

## BEFORE THE INDIAN CLAIMS COMMISSION

THE PRAIRIE BAND OF  
 POTAWATOMI INDIANS, et al.,  
 Plaintiffs,

v.

UNITED STATES OF AMERICA,  
 Defendant.

Docket No. 15-J

THE CITIZEN BAND OF  
 POTAWATOMI INDIANS, et al.,  
 Petitioners,

v.

UNITED STATES OF AMERICA,  
 Defendant.

Docket No. 71-A

Decided: February 26, 1959

ADDITIONAL FINDINGS OF FACT - ON OFFSETS

The Commission makes the following findings of fact, which are supplemental to findings numbered 1 to 69, each inclusive, and hereinbefore made on value (4 Ind. Cl. Com. 409):

70. Between June 17, 1846, and January 1, 1918, the United States, without treaty or other contractual obligation to do so, expended gratuitously from public funds certain sums which the defendant has now presented for offset credit against the award hereinbefore entered against it, of which claimed credits \$1,449.85 represents charges against The Prairie Band and The Citizen Band of Potawatomi Indians jointly and \$130.00 of which represents charges solely against the Prairie Band for a total claimed offset of \$1,579.85.

71. Between June 17, 1846, and June 30, 1849, the United States claims there was expended gratuitously from public funds for the Potawatomi Nation of Indians the total sum of \$175.00 for the following purposes:

(a) Recovery of Livestock, \$21.00. The sum represents an expenditure of \$21.00 paid from an appropriation for "Contingencies, Indian Department" (G.A.O. Report, Def. Ex. 100, page 92) under date of September 15, 1846, for the recovery of seven head of cattle belonging to the Potawatomi Indians which had strayed back into the settlements of Missouri (Def. Ex. 101). The Potawatomi Nation of Indians at that time owned its property communally. The payment having been made to recover tribal property, the item constitutes a tribal benefit allowable as an offset credit under Section 2 of 60 Stat. 1049. Osage Nation of Indians v. United States, 3 Ind. Cl. Comm. 425, 426, 438.

(b) Provisions, \$154.00. Defendant in the amended answer set up as an offset against the award the sum of \$170.00 comprising certain items of expenditures for provisions. Defendant concedes (Def. Req. Fdg. of Fact 28 (2)) that the item of \$16.00 set out in its amended answer in paragraph 44 for the purchase of two beeves should not be allowed as an offset.

(1) During the fiscal year 1847 the sum of \$28.00 was paid from an appropriation "Contingencies, Indian Department" (G.A.O. Report, page 92). This sum consisted of two items, the expenditure of \$16.00 for one beef also \$12.00 for 300 pounds of flour, both of which were delivered to the Potawatomi Indians during a council (Def. Exhibits 102 and 103)

It is not shown by the evidence the purpose of the council where these items were provided the Indians. It may well have been a council on a matter of interest to defendant in which case the items furnished would constitute "agency" or "administrative" expense. The items making up the sum of \$28.00 are denied as an offset. Miami Tribe of Oklahoma, et al. v. United States, 5 Ind. Cl. Comm. 494, 506.

(2) The remainder of the \$154.00, claimed by defendant as an offset, in the amount of \$126.00 paid from an appropriation "Provisions for Indians" consists of the following items: the sum of \$16.00 for the purchase of one beef and one barrel of flour on September 1, 1846 during a council (Def. Ex. 105-A) and the sums of \$32.00 for one beef, \$60.00 for 2,000 lbs. of flour and \$18.00 for three barrels of flour, all three of these items being expended "for provisions of annuity for the Potawatomes during the 1846 payment period" (Def. Ex. 105-B, 105-C, and 105-D). The item of \$16.00 for provisions during a council is denied as a proper offset for the reasons set forth above as an administrative or agency expense. Miami case, supra. The items of \$32.00, \$60.00 and \$18.00, representing sums expended for provisions supplied the Potawatomi Indians during a payment period in October 1846, totaling \$110.00, are allowed as proper offsets. See Miami Tribe, supra, at page 505.

72. (a) Defendant in paragraph 45 of its amended petition set forth certain sums which were presented for offset credit against the award which sums were, according to defendant, expended gratuitously from public funds for the Potawatomi Nation during the period from July 1, 1849 through

the year 1864. These items come under two classifications or categories, (1) Expenses of Indian Delegations and (2) Provisions. The expense of Indian delegations as set forth in the amended answer totaled \$294.51. This total was reduced by defendant to \$86.20 by eliminating as a claimed offset \$203.51 expenditures for Potawatomi Indians who could not be identified as members of the Potawatomi Nation of Indians (Def. Req. Fdg. 29 (2)) and by reducing one item by \$4.80 so as not to include board or expenses attributable to the United States Indian agent. The sum of \$86.20 for expenses of Indian delegations consists of the following sums paid for tribal members in 1863 on a visit to the Commissioner of Indian Affairs in Leavenworth to transact business for the Potawatomi Tribe:

Board of three horses belonging to Potawatomi Council. . . . .	\$ 9.00
Boarding two members of Council . . . . .	5.00
Traveling expenses of Council . . . . .	45.00
Board of Council. . . . .	27.20

(Def. Exhibits 108-A, 108-B, 108-C, 108-D). Expenses of Indian Delegations have been allowed as a proper offset in prior cases (The Quapaw Tribe v. United States, 128 C. Cls. 45, 62) and the above items totaling \$86.20 are so allowed herein.

(b) In paragraph 45 of defendant's amended answer certain items for "Provisions" are listed as claimed offsets. The items of \$32.00, \$1,041.65, and \$115.00 were expended from public funds as follows:

(1) \$32.00 paid on September 24, 1853, from public funds by G. W. Mannypenny, Commissioner of Indian Affairs, for beef, flour, sugar and coffee (G.A.O. Report, page 124). A notation on this voucher (Def. Ex. 113) shows this amount (as does the G. A. O. Report) was paid

from an appropriation "Extinguishing Title West of Missouri and Iowa" (Act of March 3, 1853, 10 Stat. 238 - see Tr. page 43). The Commission is aware from its findings of fact in previous cases that Commissioner Mannypenny was sent west by the President of the United States in the summer of 1853 to negotiate with the Indian tribes west of Missouri and Iowa for the extinguishment of title of Indians there located to all or parts of their lands including the Potawatomi Tribe (Finding 3 (b), The Absentee Shawnee Tribe v. United States, 6 Ind. Cl. Comm. 377). Such a negotiation was for the benefit of the United States and any expenditures for provisions under these circumstances are therefore denied as offsets as administrative expense. Miami Tribe, supra, at page 508.

(2) Defendant claims as an offset \$1,041.65 paid in 1861 under an appropriation "for the relief of the destitute Indians \* \* \* who have failed in raising crops from the drouth of last summer [1860], \* \* \*" (Act of March 2, 1861, 12 Stat. 239). According to the report of the Special Agent in charge of delivering the relief provisions the following were delivered to the Indian agent for the Potawatomi:

2137 bushels of corn	\$718.67
11 barrels of pork	209.00
27 13/60 bushels of potatoes	17.69
82 lbs. of bacon	7.54
Total	\$952.90

The difference between the offset claimed, \$1,041.65, and the amount distributed, \$952.90, occurs because 264 bushels of corn brought to the Potawatomi reserve was paid in kind to the Indians who used their teams to haul the supplies to the agency. In view of the amount of provisions delivered at one time and taking into consideration the purpose of the appropriation

it is apparent that the expenditure resulted in a tribal, rather than individual, benefit and the sum of \$952.90 is allowed as a proper offset. (See Def. Exhibits 114, 115, 116-A to 116-H, incl.)

(3) In paragraph 45 of defendant's amended answer is set forth a claimed offset of \$115.00 for provisions. This total sum consists of two items (a) \$43.00 for beef, flour and bread purchased for the sustenance of the Potawatomi Indians in July 1850 (Def. Ex. 118) during the delivery to the Indians of sundry agricultural and mechanical implements, and (2) the expenditure of \$72.00 in May 1851 for 1600 lbs. of beef purchased for the Potawatomi Indians during the payment of their annuity (Def. Ex. 117). With respect to the provisions furnished the Indians during delivery of the agricultural and mechanical implements there is no proof that such equipment was not furnished for educational purposes. Since the equipment itself must be considered as for educational purposes, without proof to the contrary, and such items in themselves would not be proper offsets (Quapaw Tribe, supra, p. 71) then the provisions furnished the Indians awaiting delivery of same must be considered agency or administrative expenses and the \$43.00 for beef, flour and bread is denied as an offset. The item showing \$72.00 paid for the purchase of beef during the annuity payment in 1851 is allowed as a proper offset. Miami Tribe, supra, at page 505.

73. Offsets Claimed Solely Against The Prairie Band - \$100.00.

During the years 1916 and 1917, the United States expended certain sums for the purchase of oats and hay delivered to the Potawatomi Agency at Mayetta, Kansas. Defendant's Exhibit 119 is a voucher showing the expenditure

in 1916 of 3320 lbs. of oats for \$51.87. Of this sum \$35.00 was paid under appropriation "Industrial Work and Care of Timber" and the balance of \$16.87 was charged to the "I. M. P. L. Pott School." Defendant claims only the \$35.00 as an offset. Defendant's Exhibit 120 is a voucher showing the purchase in 1917 of 3200 lbs. of oats for \$60.00 and the voucher charges this to the appropriation "Industrial Work and Care of Timber." Defendant claims the \$60.00 as an offset. A voucher, Defendant's Exhibit 121, is for the purchase of 13,503 lbs. of bailed prairie hay for \$67.51, and of this amount \$35.00 was charged to the appropriation "Industrial Work and Care of Timber" and the remainder to "Interest on Potawatomi, Gen'l Fund." Defendant claims only \$35.00 of the \$67.51 outlay. Disbursement Schedule No. 48 of the G. A. O. Report (Def. Ex. 100) contains the figures with respect to disbursements for the Potawatomi Indians in Kansas under the appropriation "Industrial Work and Care of Timber" for the fiscal years 1912 through 1919. Only one of the above items claimed by defendant can be identified in the report and that is \$35.00 charged to this appropriation in 1917 (G. A. O. Report, p. 130). Under this appropriation Disbursement Schedule No. 48 shows sums expended for the Prairie Band in the amount of \$8,139.25 for the fiscal years 1912 through 1919 for such purposes as pay and expenses of farmers and farm laborers, purchase of livestock and feed and care of livestock. In the absence of proof to the contrary the items for the purchase of oats and hay totaling \$130.00 which defendant sets forth as offsets appear to have been educational or agency expenses and are denied as proper offsets. Quapaw Tribe, supra, pages 64 and 72.

74. The course of dealings between plaintiffs and defendant during the period herein involved has not been such that the defendant is prohibited from setting up against the award previously entered against the United States any credits or offsets which it may have that are not precluded by Section 2 of 60 Stat. 1049.

75. The Commission finds, therefore, that the United States is entitled to offset against the award heretofore entered against it the total sum of \$1,242.10 chargeable jointly against petitioner bands. In summary the items allowed as proper offsets are as follows:

Recovery of Livestock . . . . .	21.00
Provisions (at payments). . . . .	110.00
Expenses of Indian Delegations. . . . .	86.20
Provisions for Relief of Destitute Indians .	952.90
Provisions (at payment) . . . . .	72.00
Total Offsets	<u>\$1,242.10</u>

Edgar E. Witt  
Chief Commissioner

Louis J. O'Harr  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner