

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF)
OKLAHOMA AND AMOS ROBINSON SKYE)
ON BEHALF OF THE WEA NATION,)
)
Petitioners,)

v.)

Docket No. 314, Amended

THE UNITED STATES OF AMERICA,)
)
Defendant.)

Dated: April 18, 1961

Appearances:

Jack Joseph, with whom was
L. L. Rochmes,
Attorneys for Petitioners
in Docket 314 Amended

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

OPINION

Watkins, Chief Commissioner, delivered the opinion of the Commission.

An interlocutory award having been rendered in favor of the Wea tribe of Indians against the United States for the sum of \$937,250 as additional compensation for the 1818 Wea land cession within Royce Area 99 in Indiana, this Commission has before it for decision the following matters:

1. The value of the consideration paid by the United States to the Wea tribe of Indians for the 1818 cession and;

2. The amount of any payments on the claim and other offsets which the defendant may now credit against the aforementioned judgment rendered herein.

As compensation for the relinquishment of all their right, title and interest to Royce Area 99, Article 5 of the 1818 Wea treaty of cession provided for the payment to these Indians of an additional annuity of \$1,850.00. In fulfilling this treaty obligation the United States up until 1854 appropriated and disbursed to the Wea tribe of Indians a total of \$64,192.00.

The Commission found that under Article 6 of the Treaty of May 30, 1854, the 1818 Wea annuity was commuted for the sum of \$34,498.16. The defendant in asking for a credit of \$98,070.16 seeks to lump together the commuted value of this annuity and all sums paid annually to the Wea tribe as constituting the real consideration for the 1818 Wea cession.

By our decision of August 5, 1960, on petitioners' "Motion For Partial Summary Judgment" this Commission ruled against the defendant as a matter of law with respect to its contention that the actual payments made under the 1818 annuity provision may be properly offset against the award herein as payment on the claim. ^{1/} We concluded that the commuted value of the 1818 annuity is the actual value of the consideration. Such being the case we now need only concern ourselves with whether the defendant paid over to the petitioners the \$34,418.16. To show payment the defendant introduced into evidence as "Defendant's Exhibit 1-A" a General Accounting Office

report in the form of a letter from the Comptroller General of the United States to the Attorney General in which it was stated that the sum of \$34,478.16 was duly paid to the Wea tribe pursuant to the provisions of Article 6 of the 1854 treaty.

The petitioners have made no objections to the validity of this report, nor do they challenge the fact of payment. The Commission finds therefore that payment was made as indicated, and that the defendant may properly credit this amount as payment on the claim.

We now reach defendant's additional claims of gratuities to the Wea tribe of Indians, the most important of which is the 1832 Kansas grant of some 250 sections jointly to the Piankashaw and Wea tribes of Indians. As originally pleaded, the defendant alleged that this Kansas grant with respect to the Weas, was either a legal offset, being an additional payment under the 1818 Wea treaty, or it was a gratuity. By our aforementioned decision of August 5, 1960, the Commission denied defendant's claim that the Kansas grant qualified as a legal offset for reasons stated therein, but we did allow the alternative gratuity claim to stand. At that time we were of the opinion that any final disposition "may well depend upon factual considerations that could only be developed at trial." ^{2/}

As set out in our Findings 1, 2, 3, and 6 herein, the Wea tribe of Indians ceded to the United States under the treaties of August 2, 1818 (7 Stat. 186) and August 11, 1820 (7 Stat. 209) all tribal lands and reservations. Having divested itself of its tribal property exclusive of

annuities, the purported cession of any further Wea lands, or claims to other tribal lands under the Treaty of October 29, 1832, in exchange for the Kansas grant was a transaction without consideration. It was a gratuitous act on the part of the United States.

The petitioners have made no creditable showing that the Kansas grant to the Weas was supported by an adequate consideration. Instead, having acknowledged the gratuitous nature of the grant, they have attempted to avoid the consequences thereof by crediting the Piankashaw tribe of Indians as the real donor. It is a novel approach but the Commission must reject the petitioners' contentions as being without merit, in view of the plain and unequivocal language of the 1832 treaty. ^{3/}

Since the 1832 Kansas grant to the Weas was a gratuity, the Commission finds no reason why the defendant may not in good conscience properly claim it as an offset. The problem now is to value this offset. The Commission believes that the defendant is entitled to set off either the 1832 fair market value of the Wea portion of the Kansas grant, the determination of which would undoubtedly involve an additional and rather unique hearing on value, or in lieu thereof the Commission would consider as acceptable any reasonable amount which the parties herein may agree should be the proper value of the offset.

Beginning with the Commission's Finding 7 and continuing on through Finding 14, the Commission has examined a series of expenditures which the defendant claimed were gratuities, having been disbursed from funds

^{3/} "The United States cede to the Pinakashaw and Wea tribes for their permanent residence, two hundred and fifty sections of land etc. . . ." (7 Stat. 410, Art. II.)

other than those appropriated for treaty purposes. All in all the defendant claimed between 1818 and 1907 total gratuitous expenditures in the amount of \$3,055.54. Of this sum the petitioners seriously challenged only the one item of \$417.83 which was disbursed in 1854 and 1855 by the defendant to cover expenses of the Wea Indian delegation. Although the petitioners have decided not to challenge any of the other categories, principally because of the relatively small amounts involved, the Commission is still obligated to pass on the validity of each and all of such gratuitous claims as presented by the defendant.

To prove its case the defendant introduced, without objection, as "Defendant's Exhibit 2-A", a 1956 General Accounting Office report, hereinafter referred to as the "Report", in which there is carried various and sundry expenditures between 1775 and 1951. Some of these disbursements were made directly to the Wea tribe of Indians, and others to the later formed Confederated or United tribes of Peoria, Kaskaskia and Piankashaw Indians. In so far as our present inquiry is concerned the pertinent items are found in sections D through J of the Report. We shall therefore take them up in the same order by starting with section D.

Section D contains disbursements made directly to the Wea Indians for the years 1819 through 1832, and the Commission disallowed the following items as proper offsets because in the absence of sufficient evidence to the contrary, they appear to be either individual or agency expenses. These are: \$32.00 for agricultural implements and equipment (1 bridle and 2 saddles), \$33.17 for clothing, \$2.00 for household equipment and supplies, an \$81.00 item for the purchase of 2 horses under an appropriation

entitled "Horses for Sub-agents, Interpreters, and Blacksmith at Peoria and Iowa Sub-agency and for other purposes", \$5.00 for the recovery of a stray horse, \$19.31 for the care and feeding of 7 horses for two years, and finally \$37.44 for blacksmith supplies.

On the other hand we did approve and allow as proper offsets \$41.00 for the expenses of Indian delegations as a tribal benefit, \$57.84 over a four year period for hunting and fishing equipment, \$75.88 for the funeral expenses of indigent Wea Indians, and \$725.25 for provisions over an 11 year period since the items purchased were of sufficient quantity to be of tribal benefit. Under Section D we allowed total gratuitous offsets to the defendant in the amount of \$899.97.

Section E of the report lists joint disbursements to the Peoria, Wea and Piankashaw Tribes between 1820 and 1832, and of these allowable offsets the Weas are charged a prorated share as determined by the average population figures of the three tribes during this period. Of those listed the Commission finds the following to be of tribal benefit and therefore proper offsets, \$12.00 for agricultural implements and equipment, \$102.50 for the expenses of Indian delegations, \$30.50 for the burial of indigent Indians, and \$198.63 for provisions. Since the Wea tribe of Indians constituted about 38% of the combined population of the three tribes, the defendant may credit as an offset \$130.58. On the other hand we disallowed as proper offsets a \$32.88 item for the purchase of one coat and 12 military feathers as not of a tribal benefit, and also an \$81.25 expenditure for the blacksmith shop, since we believe this to be an agency expense.

In addition the Commission finds that the \$13.50 disbursement to the Peoria and Wea tribes for expenses of Indian delegations is a proper offset, of which amount the Weas may be charged with 60%, or \$8.10. We also find that the \$13.00 expenditure to the Piankashaw and Wea tribes for the expenses of Indian delegations and a \$44.00 expenditure for hunting and fishing equipment to these two tribes appear to be tribal benefits and proper offsets. The Weas share is 48%, or \$27.30.

As shown in section F of the Report the United States, between 1833 and 1854, made certain expenditures from other than treaty appropriations singularly and jointly as the case may be, for the benefit of the Kaskaskia, Peoria, and Wea tribes of Indians. In the years 1840, 41, 43, 45, and 46, the United States disbursed for the sole benefit of the Wea tribe of Indians in quantities indicative of tribal use and benefit \$618.50 for provisions, all of which the defendant may properly claim as an offset. In 1840 the United States disbursed \$30.00 to the Piankashaw and Wea tribes for provisions in quantities indicative of tribal use and benefit, of which amount the Wea share would be \$18.00. Defendant may claim this amount as a proper offset. Then the Commission finds that a joint expenditure in 1843 for the 4 tribes, of \$84.00 for 1200 pounds of bacon and salt pork to be of a tribal benefit, of which amount \$33.60 is the Wea proportionate share, and the defendant may claim this as a proper offset. On the other hand the Commission disallowed a \$3.00 joint expenditure for 100 pounds of flour in 1843 for the Peoria and Weas as being of insufficient quantity to be of tribal benefit, and therefore not proratable. In like manner and for the same reason we disallowed an additional joint

expenditure for the four tribes of \$10.00 in 1846 for corn, and a \$3.00 expenditure in 1836 for the feed and care of livestock. Under section F total allowable offsets for which defendant may credit against the Weas amounts to \$670.10.

By virtue of the Treaty of May 30, 1854, the Kaskaskia, Peoria, Piankashaw and Wea tribes of Indians officially confederated and thereafter were recognized and treated by the United States as a single united tribe. Accordingly, in section G of the Report the defendant has alleged payment under other than treaty appropriation to this united entity expenses for Indian delegations in the aggregate of \$1,557.32 for the years 1854, 1855, 1864 and 1872.

The petitioners have taken issue with the \$1,044.57 disbursement for the fiscal year 1854-55, which was paid out under the appropriation "Extinguishing title west of Missouri and Iowa." In our judgment petitioner has good cause to argue that these disbursements were made principally for the benefit of the United States and not for the convenience of the confederated tribes. It was under the Act of March 3, 1853, (10 Stat. 226, 238) that a special sum was appropriated to treat with the tribes west of the states of Missouri and Iowa and the confederated tribe was only one of the entities with which the United States concluded negotiations. The Commission agrees and finds that these disbursements were for the benefit of the United States and are not proper offsets. Needless to say the Commission has had occasion in the case of the Prairie Band of Pottawatomie Indians et al v. United States 7 Ind. Cl. Comm. 170, to make the same ruling on the identical appropriation. The

other disbursements of \$100 in 1864 and \$442.75 in 1872 to the confederated tribe for expenses of Indian delegations may be offset as being for the benefit and convenience of the tribe, but said offset to be prorated to the extent of 40% of the total or \$217.10, as this amount represents the Wea proportionate share.

Between 1835 and 1870 when the Kaskaskia, Peoria, Piankashaw and Wea Indians as well as other tribes were under the jurisdiction of the Osage River Indian Agency the United States made certain disbursements from other than treaty appropriations directly to the Agency. In section H of the Report we find that the defendant, during the fiscal years 1845-46 and 1847, disbursed to the Agency in this manner a sum of \$1,027.90 for corn, beef, flour, and the storage thereof. The quantities purchased point to a tribal use and as such may be claimed as an offset. During the years enumerated the Wea Indians constituted about 6% of the total Indian population of the Indians at the Agency. Therefore the defendant may properly offset \$61.67 of the above amount against the Weas.

From July 1, 1870 to August 31, 1887, the confederated tribe as well as other tribes were quartered at the Quapaw Agency. The defendant alleges that between 1871 and 1907 it disbursed from other than treaty appropriations \$6,524.94 for the benefit of Indians at the Quapaw Agency. The defendant alleges further that it should be allowed a credit of 5% of the total amount as against the Weas. The Commission, however, has found that all these disbursements set out in section I of the Report, and this is indicated in the report itself, have been previously credited as offsets by the defendant in Docket 14, The Quapaw Indians, et al., v.

United States (1 Ind. Cl. Comm. 644). In fact the Commission allowed all of them as offsets and the Commission's findings in this regard were affirmed on appeal by the Court of Claims. ^{4/} As to certain items claimed herein, the defendant has already received full credit against another judgment and another tribe. Therefore it cannot now in good conscience seek an additional credit for the same items against the Wea tribe. For this reason the Commission has disallowed the following disbursements: \$2.87 for "Expenses of Indian delegation" (1886), \$9.00 for "Hunting and fishing equipment" (1886), \$54.44 for "Board" and "Funeral Expenses" of indigent Indians (1881-1883), and a \$5.00 disbursement for "Survey and allotting."

Defendant in the Quapaw case was allowed to credit against the Quapaw Indians their proportionate share of the \$5,055.37 which was spent during this period on provisions for the benefit of all the Indians at the Quapaw Agency. In view of the fact that all of the items in this case have been approved by the Court of Claims as proper offsets, we have no reason to re-examine them and therefore defendant is entitled to credit as a proper offset the Wea share of 5% or \$252.77.

While the Court in the same case also approved as a proper offset the \$1,098.06 claim for "Transportation of Indian supplies" for the period 1878 to 1900, we find that the situation in this case is different. As set forth in the Commission's Finding 13, the defendant is allowed to pro-rate against the Wea only \$539.05 of the total amount claimed. This would

give the defendant an allowable offset of \$26.95. Our reason for reducing the total in this category stems simply from the fact that, for many of the years in which these transportation expenditures were made, the Commission cannot determine on the record before us whether the provisions being transported are proper offset items. At least in this case the defendant has not made any additional claim to offset expenditures for provisions and supplies during these same years.

Defendant's final claim, as shown in section J of the Report, is for an expenditure of \$875.00 to pay the salary of an additional blacksmith and wheelright at the Quapaw Agency for the years 1906 and 1907. Whereas in this case there are many tribes quartered at an agency so that the needs and wants of the various groups are more demanding than usual, the Commission is inclined to view the maintenance and operation of a blacksmith shop and related services as an essential and necessary function of an efficient agency operation. Viewed in this light, such additional expenses are more in line with the ordinary agency and administrative expenses. Therefore, the Commission disallows this claim as a proper offset.

In conclusion, the defendant may credit against the award in this case in favor of the Wea tribe of Indians the following items:

1. \$34,478.16, as a payment on the claim, being the consideration paid by the United States for 1818 Wea cession of all right, title, and interest to Royce area 99,

2. The 1832 fair market value of 125 sections of the 250 section grant of Kansas lands made jointly to the Pinakashaw and Wea tribes of

Indians under the Treaty of October 29, 1832 (7 Stat. 410), or in lieu thereof, an amount which the parties herein shall agree to be the reasonable value of said offset subject to Commission approval; and

3. Those gratuitous expenditures found to be proper offsets as set forth in the Commission's Findings 7 through 9 and 11 through 13, in the amount of \$2,294.54.

Arthur V. Watkins
Chief Commissioner

We concur in the above:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner