

O'Marr, Commissioner, delivered the opinion of the Commission.

The Commission, on September 19, 1956, held that the petitioner Potawatomi Nation, as created by the Treaty of June 5, 17, 1846, and as it then existed, is entitled to an award for the benefit of all descendants of said nation as it was constituted and recognized by the United States in said treaty, in the sum of \$4,341,217.00, less \$1,051,000 paid on said claim, leaving a net recovery of \$3,290,217.00. An interlocutory award in accord with said decision was entered on the same date, subject to offsets, if any, allowable under the Indian Claims Commission Act, 60 Stat. 1049. (See 4 Ind. Cl. Comm. 409-472, incl.). On the same date, September 19, 1956, the Commission made findings of fact, rendered an opinion, and entered a final order wherein the rights of certain intervenors were determined adversely to said intervenors and petitioners' motion to dismiss the intervening petition was sustained (4 Ind. Cl. Comm. 473-539). The judgment of the Commission dismissing the petition for intervention was affirmed by the Court of Claims in _____ C. Cls. _____, Slip Opinion, Appeal Docket No. 2-57, decided July 16, 1958. All other issues having therefore been determined the Commission now has before it for consideration the question of what offsets, if any, the defendant is entitled to offset against the award under Section 2 of the Act.

Defendant filed an amendment to its answers in these consolidated cases in which it claimed offsets in the aggregate amount of \$1,804.00. Of this amount the sum of \$130.00 was claimed as an offset solely against the Prairie Band of Potawatomi while the remainder of the total sum claimed

was urged as an offset against the Prairie Band and the Citizen Band of Potawatomi Indians jointly. A hearing was held with respect to the claimed offsets and evidence both documentary and oral presented to the Commission.

Defendant in its proposed findings of fact conceded that certain sums set forth in its amended answer were not items that should be allowed as proper offsets. These items consist of \$16.00 for the purchase of two beeves, \$4.80 for the payment of expenses of the Indian agent accompanying Indian delegations, and \$203.51 claimed as an offset for Expenses of Indian Delegations which sum defendant concedes can not be traced to petitioners.

In support of its claimed offsets defendant introduced in evidence a report by the General Accounting Office (Def. Ex. 100) which hereinafter will be referred to as the G. A. O. Report, the testimony of Francis J. Gillies, a supervisory examiner in the Indian Claims Section, General Accounting Office, under whose supervision the report was compiled, and copies of vouchers showing the disbursement of the sums claimed as offsets.

The Commission has examined each item claimed as an offset by defendant and has applied the standards or guides applicable in offset cases as previously determined by the Court of Claims and this Commission in Quapaw Tribe v. United States, 128 C. Cls. 45; Kiowa, Comanche and Apache Tribes v. United States, 5 Ind. Cl. Comm. 297, affirmed _____ C. Cls. _____, Slip Opinion, July 16, 1958; Miami Tribe of Oklahoma, et al. v. United States, 5 Ind. Cl. Comm. 494, 506. Each item is specifically identified in the

findings of fact herein made and will be discussed now considering the contentions of the parties and the controlling prior determinations on offsets.

Recovery of Livestock, \$21.00

The Commission allows this item as a proper offset since at the time, in 1846, the cattle of the Potawatomi Indians was communally owned. A similar item was allowed in Osage Nation v. United States, 3 Ind. Cl. Comm. 425, 426, 438. In Quapaw Tribe v. United States, supra, at page 73, recovery of strayed or stolen livestock was denied as an offset but this appears to have been based on the appropriation act (education and civilization) under which the expenditure was made by defendant.

Provisions, \$154.00 (1846 to 1849 incl.).

Defendant claims offsets in the amount of \$154.00 for provisions for Potawatomi Indians during the fiscal period 1846 to 1849, inclusive. There is no question raised as to the accuracy of these disbursements but petitioners object to their allowance because some of the items making up the total were expended for provisions at councils which may well have been called by and for the convenience of the government. Without further proof the items \$16.00 for beef, \$12.00 for flour and \$16.00 for one beef and flour (Finding 71 (b) (1) and (2)) provided the Indians attending council must be deemed administrative or agency expenses and denied as a proper offset. Miami Tribe, supra, page 506. The remaining part of the \$154.00 claimed as an offset, or \$110.00, was expended for flour and beef during the 1846 payment period. These provisions at payment periods, petitioners contend, should be considered administrative expenses and should

be disallowed because at that time the defendant did not charge the items against funds owned by petitioners. This Commission in the Miami case, supra, stated at page 505 "We know of no requirement for defendant to furnish provisions to members of a tribe gathered to receive annuity payments." The fact that the tribe may have had funds available at the date of the gratuitous expenditure does not change the gratuitous nature of the item nor bring it within any exception set forth in the act. The amount of \$110.00 is therefore allowed as a proper offset.

Expenses of Indian Delegations - \$86.20

Defendant claims as an offset the total sum of \$86.20 expended for the expenses of Indian delegations. This amount was expended in 1863 for members of the Potawatomi tribal council on a visit to Leavenworth to transact business for the Potawatomi Tribe, with the Commissioner of Indian Affairs. Petitioner contends the items making up this sum should be considered as an administrative expense since the conference may have been one for the convenience of the United States. Where the Commission may ascertain or infer that such a conference or council was for the convenience of, or for the benefit of, the United States, expenditures made for expenses or provisions will not be allowed as proper offsets (Finding 72 (b) (1) and Finding 71 (b) (1)). Under the facts here presented the items for expenses of Indian delegations are proper offsets and the sum of \$86.20 is allowable. Quapaw Tribe v. United States, supra, at page 62.

Provisions - \$1,188.64 (1849-1864)

This aggregate amount of \$1,188.64 expended for provisions consists of three items, \$32.00 expended in September 1853 by Commissioner of Indian

Affairs Mannypenny for beef, flour, sugar and coffee for Potawatomi Indians; \$1,041.65 paid in 1861 for corn, pork, potatoes and bacon for the Potawatomi Indians under an appropriation act for the relief of destitute Indians suffering from a drouth; and \$115.00 for provisions in 1850 furnished the Potawatomi Indians during delivery to them of sundry agricultural and mechanical equipment.

The item of \$32.00 for provisions expended by Commissioner Mannypenny was charged to the appropriation (Act of March 3, 1853, 12 Stat. 238) "Extinguishing Title West of the Missouri and Iowa" according to the voucher. This Commission may take judicial notice of its findings of fact in other cases (Absentee Shawnee v. United States, 6 Ind. Cl. Comm. 377) with respect to the actions of the defendant under said act. Commissioner Mannypenny at the direction of the President of the United States proceeded to Indian country to set in motion negotiations for such extinguishment of Indian title. Mannypenny visited the tribes, including the Potawatomi, in the summer of 1853 and the expenditure for provisions was no doubt made at that time. Since such negotiations were for the benefit of the United States the item is denied as a proper offset.

In 1861 Congress passed an Act "for the relief of the destitute Indians * * * who have failed in raising crops from the drouth of last summer * * *." A special agent was appointed by the Commissioner of Indian Affairs to purchase and deliver to the tribes provisions under this act. Among the tribes receiving such relief provisions were the Potawatomi to whom were delivered 2401 bushels of corn, 11 barrels of pork, 27 plus bushels of potatoes and 82 lbs. of bacon. Petitioners contend that the

item \$1,041.65 expended for these provisions and claimed as an offset should be denied for several reasons. Petitioners urge among other reasons that the Potawatomi were not in need and had considerable tribal funds in the United States Treasury. The supplies distributed by the special agent were based on tribal needs and turned over to the tribal agents for distribution rather than distributing it himself to prevent waste. The circumstances causing the expenditures for this item, the quantity of the provisions as a whole and the fact that allotment was based on a determination of tribal conditions leads the Commission to conclude that the expenditure was for the benefit of the whole tribe rather than individual in nature. Where a tribal benefit is derived from the expenditure and it does not fall within any of the exceptions of the act then the item is allowable. The Commission allows the sum of \$952.90 as a proper offset for provisions. Quapaw Tribe v. United States, supra, page 66. This amount allowed does not include credit for 264 bushels of corn at 33.63 cents per bushel, or \$38.78, since the special agent reported the 264 bushels were payment to those Potawatomi Indians who used their teams to haul the provisions to the agency.

Defendant would have the Commission allow an offset of an aggregate amount of \$115.00 for provisions. One of the items making up this amount is for \$43.00 expended for provisions for the Potawatomi Indians while awaiting delivery of sundry agricultural and mechanical implements. The proof does not show from what source the funds to purchase this equipment was forthcoming. In the absence of such proof it must be assumed that the equipment was furnished for educational purposes and the item is not allowable

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as a proper offset. The remaining balance of the claimed offset of \$115.00 was the expenditure of \$72.00 for provisions supplied the Potawatomi during the payment of their annuity in 1851. For reasons already stated the sum of \$72.00 is allowed as a proper offset.

Offsets Claimed Solely Against Prairie Band

Defendant sets forth a claimed offset of \$130.00 solely against the Prairie Band of Potawatomi Indians for oats and hay furnished in 1916 and 1917. The items making up this aggregate amount are not allowed as proper offsets for several reasons. The vouchers for two of the items show part of the expenditures being charged to Indian trust funds while the balance is charged to the appropriation "Industrial Work and Care of Timber." The remaining voucher is charged to "Industrial Work and Care of Timber." Those portions of these vouchers not charged to Indian trust funds may well have been for agency or educational purposes. Another reason for denying these items as offsets results from an analysis of the G. A. O. Report. Expenditures charged to the appropriation "Industrial Work and Care of Timber" are set forth in Disbursement Schedule No. 48 for the years 1912 through 1919. Only \$35.00 of the claimed offset of \$130.00 may be identified in said schedule. The total amount set forth in Schedule 48 as disbursed under the appropriation "Industrial Work and Care of Timber" is \$8,139.25 for the fiscal years 1912 through 1919 and these expenditures for the most part are for pay and expenses of farmers, stock laborers, purchase of livestock and feed and care of livestock. These expenditures appear to be for agency or educational purposes and are not claimed as offsets. Why the three items making up the claimed offset of \$130.00 should be singled out from the others is not apparent.

The Commission, having determined that there is nothing in the course of dealings between defendant and petitioners which in good conscience would prevent the allowance of proper offsets, holds that defendant may offset against the net award of \$3,290,217.00 granted the petitioners on September 19, 1956, the total sum of the offsets allowed \$1,242.10, leaving a balance due petitioners of \$3,288,974.90.

Louis J. O'Marr
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner