

BEFORE THE INDIAN CLAIMS COMMISSION

THE SQUAXIN TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 206
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: July 31, 1974

Appearances:

Frederick W. Post, Attorney for the Plaintiff.

Bernard M. Sisson, with whom was Assistant
Attorney General Wallace H. Johnson, Attorneys
for the Defendant.OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This phase of Docket 206 deals with the issue of what gratuitous offsets, if any, will be allowed under the Indian Claims Commission Act against an interlocutory award to the plaintiff in the amount of \$7,847.47. See 29 Ind. Cl. Comm. 288, 323 (1972).

On February 12, 1973, defendant filed an amended answer requesting that the award be reduced by gratuities of \$13,856.00. On August 7, 1973, a hearing on the matter was held before the Commission in Seattle, Washington. However, in its proposed findings of fact filed on November 26, 1973, defendant reduced its claimed offsets to \$12,127.51.

Defendant introduced in support of its claim a 1960 accounting report prepared by the General Accounting Office. It was supplemented by a series of representative vouchers (Def. Exs. 0-1 through 0-31, 0-33 and 0-34). Also, at the hearing on offsets, Mr. Curtis R. Fulton testified as an expert for defendant.

The gratuitous offsets which defendant claims consist of expenditures for agricultural aid, clothing, household equipment, hunting and fishing equipment, livestock, pay for interpreters, provisions, subsistence for indigent Indians, care and sale of timber, and soil and moisture conservation. These expenditures were made on behalf of tribes party to the Treaty of Medicine Creek, 10 Stat. 1132, or at the reservations on which those tribes resided.

In determining the gratuitous offsets chargeable to the Squaxin Tribe, the 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 321. ^{*/}

Plaintiff has argued that allocation of gratuities on a percentage basis is invalid since it fails to establish that the Squaxin Tribe actually received the benefit of the gratuities. Thus, asserts plaintiff, defendant has not met its burden of proving that gratuities were

^{*/} The Commission determined that the Squaxin Tribe, with a population of 40, constituted 8.89 percent of the total Indians participating in the Treaty of Medicine Creek.

expended "for the benefit of the claimant", as required by Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a (1970).

We do not agree with plaintiff's argument. This Commission has on a number of occasions utilized the method of proration in determining gratuitous expenses when a number of tribes are involved. E.g., Peoria Tribe v. United States, Docket 314, 9 Ind. Cl. Comm. 274, 281-82 (1961), Pottawatomie Tribe v. United States, Dockets 15-B and 111, 3 Ind. Cl. Comm. 540, 557-58 (1955). In Pottawatomie, supra, the Commission stated:

. . . While the record of such expenditures does not show how much of the aggregate amount was actually expended for a particular tribe or band, the procedure of allocating a proportionate amount of the total expenditures to each tribe on a population basis has the approval of the Court of Claims and this Commission.

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

	<u>Total</u>	<u>Percentage</u>	<u>Squaxin Share</u>
Agricultural Aid:	\$ 198.45	.0889	\$ 17.65
Livestock, Feed & Care of:	1,016.80	.0889	90.39
Livestock, Purchase of:	648.72	.0889	57.67
Pay of Interpreters:	4,911.10	.0889	436.60
Provisions:	<u>657.65</u>	.0889	<u>58.47</u>
Totals:	\$7,432.72		\$ 660.77

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 the defendant are the following:

	<u>Amount</u>	<u>Percentage</u>	<u>Squaxin Share</u>
Clothing:	\$ 6,511.98	.0889	\$ 578.91
Household Equipment & supplies:	2,961.58	.0889	263.28
Hunting & Fishing Equipment:	1,204.50	.0889	107.08
Livestock, Feed and Care of:	273.87	.0889	24.35
Provisions:	<u>1,176.59</u>	.0889	<u>104.60</u>
Totals:	\$12,128.52		\$1,078.22

In findings of fact 31 through 38 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 \$17.65 for agricultural aid were of too small an amount to permit the inference that they constituted a tribal benefit. We disallow these expenditures.

We are disallowing defendant's claim of a total of \$114.74 for feed and care of livestock. The yearly expenditures are generally of too small an amount to permit an inference of tribal benefit.

The supporting documents for defendant's claim of \$38.34 for the purchase of livestock in 1864 indicate that a tribal benefit was conferred. This amount is allowed. The voucher for the expenditure of \$19.33 for the purchase of livestock in 1866 indicates that the

animals purchased were for an Indian tribe other than the plaintiff.

We therefore disallow this claimed expenditure.

Defendant has claimed a total of \$436.60 for the pay of interpreters. The services of interpreters, however, were generally as beneficial to the defendant as to the plaintiff. We disallow these expenditures.

We are disallowing the entire \$163.07 claimed by defendant for provisions. The G.A.O. report indicates that the bulk of money spent for provisions in 1859 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, 24 Ind. Cl. Comm. 34, 41 (1970). 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 \$578.91 as an offset for the purchase of clothing, and \$263.28 for the purchase of household equipment and supplies. The G.A.O. report indicates that expenditures of \$374.62 for clothing and \$241.81 for household equipment and supplies during fiscal year 1859 were disbursed from the appropriation "Removal and Subsistence of

Indians in Washington Territory." These must be disallowed. See Suquamish Tribe, supra. The remaining \$147.31 disbursed for clothing in 1859 constituted a tribal benefit. We allow it. The remaining amounts claimed in each category are too small on a yearly basis to permit the inference that they constituted a tribal benefit. They are therefore disallowed.

The defendant has claimed offsets for hunting and fishing equipment in the amount of \$107.08. The G.A.O. report indicates that only \$13.50 was expended for hunting and fishing equipment for all of the parties to the Medicine Creek Treaty. Therefore, all the offsets claimed in this category are disallowed.

The defendant, in its third proposed finding has claimed offsets for expenditures in the amount of \$6,258.05 disbursed during the period from July 1, 1919, to June 30, 1947, under the heading "Indigent Indians - Subsistence." This claim is based on Part III, Section W, of the G.A.O. report. This offset can be disposed of without much discussion. Since all payments were made for the benefit of individual indigent Indians, this item is disallowed as an offset. See Seminole Indians v. United States, Dockets 73 and 151, 24 Ind. Cl. Comm. 1, 6 (1970).

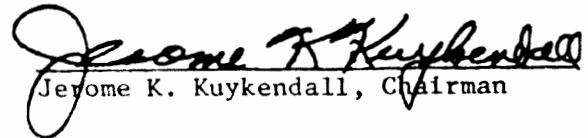
In its fourth and fifth proposed findings, based on Part III, Section Z, and Part III, Section AC, of the G.A.O. report, defendant claims \$3,911.60 as a gratuitous offset. Defendant asserts that this amount represents the Squaxin proportionate share of expenses

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).

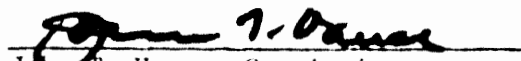
In its fifth proposed finding, based on Part III, Section AC, of the G.A.O. report, defendant claims an additional \$218.87. This amount represents the Squaxin proportionate share of monies spent in the Western Washington Agency for soil and moisture conservation during 1953, 1954 and 1955. There are no documents to support these claimed expenditures and defendant has not otherwise described the nature of these expenditures. It is likely that disbursements in this category were for the salary of agency or administrative employees. See, e.g. Mohave Indians, supra. Defendant has not sustained its burden of proving that these were proper gratuitous expenditures. They are disallowed.

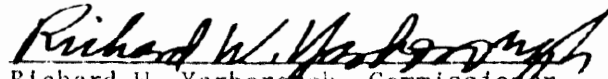
In finding 42, we have summarized the amounts which are allowed in each of the categories for which the defendant has claimed credit. The allowable gratuitous offsets total \$185.65.

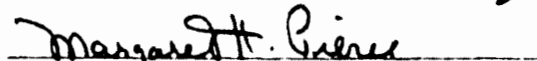
The gross amount of the award to the plaintiff was \$7,847.47. From this sum, the deduction of offsets in the amount of \$185.65 leaves a net sum of \$7,661.82, for which amount an order of final judgment will be entered.



Jeyome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner