

BEFORE THE INDIAN CLAIMS COMMISSION

THE OMAHA TRIBE OF NEBRASKA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 225-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 13, 1959

OPINION ON ORDERS DISALLOWING A CLAIM OF DEFENDANT  
AS TO CREDIT OR OFFSET FOR \$374,465.02

Witt, Chief Commissioner, delivered opinion of the Commission.

This Commission in its Conclusions of Law and Final Award in the above numbered cause under date of May 6, 1959 held that the offset in the amount of \$374,465.02 claimed by the defendant should not be allowed and said order disallowed said claim of offset.

At the time of making said order no opinion was given as to why said offset was disallowed, nor had a reason been given for the disallowance of the claim as a credit. Since the making of said orders, it has occurred to the Commission that it might be well for it to give the grounds upon which said determinations were made.

The undisputed records in evidence with reference to said item of \$374,465.02 show that in a proceeding in the Court of Claims in 1918 it held that the defendant had in a treaty dated April 17, 1854 agreed to pay the Omaha Tribe \$94,739.54 for 783,365 acres of land and that

the said \$94,739.54 had not been paid and said amount was awarded to the tribe. The Court of Claims indicated it would also allow the tribe interest on \$94,739.54 from June 15, 1854, except there was no legal authority to do so.

In 1924 a bill was enacted to pay the Omaha Tribe the interest which the Court of Claims had indicated it would pay had it the authority to do so, which was approved February 9, 1925 (43 Stat. 820). This legislation provided for payment of the sum of \$374,465.02 to represent "interest at 5 per cent" on the amounts found due the Indians by the aforesaid decision of the Court of Claims. By a later Act of Congress approved March 3, 1926 (44 Stat. 174), the sum of \$374,465.02 was appropriated to pay said amount to the Omaha Tribe of Indians in accordance with the Act of Congress, approved February 9, 1925 -- that is to represent interest. It was in no sense a payment on the purchase price of the land.

The aforesaid acts show that Congress was of the opinion that compensation for the delay in payment of the amount due and owing by the defendant for said land for a period of 70 years created a moral obligation on the part of the defendant, even though under the law there was no legal obligation to compensate therefor. In the opinion of this Commission the said payment by the defendant government to the plaintiff was not therefore in money expended by it "gratuitously" for the benefit of the claimant, as contemplated by the Indian Claims Commission Act. We think that, while it was a payment that the defendant was not legally bound to pay, it was not a gratuitous gift of the character

provided as possible offsets by the jurisdictional provisions of the Indian Claims Commission Act.

This Commission further feels that in view of the nature of pending claim of plaintiffs and the obligation recognized by Congress in making the \$374,465.02 payment, that "good conscience" does not warrant the allowance by this Commission of said sum as an offset, even if it should be considered as a gratuity.

/s/ EDGAR E. WITT  
Chief Commissioner

I concur:

/s/ WM. H. HOLT  
Associate Commissioner