

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

Decided: December 28, 1973

ADDITIONAL FINDINGS OF FACT

This case is now before the Commission on the question of offsets allowable against an interlocutory award entered in favor of the plaintiffs. For reasons expressed by the Commission in the accompanying opinion and proposed findings of fact, certain categories of expenditures claimed as offsets by the defendant have been disallowed herein. On the basis of the entire record herein, the Commission finds the following facts, which are supplemental to findings of fact numbered 1 through 11 previously entered herein.

12. Expenditures for Provisions, 1820-36. The defendant claims expenditures of \$2,605.92, made during the years 1820-1836, for provisions for the benefit of the Six Nations. Various provisions were purchased, predominantly bread, pork, beef, and flour.

The expenditures were for the most part for provisions delivered to the Indians while in council, or at the distribution of annuities. There is no indication of the nature of the council meetings, or evidence that the meetings were of benefit to the Indians alone, and not to the Government as well. Expenditures for provisions supplied during distribution of annuities is an administrative expense.

The remaining expenditures for provisions were of small amounts (\$50 maximum), with no evidence of the occasion for their distribution, or to support the supposition that they were of benefit to the tribe.

We therefore conclude on the basis of the record, and for reasons expressed in the opinion, that the expenditures for provisions must be disallowed as offsets.

13. Expenditures for Seneca & Stockbridge Munsee Indian Delegations in 1839, 1840 and 1875.

(a) The defendant claims expenditures totalling \$789.23 for the benefit of the Seneca Nation during the years 1839 and 1840. The defendant submitted evidence to prove the disbursements, and the plaintiffs do not contest the fact of the expenditures. The expenditures were to pay the costs of delegations of Seneca Indians who visited Washington to protest against the ratification of an 1838 treaty entered into between the Senecas and the United States. 7 Stat. 550.

The plaintiffs challenge the allowance of these delegation expenses as an offset on the grounds that the 1838 treaty was tainted with fraud and duress. But the Commission rejected this contention in Seneca Nation v. United States, Dockets 342-A and 368-A, 12 Ind. Cl. Comm. 755, 791 (1963).

However, the 1838 treaty had the assent of only part of the Seneca Tribe. As a consequence, Indian delegations went to protest the treaty, and a new treaty was negotiated in 1842 with the Senecas. 7 Stat. 586. The 1842 treaty modified the 1838 treaty, by allowing the Senecas to retain two reservations surrendered in 1838, and by eliminating the requirement that the entire tribe move to Kansas. See Seneca Nation, supra, at 776.

For reasons expressed in the accompanying opinion, we disallow this item as a gratuitous offset.

(b) The defendant claims \$1,160.50 for the 1839 "expenses of Seneca and Stockbridge Munsee delegation." The Stockbridge Munsee were protesting their proposed westward movement by the 1839 Stockbridge-Munsee Treaty, 7 Stat. 580, and the Senecas were presumably protesting the aforementioned 1838 treaty. The expenditure of \$1,160.50 for the Seneca and Stockbridge Munsee delegation is disallowed for the reasons stated in (a) above.

(c) The defendant claims allowance of an offset for an expenditure of \$79.64 for the expenses of a Seneca Indian delegation that visited Washington in 1875. Since the defendant has not given an explanation

for the trip, or shown that this expense was of tribal benefit, it is disallowed.

14. Expenditures to Investigate Marl Deposits for the Six Nations, 1942. The defendant claims an expenditure of \$86.65 for the investigation of Marl deposits during the year 1942. In proof thereof, the defendant submitted a comptroller's voucher for \$86.65, dated March 3, 1942, for the services of one G. R. Mansfield in an investigation, sponsored by the Geological Survey, of Marl deposits on the Cattaraugus Reservation, and an authorization, dated January 20, 1942, from the Office of Indian Affairs in connection therewith. The defendant also submitted an appropriation act, dated June 18, 1940, which authorized, among other things, the general support of Indians and the collection of money from individual Indians for services performed for them.

No evidence was presented to explain the purpose of this expenditure or to show that it was for the benefit of the entire tribe. Accordingly, this claimed offset is disallowed.

15. Expenditures for Board and Care of Orphans for the Six Nations, 1875-1879. The defendant claims expenditures on behalf of the Six Nations for board and care of Indian orphans at the Thomas Orphan Asylum during the years 1875 through 1879. In support thereof, the defendant submitted a representative voucher, dated August 21, 1875, which indicates that the orphanage purchased clothing and other useful articles for orphans and destitute Indian children on the Cattaraugus Reservation in New York.

After considering the nature of the asylum and the defendant's evidence, we conclude that the expenses incurred for the years 1875 through 1879 were for indigent Indians. Therefore, this offset did not constitute a tribal benefit and is disallowed.

16. Expenditures for Indian Delegations for the Six Nations, 1842-1905. The defendant claims expenditures of \$5,340.17 on behalf of the Six Nations for expenses of Indian delegations during the years 1842 through 1905. In support thereof, the defendant submitted representative vouchers, including documentary explanation of the tribal business of the delegation, authorizations, and receipts. An example was a delegation undertaken pursuant to a tribal council resolution in 1884 to discuss "diversion" of the Indians' lands in severalty. The plaintiff did not object to the defendant's proposed finding of fact.

We conclude on the basis of the evidence that these expenditures were both gratuitous and made for the tribal benefit. Accordingly, we allow \$5,340.17 as an offset against the award to the Six Nations.

17. Expenditures for Provisions, 1865. The defendant claims expenditures of \$1,448 for provisions for the Stockbridge Munsee Indians. Defendant's evidence shows that the money was spent in 1865

for the Stockbridge Munsee Indians on the Menominee Reservation, predominantly for 70 barrels of flour and for 8,846 pounds of beef.

We conclude on the basis of the evidence that these expenditures for provisions in this quantity under the circumstances were both gratuitous and made for the tribal benefit. Accordingly, we allow \$1,448 as an offset against the award to the plaintiffs.

18. Course of Dealings. The Commission finds, on the basis of examination and consideration of the entire record herein and the nature of claim, that the course of dealings between plaintiffs and defendant has not been such that the Commission is warranted in denying, against the awards previously entered herein, any offsets which are not otherwise precluded by Section 2 of the Indian Claims Commission Act.

19. Total of Allowable Offsets. On the basis of the evidence and the entire record, and as discussed in the foregoing findings of fact, and for the reasons expressed in the accompanying opinion, we allow the following offsets:

<u>Finding of Fact</u>	<u>Nature of Expenditure</u>	<u>Offset Allowed</u>
16	Indian Delegation Expenses, Six Nations	\$5,340.17
17	Provisions, Stockbridge Munsee	\$1,448.00

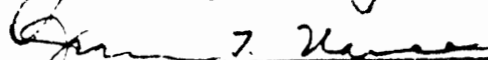
All other claimed offsets are disallowed.

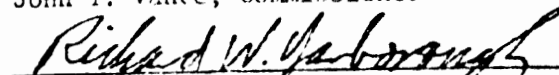
20. Final Award. In our Interlocutory Order of August 11, 1970, 23 Ind. Cl. Comm. 376, 386, we ordered that the plaintiffs should recover \$36,718.42, less allowable offsets. In addition, we ordered that the Seneca Nation of Indians should recover \$25,399.50, less allowable offsets. We have found allowable offsets of \$6,788.17 against the award to the plaintiffs. We find that plaintiffs are entitled, therefore, to a final award of \$29,930.25, derived as follows:

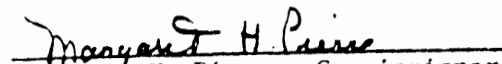
Interlocutory Award	\$36,718.42
Allowable Offsets	<u>6,788.17</u>
Final Award	\$29,930.25

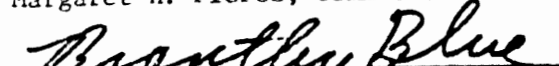
In addition, we have disallowed all offsets claimed against the award to the Seneca Nation of Indians, and therefore the Seneca Nation of Indians is entitled to an award of \$25,399.50.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner