

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

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings of fact numbered 1 through 11, previously entered in this docket, 19 Ind. Cl. Comm. 514 (1968), and findings of fact numbered 12 through 26, previously entered herein, 26 Ind. Cl. Comm. 22 (1971).

I. Payments on the Claim

27. Amount of Consideration Promised Plaintiffs Under the 1837 Treaty. The United States promised to pay the amount of \$870,000 as consideration to plaintiffs for the cession of Royce Area 242, pursuant to the Treaty of July 29, 1837, 7 Stat. 536. The 1837 Treaty was executed by the United States and "the Chippewa nation of Indians". The Commission has determined that the Lake Superior and Mississippi Chippewas were the only parties having an interest in the treaty. 26 Ind. Cl. Comm. 22, 57 (1971). The treaty was proclaimed June 15, 1838.

Pursuant to Article 2 of the 1837 Treaty, defendant promised to plaintiffs the sum of \$700,000 in goods and coin, as a 20-year annuity

in amounts of \$35,000 per annum, as follows:

	<u>Per annum</u>	<u>Total</u>
Cash annuity	\$ 9,500	\$190,000
Annuity goods	19,000	380,000
Blacksmiths and shops	3,000	60,000
Farmers, tools and seeds	1,000	20,000
Provisions	2,000	40,000
Tobacco	<u>500</u>	<u>10,000</u>
	\$35,000	\$700,000

Pursuant to Article 3, defendant promised to distribute \$100,000 to "half-breeds of the Chippewa nation . . ." Under Article 4, defendant promised to pay tribal creditors the total of \$70,000 in liquidation of their "just claims" against plaintiffs. Defendant provided for these payments in the treaty in response to the insistence of plaintiffs during the treaty negotiations. (PL Ex. 67, p. 3; PL Ex. 68, p. 10 et seq.; PL Ex. 70, p. 6.)

28. Division of 1837 Treaty Annuities Among Plaintiffs. The 1837 Treaty did not specify the manner in which the annuities were to be distributed to the two divisions of plaintiffs, i.e., the Lake Superior Chippewas and the Mississippi Chippewas. Annuity payments would appear to have been made mainly to Mississippi Chippewas during the first few years after execution of the 1837 Treaty, for Article V of the Treaty of October 4, 1842, 7 Stat. 591, which was proclaimed on March 23, 1843, stated that:

. . . . whereas the bands bordering on Lake Superior, have not been allowed to participate in the annuity payments of the treaty made with the Chippewas of the Mississippi, at St. Peters July 29th 1837, and whereas all the unceded lands belonging to the aforesaid Indians, are hereafter to

be held in common, therefore, to remove all occasion for jealousy and discontent, it is agreed that all the annuity due by the said treaty, as also the annuity due by the present treaty, shall henceforth be equally divided among the Chippewas of the Mississippi and Lake Superior, party to this treaty, so that every person shall receive an equal share.

The manner in which the 1837 Treaty annuities were to be divided respectively among the Lake Superior and the Mississippi Chippewas was changed again, by Article 8 of the Treaty of September 30, 1854, 10 Stat. 1109, which was proclaimed on January 29, 1855. The article reads as follows:

It is agreed, between the Chippewas of Lake Superior and the Chippewas of the Mississippi, that the former shall be entitled to two thirds, and the latter to one third, of all benefits to be derived from former treaties existing prior to the year 1847.

According to pertinent agreements, therefore, the \$35,000 annuity should have been paid as follows over the course of the 20 years:

<u>Payments</u>	<u>Years</u>	<u>Lake Superior</u>	<u>Mississippi</u>	<u>Total</u>	
1-6	1838-43	---	\$35,000*	---	\$210,000
7-17	1844-54	\$17,500.00	\$17,500.00		385,000
18-20	1855-57	23,333.33	11,666.67		<u>105,000</u>
					\$700,000

* Due to plaintiffs as an entity.

29. Disbursements Claimed by Defendant as Payments on the Claim.

Defendant introduced an accounting report prepared by the General Accounting Office, dated March 27, 1952 (Def. Ex. 1-S), hereinafter referred to as the GAO Report. It was supplemented by disbursement schedules from an accounting report dated January 24, 1946 (Def. Ex. 2-S), which was

prepared by the GAO for use by the Court of Claims in Mole Lake Band v. United States, Docket No. 45162 (later reported as 126 Ct. Cl. 596 (1953)). This report will be referred to as the Mole Lake Report.

In addition, defendant submitted another disbursement schedule, a gratuity report, and "representative" receipts and vouchers.

The GAO Report states that defendant distributed to plaintiffs and others amounts in goods and coin aggregating \$865,696.34 as 1837 Treaty consideration (pp. 15-16, 32). Accordingly, in its amended answer filed August 24, 1971, defendant claimed payments on the claim in the amount of \$865,696.34.

In its proposed findings of fact, filed February 1, 1972, defendant claimed only \$827,223.79 of the aforesaid sum as payments on the claim. However, defendant changed its position again in its reply brief filed August 8, 1972, and now claims \$852,940.12 of the total disbursements as payments on the claim, and the remaining \$12,756.22 as overpayments of consideration.

30. Allocation of Expenditures. The GAO Report states (p. 14) that monies appropriated to fulfill several treaties between plaintiffs and defendant were advanced to disbursing officers together, making it ". . . impracticable to set out a balanced statement of money appropriated for each treaty separately." However, defendant's expert witness testified that the examiners preparing the report ". . . were able to separate the monies disbursed according to the various treaties involved . . ." (Tr., p. 13.) The GAO Report does allocate expenditures by treaty in balanced statements. (Statements 4, 5 and 6, pp. 20-31.)

31. Distribution of 1837 Treaty Consideration. The Mole Lake Report contains distribution schedules numbered 14 through 18 showing payments made by defendant toward the consideration under the 1837 Treaty, as follows:

Art. II*

(a) Cash annuity	\$185,408.46
(b) Annuity Goods	362,902.34
(c) Blacksmiths	45,633.04
(d) Farmers	13,972.87
(e) Provisions	59,262.79
(f) Tobacco	9,307.08
(g) Agricultural implements and equipment	4,400.78
(h) Grist and saw mills	1,068.84
(i) Guns, ammunition and traps	11,526.40
(j) Household equipment	1,267.49
(k) Education	625.00

Art. III

Payments to halfbreeds	100,000.00
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Arts III and IV

Commission to investigate claims	1,500.00
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Art. IV

Payment of tribal debts	<u>68,821.25</u>
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Total	\$865,696.34
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* The letter designations are the Commission's: (a) through (f) correspond to payments 1 through 6 in article II of the 1837 Treaty.

The distribution schedules prepared by defendant constitute prima facie proof that treaty consideration was paid to Indian tribes. Since no evidence was introduced which controverts the fact of these expenditures, the Commission concludes that defendant distributed the amount of \$865,696.34 as indicated in their reports.

32. Expenditures of Special Investigatory Commission. Article IV of the 1837 Treaty directed defendant to pay \$70,000 in satisfaction of creditors' claims against plaintiffs. The article specified payment of \$58,000 to three of plaintiffs' creditors in satisfaction of their outstanding obligations. Claims of other tribal creditors were to be liquidated by defendant by expending another \$12,000.00. In execution of Article IV of the 1837 Treaty, defendant established a special investigatory commission to examine and liquidate outstanding tribal debts. The special commission was reimbursed for their expenses in the total of \$1,500. Defendant requests that \$1,178.75 of the \$1,500 be allowed as a payment on the claim pursuant to Article IV, and that the remaining \$321.25 be allowed as a gratuitous offset. (The \$1,178.75 represents the difference between the \$70,000 provided by Article IV for payment of creditors' claims, and the \$68,821.25 spent for that purpose.)

The language of the 1837 Treaty is specific. The United States accepted the obligation and duty to settle and liquidate the claims of plaintiffs' creditors in amounts aggregating \$70,000. The treaty does not authorize reimbursement of the costs of the special investigatory

commission from tribal or treaty funds. The \$1,500 expenses of the special commission are not deductible as a payment on the claim, nor as a gratuity.

33. Expenses Not Specified Under Article II. Defendant in its Requested Findings of Fact and Brief on Offsets stated that there were listed in the Mole Lake Report payments for items costing \$18,263.51 which seemed "to have no relation to the consideration required by said treaty". These expenditures were for agricultural implements and equipment; grist and saw mills; guns, ammunition and traps; and, household equipment. (See finding 31, supra, under article II, items (g) through (k).) Defendant originally proposed that these expenditures be allowed as gratuities or "additional consideration".

Plaintiffs argue that the items were not authorized by the 1837 Treaty, and that they must therefore be disallowed as consideration paid under the treaty.

Defendant, in its Objections to Plaintiffs' Proposed Findings of Fact, reconsiders its earlier position. Defendant notes that the category of annuity goods was short \$17,097.66 of what was required by the treaty. (See findings 27 and 31.) Defendant argues that the expenditures of \$1,068.84 for grist and saw mills, of \$11,526.40 for guns, ammunition and traps, and of \$1,267.49 for household equipment, a total of \$13,862.73, qualify as "annuity goods", and should be deducted as such.

"Goods" are usually considered wares or commodities. Grist and saw mills would not fit such a definition, and therefore may not be allowed as deductions for annuity goods. The remaining \$12,793.89 in expenditures do qualify as "annuity goods" and are allowable.

Defendant further notes that the category of "farmers" under article II of the treaty was \$4,027.13 short of the amount required by the treaty. Under article II expenditures for "farmers" can include expenditures for farm implements and grain or seed. Defendant argues that the \$4,400.78 spent for agricultural implements are allowable deductions, up to the shortfall in the "farmers" category of article II of the treaty. We agree. That leaves \$373.65 spent for agricultural implements which must be disallowed.

Plaintiffs in addition object to the \$625 expenditures for "education". However, Article II of the 1837 Treaty provided:

If at the expiration of one or more years the Indians should prefer to receive goods, instead of the nine thousand dollars agreed to be paid to them in money, they shall be at liberty to do so. Or, should they conclude to appropriate a portion of the annuity to the establishment and support of a school or schools among them, this shall be granted them.

The \$625 expended for education is therefore allowable as an expenditure charged against annuity cash.

We have disallowed, of the foregoing expenditures, \$1,068.84 for grist and saw mills, and \$373.65 for agricultural implements, a total of \$1,442.49.

34. Excess Provisions. The amount expended for provisions under the treaty was \$59,262.79, although only \$40,000 was required by the treaty. Thus there were expenditures of \$19,262.79 in excess.

Under the portion of Article II cited in the preceding finding of fact, provisions could be provided plaintiffs in lieu of cash. In addition, provisions could be provided as "annuity goods". The respective

shortages in expenditures in these two categories were \$3,966.54 and \$4,303.77. Therefore \$8,270.31 of the excess expenditures for provisions are allowable as payments under the treaty, while \$10,992.48 of such expenditures are disallowed.

35. Payments to Replace Tribal Funds and Goods. According to the GAO Report (p. 12), Congress appropriated \$1,382.29 ". . . for an amount retained by . . ." a sub-agent, and \$15,000 to replace treaty goods ". . . destroyed by fire at the agency . . ." Since this \$16,382.29 was to replace goods which had not been received by the Indians, defendant may not be credited for these expenditures.

36. Total of Payments on the Claim. The sum of the expenditures by defendant which we have disallowed is \$30,317.26, as follows:

Finding 32	\$ 1,500.00
" 33	1,442.49
" 34	10,992.48
" 35	16,382.29

This sum subtracted from the total expenditures claimed by defendant leaves a figure of \$835,378.08, which we allow as payments on the claim.

37. Distribution of Payments Among Plaintiffs. As we have noted above (finding 28), starting with payments for fiscal year 1844, plaintiffs' two divisions were to divide the payments according to formula determined by treaty.

The initial appropriations under the 1837 Treaty referred to "carrying into effect the treaty with Chippewas of Mississippi", and the GAO report specified that the expenditures were in accordance with the 1837 Treaty.

At the time, the term "Chippewas of Mississippi" was used to refer to the joint entity composed of plaintiffs' two divisions.

The Act of March 3, 1845, 5 Stat. 766, was the first appropriation to carry out the 1837 Treaty that named the Chippewas of Lake Superior along with the Chippewas of the Mississippi. That appropriation was for fiscal year 1846. Subsequent appropriations named both divisions.

In addition, there is in evidence the first page of a receipt dated October 6, 1848, signed by Lake Superior Chippewas, acknowledging payment of cash annuities.

Disbursement Schedule No. 18 in the Mole Lake report (p. 217) shows distribution of 1837 Treaty annuities in fiscal year 1858 to the Lake Superior Chippewas for their sole benefit. Disbursement Schedule No. 6 (Def. Ex. 4-S, not otherwise identified) shows distribution of 1837 Treaty annuities to the Mississippi Chippewas for their sole benefit in fiscal years 1857 through 1859, and in fiscal year 1863.

There is no allegation or evidence that plaintiffs did not receive the expenditures reported in the GAO and Mole Lake Reports.

II. Gratuities

38. Overpayment of Treaty Annuities as Gratuities. Defendant supplied provisions to plaintiffs in accordance with article II of the 1837 Treaty in excess of the requirements of the treaty in the amount of \$10,993.48. (Finding 34, supra.) The excess provisions are accounted for by the extraordinary quantity furnished plaintiffs in 1847. (Def. Ex. 2-S, p. 208.) Plaintiffs at that time numbered about 5,300 Indians.

We conclude that an expenditure of that amount in one year was of a size and nature that would constitute a tribal benefit, and that it may be deducted as a gratuity.

Defendant in addition provided agricultural implements in excess of the requirements of article II of the treaty in the amount of \$373.65. The record is unclear concerning the agricultural implements provided in excess of treaty requirements. Lacking further information, we cannot allow these expenditures as gratuities.

Defendant also claimed \$1,068.84 for grist and saw mills as an article II expense. We concluded that expenditures for mills were not properly allowable as treaty expenses. (Finding 33, supra.) However, the expenditure for the mills, which was made in 1856 (Def. Ex. 2-S, p. 215), we conclude was of a size and nature that would constitute a tribal benefit, and therefore may be deducted as a gratuity.

The total gratuities allowed for claimed excess expenditures under article II is therefore \$12,062.32.

39. Additional Provisions Claimed as Gratuities. Receipts in evidence (Def. Ex. 15-S) and a General Accounting Office report re the "Chippewa Tribe of Indians and Various Bands and Divisions thereof in Michigan, Minnesota, and Wisconsin" (Def. Ex. 5-S), show that in both 1841 and 1842 plaintiffs' chiefs and headmen acknowledged receipt of \$700 in provisions, for a total of \$1400. In 1848 another \$235 in provisions were distributed to plaintiffs. Plaintiffs at that time

numbered about 5,300 Indians. We conclude that the expenditures for provisions totalling \$1,635.00 were not of tribal benefit and are not allowable as gratuities.

40. Expenditures for Care and Protection of Timber as Gratuities.

During the years 1949 through 1951, the St. Croix Chippewas, a constituent of the Lake Superior division, were under the jurisdiction of the Great Lakes Consolidated Agency. Defendant claims that during those years the agency expended \$85,687.20 for care and protection of Indian timber. Defendant relies on a GAO accounting report dated September 26, 1963 (Def. Ex. 5-S). Disbursement schedules 297-300 show the claimed expenditures.

In 1945 the population of the St. Croix Chippewas, who are a part of plaintiff tribes, was 241, or 1.42% of the total Indian population of 16,928 within the agency. The proportional expenditure for which offset relief is requested is therefore \$1,216.76.

Defendant has introduced seven representative vouchers to support its claim for offset relief (Def. Ex. 14-S). A study of the vouchers shows that money from these funds was used for administrative and agency purposes. The vouchers show that reimbursement was requested from the appropriation "control of forest pests" for the cost of oil used in a motor vehicle owned by the United States Government. Reimbursement for the cost of points, point guards and spark plugs for use in another motor vehicle owned by the United States was made from the appropriation "resources management". Payment of the agency's electric bill was made

from the same appropriation. Other vouchers are for car repairs and telephone bills.

Since the Commission is unable to determine the amount of percentage of funds used for agency and administrative purposes and the amount of funds used for tribal benefits, none of the expenditures claimed as tribal benefits may be offset.

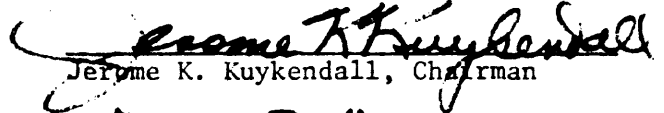
41. Total of Gratuities. The sum of the gratuities claimed by defendant which we have allowed is \$12,062.32, per finding 38.

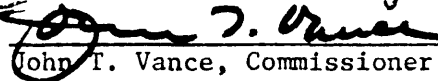
CONCLUSION

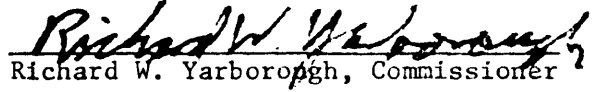
On the basis of the foregoing findings of fact and for the reasons expressed in the accompanying opinion, the Commission finds and concludes that: defendant made payments on the claim for the benefit of plaintiffs in accordance with the 1837 Treaty in the amount of \$835,378.08; defendant made gratuitous expenditures for the benefit of plaintiffs in the total amount of \$12,062.32.

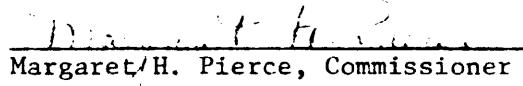
Accordingly, on the basis of the entire record in this case, we conclude that the amount of \$847,440.40 may be deducted from the gross award previously entered herein of \$9,875,000.00. The Commission will therefore enter a final judgment awarding plaintiffs \$9,027,559.60. In accord with our earlier determination, 26 Ind. Cl. Comm. at 58, one third

of the total judgment is in favor of the Chippewas of the Mississippi
and two-thirds in favor of the Chippewas of Lake Superior.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner