

BEFORE THE INDIAN CLAIMS COMMISSION

THE KICWA, COMANCHE AND
APACHE TRIBES OF INDIANS,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 32

AMENDED FINAL ORDER

On March 29, 1957, the petitioners filed their motion for rehearing herein and on April 4, 1957, defendant filed its opposition thereto. On April 12, 1957, the parties argued the motion and submitted the same to the Commission and it was taken under advisement.

And now the Commission after reviewing the evidence relating to the offsets heretofore allowed by its final order of March 12, 1957, orders, with respect to certain of the findings of fact filed as part of said final order, the following:

(1) That Finding 28 be stricken and there shall be set forth in lieu thereof:

During the fiscal years 1945 through 1956 (G.A.O. Report, Def. Ex. 26, pp. 3, 4, 6, 7 and Def. Ex. 30) there was expended for the relief of needy Indians of the petitioner tribes the aggregate sum of \$396,844.96. These disbursements were made from appropriations for the health, welfare, support or rehabilitation of needy Indians, generally, throughout the United States. The disbursements were made to individual members of the petitioner tribes on the basis of individual needs only after an investigation by social workers employed by defendant. To be eligible for the cash payments it was necessary for the recipient to show his need for the payments. The appropriations out of which the payments were made appear at page 187 of defendant's said Exhibit 27 and defendant's said Exhibit 30.

In none of the acts from which the disbursements were made was it required that the tribes of which the recipients were members reimburse the defendant for such outlays, nor is there any proof that the petitioner tribes requested the aid for its indigent members or assumed any obligation to reimburse the defendant therefor, and none of such disbursements were made to either of the petitioner tribes, as such, but only to their individual members in need and who required financial assistance. (Tr. 1386, and Def. Exs. 32, 32a, 32b and 32p). The amount claimed by defendant as an offset is denied.

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(2) That Finding 30 be stricken and there shall be set forth in lieu thereof:

Under appropriations for the "support of Apaches, Kiowa, Comanches and Wichitas" at the Kiowa Agency, Oklahoma, there was disbursed for barbed wire and staples for fencing land the following sums in the fiscal years: 1901, \$2068.41; 1902, \$2416.06; 1905-1908, \$393.05, a total sum of \$4877.52.

The only proof offered is that shown by defendant's Exhibit 26, pages 39, 41, 46, 48, 53 and 56, being pages from the G.A.O. Report, which is to the effect that wire and staples were received at the agency and that there was disbursed from the appropriations referred to above the amounts stated. No proof has been offered of the distribution of such items or that they were used for tribal benefit. The total claimed is denied as an offset.

(3) That Finding 31(a) be stricken and there shall be set forth in lieu thereof:

The G.A.O. Report (Def. Ex. 27, p. 41) shows an expenditure of the sum of \$1966.99 for "seeds, fruit trees and fertilizer for indigent Indians" of the Kiowa Agency, and expenditures of that exact sum were made from the appropriation act of June 28, 1941 (p. 186, G.A.O. Report, Def. Ex. 27) for the "support and rehabilitation of needy Indians." In a separate and later G.A.O. Report (Def. Ex. 26, p. 32) the same item was broken down and shown to cover \$15.99 for paper bags for issuing seed to Indians, and \$1951 for vegetable seed. While this later report listed the amount under "agricultural aid," it is obvious that it was expended for the support of needy Indians since the amounts were disbursed from the appropriation act for such Indians. The amount is denied as an offset.

(4) That Finding 32 be stricken and there shall be set forth in lieu thereof:

At pages 15 and 39-61 of defendant's Exhibit 26 there appears disbursements aggregating \$7,011.42 for agricultural implements and equipment. The evidence shows that agricultural implements and equipment were sold to Indians of the Kiowa Agency after June 30, 1903, on credit, and that during the fiscal year 1901 the sum of \$1601.25 and during the fiscal year 1902 the sum of \$652.29 were disbursed for such items, and there is no evidence that such items were distributed to the Indians of the Kiowa Agency, but the evidence does show that during the period 1901 to 1910 the agency conducted extensive farm operations for agency purposes, and that schools operated under the agency administration conducted farm operations. It is therefore impossible to determine from the evidence what the implements and equipment were used for or by whom it was received. The amount claimed is denied as an offset.

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(5) That Finding 39 be stricken and there shall be set forth in lieu thereof:

At page 16, G.A.O. Report, Def. Ex. 26, is shown the sum of \$85,329.47 expended for provisions purchased between the fiscal years 1901 and 1910, and \$1179.60 expended for provisions purchased in the years 1930-36, 1940, a total of \$86,509.07. Disbursement schedules covering said sum show that the disbursements were made from appropriations for the "subsistence and civilization of Apaches, Kiowas, Comanches and Wichitas," but no proof has been offered of the distribution of provisions to the tribe or any of its members, in fact, Indian witnesses have testified that no rations were issued Indians of the Kiowa Agency after their lands were allotted by May 31, 1901.

It is further shown by the evidence that of the total of 703,000 pounds of beef purchased in 1901, 29,090 pounds were used by agency schools and that Indian employees of the agency received rations as part of their pay but no account of the amount of such rations is shown by the evidence, nor is there any proof shown that provisions purchased during said period were used for tribal benefit. The amount is therefore denied as an offset.

(6) That 39(a) be added:

39 (a). At page 81 of the G.A.O. Report, Defendant's Exhibit 26, appears an item of \$3468.21; a breakdown of the amount shows the following disbursements: \$63 for slaughtering cattle in 1902; \$578.12 for food in 1909, and \$2820.16 for food in 1910. (See pages 112, 120 and 122 of the G.A.O. Report, Def. Ex. 26, Disbursement Schedules 19 and 20, respectively). The caption of each disbursement schedule shows the disbursements therein listed were made from appropriations for the "support of Apaches, Kiowa, Comanches and Wichitas." A report of the General Accounting Office (Tr., p. 1288) testified: "Section B is shipped to the agency and there is nothing to show it was given to the Indians." The two disbursement schedules mentioned above are in Section B of Part III of said report and the invoice or voucher for the purchases merely indicates a purchase for the Kiowa Agency as distinguished from purchases for "Indians," as appears in Section A of Part III of said report. No proof has been offered showing distribution of the supplies to the Indians of petitioner tribes, and in so far as anything appears to the contrary they may have been acquired for agency or school uses. The amount is denied as an offset.

(7) That Finding 43 be stricken and there shall be set forth in lieu thereof:

As shown at page 81, G.A.O. Report, Defendant's Exhibit 26, appears the sum of \$2133.58 expended for hay. The invoice or voucher of such expenditures shows only the words "Kiowa Agency." The report does not purport to

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show tribal use or benefits or distribution and for ought that appears may have been for purchases for agency or school use. The amount is denied as an offset.

(8) That Finding 47 is amended to read:

Defendant claims offsets in the total amount of \$8,767.53 for transportation of goods and materials to the Kiowa Agency. Since the sums expended for items under the headings "Clothing"; "Hardware, Glass, Oil and Paints"; "Household Equipment and Supplies"; "Buildings"; "Mills and Shops," and "Surveying and Allotting" have been denied as proper offsets, the sums expended in transportation of such articles or items for use under such headings are also denied as proper offsets. With respect to transportation of agricultural implements and equipment defendant claims an offset for the expenditure of \$470.44 for the transportation of 717 spools of barbed wire in 1901, and \$314.30 expended in 1902 for the transportation of 483 spools of barbed wire and \$6.36 for 10 kegs of staples (G.A.O. Report, Def. Ex. 26, pp. 145 and 147), a total of \$791.10. With respect to the transportation for agricultural implements and equipment the G.A.O. Report shows \$245.00 expended for transportation of such items in 1901 and \$208.61 in 1902. For the 1901 transportation expenditures (G.A.O. Report, p. 144), defendant does not claim \$29.72 for two wagons (Def. Req. Fdg. 30(2), p. 14 of Def. Br.), leaving a total of \$215.28 claimed by defendant. The following items for transportation expenditures are also disallowed on Disbursement Schedule No. 24 for the fiscal year 1901; grindstones - \$3.43; shovels and spades - \$1.69; drills - \$1.90; spade handles - \$0.29; a total of \$7.31, leaving a balance claimed for the transportation of agricultural implements and equipment for the fiscal year 1901 of \$207.97. For the fiscal year 1902, the G.A.O. Report (p. 146) lists expenditures of \$208.61 for the transportation of the same type of items. Defendant (Def. Req. Fdg. 30(2)) concedes items totaling \$10.43 should be disallowed as offsets. Defendant's claimed offsets for the transportation of agricultural implements for the fiscal year 1902 is therefore \$198.18, or total offsets under this heading for the fiscal years 1901 and 1902 of \$406.15. These and all other items for transportation of agricultural implements and equipment are not allowed as proper offsets. Since defendant is not allowed offsets for provisions or agricultural implements and equipment, defendant's claim for offsets for the transportation of such items must be denied.

(9) That Finding 50 be stricken.

THEREFORE, upon the findings of fact numbered from 1 to 22, inclusive, and those numbered 23 to 49, as changed or amended by this order, the Commission concludes as a matter of law that each and all of the offsets claimed by defendant as set forth in its amended answer and specifically referred to in the findings herein numbered 23 to 49, as changed or amended, should be denied and that the defendant is liable to the petitioners in the sum of \$2,067,166.00.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, That petitioners recover of and from defendant the sum of \$2,067,166.00.

IT IS FURTHER ORDERED, That the petitioners' motion for rehearing in so far as it relates to the allowance of interest on or other increment to said award is hereby overruled and denied.

Dated at Washington, D. C., this 18th day of July, 1957.

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner