

## BEFORE THE INDIAN CLAIMS COMMISSION

OTCE AND MISSOURIA INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 11
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 11, 1953

Appearances:

Luther Bohannon, with whom were  
Bat Shunatona and Bert Barefoot,  
Jr., Attorneys for Plaintiff.

Ralph A. Barney and Cornelius J.  
McCool, with whom was Mr. Acting  
Assistant Attorney General J. Edward  
Williams, Attorneys for Defendant.

OPINION OF THE COMMISSION

WITT, Chief Commissioner, delivered the opinion of the Commission.

In an opinion rendered in this Docket on March 31, 1953, the Commission found that the petitioner should recover \$554,589.85 upon the claim asserted by it in its Third Cause of Action, and \$624,468.55 upon the claims set forth in its Fourth Cause of Action. It was ordered the total recovery of \$1,179,058.40 should be reduced by such offsets, if any, as might later be found allowable.

In its Amended Answer the defendant claims credit for a group of expenditures made solely for the benefit of the plaintiff and also a percentage of eight separate groups of expenditures made jointly for

the plaintiff and various other Indian tribes. The plaintiff has not questioned the amount of any expenditure or the population ratio between the plaintiff and the other tribes benefited by the joint expenditures but does deny that certain types of expenditures are available as offsets under the limitations of 60 Stat. 1049, and says that the treaties of 1817, 1825, 1830, 1833, 1836 and 1854 morally obligated defendant to do and perform many things not enumerated or set out therein, and that many of the claimed offsets are expenditures made in compliance with such obligations and so, being for the satisfaction of an obligation owing, cannot be considered as credits or offsets. The plaintiff does not spell out any inferred obligation within any one of the enumerated treaties.

Plaintiff also contends that for want of fair and honorable dealings the defendant should be denied the right to any offsets whatsoever because while it handled the tribal funds of the plaintiff it caused more than \$152,290.71 of those funds to be expended for items which 60 Stat. 1049 expressly eliminates from offsets allowable to the defendant when they have been paid from public funds. It is not charged that such expenditures were not proper expenditures of trust funds under the terms of the trust agreement. Plaintiff thus recognizes and seeks to avoid the effect of Sioux Tribe vs. United States, 112 C. Cls. 50.

We do not believe that the course of transactions between the plaintiff and defendant over the long period involved in this litigation has been such that the defendant has forfeited the right to offset against the additional remuneration heretofore awarded to the

plaintiff herein any credits not falling within the classifications prohibited by 60 Stat. 1049, known as the Indian Claims Commission Act.

We conclude that there are three types of expenditures which may be involved in these Indian cases. First: Annuity payments which may be in money or articles, payable direct or otherwise, according to the provisions of the treaty or contract. Second: Gratuitous expenditures of public funds for purposes for which there exists no treaty or contractual obligation. Third: Trust fund disbursements, or expenditures of funds held in trust and subject to the authorization of the trust agreement, express or implied. No accounting is sought for trust funds or annuity payments accruing under the clear wording of the treaties and agreements between the parties. We are asked, however, to consider each contested item with relation to any moral obligation which may be inferred from the treaties enumerated, but not specifically set out in them, and have determined that the items hereinafter allowed were in each instance incurred without moral or legal obligation therefor, and are properly allowable as offsets.

Petitioner has not contested the amount of the several items listed in Findings 24 and 25 as gratuities advanced to the Otoe and Missouri Indians from the public funds by the defendant and in the sums of \$13,043.41 and \$8,742.63, respectively. They will accordingly be allowed as credits against the award heretofore entered without further discussion being had.

The remaining items claimed for offset credits are disputed by the petitioner, not as to the amount of the benefits received, but solely

because it is contended the nature of the items are such that they are prohibited as offsets by section 2 of 60 Stat. 1049. There are in all eight types of items thus in dispute, together with several charges for transporting those items or supplies used in connection with them.

We believe that these can be most briefly and conveniently discussed if they are broken down according to the item and the period of time within which it was furnished, and this we have done as follows:

	<u>Percentage Received by the plaintiff</u>	<u>Total Ex- pendi- ture</u>	<u>Total Bene- fits to plaintiff</u>
<u>Surveying and Allotting, and Transporting Supplies for Surveying and Allotting.</u>			
July 15, 1830 to 6-30-1946	100%	\$ 18.00	\$ 18.00
July 1, 1927 to 6-30-1946	25%	.65	.16
<u>Maintaining Law and Order and Transporting Supplies</u>			
July 15, 1830 to June 30, 1946	100%	\$ 34,731.56	\$ 34,731.56
		.93	.93
Jan. 1, 1839 to June 30, 1855	9%	239.32	21.54
Aug. 23, 1882 to June 30, 1885	12%	414.90	49.79
July 1, 1885 to June 30, 1901	20%	716.92	143.38
	20%	29.78	5.95
July 1, 1919 to June 30, 1921	22%	436.92	96.12
	22%	.06	.01
July 1, 1927 to June 30, 1946	28%	13,594.26	3,398.58
	25%	.30	.08
<u>Pay and Expense of Farmers</u>			
July 15, 1830 to June 30, 1946	100%	36,723.67	36,723.67
July 1, 1919 to June 30, 1921	22%	844.71	185.84
July 1, 1921 to June 30, 1927	44%	4,286.46	1,886.04
July 1, 1927 to June 30, 1946	25%	7,319.31	1,829.83

	<u>Percentage Received by the plaintiff</u>	<u>Total Ex- pendi- ture</u>	<u>Total Bene- fits to plaintiff</u>
<u>Pay and Expense of Agricultural Extension Agent</u>			
<u>Transportation of Supplies for Agricultural Agent</u>			
July 1, 1927 to June 30, 1946	25%	\$ 66,046.72	\$ 16,511.69
	25%	9.11	2.28
July 15, 1830 to June 30, 1946	100%	1,307.86	1,307.86
<u>Pay and Expense of Home Extension Agent</u>			
July 1, 1927 to June 30, 1946	25%	17.19	4.30
<u>Pay to Interpreters</u>			
July 15, 1830 to June 30, 1946	100%	19,173.15	19,173.15
July 1, 1927 to June 30, 1946	25%	16.00	4.00
<u>Transportation of Supplies for Agricultural Aid</u>			
July 1, 1919 to June 30, 1921	22%	1.12	.25
July 1, 1921 to June 30, 1927	44%	.19	.08
July 1, 1927 to June 30, 1946	25%	477.50	119.36
July 15, 1830 to June 30, 1946	100%	920.82	920.82
<u>Transportation of Miscellaneous Building Materials</u>			
July 1, 1927 to June 30, 1946	25%	401.90	100.48
July 15, 1830 to June 30, 1946	100%	11.50	11.50
<u>Surveying and Allotting and Transportation of Supplies</u>			

The report of the General Accounting Office discloses that \$18.00 was spent for surveying in 1891 and that in 1937 65 cents was paid for transporting surveying supplies of which 65 cents petitioner received benefits of 25%, or 16 cents. In section 5 of the Act of March 31, 1881, (21 Stat. 380), which the Otoe and Missouri Tribe accepted May 14, 1881, the Indians assumed certain costs in connection with the creation of a new reservation, not to exceed \$100,000 in all, and including cost of surveys. As of June 30, 1946, there remained unexpended in the fund segregated for compliance with that

statute the sum of \$979.37. The item of \$18.00, being survey costs incurred in 1891, is part of those expenses assumed by the petitioner and should have been paid from the "Removal Fund." To correct the erroneous charge, defendant is entitled to offset that sum.

We conclude the 16 cent charge made in 1937 is too far removed in point of time from the petitioners removal to the new reservation lands to have been within the consideration of the parties. Furthermore, it is an item advanced by defendant 33 years after the passage of 33 Stat. 189, directing distribution of all Otoe and Missouriia funds in the United States Treasury, and there is nothing in the record indicating any program of survey among the Indians in 1937. It will be denied as an agency or administrative expense.

Maintaining Law and Order and Transporting  
Supplies for Maintenance of Law and Order

The maintenance of law and order and the cost of transporting supplies for use in that function are administrative expenses. Under *Shoshone Tribe vs. United States*, 85 Ct. Cls. 331, and *Kansas Indians vs. United States*, Docket 33-35, they are denied for use as offsets.

Pay and Expenses of Farmers

According to the Report of the General Accounting Office, \$962,875.67 was paid by the United States as interest on Otoe and Missouriia funds by deposit into an account entitled "Interest on Otoe and Missouriia Fund" as directed by sections 4 of 19 Stat. 208 and 21 Stat. 380 (Finding 26). There was also deposited to this account \$4,515.45 as interest on special deposits and proceeds from sale of merchandise and other Indian money. \$3,778.04 was transferred to a separate account entitled "Interest on

Otoe and Missouri Minors' Fund" and \$384,258.96 was paid out in per capita payments, leaving a balance of \$1,071.49 in the account on June 30, 1946. Interest payments were also made by deposit to the account "Interest on Otoe and Missouri Minors' Fund" and \$70,591.05 of that fund has been paid in per capita payments, leaving .04 cents in the deposit on June 30, 1946.

This interest money was to be "expended annually for the benefit of said Indians." By directing destruction of its source in 1904 through distribution of the tribal funds, the defendant in effect released the petitioner from its agreement to pay beneficial expenses. We find \$62.50 of the \$36,723.67 expended for farmers was paid out in 1887, and as to that item, deem the defendant entitled to an offset. The balance of \$36,651.17 is denied it as prohibited by section 2, (60 Stat. 1049) since we are unable to tell what portion, if any, represents common labor as distinguished from work educational in its nature.

Pay and Expense of Agricultural Extension Agent and Transportation of Supplies for Agricultural Agent.

Subsequent to July 1, 1927, the defendant expended \$17,819.55 as pay and expense of agricultural extension agents for plaintiff's benefit, and \$2.28 for transporting such supplies to them. The duties of an agricultural agent are essentially adult educational in nature, and their pay and incidental expense in connection with their work fall within that classification of items which are listed in 60 Stat. 1049 as not available for offset purposes.

Pay and Expenses of Home Extension Agent.

The item of \$4.30 as pay and expenses of a home extension agent

arose after July 1, 1927. Since the work of such an agent is instruction in the domestic arts and for the education of adults, and the item was incurred after termination of the plaintiff's assumption of cost of beneficial expenses, it must be denied be reason of the prohibition in 60 Stat. 1049.

Pay of Interpreter

The retention of an interpreter has been considered an item of administrative expense. *Seminole Nation v. United States*, 102 C. Cls. 565. There is nothing in the evidence justifying a different interpretation in this case. The pay of interpreters may not be offset.

Transportation of Supplies for Agricultural Aid

The nature of the items transported as supplies for agricultural aid is such that they were useful to the Indian population rather than in the administration of an agency, and their immediate purpose would be the material benefit of the Indians as distinguished from an educational intent. As such the charges for transporting gratuitous supplies are allowable as offset credits. The oral testimony presented, however, disclosed that the greater portion of a \$920.82 item included in the total \$1,040.53 charged for transporting supplies for agricultural aid represents the cost of delivering merchandise purchased for the Indians with their annuity money arising under the treaty of 1854 and according to the provisions of that treaty. The treaty specified payment of a specific sum; it authorized payment directly to the Indians or the expenditure of all or part in their behalf. Having expended the annuity payment as directed, the obligation of the government was met. To require it to also pay the cost of transporting the purchases would increase the amount



of its expenditure beyond the amount of annuity payment called for under the treaty. In the absence of an agreement to also transport the merchandise so purchased, which is lacking here, we conclude payment of transportation is a gratuity, which the defendant may offset. Credit of \$1,040.53 will be allowed.

Transportation of Miscellaneous Building Material.

The United States paid \$111.98 for transporting miscellaneous building material. This was not reported as agency expense by the Agents to the Otoe and Missouri Indians, who were most likely to know the true use made of the material transported, and upon whose reports we must rely in the absence of other evidence. Similar charges were offset in Quapaw Tribe vs. United States, Docket 14. The \$111.98 will be allowed as an offset here. \$11.50 of this arose in 1893, and should have been charged against the tribal interest fund as an assumed beneficial expense.

In summation, we find the defendant, the United States, may offset as against the award granted the plaintiff in this Docket on March 31, 1935, the following sums, to-wit:

Uncontested credits:	
Finding 24 .....	\$ 13,048.41
Finding 25 .....	8,742.63
Surveying and allotting .....	18.00
Pay and expense of farmers' .....	62.50
Transportation of Supplies for	
Agricultural Aid .....	1,040.53
Transportation of Miscellaneous	
Building Material .....	<u>111.98</u>

or a total offset of ..... \$ 23,024.05.

It is so ordered.