewa Tribe v. United States, Docket 18-T, 28 Ind. Cl. Comm. 103, 105 (1972).

Plaintiffs argue that the amounts paid to half-breeds and tribal creditors pursuant to Articles 3 and 4 of the 1837 treaty did not constitute payments on the claim. The Commission believes that a reading of the entire treaty establishes that the payments made pursuant to Articles 3 and 4 were occasioned by the land cession.

This case is readily distinguishable from Saginaw Chippewa Tribe v. United States, Docket 57, 30 Ind. Cl. Comm. 295 (1973). There plaintiffs argued that by the Treaty of September 24, 1819, 7 Stat. 203, payment for land ceded was made only under Article 4. Other payments set forth in other articles, plaintiffs argued, were for

concessions other than land made by the Indians in other articles of the treaty. We concluded that it was clear that there were such other concessions, and that this created an ambiguity in the treaty which must be resolved in favor of the Indians. Id. at 306. In the instant case plaintiffs have not pointed to additional concessions by the Indians for which the payments by defendant in articles 3 and 4 might have been consideration, and we find no such additional concessions in the treaty. Thus the Saginaw decision is inapplicable here. There is no indication that the payments to plaintiffs undertaken in articles 3 and 4 were in consideration of anything other than the land cession. See Nez Perce Tribe v. United States, Docket 175, 24 Ind. Cl. Comm. 429, 440-42 (1971). Moreover, the record of the treaty negotiations shows that these payments were made in response to the insistence of the plaintiffs.

The Commission therefore concludes that payments made by the United States pursuant to Articles 3 and 4 were consideration. Accordingly, the Commission has concluded that the plaintiffs' objections, with one small exception, are without merit as to the payments under Articles 3 and 4. The exception concerns $1,500 spent by defendant for a special investigatory commission. We conclude that the language of the Treaty does not authorize such expenditures, and that they are not deductible as payments on the claim.

Plaintiffs contend further that the payments under Article II can not be allowed as offsets because the evidence does not show that they were divided properly between plaintiffs' two divisions, the Lake Superior Chippewas and the Mississippi Chippewas.

The 1837 Treaty was made with the "Chippewa nation of Indians," and made no reference to the aforementioned two divisions. Neither did the treaty refer to any division in the payments. However, in 1842, plaintiffs, as the "Chippewa Indians of the Mississippi and Lake Superior," entered into another treaty with defendant by which more lands were ceded. 7 Stat. 591. In Article V of the 1842 Treaty it was specified that henceforth the annuities due under the 1837 Treaty should be divided equally between the two divisions.

Another treaty of cession was entered into between plaintiffs and defendant in 1854. 10 Stat. 1109. In Article 8 of the 1854 Treaty the two divisions agreed that henceforth the Chippewas of Lake Superior should receive two-thirds, and the Chippewas of the Mississippi should receive one-third, of all benefits deriving from any treaties prior to 1847, including the 1837 Treaty annuities.

Therefore, according to the three relevant treaties, defendant was obligated to make the first six annuity payments to plaintiffs as a single entity, the next eleven payments were to be evenly divided between the two divisions, and the final three payments were to be divided on a two-to-one ratio.

The initial appropriations to carry out the 1837 Treaty referred to plaintiffs as the "Chippewas of Mississippi." The first appropriation to mention both divisions was that for fiscal year 1846. Subsequent appropriations named both divisions.

Defendant's "representative" receipts, and another disbursement schedule, each show distribution to the separate divisions for their respective sole benefit.

Plaintiffs have made the claim that the distribution of the annuities was not in accordance with the treaties, but have introduced no evidence in opposition to that submitted by defendant. We believe that the evidence in the record establishes a prima facie case that distribution of the annuities was made in accordance with the applicable treaty provisions. (We may note that a determination that one division received money owed to another would affect not the total amount of the award, but only the distribution of the award between plaintiffs' two divisions.)

Plaintiffs have noted the statement in the GAO Report that monies appropriated to fulfill several treaties with plaintiffs were advanced together to disbursing agents. Appropriations therefore were commingled before actual disbursement. Plaintiffs conclude that defendant therefore cannot prove that the expenditures allegedly made under Article II of the 1837 Treaty did not include expenditures owing under other treaties between the parties.

The GAO Report did determine the allocation of expenditures among the various treaties, and there is no evidence challenging that allocation. Furthermore, there is uncontroverted prima facie proof that plaintiffs received all of the money reported expended under all of the treaties involved. (Moreover, no expenditure is claimed twice under different treaties, and no such allegation has been made. The accuracy of defendant allocation is therefore irrelevant.)

Review of claimed expenditures shows payments were made in excess of treaty requirements, for agricultural implements and provisions, in the sum of $12,434.97. Duplicate payments totalling $16,382.29 were made to replace goods which were lost or destroyed before receipt by Indians. These expenditures, plus the aforementioned $1500 for a special investigatory commission, must be disallowed. The total of disallowed expenditures is $30,317.26. The remaining expenditures, totalling $835,378.08, are allowable as payments on the claim.

We have considered defendant's claims for gratuitous expenditures for the benefit of plaintiffs in the total amount of $15,286.73. Plaintiffs argue that the nature of the claim and the course of dealings do not in good conscience warrant the offset of gratuities.

We have considered plaintiffs' argument in this regard, and have fully examined the nature of this claim and the entire course of dealings and accounts between the parties. We are unable to find that in good conscience any otherwise allowable gratuities for the benefit of plaintiffs should be denied. See United States v. Assiniboine Tribes of Indians

192 Ct. Cl. 679, 428 F. 2d 1324 (1970), aff'g Docket 279-A, 21 Ind. Cl. Comm. 310 (1969).

Plaintiffs argue that the expenditures claimed as gratuities by defendant for provisions for 5500 Indians should be disallowed. The expenditures occurred in three different years, and consisted of $700 (twice) and $235. Plaintiffs state, and we agree, that there is no arbitrary dollar figure which can be used to determine whether an expenditure is of tribal benefit. The test should be whether the evidence supports the conclusion that the provisions were for distribution on a tribal, as opposed to individual, basis. We have concluded on the basis of the record that the evidence does not support the conclusion that the provisions were of tribal benefit.

Finally defendant requested that the amount of $1,216.76 be deducted from the judgment in this case as a gratuitous offset. This amount represents the St. Croix Chippewas' proportionate share of the amount of $85,687.20 which allegedly was expended by the Great Lakes Consolidated Agency for the care and protection of Indian timber during the years 1949 through 1951.

Defendant introduced seven representative vouchers to support its claim for offset relief. The vouchers show that some expenditures were for administration and agency purposes. On the basis of the record, the Commission is unable to determine the proportion which was expended for administrative purposes or which was solely for tribal purposes. Since we have no basis for allocation of the expenditures, we will disallow the entire amount requested as a gratuitous offset. Quapaw Tribe of Indians

v. United States, 128 Ct. Cl. 45, 76 (1954), aff'g in part, rev'g in part, Docket 14, 1 Ind. Cl. Comm. 644 (1951).

The remaining gratuities claimed are for expenditures totalling $12,062.32, made in accordance with article II of the 1837 Treaty, but in excess of the requirements of the treaty. We have concluded on the evidence that these expenditures were of tribal benefit, and that they are deductible as gratuitous offsets. See Sioux Tribe of Indians v. United States, Docket 78, 9 Ind. Cl. Comm. 538, 549-51 (1961), aff'd 161 Ct. Cl. 413, 315 F. 2d 378, cert. denied 375 U.S. 825 (1963).

In summary, the Commission concludes that the amount of $835,378.08 may be deducted from the gross judgment in this case as a payment on the claim. The Commission further concludes that the amount of $12,062.32 may be deducted from the gross judgment for gratuitous expenditures made by defendant for the benefit of plaintiffs. Accordingly, the Commission will enter a final judgment in this case awarding plaintiffs $9,027,559.60. According to our earlier decision, the plaintiffs have agreed that one third of the total judgment is in favor of the Chippewas of the Mississippi and two thirds are in favor of the Chippewas of Lake Superior.

John T. Vance, Commissioner

We Concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner