BEFORE THE INDIAN CLAIMS COMMISSION

CADDO TRIBE OF OKLAHOMA, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 226
	)	(1835 Treaty)
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 4, 1977

Appearances:

Rodney J. Edwards, Attorney for Plaintiff.

Clifford R. Stearns and Bernard M. Sisson, with whom were Assistant Attorneys General Shiro Kashiwa and Wallace H. Johnson, Attorneys for Defendant.

OPINION

Yarborough, Commissioner, delivered the opinion of the Commission.

This case is now before the Commission to determine gratuitous offsets allowable against an interlocutory award in favor of plaintiffs. The Commission previously determined in this docket that plaintiff's predecessors possessed aboriginal title to lands in northwestern Louisiana and southwestern Arkansas ceded under the Treaty of July 1, 1835, 7 Stat. 470. 4 Ind. Cl. Comm. 214 (1956). The Commission determined that the value of such lands, containing 636,321 acres, was $463,475.55, 8 Ind. Cl. Comm. 354 (1960), and that the $80,000 plaintiff

received for their lands was unconscionable. The Commission further found defendant entitled to offset against the interlocutory award of $383,475.55, the fair market value of the Caddo interest in the Wichita Reservation as of March 2, 1895. 9 Ind. Cl. Comm. 556 (1961).[1/] Thereafter, upon further consideration, the Commission concluded the Caddo acquired their interest in the Wichita Reservation pursuant to a discharge by the Government of an obligation it owed the Caddo. Consequently the value of the Caddo interest in the Wichita Reservation was denied as a gratuitous offset. 19 Ind. Cl. Comm. 385 (1968).

Subsequently, there was a hearing on gratuitous offsets on October 15, 1969, with testimony from defendant's expert witness. On November 17, 1969, defendant filed requested findings of fact in which it claimed gratuitous offsets totaling $624,617.81 for expenditures made for the benefit of plaintiff Indians. Defendant relied on a report dated April 28, 1958, and supplements dated October 28, 1959, and November 29, 1960, prepared by the General Accounting Office for use in this docket.[2/]

1/ Plaintiff by letter dated April 23, 1975, requested that changes be made in the figures in its brief to the effect that our interlocutory award of $383,475.55 in this docket be changed to $463,475.55. Implicitly, plaintiff wanted to set aside our determination, 8 Ind. Cl. Comm., supra, at 390-91, that the $80,000 payment on the claim made by defendant be deducted from the $463,475.55 land valuation. We cannot accept a letter as a basis for changing an interlocutory award. Moreover, this issue is res judicata. Wichita Indians v. United States, 89 Ct. Cl. 378, 402 (1939).

2/ The same accounting report is referred to in the separate opinion issued today in this docket concerning plaintiff's accounting claim. The accounting claim deals with expenditures by the United States of treaty funds or trust funds, which are covered by part II of the accounting report. This opinion is concerned with gratuitous expenditures by the United States, which are covered by part III of the accounting report.

Plaintiff filed its requested findings of fact and brief on March 10, 1975, and defendant filed a reply on May 15, 1975.

Plaintiff urges that all or portions of the claimed offsets be denied for a variety of reasons. Plaintiff first argues that the nature of the claim and the entire course of dealings and accounts between the United States and the Caddo Tribe do not in good conscience warrant the allowance of any of the claimed offsets.

It will be seen from our cases that, as directed by Section 2 of the Indian Claims Commission Act, 60 Stat. 1040, 1050, the Commission looks at the total record of the tribal plaintiff's dealings with the United States and makes an overall judgment as to whether the good so outweights the bad as to allow "in good conscience" credit for particular claimed offsets otherwise qualified. We have interpreted our act, and the course of decision, to require that something more heinous than the average course of repressive and indifferent dealings common to almost all tribes appear in the record to warrant denial of all offsets. See Minnesota Chippewa Tribe, et al. v. United States, Docket 18-U, 35 Ind. Cl. Comm. 427 (1975).

We have reviewed the record as set forth in the findings of fact 1 through 69 entered in this docket. We are not required to set out in detail here the course of dealings between the parties. It is enough that we mention the salient facts. See United States v. Assiniboine Tribe, 192 Ct. Cl. 679, 428 F. 2d 1324 (1970), aff'g Docket 279-A, 21 Ind. Cl. Comm. 310 (1969); Ponca Tribe v. United States, Docket 322, 26 Ind. Cl. Comm. 303 (1971).

Here, we note first that the great bulk of the claimed offsets consist of provisions and clothing furnished after 1859, when the Caddo were forced to abandon much of their personal property on the Brazos Reservation. Thus a large and indeterminate portion of the claimed expenditures could not be said to be "gratuitous," but rather were given in compensation for the failure to protect the plaintiffs in the possession of their property on their initial reservation. And whatever portion of the expenditures was truly gratuitous, we find in the defendant's course of dealings with the Caddo sufficient "bad" as compared with "good" to prevent our allowing in good conscience any of the claimed offsets.

Plaintiff Indians in their dealings with the defendant have been peaceful, and have relied on defendant in its role of trustee to protect their interests. Following the 1835 treaty of cession the Caddo suffered extreme hardship. Plaintiff in agreeing to the 1835 treaty relied on an agent of defendant who did not have their interests at heart. The payment of under $0.13 per acre for plaintiff's lands was clearly unconscionable. The Caddo were not protected by defendant in their move to Texas, and suffered as a result. Nor, after Texas joined the Union, and defendant assumed the obligation of protector of the Indians pursuant to the 1846 treaty, 9 Stat. 844, did defendant protect the Caddo from hardship, massacre, and forced exodus undertaken with great pain and suffering and loss of property. Even after the move to Indian territory in 1859, plaintiff Indians did not receive title to land, so that special legislation was required in 1891 to provide allotments for them pursuant to the United States' Indian policy as expressed in the Allotment Act of 1887. We may infer that the nature of

defendant's gratuitous expenditures prior to 1902 (when allotments to the Caddo were completed), predominantly for provisions and clothing, 3/ reflect the failure of defendant to protect plaintiff from hardship or to provide plaintiff with an adequate basis for becoming self-sufficient. And finally, we may note the delay of over 140 years in rectifying the wrong of the 1835 treaty, during which time the dollar has depreciated markedly and no interest has run.

In conclusion, we have fully examined the nature of this claim, and the entire course of dealings between the United States and the Caddo Tribe of Indians, and we are unable to find that in good conscience they warrant our setting off any part of the gratuitous expenditures claimed by defendant against the award for damages in this case. We will therefore enter an order this day for a final award in favor of plaintiff in the amount of $383,475.55 for their claim arising from the land cession of the 1835 treaty.

Richard W. Yarborough, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

3/ In view of our ruling here on the threshold question of "course of dealings," we find it unnecessary to discuss the effect of the 1974 Amendment to our Act, Public Law 93-494, 88 Stat. 1487, on claims for offset of gratuities of provisions and clothing.