

## BEFORE THE INDIAN CLAIMS COMMISSION

THE STELLACOOM TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 208
	)	
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.

This phase of Docket 208 deals 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 \$9,272.43. See 29 Ind. Cl. Comm. 481, 518 (1973). Defendant requests that the award be reduced by offsets totaling \$1,087.61. 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 0-27, 0-33, 0-34). In addition, at the hearing Mr. Curtis R. Fulton testified as an expert for defendant.

The gratuitous offsets claimed by defendant consist of expenditures in various categories made on behalf of tribes party to the Treaty of Medicine Creek, 10 Stat. 1132, or on behalf of the reservations upon which those tribes resided. In determining the claimed gratuitous offsets chargeable to the Steilacoom 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 516. <sup>\*/</sup>

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 two proposed findings of fact which correspond to two 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:

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<sup>\*/</sup> The Commission determined that the Steilacoom Tribe, with a population of 25, constituted 5.56% of the Indians participating in the Medicine Creek Treaty.

	<u>Total</u>	<u>Percentage</u>	<u>Steilacoom Share</u>
Agricultural Aid	\$ 198.45	.0556	\$ 11.03
Livestock, Feed & Care of	1,016.80	.0556	56.53
Livestock, Purchase of	648.72	.0556	36.07
Pay of Interpreters	4,911.10	.0556	273.06
Provisions	<u>657.65</u>	.0556	<u>36.57</u>
Totals	\$7,432.72		\$413.26

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 Medicine Creek Treaty reside. These offsets claimed by defendant are the following:

	<u>Total</u>	<u>Percentage</u>	<u>Steilacoom Share</u>
Clothing	\$ 6,511.98	.0556	\$362.07
Household Equipment & supplies	2,961.58	.0556	164.66
Hunting & Fishing Equipment	1,204.50	.0556	66.97
Livestock, Feed & Care of	273.87	.0556	15.23
Provisions	<u>1,176.59</u>	.0556	<u>65.42</u>
Totals	\$12,128.52		\$674.35

In findings of fact 44 through 51 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 \$11.03 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 disallowing defendant's claim of a total of \$71.76 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 \$23.98 for the purchase of livestock in 1864 indicate that a tribal benefit was conferred. This amount is allowed. The voucher for the expenditure of \$12.09 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 \$273.06 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 \$101.99 claimed by defendant for provisions. The G.A.O. report indicates that the bulk of the 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, Docket 132, 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.

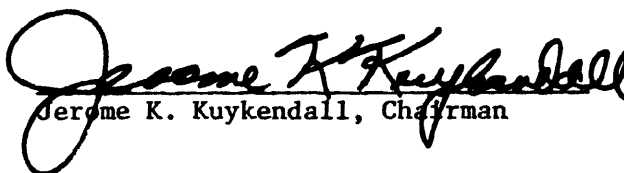
Defendant claims \$362.07 for the purchase of clothing and \$164.66 for the purchase of household equipment and supplies. The G.A.O. report indicates that expenditures of \$217.41 for clothing and \$151.23 for household equipment and supplies during fiscal year 1859 were disbursed from the appropriation "Removal and Subsistence of Indians in Washington Territory." These must be disallowed. See Suquamish Tribe, supra. The remaining \$92.13 disbursed for clothing in 1859 constitutes a tribal benefit

and 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 \$66.97. 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 finding 52 we have summarized the amounts which are allowed in each of the categories in which defendant has claimed offsets. The allowable gratuitous offsets total \$126.11.

The gross amount of the award to plaintiff was \$9,272.43. The deduction of \$126.11 from this sum leaves a net of \$9,146.32, for which amount a final award will be entered in favor of plaintiff.

  
Jerome K. Kuykendall, Chairman

We concur:

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner