BEFORE THE INDIAN CLAIMS COMMISSION

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| THE SIOUX TRIBE, et al., | ) | |
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| Plaintiffs, | ) | |
| | ) | |
| v. | ) | Docket No. 74 |
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| THE UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Defendant. | ) | |

Decided: July 19, 1978

Appearances:

Arthur Lazarus, Jr., William Howard Payne, Marvin Sonosky, Attorneys for Plaintiffs.

Craig Decker, with whom was Assistant Attorney General James W. Moorman, Attorneys for Defendant.

OPINION ON DEFENDANT'S MOTION TO ENTER ADJUSTMENTS IN VALUATION AWARD

Vance, Commissioner, delivered the opinion of the Commission.

The defendant has moved that the Commission enter an order adjusting the gross valuation award made by the Commission July 15, 1976, 38 Ind. Cl. Comm. 469, 532. In that decision the Commission determined that the fair market value of the lands obtained from the Sioux by the United States under the Treaty of April 29, 1868, 15 Stat. 635, was $45,685,000; broken down to $20,895,000 for lands east of the Missouri River, and $24,790,000 for lands west of the Missouri. Defendant asserts that the award for lands west of the Missouri should be subject to three reductions,

as follows: 1) A 7 percent reduction to account for the fact that the Teton Sioux owned only a 93 percent interest in the lands ceded west of the Missouri. */ This reduction would amount to $1,735,300. 2) An additional reduction representing an increase of 7 percent in the plaintiffs' ownership of the land inside the Great Sioux Reservation. */ This reduction would amount to $1,351,033. 3) A final reduction representing the value of lands not previously owned by the plaintiffs which were included in the Great Sioux Reservation. This reduction would equal $1,417,988. For the reasons indicated below we grant in part, and deny in part, defendant's motion.

1. This Commission has determined that under the Fort Laramie Treaty of September 17, 1851, the Teton Sioux received an undivided 93 percent interest in the Sioux Fort Laramie lands, and the Yankton Sioux received an undivided 7 percent interest in those lands. 24 Ind. Cl. Comm. 147 (1970), as modified by 41 Ind. Cl. Comm. 160 (1977). Under the 1868 treaty the United States acquired from the Tetons their interest in that portion of the Sioux Fort Laramie lands outside of the Great Sioux Reservation. In our valuation decision we determined the full fair market value of those lands. Since the Teton Sioux, represented by the plaintiffs in this docket, owned only a 93 percent interest in those lands it is necessary to reduce the valuation by 7 percent to reflect the actual value of what was acquired by the United States.

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*/ Defendant's motion requested actual reduction of 17 percent, based on earlier Commission determinations that the Teton Sioux ownership of land west of the Missouri was 83 percent. Subsequent to the filing of defendant's motion, the Commission held that Teton ownership was actually 93 percent. See 41 Ind. Cl. Comm. 160 (1977). We have treated defendant's motion as modified to reflect the recent Commission ruling.

The plaintiffs, however, contend that they should receive credit for the full value of the lands acquired by the United States. Plaintiffs' assertion basically is that, after the Yankton Sioux ceded whatever interest they had in the Sioux Fort Laramie lands in 1858, the Tetons became the sole owners in physical control of the Sioux Fort Laramie lands, and thus owners of a 100 percent interest. Further, plaintiffs argue, in 1868, when the United States negotiated with the plaintiffs, the Government treated them as if they were owners of 100 percent of the land rather than a fraction of it. We are unable to accept plaintiffs' contention.

In the past, when the Commission has confronted the situation in which more than one tribe possessed interests in recognized title lands, we have always awarded each tribe a gross award equivalent to its proportionate interest in the total value of the lands. We know of no instance (and plaintiffs have cited none) in which the Commission has determined that a tribe's fractional interest ripened to 100 percent when the co-owning tribe ceded its respective interest in the recognized title lands. Were we to accept plaintiffs' contention, the last tribe to cede its interest in a recognized title area would always possess a 100 percent interest in the land.

The absurdity of the plaintiffs' position is demonstrated by examining what would have happened if the Tetons, rather than the Yanktons, had been the first to cede their interest in the Fort Laramie lands. Under plaintiffs' theory, when the Tetons ceded their interest the Yanktons would become the sole owners in physical control of the land, and their

7 percent interest would abruptly increase to 100 percent. The mere recital of this hypothetical situation demonstrates the invalidity of plaintiffs' position. We shall therefore grant the first part of defendant's motion.

2. The second and third reductions requested by the defendant, although represented as adjustments to the value of the ceded lands, are actually claims for offset of payments on the claim. Defendant is really claiming that under the 1868 treaty plaintiffs' ownership interest in the Great Sioux Reservation was increased, that this increase amounted to treaty consideration, and that defendant should receive credit for this increase. When viewed this way, we must deny both of these claimed reductions.

In a companion decision the Commission has described the history behind, and the negotiations leading up to the 1868 treaty. It is clear from this history, and the negotiations, that the Sioux viewed the establishment of the reservation as a setting aside of a portion of their own lands, from which all non-Indians would be forever barred and upon which those Sioux who agreed to become farmers would do so. It is equally clear that the Sioux viewed the entire reservation as already belonging to them, and that they could not have understood that they were receiving an additional property interest in the reservation from the Government. In this respect this case is indistinguishable from Nez Perce Tribe v. United States, Docket 175, 24 Ind. Cl. Comm. 429 (1971). Since the Sioux did not bargain for and agree to this increase of their property right in the Great Sioux Reservation, the increase cannot constitute

consideration flowing from the United States to the Sioux. Therefore, it cannot be offset as a payment on the claim.

We shall enter an order granting in part, and denying in part, defendant's motion.

John T. Vance, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner