

BEFORE THE INDIAN CLAIMS COMMISSION

THE MINNESOTA CHIPPEWA TRIBE, et al.,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 18-S
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 23, 1977

Appearances:

Rodney J. Edwards, Attorney of Record
for Plaintiffs, Marvin J. Sonosky was
on the brief.

Richard L. Beal, with whom was Assistant
Attorney General Peter R. Taft, Attorneys
for the Defendant.

OPINION

Vance, Commissioner, delivered the opinion of the Commission.

This case is now before the Commission for determination of defendant's payments on the claim. The plaintiffs, by the Treaty of October 4, 1842, 7 Stat. 591, ceded to the United States Royce Area 261 situated in the northern portions of the States of Michigan and Wisconsin (19 Ind. Cl. Comm. 319 (1968)). The fair market value of the ceded lands has been found by the Commission to have been \$8,862,818.00 (37 Ind. Cl. Comm. 146 (1975)). In return for the cession the United States agreed to pay the Chippewa Indians of the Mississippi and Lake Superior some \$875,000.00,

an amount which the Commission has determined was so grossly inadequate as to render the consideration unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050. With the concurrence of defendant the claim for gratuitous offsets was dismissed by order of the Commission on April 28, 1976.

The promised consideration was set forth in Article IV of the 1842 Treaty. It provided for certain annuity payments for 25 years in cash, goods, and services as well as single payment amounts. The total amount of the promised consideration was \$875,000.00, as detailed in our finding 37 herein.

The first item of consideration was a cash annuity of \$12,500.00 annually for 25 years (\$312,500.00). Defendant has itemized annuity payments of \$300,239.51 for which it claims credit. In finding 38 we have considered the claimed amounts for each year in arriving at a determination that defendant is entitled to credit for a total of \$196,002.57 as payment on the claim under the cash annuity provision.

In general the annual cash payments to the Chippewas of the Mississippi and the Lake Superior Chippewas were lumped together with similar cash annuities due the same Indians pursuant to several other treaties, namely:

Treaty of July 29, 1837, 7 Stat. 536
Treaty of August 2, 1847, 9 Stat. 904
Treaty of September 30, 1854, 10 Stat. 1109
Treaty of February 22, 1855, 10 Stat. 1165.

Consequently, the supporting documents for the yearly payments indicate total expenditures in excess of the amounts claimed as 1842 Treaty consideration. Therefore, for each year we have checked the voucher or abstract totals against the cash annuities which have been allocated by defendant for credit under the other treaties involved. In those instances where it could be determined that the allocations had been properly made, we have allowed the credit (if otherwise proper) as a payment on the claim in this case. Where, however, it has not been possible to verify the allocation of certain payments, the claimed amounts have been disallowed.

In two of the years, 1852 and 1853, the vouchers have indicated that annuity payments were partially used to supply provisions for the Indians. By the Act of October 27, 1974, 88 Stat. 1499, Section 2 of the Indian Claims Commission Act was amended to provide that expenditures for food, rations, or provisions should not be deemed payments on the claim. All payments for provisions for the Indians come within the purview of the 1974 amendment, and they have been disallowed.

We have disallowed defendant's claim in those instances where the vouchers or Indian agent's abstract of disbursements are not available. In such cases the defendant's accounting "summary sheets" have indicated that the documents are missing and that it was not possible to determine when the payments were made or how they were allocated. There is no way of determining if any of those payments were used to purchase provisions or even if the payments were made to the plaintiffs in this case.

Plaintiffs have objected to the inclusion of annuity cash payments where the supporting voucher has included additional cash payments to chiefs for their services or for such purposes as pay of physicians and blacksmiths. The various treaties under which the annuity payments were made contain various qualifications and requirements governing the disbursements. For example the 1837 Treaty provided that after one or more years the Indians could elect to receive goods instead of the annual cash annuity. The 1854 Treaty provided that any arrearages in annuity payments under prior treaties with the Chippewas of the Mississippi and Lake Superior should be paid as the chiefs might direct. And the 1855 Treaty provided that out of the cash annuity payments to the Mississippi Bands of Chippewas, \$2,000.00 per year should be paid or expended as the chiefs might request for the improvement and welfare of the Indians. The treaty also provided that if the Indians should become intemperate and abandon or waste their property, the President might withhold moneys due and payable and expend it so as to insure the benefit thereof to the Indian families. In view of such latitude in paying annuities, there is no basis for disallowing any credit for payments solely because a voucher recited that some amounts were used to make extra payments to chiefs or pay for services rendered the Indians. In many instances where plaintiffs have noted such "other purposes" the claimed disbursements have been disallowed for other reasons.

Defendant claims expenditures totaling \$267,073.67 in purchasing annuity goods for the plaintiff Indians. The purchased goods included such items as cloth, thread, blankets, clothing, cooking utensils, guns, powder, shot, files, shovels, axes, knives, fish hooks, and other dry goods. The Commission has held that expenditures for food, clothing, medicine, tents, axes, and similar items relating to supplying basic subsistence needs, are considered to be food, rations, and provisions within the meaning of the 1974 amendment. Prairie Band of the Pottawatomie Tribe v. United States, 38 Ind. Cl. Comm. 128, 224-28 (1976), aff'd, ___ Ct. Cl. ___ (Appeal No. 6-76, October 19, 1977). The annuity goods purchased for the Chippewa Indians in this case were likewise related to their basic subsistence needs. The claimed payments in this category are within the purview of the 1974 amendment, and they are not allowed as payments on the claim.

Defendant has argued that payments made in consideration of a treaty cession are not payments on the claim within the meaning of the 1974 amendment. Defendant considers that "payments on the claim" refers to payments made unilaterally by the United States to compensate the Indians for the loss of their land. This same argument was considered and rejected in the Pottawatomie case, supra. At that time the Commission noted, at page 224:

Although there is some ambiguity in the language of the amendment and its legislative history as to whether "payments on the claim" are to be deemed synonymous with or include "consideration", our present judgment as to the intent of Congress is

that such forms of payment are not to be credited against our awards whether or not there exists a refined distinction between consideration and payments on the claim.

Defendant is allowed credit for disbursements made for the pay of blacksmiths, farmers, carpenters, and teachers. The payments were made in fulfillment of obligations under Article IV of the 1842 Treaty.

Plaintiffs have objected to allowance for any payments after fiscal 1854 on the ground that the obligation to furnish those employees became an obligation under Article V of the Treaty of September 30, 1854. That article provided that the United States would furnish a blacksmith, an assistant and stock at each of ten reservations to be set apart for the Indians. And the blacksmithing was to be furnished for 20 years -- or as much longer as the President might think proper -- the same to be in lieu of all the employees to which the Chippewas of Lake Superior were entitled under previous existing treaties. The 1842 and 1837 Treaties were the "previous existing treaties." Since the 1842 Treaty obligation was to furnish employees for 25 years, it would not have expired until 1868 (the treaty was proclaimed March 23, 1843). The 1837 Treaty obligations would have expired in 1858. The effect of the 1854 Treaty was to increase the blacksmithing benefits, by extending the period for supplying such services -- to at least 1875 -- and by increasing the number of shops to be supported. While it is true that the 1854 Treaty provided that the blacksmithing services would be in lieu of still outstanding obligations under previous treaties, that did not make all the 1854 Treaty obligation consideration for the 1854 session. We held in Minnesota Chippewa Tribe

v. United States, Docket 18-U, 35 Ind. Cl. Comm. 427, 444 (1975) that:

. . . so much of the expenditures under Article 5 of the 1854 treaty as exceed the obligation remaining on January 10, 1855, the treaty ratification date, under Items 3 and 4, Article 2, of the 1837 Treaty, and Article IV of the 1842 Treaty, were part of the consideration for the cession under the 1854 Treaty, and they may be offset as payments on the claim.

It follows that the portions of the payments made after January 10, 1855, which did not exceed the obligations remaining under the 1837 and 1842 Treaties were made in fulfillment of the consideration promised for the 1837 and 1842 Treaty cessions. And such payments are properly credited as part of defendant's payments on the claim in the 1842 and 1837 Treaty cases.

Defendant has included in the blacksmithing category disbursements of \$6,121.32 for guns, ammunition, and traps. These do not fit the description of supplies to support a blacksmith shop, and they are not properly included in this category. But, in any event, they come within the purview of the 1974 amendment as expenditures for food, rations, or provisions, and they are not allowed as payments on the claim.

Expenditures for board and tuition are also disallowed as payments for food, rations, and provisions. Since defendant has not introduced any evidence to establish what part of the \$17,492.49 in this category was spent for board and what part for tuition, we must disallow all the expenditures in this category.

All of the claimed payments in the agricultural fund category (\$6,649.19) are disallowed. Most of the disbursements for which vouchers or abstracts

are available indicate the payments were for purposes within the precluded category of food, rations, and provisions. The other expenditures for building or repairing houses for chiefs are not properly included in the agricultural fund category.

The claimed payments of \$15,000.00 to the halfbreeds are also disallowed. The defendant's accountants reported that the documents relating to these payments are missing. Under these circumstances it is impossible to determine how the payments were made. In view of the 1974 amendment which precludes allowance of any payments made in goods, rations, or provisions, and the difficulties we have noted with respect to the listing of the cash annuity payments, we cannot allow credit for the halfbreed payments in the absence of any evidence as to when or how the payments were made.

As summarized in finding 47 we find the United States entitled to offset payments on the claim totaling \$346,689.68. Deducting this amount from the interlocutory award of \$8,862,818.00 leaves a net sum of \$8,516,128.32. Since there are no gratuitous offsets to be allowed in this case, plaintiffs are entitled to a final award in that amount.

The Treaty of September 30, 1854, provided in Article 8 that the benefits derived from the former treaties, including the 1842 Treaty involved herein, should be divided in the proportion two-thirds to the Chippewas of Lake Superior and one-third to the Chippewas of the Mississippi.

This division results in an award for the benefit of the Chippewas of Lake Superior of \$5,677,418.88 and for the benefit of the Chippewas of the Mississippi of \$2,838,709.44.




John T. Vance, Commissioner


We concur:



Jerome K. Kuykendall, Chairman



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner