

on November 18, 1957, defendant stated it was withdrawing its claim for certain items totaling \$129,937.85, leaving claimed offsets of \$35,334.11.

Defendant has introduced in evidence a report by the General Accounting Office, dated July 17, 1956 (Def. Ex. 55), which is supplemented by a statement, dated October 3, 1956 (Def. Ex. 57). From the record of disbursements made by the United States, as detailed in these two reports, defendant has presented the items claimed as offsets. Defendant asserts that by the two General Accounting Office reports and the testimony of a General Accounting Office official, Mr. Gillies, it has proven that the United States, during the period from August 1, 1920, to June 30, 1956, gratuitously expended for the benefit or on behalf of the petitioner sums totaling \$35,334.11 for items which are proper offsets under the provisions of Section 2 of the Indian Claims Commission Act and should be deducted from the award made in this case.

Petitioner does not question the accuracy of the disbursements listed in the G.A.O. reports. However, it contends that the evidence introduced by defendant fails to prove that any of the disbursements were for the benefit of the Seminole Nation but rather indicates that they were for the benefit of individual Indians or for agency expenses and educational purposes, and, therefore, the claimed items are not proper offsets.

The items claimed by defendant as proper offsets may be generally classed as:

- (1) Those asserted by defendant as payments made directly to the Seminole Nation;

(2) Those paid to Seminole and Creek Indians which defendant claims should be offset in the proportion which the Seminole Indians represent to the total population of the two tribes, and;

(3) Those paid to or on behalf of the Five Civilized Tribes Agency which defendant asserts should be offset according to the proportion of the population of the Seminole Nation to the total Indian population of the Five Civilized Tribes Agency.

Before proceeding to examine the items under the three classes, we will briefly set forth the guides used by the Commission to test the legitimacy of the claimed offset items. The applicable part of Section 2 of the Indian Claims Commission Act (25 U.S.C. 70a) makes the following provision respecting gratuity offsets:

. . . the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that it is hereby declared to be the policy of Congress that monies spent for the removal of the claimant from one place to another at the request of the United States, or for agency or other administrative, educational, health or highway purposes, or for expenditures made prior to the date of the law, treaty or Executive Order under which the claim arose, or for expenditures made pursuant to the Act of June 18, 1934 (48 Stat. 984), save expenditures made under section 5 of that Act, or for expenditures under any emergency appropriation or allotment made subsequent to March 4, 1933, and generally applicable throughout the United States for relief in stricken agricultural areas, relief from distress caused by unemployment and conditions resulting therefrom, the prosecution of public work and public projects for the relief of unemployment or to increase employment, and for work relief (including the Civil Works Program) shall not be a proper offset against any award.

In considering the various items presented by defendant as offsets against the award in this case the Commission has measured each item against the following requirements:

(1) Were the disbursements made by the United States gratuitous expenditures made to or for the Seminole Nation without any obligation on the part of the Government to make them and without obligation on the part of the Seminole Nation to repay them?

(2) Were the gratuitous expenditures for the benefit of the entire tribe?

(3) Do any of the gratuities come within the scope of any of the excepted categories?

(4) Does the nature of the claim and does the course of dealings between the petitioner and the United States in good conscience warrant the offset?

If any of the claimed items fail to meet all these criteria, it must be denied as an offset. With this brief statement concerning the test of an allowable offset, we now turn to the items claimed in this case.

The largest category of offsets includes those items which defendant claims were paid directly to the Seminole Nation. The items of offset falling within this category total \$34,043.39. As detailed in Finding of Fact No. 17, defendant asserts that gratuitous expenditures totaling \$10,180.39 were made during the period from August 1, 1920, to June 30, 1951, for the benefit of the Seminole Nation.

Of the disbursements made during this period the Commission has found only two allowable offset items--payments of \$75.00 and \$85.00 for funeral expenses of indigent Indians (see Finding of Fact No. 17(d)).

Gratuitous expenditures by the United States for funeral expenses of indigent Indians have been consistently held to be allowable offsets. Pottawatonic Tribe of Indians, et al., v. United States, 3 Ind. Cl. Comm. 540; The Quapaw Tribe of Indians, et al., v. United States, 1 Ind. Cl. Comm. 644, affirmed 128 C. Cls. 45. The funeral expense expenditures satisfy the criteria for offsets allowable under the Act, and these items, totaling \$160.00, will be offset against the award in this case.

Of the remaining items claimed by defendant as allowable offsets, most involved payments made to individual Indians. The question of gratuitous expenditures for individual members of a tribe was discussed in detail in our decision in the case of The Kiowa, Comanche and Apache Tribes of Indians v. United States, 5 Ind. Cl. Comm. 297. After discussing the legislative history of the Act and the relevant court decisions on offsets we stated in that case, "at no place in any of the bills that we have examined were payments to individual members of a claimant suggested as an offset nor does the present act expressly make such outlays deductible from awards (page 301) . . . it is only gratuitous expenditures for a tribe, as distinguished from gifts to its members, that can be offset against an award in any case." (page 305)

The \$19.00 and \$84.00 items listed under the heading "Agricultural aid" (Finding 17(a)) were paid from the appropriation "Support and Rehabilitation of Needy Indians." This clearly indicates that these funds were expended for the use and benefit of individual needy Indians. In 1943 and 1944, when these payments were made, there were 2,000 Seminole Indians. The distribution of such small amounts, \$19.00 in 1943 and

.00 in 1944, for agricultural aid to a tribe of 2,000 members can scarcely be said to be a tribal gratuity. These payments were gifts to individual members of the tribe and cannot be offset against the award in this case.

The \$9,125.35 disbursed in cash payments during the period from 1945 through 1951 were likewise made to individual, indigent Indians. (Finding 17(b)). The payments were not made on a tribal basis for the benefit of the Seminole Nation. As defendant's witness from the G.A.O. testified, the vouchers for these payments showed the names of individual Indians and the case number opposite each name. As enunciated in the Kiowa case, supra, such gifts to individual members of the petitioning tribe are not allowable offsets.

The \$70.00 item expended in 1947 for fuel came from the "Welfare Indians" appropriation and it is listed in the G.A.O. report as a payment to indigent Indians (Finding 17(c)). This item was a gratuity to individual Indians and cannot be allowed as an offset.

The \$721.08 disbursement described in our Finding of Fact No. 17(e) appears to have also been an individual gratuity since the payments were listed as having been made for the benefit of indigent Indians. Since those payments were not made for the benefit of the Seminole Nation, they are denied as offsets.

The 96 cent item for feed and care of livestock was paid from the appropriation "Support and Rehabilitation of Needy Indians." The source of these funds and the amount clearly indicate individual use, and it is denied as an offset.

The final items under the first class of claimed offsets are payments made during the period from 1952 through 1956 totaling \$23,863.00 (Finding 22). These disbursements are listed as relief grants to indigent Seminole Indians. Again the evidence indicates the payment of funds to individual indigent Indians. The payments were not made on a tribal basis, and, in fact, the Indians paid under these claimed disbursements could only be identified with the Seminole Nation by checking the names against other lists of the Five Civilized Tribes Agency. In the absence of any evidence that these payments were tribal gratuities, these payments to individual Indians should be denied as offsets.

The second category of claimed offsets includes payments made in 1943 and 1946 as subsistence payments to the Seminole and Creek Indians. Defendant claims 16.8% of the total disbursements of \$63.54 since that is the percentage of Seminole Indians to the population of the two tribes. Thus the total claimed under this category is \$10.67. These payments were made for the support and rehabilitation of needy Indians indicating their use for individuals rather than the tribe. Further, such small payments which total but \$10.67 for two years cannot be said to have constituted a tribal benefit. Accordingly, these payments are denied as offsets.

The third class of claimed offsets represents those payments made to or on behalf of the Five Civilized Tribes Agency which defendant asserts should be offset according to the proportion of the population of the Seminole Nation to the total Indian population of the Five Civilized Tribes Agency. The total of the claimed offsets under this category is \$1,290.72.

The first group of disbursements, as detailed in our Finding of Fact No. 19, totaled \$50,217.82 of which defendant claims 2.4% as the offset against petitioner. Defendant did not introduce any evidence indicating that any portion of these funds were distributed as a gratuity for the Seminole Nation. The source of the funds as well as the items themselves indicates their use for either (1) individual indigent Indians, (2) educational use, (3) administrative expenses of the Five Civilized Tribes Agency, or (4) transportation of items previously disallowed as offsets. Funds expended for any of these purposes are not available for offset against an award by this Commission.

The final group of claimed offsets totals \$3,047.70 expended for transportation expenses relating to various items listed in our Findings of Fact Nos. 20 and 21. The proportionate share which defendant would attribute to petitioner is 2.4% or \$73.14. The items with respect to which the transportation charges pertain have either been disallowed as offsets or clearly indicate a non-tribal use. Accordingly, these charges are disallowed as offsets.

In summary, defendant is allowed to offset \$160.00 against the award of \$34,213.66, leaving the sum of \$34,053.66 for which amount a judgment will be entered for petitioner.

Wm. M. Holt
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Louis J. O'Marr
Associate Commissioner