BEFORE THE INDIAN CLAIMS COMMISSION

THE SIX NATIONS, by Dean Williams, et al.; THE SENECA NATION OF INDIANS; THE CAYUGA NATION, by Stewart Jamison, et al.; THE ONEIDA NATION, by Julius Danforth, et al.; THE SENECA-CAYUGA TRIBE OF OKLAHOMA; THE ONEIDA NATION OF NEW YORK; THE ONEIDA TRIBE OF INDIANS OF WISCONSIN; THE TUSCARORA NATION,	)	Docket No. 84
THE STOCKBRIDGE MUNSEE COMMUNITY, THE STOCKBRIDGE TRIBE OF INDIANS AND THE MUNSEE TRIBE OF INDIANS, by Arvid E. Miller and Fred L. Robinson,	)	Docket No. 300-B
Plaintiffs, v. THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: December 28, 1973

Appearances:

Paul G. Reilly and Marvin S. Chapman, Attorneys for Plaintiffs, Louis L. Rochmes was on the brief.

M. Edward Bander, with whom was Mr. Assistant Attorney General Kent Frizzell, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Blue, Commissioner, delivered the opinion of the Commission.

The Commission now has before it the question of allowable offsets against an interlocutory award previously entered by the Commission in this case. 23 Ind. Cl. Comm. 376 (1970). The claims were brought

pursuant to Section 2, Clause 2, of the Indian Claims Commission Act, 25 U.S.C. §70a, and were for an accounting by the United States of monies payable or goods distributable under 21 treaties between the United States and one or more of the plaintiff tribes.

The plaintiffs eventually confined their claims to alleged deficiencies in the payments required under two agreements with the United States, i.e., an unpublished article dated April 23, 1792 (see Finding 3, 23 Ind. Cl. Comm. at 390), and the Treaty of November 11, 1794, 7 Stat. 44. The Seneca Nation of Indians, one of the plaintiffs in Docket 84, filed an additional claim with regard to the United States failure to comply with provisions of a private agreement entered into on August 31, 1826, and known as the Treaty of Buffalo Creek. Finding 8, 23 Ind. Cl. Comm. at 396.

On August 11, 1970, the Commission awarded the plaintiffs $4,500 on the basis of the 1792 Article, and $32,318.42 on the basis of the 1794 Treaty, for a total of $36,718.42. The Commission awarded the Seneca Nation the sum of $25,399.50 based on the 1826 agreement.

The offset trial was held on December 6, 1971. Mr. Benjamin Spaulding, a clerk in the office of the Indian Tribal Claims Branch, General Services Administration, testified for the United States. The United States also submitted a series of representative vouchers, appropriation acts and annual reports of the Commissioner of Indian Affairs to substantiate the offset claims. The plaintiffs submitted several annual reports of the Commissioner of Indian Affairs.

On May 5, 1972, the defendant filed its requested findings of fact and brief on offsets. Therein the defendant claims disbursements of $12,112.38 for the Six Nations, and disbursements of $2,608.50 for the Stockbridge Munsee, which it seeks to offset against the awards of $36,718.42 to the plaintiffs. The defendant also claims disbursements of $12,397.67 which it seeks to offset against the award of $25,399.50 to the Seneca Nation of Indians.

On November 14, 1972, the plaintiffs filed their brief on offsets. Therein, the plaintiffs made general and specific objections, on various grounds, to the claimed offsets.

The plaintiffs' first general objection opposes the offsets claimed by the United States against the Stockbridge Munsee Tribe for expenditures for that tribe made by the defendant in 1839 and 1865. This objection is based on the Commission's decision in Emigrant New York Indians v. United States, Docket No. 75, 13 Ind. Cl. Comm. 560 (1964), aff'd,177 Ct. Cl. 263 (1966), wherein the Commission considered the gratuitous payments made by the United States to the plaintiffs therein after June 25, 1832. The plaintiffs herein assert that since the Stockbridge Munsee Tribe was one of the plaintiffs in Emigrant, the United States is barred by the doctrine of res judicata from asserting in the instant case offset claims against the Stockbridge Munsee for disbursements made after June 25, 1832.

The defendant contends that the offsets claimed against the Stockbridge Munsee Indians herein were not adjudicated in the Emigrant

case. Furthermore, the defendant states that these expenses are unrelated to those adjudicated in Emigrant, and that the defendant was not prohibited by the Commission therein from asserting other claims at a later date.

We have considered the contentions of the two parties, and have concluded that defendant's point is well taken. The Emigrant decision was issued in 1964. The expenditures claimed here were first claimed before the Commission as disbursements in the instant docket in fulfillment of treaty obligations pursuant to the 1794 treaty with the Six Nations, 7 Stat. 44. In 1970 we disallowed these expenditures as being improper, under the terms of the 1794 treaty, in that they were not the type of expenses contemplated therein. 23 Ind. Cl. Comm. 376, 380-81. On the basis of that ruling by the Commission, defendant has now claimed these expenditures as gratuities here. They were not raised in Emigrant, nor could they have been, and plaintiff's contention is rejected.

The second general objection made by the plaintiffs is to the offsets claimed by the United States for disbursements expended on behalf of the Seneca-Cayuga Tribe of Oklahoma. The plaintiffs contend that such disbusements are not chargeable against the award in favor of the Seneca Nation, because the Seneca Indians who later formed part of the Seneca-Cayuga Tribe of Oklahoma were not members of the Seneca Nation when the claim arose upon which the judgment is based. Furthermore, the plaintiffs argue that the disbursements made to the Seneca-Cayuga Tribe of Oklahoma are not allowable against the remaining awards, because such disbursements

exceed the interest of the Seneca-Cayuga Tribe of Oklahoma in those awards.

The award to the Seneca Nation is based on the 1826 Treaty of Buffalo Creek. At the time of the 1826 Treaty, the ancestors of the Seneca Nation resided on reservation in New York, while the ancestors of the Seneca-Cayuga Tribe of Oklahoma lived on reservations in Ohio. The latter made treaties of cession for their Ohio lands in the 1830's. These treaties are the subject of claims by the Seneca-Cayuga Tribe of Oklahoma in Docket 341. In 1826 these two tribes were separate and independent of each other. Therefore, defendant's expenditures for the Seneca-Cayuga Tribe of Oklahoma cannot be credited to the United States against the award made to the Seneca Nation under the 1826 Treaty. (These expenditures may be claimed as offsets against any award in Docket 341, as discussed below.)

The plaintiffs also oppose the allowance of the claimed expenditures for the Seneca-Cayuga Tribe of Oklahoma against the awards based on the 1792 and 1794 agreements, because of the small size of the Seneca-Cayuga Tribe in relation to the other beneficiaries of these awards.

The total award under the 1792 and 1794 agreements was $36,718.42, while the offsets claimed by the United States against the Seneca-Cayuga Tribe of Oklahoma, who plaintiffs allege number less than one-tenth of the collective plaintiffs herein, amount to $20,608.44. If the Commission were to allow this amount to be offset herein, the effect would be to unfairly deprive the nonbeneficiaries of the offsets of a substantial portion of the award to which they are entitled. See Red Lake Pembina

and White Earth Bands v. United States, 164 Ct. Cl. 389, 399 (1964), aff'g in part, rev'g in part, Dockets 18-A, et al. 9 Ind. Cl. Comm. 315, 457 (1961).

If any of these claimed offsets are otherwise allowable, they may be asserted by the defendant in Docket 341, in which the Seneca-Cayuga Tribe of Oklahoma is the sole claimant.[1/] The Commission has been granted discretion under the Indian Claims Commission Act in considering and deducting gratuities as offsets. See United States v. Pueblo de Zia, 200 Ct. Cl. 601, 620 (1973), aff'g in part, rev'g in part, Docket 137, 26 Ind. Cl. Comm. 218 (1971). We therefore conclude that the offsets of $20,608.44 claimed against the Seneca-Cayuga Tribe of Oklahoma must be denied herein without prejudice.

The final general objection made by the plaintiffs is that none of the offsets, whether against the Six Nations or against the Seneca Nation of Indians, are allowable because they are not warranted by the course of dealings between the United States and the claimants.

The first treaty entered into by the United States with Indians after the Revolution was in 1784 with the Six Nations. 7 Stat. 15. The plaintiffs contend that quotes of the United States treaty commissioners, taken from the minutes of the treaty negotiations with the Six Nations, indicate that the United States did not deal with the Six Nations in a peaceful and amicable manner. However, four of the Six Nations had

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1/ See Seneca-Cayuga Tribe of Oklahoma v. United States, Dockets 341-A and 341-B, 29 Ind. Cl. Comm. 262 (1972), in which plaintiffs won an interlocutory award of $42,021.12, less allowable offsets.

violated two treaties of neutrality into which they had entered with the United States in 1775 and 1776. See Oneida Nation v. United States, Docket 301, 20 Ind. Cl. Comm. 337, 346 (1969). These tribes had participated with Great Britain in a war against the United States. Under such circumstances it was reasonable for the United States to treat them as a subdued people.

With respect to the course of dealings between the Seneca Nation and the United States, the plaintiffs argue that offsets against the Seneca Nation should not be allowed, because of the small consideration that the Seneca Nation received for the 1788 Phelps-Gorham purchase. But the Court of Claims, in Seneca Nation of Indians v. United States, 173 Ct. Cl. 917, 920 (1965), aff'g Dockets 342-A and 368-A, 12 Ind. Cl. Comm. 755 (1963), held that the United States had no part in the Phelps-Gorham purchase, and that since the purchase antedated the first Trade and Intercourse Act, 1 Stat. 137 (1790), the United States was not accountable for the bargain.

The plaintiffs also allege that as to subsequent treaties, the United States intervened to the disadvantage of the Seneca Indians. However, the Commission has fully examined the nature of the claim and the course of dealings and accounts between the plaintiffs and defendant, and we are unable to find in good conscience that they warrant our denying defendant's claimed offsets. See Red Lake, Pembina & White Earth Bands v. United States, supra, at 395-96; see also United States v. Pueblo de Zia, supra, at 617 et seq. 372 F. 2d 980 (1967), aff'g in part, rev'g in part,

Docket 316, 15 Ind. Cl. Comm. 628 (1965).

We now turn to a consideration of the specific expenses claimed by the defendant as offsets, which have not already been denied for the reasons discussed above.

EXPENDITURES FOR PROVISIONS FOR THE SIX NATIONS

Defendant has claimed $2,605.92 in offsets, for disbursements expended on provisions made during the years 1820-1836 for the benefit of the plaintiff Six Nations. The defendant submitted in evidence representative vouchers to prove that the disbursements were expended by defendant on behalf of the Six Nations.

The plaintiff contends that the entire offset should be disallowed, because the total amount of the expenditures, which were made over a seventeen year period, was too small to constitute a tribal benefit.

The expenditures were predominantly for provisions distributed to the plaintiffs either at council meetings, or at the distribution of annuities. The Commission has ruled that expenditures for provisions distributed at council meetings are allowable as gratuitous offsets if it is shown that the meeting did not benefit the United States and did benefit the Indians. If it is unclear who benefited, then the expenditure must be disallowed. In this case, in the absence of evidence concerning the purpose of the meetings, it is unclear who benefited from them. We therefore deny the expenditures. See Miami Tribe of Oklahoma v.

United States, Dockets 67, et al., 5 Ind. Cl. Comm. 494, 506, 510, (1957), aff'd in part, rev'd in part, 146 Ct. Cl. 421 (1959).

Provisions given out during the distribution of annuities are considered agency expenses. Absentee Delaware Tribe v. United States, Docket 337, 12 Ind. Cl. Comm. 404, 414-15 (1963).

The remaining expenditures were lacking in explanation, and were small in size, and therefore are disallowed as not being of tribal benefit.

Thus, on the basis of the evidence, the defendant's expenditures for provisions are disallowed as not being of tribal benefit.

EXPENDITURES FOR SENECA AND STOCKBRIDGE INDIAN DELEGATIONS IN 1839, 1840 and 1875

The defendant claims an offset of $789.23 for disbursements made to Seneca Indian delegations during the years 1839 and 1840. In support thereof, defendant submitted in evidence representative vouchers to prove that these expenditures were made on behalf of the Seneca Nation.

These delegation expenditures were incurred by the Senecas in an attempt to protest the ratification of an 1838 treaty with the United States.

The United States had the responsibility of insuring that the 1838 treaty represented the wishes of the majority of the Seneca Nation. That the United States failed to meet this responsibility is evidenced by the 1842 treaty with the Seneca Nation, in which the United States agreed to modify the major provisions of the 1838 treaty.

Since the Seneca delegation expenses were necessitated by the United States' failure to conclude a representative treaty in 1838, the Commission does not believe that these expenditures were made for the tribal benefit in the usual sense. Accordingly, this item must be disallowed as an offset. Emigrant New York Indians, supra, at 569.

The defendant claims an additional offset of $1,160.50 for the 1839 expenses of a delegation of Stockbridge Munsee and Seneca Indians. In support thereof, defendant submitted in evidence an appropriation act of March 3, 1829, a number of receipts, and a controller's certificate from the same year.

These additional expenses are also disallowed, as were the other 1839 Seneca delegation expenses, because they were made in protest of treaties improperly negotiated, and thus the expenditures did not constitute a tribal benefit in the usual sense.

Defendant's final claim for the allowance of delegation expenses is for $79.64 to cover the expenses of a Seneca Indian delegation that visited Washington in 1875. Since the defendant has no evidence to show that this expense was made for the tribal benefit, it is disallowed.

EXPENDITURES TO INVESTIGATE MARL DEPOSITS FOR THE SIX NATIONS, 1942

The defendant claims an offset of $86.65 for the investigation of marl deposits in the year 1942. In support thereof, defendant submitted

in evidence an appropriation act of June 18, 1940, and a controller's voucher approved on March 3, 1942, for $86.65.

No evidence or explanation was offered by the United States to show the purpose of this expenditure, or how it constituted a tribal benefit. Accordingly, this claimed offset is disallowed.

EXPENDITURES FOR BOARD AND CARE OF ORPHANS FOR THE SIX NATIONS, 1875-1879

Defendant has claimed an offset against the Six Nations of $4,000.00 for board and care of orphans during the years 1875-1879. In support thereof, defendant has submitted a representative voucher, dated August 21, 1875. This exhibit, which is a spending authorization, indicates that expenditures were authorized for clothing and other articles for orphans and destitute Indian children. This expense was for individual indigent Indians. Accordingly, this item does not constitute a tribal benefit, and the offset is disallowed. See Washoe Tribe v. United States, Docket 288, 24 Ind. Cl. Comm. 107, 115 (1970).

EXPENDITURES FOR INDIAN DELEGATIONS FOR THE SIX NATIONS, 1842-1905

Defendant claims an offset in the amount of $5,340.17 for the expenses of Six Nations Indian delegations for the years 1842-1905.

Defendant submitted evidence and receipts showing that these expenditures were made for delegations engaged in tribal business for the benefit of the tribe. Accordingly, we allow $5,340.17 as an offset against the award to the plaintiffs.

EXPENDITURES FOR PROVISIONS FOR THE STOCKBRIDGE MUNSEE, 1865

Defendant claims an offset in the amount of $1,448 for expenditures in 1865 for provisions for the Stockbridge Munsee Indians on the Menominee Reservation.

Defendant submitted evidence showing that the expenditures werepredominantly for sizable quantities of flour and beef such as would constitute a tribal benefit. We accordingly allow $1,448 as an offset against the award to the plaintiffs.

CONCLUSION

We allow the offset of $5,340.17 for delegation expenses of the Six Nations, which are discussed above and described with particularity in finding of fact 16, and the offset of $1,448 for expenditures for provisions for the Stockbridge Munsee Indians,

described with particularity in finding of fact 17. The offsets allowable, therefore, total $6,788.17.

In our interlocutory order of August 11, 1970, we awarded the plaintiffs $36,718.12, less allowable offsets. In addition, we ordered that the Seneca Nation of Indians should recover $25,399.50, less allowable offsets.

The plaintiffs herein are thus entitled to a net final award in the amount of $29,930.25, derived as follows:

Interlocutory award	$36,718.42
Allowable offsets	6,788.17
Final Award	$29,930.25

In addition, we have disallowed all offsets claimed against the award to the Seneca Nation of Indians and therefore the Seneca Nation of Indians is entitled to an award of $25,399.50.

A final judgment in both these amounts is entered today.

Brantley Blue, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner