

BEFORE THE INDIAN CLAIMS COMMISSION

THE NISQUALLY TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 197
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 31, 1974

Appearances:

Frederick W. Post, Attorney for
Plaintiff.

Bernard M. Sisson, with whom was
Assistant Attorney General Wallace
H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In this phase of Docket 197 the Commission is faced with defendant's claim that certain monies which it expended gratuitously on behalf of plaintiff should be set off against an interlocutory award to plaintiff in the amount of \$81,106.08. See 29 Ind. Cl. Comm. 432, 470 (1973). Defendant requests that the award be reduced by gratuities totaling \$11,215.22. A hearing on defendant's claim was held before the Commission on August 7, 1973.

In support of its claim defendant submitted portions of a 1960 accounting report prepared by the General Accounting Office and a series of representative vouchers (Def. Exs. 0-1 through 0-28, 0-30 through 0-34). In addition, Mr. Curtis R. Fulton testified at the

hearing as an expert for defendant.

The gratuitous offsets which defendant claims consist of expenditures in various categories made on behalf of tribes party to the Treaty of Medicine Creek, 10 Stat. 1132, or at the reservations upon which those tribes resided. In determining the gratuitous offsets chargeable to the Nisqually Tribe defendant has apportioned the total offsets among the tribes on the same basis that the Commission apportioned consideration payments under the Medicine Creek Treaty. See 29 Ind. Cl. Comm. at 468.^{*/}

Plaintiff argues that allocation of claimed gratuities on a percentage basis fails to satisfy defendant's burden of proving that the gratuities were expended "for the benefit of the claimant," as required by Section 2 of the Indian Claims Commission Act. 25 U.S.C. § 70a (1970). For reasons expressed in our opinion in Squaxin Tribe v. United States, Docket 206, 34 Ind. Cl. Comm. 311, 313, also decided today, we reject plaintiff's argument and adopt defendant's method of apportionment.

Defendant has claimed its offsets in four proposed findings of fact, which correspond to four sections of the G.A.O. report. The claimed offsets in the first proposed finding are based on Part II, Section E, of the report, which purports to be disbursements for the parties to the Medicine Creek Treaty under other than treaty appropriations. These offsets claimed by defendant are the following:

^{*/} The Commission determined that the Nisqually Tribe, with a population of 184, constituted 40.89% of the Indians participating in the Medicine Creek Treaty.

	<u>Total</u>	<u>Percentage</u>	<u>Nisqually Share</u>
Agricultural Aid	\$ 198.45	.4089	\$ 81.15
Livestock, Feed & Care of	1,016.80	.4089	415.77
Livestock, purchase of	648.72	.4089	265.26
Pay of Interpreters	4,911.10	.4089	2,008.15
Provisions	657.65	.4089	268.91
Totals	<u>\$7,432.72</u>		<u>\$3,039.24</u>

In its second proposed finding defendant claims offsets based on Part III, Section B, of the G.A.O. report. These purport to be disbursements for the benefit of the reservations on which the parties to the Treaty of Medicine Creek reside. These offsets claimed by defendant are the following:

	<u>Total</u>	<u>Percentage</u>	<u>Nisqually Share</u>
Clothing	\$6,511.98	.4089	\$2,662.75
Household Equipment & supplies	2,961.58	.4089	1,210.99
Hunting & Fishing equipment	1,204.50	.4089	492.52
Livestock, Feed & care of	273.87	.4089	111.99
Provisions	<u>1,176.59</u>		<u>481.11</u>
Totals	\$12,128.52		\$4,959.36

In findings of fact 34 through 41 the Commission has considered the claimed offsets in these two proposed findings on a category by category basis. We have found that the expenditures totaling \$81.15 for agricultural aid were of too small an amount to support the inference that they constituted a tribal benefit. We disallow these expenditures.

We are allowing \$150.20 of the \$527.76 claimed by defendant for feed and care of livestock. This expenditure in 1868 was of tribal

benefit. The G.A.O. report indicates that \$89.96 spent in this category in 1858 was disbursed from the appropriation "Removal and Subsistence of Indians in Washington Territory." As defendant has not submitted any evidence to the contrary, we must assume that these disbursements were, at least in part, for purposes of removal. The Indian Claims Commission Act specifically states that "monies spent for the removal of the claimant from one place to another . . ." are not proper offsets. 25 U.S.C. §70a. See Suquamish Tribe of Indians v. United States, Docket 132, 24 Ind. Cl. Comm. 34, 41 (1970). This expenditure is disallowed. The remaining expenditures in this category are of too small an amount to permit the inference that they constituted tribal benefits. They are disallowed.

The supporting documents for defendant's claim of \$265.26 for the purchase of livestock indicate that this amount constituted a tribal benefit to plaintiff. It is allowed.

Defendant has claimed a total of \$2,008.15 for the pay of interpreters. The services of interpreters, however, were generally as beneficial to defendant as to plaintiff. We disallow these expenditures.

We are disallowing the entire \$750.02 claimed by defendant for provisions. The G.A.O. report indicates that the bulk of the money spent on provisions in 1859 was disbursed from the appropriation "Removal and Subsistence of Indians in Washington Territory." This must be disallowed. See, Suquamish Tribe, supra. The remaining expenditures in this category are denied because the disbursements are too small to permit the inference that a tribal benefit was conferred, or because the record indicates that tribes other than the parties to the Medicine

Creek Treaty received provisions.

Defendant claims \$2,662.75 as an offset for the purchase of clothing, and \$1,210.99 for the purchase of household equipment and supplies. The supporting documents indicate that expenditures of \$1,598.89 for clothing and \$1,112.21 for household equipment and supplies during fiscal year 1859 were disbursed from the appropriation "Removal and Subsistence of Indians in Washington Territory." These are disallowed. See Suquamish Tribe, supra. The remaining \$677.55 disbursed for clothing in 1859 constituted a tribal benefit. We allow it. The remaining amounts claimed in each category are too small to permit the inference that they constituted a tribal benefit. They are therefore disallowed.

Defendant has claimed offsets for hunting and fishing equipment in the amount of \$492.52. The G.A.O. report indicates that only \$13.50 was expended for hunting and fishing equipment for all the parties to the Medicine Creek Treaty. Therefore the offset claimed in this category is denied.


In its third and fourth proposed findings, based on Part III, Section Z, and Part III, Section AC, of the G.A.O. report, defendant claims \$3,044.66 as an offset. Defendant asserts that this amount represents the Nisqually proportionate share of expenses incurred for the care and sale of timber on reservations under the jurisdiction of the Tahola Agency and the Western Washington Agency during the period 1922 through 1958. The supporting documents for these expenditures indicate that the money was expended for the salaries of forest guards. These employees were primarily a part of the agency or administrative

service. We therefore disallow these expenditures. See Mohave Indians v. United States, Dockets 283 and 295, 26 Ind. Cl. Comm. 563, 573 (1971).

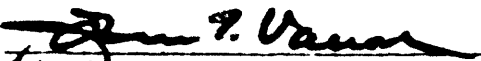
In its fourth proposed finding, based on Part III, Section AC, of the G.A.O. report, defendant claims an additional \$171.96. This represents the Nisqually proportionate share of monies spent in the Western Washington Agency for soil and moisture conservation during 1953, 1954 and 1955. There are no documents to support these claimed expenditures, and defendant has not otherwise described their nature. It is likely that disbursements in this category were for the salaries of agency or administrative employees. See Mohave Indians, supra. Defendant has not sustained its burden of proving that these were proper gratuitous expenditures. They are disallowed.

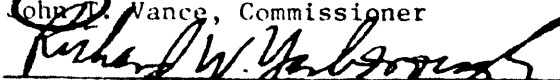
In finding 44 we have summarized the amounts which are allowed in each of the categories in which defendant has claimed offsets. The allowable gratuitous offsets total \$1,093.01.

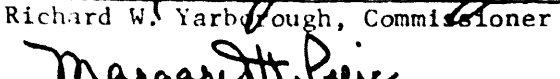
The gross amount of the award to plaintiff was \$81,106.08. The deduction of \$1,093.01 from this sum leaves a net of \$80,013.07, for which sum a final award will be entered in favor of plaintiff.

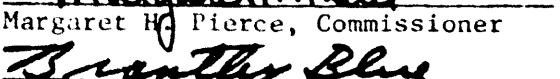

Jerome K. Kuykendall, Chairman

We concur:


John D. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner