

BEFORE THE INDIAN CLAIMS COMMISSION

THE MIAMI TRIBE OF OKLAHOMA)	Docket No. 67 (Consolidated)
also known as THE MIAMI TRIBE,)	with Dockets Nos. 124, 314
et al.,)	and 337
)	
Petitioners,)	
)	
vs.)	
)	
THE UNITED STATES OF AMERICA,)	Intervenors:
)	Dockets Nos. 15-D, 29-B, 89,
Defendant.)	311 and 315

Dated: September 30, 1957

Appearances:

Edward P. Morse, with whom
were Edwin A. Rothschild
and Louis J. Rochmos,
Attorneys for Petitioners
in Docket No. 67

Walter H. Maloney,
James N. Peery,
Attorneys for Petitioners
in Docket No. 124

W. Braxton Miller, with
whom was Mr. Assistant
Attorney General Perry W.
Morton, Attorneys for
Defendant.

Witt, Chief Commissioner, delivered the opinion of the Commission:

We are here concerned solely with the amount of credits and offsets which the defendant is entitled to credit against the award entered in these consolidated dockets on September 17, 1956.

Credits: (Payments on the Claim)

In its Amended Answer the defendant set up alleged payments on the claim totaling \$841,820.89. The parties hereto have devoted considerable space in their briefs to a discussion of the proper credit

to which the defendant is entitled by reason of these expenditures made by it in compliance with the provisions of the Treaty of October 6, 1818, 7 Stat. 189. Aside from the fact that the parties have stipulated that the consideration paid for the land involved, Area No. 99, (Royce), had a commuted value as of the date of the cession of \$280,500, unless error be found in the computation, and none has since been shown, there seems no reason in equity or justice to allow the defendant credit for all deferred payments at their face amount. The cash value of said payments as of the time of the cession would seem to be a fair basis of allowance for credit to the defendant. Therefore, there is affirmed the previous credit of \$280,500 allowed to the defendant as the consideration received by petitioners for the cession involved.

Offsets: (Gratuities)

As to the gratuities, the defendant set up in its Amended Answer seven separate lists or groups of gratuity expenditures as claimed offsets. It has since withdrawn two of these lists or groups, together with several items appearing in the remaining five lists or groups of expenditures, leaving claimed gratuity credits of \$24,925.50. The petitioners in both dockets have conceded that \$1,844.12 of said items may properly be offset against the award heretofore entered.

We shall discuss the gratuity expenditures which are claimed for offset credit in the order of their presentation in defendant's Amended Answer and in the corresponding sections of the General Accounting Office Report, Def. Ex. No. 15.

Paragraph No. 43 (G.A.O. Report, Section A)

After having withdrawn certain items, the defendant now seeks a total offset of \$8,970.45, representing disbursements of public funds for the benefit of petitioners made by defendant between October 6, 1818, and July 29, 1872. The claimed items are enumerated in Section A of the Defendant's Exhibit No. 15, and include the following:

Expense of Indian Delegations. \$1,758.00

Defendant paid \$1,758.00 from an appropriation "to defray the expense of delegations of Indians visiting Washington, and to purchase presents for the members thereof" for travel and living expenses incurred by a delegation of Western Miami Indians visiting Washington, D. C. between March and June, inclusive, in 1872. At that date the Miami Indians residing in Indiana, known as The Miami Indian Tribe, petitioners in Docket No. 124, were recognized as a separate and distinct group from the Western Miami Indians then residing in Kansas, who are the petitioners in Docket No. 67. It is evident from an instrument entitled "Argument of the Western Miami Delegation" filed with the Senate Committee on Indian Affairs during April, 1872, which appears as Petitioners' Exhibit No. 47 in the companion case of Miami Tribe vs. United States, Docket No. 253, that the delegation was in Washington as representatives of an on behalf of the Western Miami Indians. The petitioners in both dockets concede that these expenditures are proper credit items for offset against the award heretofore entered, and we believe they are properly chargeable against the award heretofore entered. See Quapaw Tribe vs. United States, 120 C. Cls. 45.

Hunting and Fishing Equipment, \$36.12

This charge represents the cost of repairing guns and tomahawks during 1823, paid from an appropriation of public funds for the general expense of the Indian Department. The petitioners in both dockets have conceded the item as a proper credit charge against the award granted in these consolidated dockets on September 17, 1956, and we therefore permit the defendant to offset \$36.12 against said award.

Indigent Indians:Board, \$6.50Feed and Care of Livestock, \$5.00

Each of the above expenditures were made from public funds appropriated during 1818 for payment of the general expense of the Indian Department. The report of the General Accounting Office (Def. Ex. No. 15) discloses only one Indian received board, and that but two animals were fed. In the absence of a showing that these expenses were incurred in connection with tribal affairs, each appears to represent benefits passing to individual Indians rather than to the tribe. As such their use as an offset credit is denied by Section 2, 60 Stat. 1049.

Presents to Indians, \$3.94

During 1819 defendant paid \$3.94 for 100 pounds of bells, 12 flints, 6 pounds of lead and 3 pounds of tobacco for presents to the Miami Indians, which were paid for from an appropriation of the public funds for the general expense of the Indian Department. There were at the time approximately 1,000 Miami Indians (Tr., p. 126). While it is conceivable that 100 pounds of bells might have been sufficient for a general distribution among the tribe, it is clearly evident that the remaining items were insufficient to constitute gifts to more than a

chosen few and it is highly improbable that such gifts would have had an over-all tribal benefit. The cost of the separate items cannot be identified, and since we are permitted to offset only such gratuities as constitute a tribal as distinguished from an 'individual' benefit, the items are not available to the defendant for offset purposes. See ^{our} opinion, Kiowa, Comanche, and Apache vs. United States, Docket No. 32.

Provisions: \$7,160.89

(1) During 1821, 1822, and 1823, and from 1838 to 1846, inclusive, the defendant spent a total of \$2,647.97 for provisions for petitioner tribe, which were paid for from public funds appropriated for the current expense of the Indian Department.

a. The amounts spent in 1838 and 1839, respectively, each totaled \$25.00. There is no proof of the nature of the provisions furnished or the occasion of their distribution. The amounts indicate that the entire tribe did not participate, and for want of convincing evidence that the resulting benefits extended to the entire tribe as distinguished from individual members thereof, the expenditures are not available to the defendant for offset credit use.

b. The remaining charges total \$2,597.97, and represent sizeable numbers of rations delivered, there having been 3,500 issued during 1844, and 6,000 issued during 1845. It is stipulated these rations represent provisions furnished to the Miami Indians while receiving their annuity payments during 1821 to 1823, and from 1840 to 1846, inclusive (Tr., p. 41).

We know of no requirement for defendant to furnish provisions to members of a tribe gathered to receive annuity payments. The treaty obligation of defendant was complete upon delivery of the annuity items called for by the treaty, and it would appear that other items distributed at such time would be gratuities subject to being offset as credits under Section 2, 60 Stat. 1049, upon showing of tribal participation. The number of rations furnished and the purpose of the gatherings indicate that the entire tribe participated in the distributions, and we conclude the proof reasonably establishes a tribal benefit was derived.

The petitioners in both dockets have conceded that the sum of \$50.00 as the cost of provisions delivered the petitioners, is a proper offset credit against the award heretofore entered. The proof does not permit identification of the items said petitioners have reference to, and we assume they are a portion of the items comprising this charge of \$2,597.97. Defendant may offset the sum of \$2,597.97 against the award. See Kiowa, Comanche, and Apache v. United States, Docket No. 32.

(2) Between 1834 and 1839, inclusive, defendant paid \$4,512.92 for provisions delivered petitioner Indians and charged to an appropriation of public funds "for expense of provisions for Indians at the distribution of annuities, while on visits of business with the different superintendents and agents, and when assembled on business."

(a) It is stipulated (Tr., p. 42) that \$2,865.24 of this amount represents the cost of provisions delivered to the Miami Indians while they were assembled in compliance with Articles 5 and 6 of the Treaty

of November 6, 1838. According to that treaty, the Miami Indians desired the defendant appoint a commissioner to examine into claims existing against the tribe, and it was provided that a part of the consideration to be paid to the tribe under that treaty should be applied to the payment of such debts of the tribe as that commissioner should determine to be just and legal. This was an assembly, then, concerned solely with tribal affairs and in which the defendant participated as an arbitrator at the petitioners' request, and without any benefit or advantage to be derived therefrom by it. Upon the basis that this charge represents provisions furnished to the tribe or its members while assembled for disposition of tribal matters, we find the sum of \$2,865.24 may be applied as an offset credit against the award heretofore entered.

(b) We are unable to determine what part of the remainder of \$1,647.68 represents expenditures for provisions furnished during the distribution of annuities, while the Indians were on business visits or assembled for disposition of tribal matters, or while they were engaged upon matters which were also of interest to the defendant, so that the items furnished would constitute an "agency" or "administrative" expense. Agency or administrative expenses are expressly denied the defendant for offset credit under Section 2, 60 Stat. 1049. The defendant has failed to present the necessary proof to establish these items as proper offset credits, and they must be denied.

Paragraph No. 44 (G.A.C. Report, Section E)

Between January 1, 1823, and December 31, 1831, petitioner Indians were under jurisdiction of the Fort Wayne and Wabash Agency, and constituted approximately 24% of the total Indian population within that Agency.

Pay of Blacksmiths, \$2,994.24

Between 1823 and 1828, inclusive, defendant paid \$2,994.24 from appropriations for the contingency expense of the Indian Department for blacksmiths at the Fort Wayne and Wabash Agency, \$1,516.33 being paid during the first three years. It appears the services of a blacksmith are such that all tribes present might benefit thereby to the extent of the needs of each. However, petitioners were entitled to the services of a blacksmith under the terms of their 1818 treaty, and the General Accounting Office Report on treaty payments (Def. Ex. No. 14) discloses that none were furnished before 1826. We think petitioners' participation in these benefits for the first three years, if any, were in lieu of the services of a tribal blacksmith (to which they were entitled) and their proportionate share of the expenses for these three years should be considered "payments on the claim." Since they had a tribal blacksmith after 1825, we think it unlikely that the Miami tribe benefited from the services of the agency blacksmith. Accordingly, we deny any part of these expenditures as offset credits.

Provisions, \$247.28

During two separate years the defendant distributed provisions among the Indians under the Fort Wayne and Wabash Agency, the total

cost being \$247.28. It is apparent the benefits derived were not sufficient to extend to some 5,000 Indians that were then within the jurisdiction of the agency, and that they were enjoyed by a comparative few. We think the item must represent individual, as distinguished from tribal, benefits and is not subject to offset use. Kiowa, Comanche and Apache Tribes vs. United States, Docket No. 32.

Paragraph No. 45 (G.A.O. Report Section C)

<u>Presents for Indians</u>	\$ 140.60
<u>Provisions for Indians,</u>	3,386.90

From June 1, 1826, to October 31, 1826, the defendant disbursed a total of \$140.60 for presents and \$3,386.90 for provisions issued to Miami and Pottawatomie Indians at Camp Paradise Springs, Indiana, from \$15,000 appropriated for the purpose of defraying the expense of holding treaties with these tribes and any other Indians claiming land in Indiana. According to the report of the Treaty Commissioners addressed to the Secretary of War on October 23, 1826, this appropriation was used "to pay the actual claims for services and supplies essential to the subsistence of the multitude assembled here, to the preservation of the necessary policy, and to the successful result to which we have ultimately attained."

The Treaty Commissioners' report clearly indicates their understanding of the purposes for which the funds were appropriated, and that they considered the expenditures necessary and incidental to the making of the treaty. We think they were administrative expenses, and as such are barred by Section 2, 60 Stat. 1049, from use for offset credit.

Quapaw Tribe vs. United States, 128 C. Cls. 45, 64.

Paragraph No. 46 (G.A.C. Report, Section D)

During the period from January 1, 1832, to December 31, 1834, the Miami Indians were under jurisdiction of the Indiana Agency. There appears to have been 1378 Miami Indians, 1346 Pottawatomie Indians and under 500 Kickapoo and Chippewa Indians within that agency during this period, and defendant expended public funds totaling \$422.75 for all of said Indians for the purposes set forth below:

Presents to Indians, \$239.50

Defendant spent \$239.50 from appropriations for the purpose of "promoting civilization among the friendly Indian tribes, to secure their continued friendship and maintain agents among them," (2 Stat. 143, 4 Stat. 519), for presents delivered the Indiana Agency Indians. We believe that expenditures of this nature were primarily administrative expenses for the benefit of the United States, and as such they are not subject to use as offset credits under the wording of Section 2, 60 Stat. 1049.

Provisions, \$183.25

The provisions supplied by the above expenditure were 12 barrels of flour in 1832; 30 bushels of corn, 5 barrels of flour and 200 pounds of pork supplied in 1833, and 4 barrels of flour and 2 barrels of pork delivered during 1834. The cost was paid from an appropriation of public funds "for provisions for Indians at the distribution of annuities, while on visits of business with the different superintendents and agents, and when assembled on business."

As previously stated, it is not clear from the appropriation act alone whether the United States was interested in the business conducted during the various assemblies or visits. It is quite likely that defendant's interest in the purposes of these meetings and visits would qualify the expenditure as one of "agency" or "administrative" expense, and in the absence of convincing evidence to the contrary, we deny this item as an offset credit.

Paragraph No. 47 (G.A.O. Report, Section E)

From July 1, 1870 to August 31, 1947, the Miami Indians, who are the petitioners in Docket No. 67, resided within the jurisdiction of the Quapaw Agency. In ^{our} Docket No. 14, Quapaw Tribe vs. United States, 128 C. Cls. 45, this Commission permitted defendant to offset against an award granted to the Quapaw Tribe a proportionate share of certain expenditures made by it during this period for the benefit of all Indians under that Agency which allowance was later approved by the Court of Claims upon appeal to that Court. Defendant has submitted the same expenditures for offset credit in these consolidated dockets, with the exception, however, that an item of \$3,636.60 which is now said to represent the cost of transportation of provisions for Indians residing within the jurisdiction of the Quapaw Agency, was in Docket No. 14 presented as being a part of the cost of such provisions.

We have had occasion to review our interpretation of Section 2, 60 Stat. 1049, with respect to the allowance of offset credits in Kiowa, Comanche and Apache Tribes vs. United States, Docket No. 32. In line with our position, as stated in the opinion recently rendered in that docket, we have checked into the various appropriations from which the items presently claimed as credits were paid. Having considered

each of the items here presented without respect to our prior conclusions expressed in Docket No. 14, and having applied the measure expressed in our opinion rendered in Docket No. 32, particularly the yardstick of 'individual' as distinguished from 'tribal' benefits, we are convinced that many of these claimed credits are inhibited by Section 2, 60 Stat. 1049, or that the defendant has failed to produce that degree of proof necessary to establish the validity of the item as an offset credit against these Indians.

<u>Expense of Indian Delegations</u>	<u>\$2.87</u>
<u>Hunting and Fishing Equipment</u>	<u>\$9.00</u>

During 1880 the defendant paid \$2.87 as expenses of an Indian delegation from an appropriation "for education and civilization of the Indians within the limits of the late Central Superintendency, including clothing, food and lodging for the children attending school." During 1883 it paid \$9.00 from an appropriation for those exact purposes for hunting and fishing equipment. A like appropriation was held to have been for educational purposes within the meaning of 60 Stat. 1049 as interpreted in Menominee Tribe of Indians vs. United States, 118 C. Cls. 290, by the Court of Claims in Quapaw Tribe vs. United States, 128 C. Cls. 45. Since the use of expenditures for educational purposes for offset credit is denied to the defendant by Section 2, 60 Stat. 1049 and the appropriation clearly included funds for educational purposes, we deem these expenses not available for offset purposes in the absence of proof that they were not of that nature.

Furthermore, in 1880 there were ten separate and distinct tribes residing within the jurisdiction of the Quapaw Agency; there were nine

such tribes there in 1883. The nature of the first item suggests that but one tribe benefited thereby for it would seem quite unlikely each of ten separate tribes would have had occasion to be represented by the same delegation. The amount of the second expenditure clearly indicates that the benefits derived were 'individual' rather than accruing to the entire Indian population of the Agency, or even to the Miami tribe as a whole.

Indigent Indians: Board, \$33.20
Indigent Indians: Funeral Expense \$21.24

Defendant paid \$33.20 during 1881 for board of indigent Indians from an appropriation called "Civilization Fund." The amount involved clearly discloses that the benefits were 'individual' rather than tribal in their nature.

During three separate years defendant paid funeral expenses for indigent Indians. A total of \$21.24 was thus paid from the contingency appropriation fund of the Indian department. This type of expense has consistently been held to constitute a tribal benefit. That moral benefits on a broad basis flow from the proper internment of a deceased, though indigent, Indian is beyond question. Ordinarily the item is a proper offset, and would be here allowed were it not for the fact that during these years there were at least seven other tribes under the Quapaw Agency. (Def. Ex. No. 15). We do not believe that Congress intended when 60 Stat. 1049 was adopted that a successful litigant should be charged with a portion of the cost of burying an Indian of a tribe with which it has no relationship other than the happenstance that each are situated within the jurisdiction of a common agency. We are unable

to identify the deceased as members of the petitioner tribe represented in Docket No. 67, and the item is denied for offset use.

Surveying and Allotting, \$5.00

During 1907 the defendant paid \$5.00 from the contingency appropriation fund of the Indian Department for surveying and allotting expense within the Quapaw Agency. We know of no obligation upon the part of the defendant to perform this service, nor is the nature of this item such that it is reasonable to suppose it was as beneficial to each of the eight tribes then within the jurisdiction of the Quapaw Agency. The size of the expenditure suggests that not more than one or two individuals may have been benefited thereby, or that it was for the benefit of the agency itself. In the absence of further evidence concerning the actual service performed, we conclude the item should not be allowed as representing a tribal benefit subject to offset against the award heretofore entered.

Provisions, \$5,055.57

Defendant spent varying amounts from a number of appropriation funds over a period of several years for the purpose of supplying provisions to the Indians within the Quapaw Agency. During this period the petitioners in Docket No. 67 comprised a varying percentage of the total population under that agency.

During 1871, 1873, 1887, 1889 and 1890 less than \$50.00 per year was spent for this purpose. Without respect to the various appropriation funds from which payments were made, the size of these expenditures do not indicate a widespread distribution among the Indian population which

varied from 1111 to 1245 during these years. The same is true with reference to \$77.00 spend during 1893 when there were eight different tribes and a total Indian population of 1356 under this Agency. (Def. Ex. No. 15). We believe these expenditures were for 'individual' benefits, and as such they are inhibited for use as offset credit by the wording of Section 2, 60 State. 1049.

During 1875, \$433.75 was spent from an appropriation to purchase presents and provisions for the Indians. the General Accounting Office's report discloses that the number of Miami Indians under the Quapaw Agency that year is not known. The closest census in point of time which includes the Miami population is that for 1871, when 1245 Indians lived there of which 33 were Miamis. There is nothing in the record indicating petitioner Indians participated in these benefits. In any event, the size of the expenditure raises the question of tribal versus individual benefits. The item will be denied. Kiowa, Comanche and Apache vs. United States, Docket No. 32.

From 1880 to 1886, inclusive, defendant spent \$3,564.59 from appropriations made for the education and civilization of the Indians within the limits of the late Central Superintendency, including clothing, food, and lodging for the children attending school. There being no evidence that these provisions were not used in connection with educational purposes, these expenditures will be denied to the defendant for offset use for the reasons expressed when considering other expenditures from this selfsame fund.

During 1883 the Indian population of the Quapaw Agency was 1100 of which .0555¹/₃ or 61 souls were Miami Indians. That year defendant spent \$677.78 for beef which was delivered to the Quapaw Agency and paid for from public funds appropriated for the purchase of additional beef to be distributed at such agencies as the necessities of the Indians required. There being no proof of the extent to which petitioners in Docket No. 67 participated in this item, if at all, the defendant may not offset any part. Kiowa, Comanche and Apache vs. United States, Docket No. 32.

The remaining item is an expenditure of \$172.40 made during 1881 from an appropriation entitled "Civilization Fund." There being nothing to indicate that this expenditure was for the benefit of all of the Indians under the Quapaw Agency at this time, or to what extent the petitioners in Docket No. 67 participated therein; since the amount indicates the provisions furnished were not sufficient to benefit the entire Indian population, we think this item should also be denied to defendant for offset use.

Transportation of Provisions, \$3,636.60

From 1878 to 1900, inclusive, and while the Miami Indians who are petitioners in Docket No. 67 were under the jurisdiction of the Quapaw Agency, defendant paid a total of \$1,398.06 for transporting provisions to that Agency. Each year these payments were made from public funds appropriated to cover the transportation of goods, provisions and other articles for the various Indian tribes provided for in the general appropriation bill of the Indian Department.

The General Accounting Office report reflects that \$2,170.64 of this sum was spent after 1930. According to this report there were no gratuitous items furnished to the Indians under the Quapaw Agency after 1893. It is obvious then that these items represent charges for transporting articles for agency or administrative use or items which defendant was obligated to or did furnish to one or another of the several other tribes, bands or groups of Indians attached to that Agency. It has been consistently held when considering questions involving offset credits such as these, that the cost of transporting items to the various Indian tribes should follow the assessment of the cost of the item itself. Accordingly, the defendant may not set off any part of the \$2,170.64 spent for transportation of provisions after 1930.

Turning then to the remaining charges, it appears that this Commission has found from the proof tendered in these consolidated dockets that the defendant may not offset any of the gratuitous items furnished the Indians residing within the jurisdiction of the Quapaw Agency. Accordingly, none of the transportation items presented may be allowed for offset credit.

To summarize, the defendant may offset against the award of \$3,218,625.00 granted these petitioners on September 17, 1956, credits of \$280,500.00 according to the stipulation of parties, and gratuitous expenditures totaling \$7,257.33.

Edgar E. Witt
Chief Commissioner

We concur in the above:

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner