

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE, PEMBINA AND WHITE EARTH)
 BANDS, ET AL.,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant.)

Docket No. 18-A

TURTLE MOUNTAIN BAND OF CHIPPEWA)
 INDIANS,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant.)

Docket No. 113

THE LITTLE SHELL BAND OF CHIPPEWA)
 INDIANS, ET AL.,)
)
 Petitioners,)
)
 v.)
)
 THE UNITED STATES,)
)
 Defendant.)

Docket No. 191

Decided: June 15, 1961

Appearances:

Jay H. Hoag, Attorney of Record
for Petitioners in Docket No. 18-A

Ernest L. Wilkinson, Attorney of
Record for Petitioners in
Docket No. 113

Lawrence C. Mills, Attorney of
Record for Petitioners in
Docket No. 191

Ralph A. Barney, Sim T. Carman,
Maurice H. Cooperman, William D.
McFarlane, with whom was Mr.
Assistant Attorney General,
Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

HOLT, Commissioner, delivered the opinion of the Commission.

On May 21, 1958, the Commission made an interlocutory award to petitioners of \$3,369,726.00, less \$609,480.36 paid on the claim, leaving a balance of \$2,760,245.64. It was also provided that the award might further be amended to the extent justified by subsequent proof as to the acreage of lands within the subject area, granted, or in lieu thereof scrip issued, to male adult mixed-bloods of the Red Lake and Pembina Bands, as provided by Article 8 of the October 2, 1863 Treaty, as modified by Article 7 of the April 12, 1864 Treaty, or as to the 1280 acres of land that were to be set aside to the two chiefs of the Bands, as provided in Article 9 of the 1863 Treaty. Further, the order stated that the interlocutory award would be reduced by the amount of offsets, if any, as might be allowable under the Indian Claims Commission Act.

Recent decisions of the Court of Claims have held that the value of the consideration and the amount constituting the United States' payment on the claim should not be computed by totaling the payments made to petitioners over a period of time, but rather by determining the treaty-date value of the right to receive such payments in the future. The Miami Tribe of Oklahoma, et al., v. United States, 6 Ind. Cl. Comm. 513, aff'd in part and rev'd in part ____ C. Cls. ____, 281 F. 2d 202, cert. denied May 15, 1961; The Crow Tribe of Indians v. United States, 6 Ind. Cl. Comm. 98, aff'd as modified ____ C. Cls. ____, 284 F. 2d 361, cert. denied May 15, 1961; The United States of America v. The Absentee Shawnee

Tribe of Oklahoma, et al., 6 Ind. Cl. Comm. 395, aff'd as modified, _____
C. Cls. _____, App. No. 9-59, November 2, 1960, cert. denied May 15, 1961.
Therefore our interlocutory order must be further amended to reflect the
commuted value of the allowable items of consideration.

The findings of fact entered this date and this opinion of the Commission relate solely to the question of the legal offsets or payments made to petitioners on the claim. In accordance with the decisions cited above additional evidence will be required to enable the Commission to finally determine the treaty-date value of the items which we find to be proper payments on the claim. After such evidence has been filed, the Commission will enter its ultimate findings on legal offsets and will determine the amount of the gratuitous offsets, if any, to be allowed in this case.

The first reduction to the award claimed by defendant relates to the value of land within the subject area granted to mixed-bloods of the Red Lake and Pembina Bands and 1280 acres of land that were set aside to the two chiefs of the Bands. Defendant has claimed that the value of the acreage patented with half-breed scrip, plus the acreage reserved to the two chiefs, was \$34,043.34 and petitioners have agreed that this is a proper reduction to the award.

The defendant also contends that the award should be further reduced in the amount of \$46,457.71 which, it states, represents the total sum of payments made on the claim which were previously disallowed by the Commission.

In the previous hearing the defendant introduced a report of the General Accounting Office (Def. Ex. 81) to support its contention that

the consideration paid petitioners under the 1863-1864 treaty was \$677,591.25. That report indicated the pertinent articles of the respective treaties under which various sums were paid. In addition the General Accounting Office listed a "Miscellaneous Expenses" category under which the following expenditures were included:

1863 Treaty

Expenses of board of visitors	\$10,030.00
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1864 Treaty

Expenses of paying annuities	8,500.55
Gilling twine for nets	1,200.00
Misc. agency expenses	2,540.02
Provisions and other rations	2,380.30
Transportation, etc. of annuity supplies	<u>43,460.02</u>

Total	\$68,110.89
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The Commission previously determined that the above expenditures for "Miscellaneous purposes" were not a part of the consideration for the cession, and, by Finding of Fact No. 29 it was found that the consideration paid the petitioners was \$609,480.36.

Defendant has again urged that certain items listed under the "Miscellaneous purposes" category were in fact paid to discharge treaty obligations. Specifically, defendant now claims that of the \$68,110.89 previously disallowed, the sum of \$46,457.71 should have been included as part of the consideration paid. Defendant has submitted as Part III, Sections A and B of the General Accounting Office Report (Def. Ex. o-3), a detailed listing of the "Miscellaneous purposes" disbursements. While this report does list the specific items involved for each fiscal year, the General Accounting Office has made no allocation of the various expenditures to pertinent

articles of the treaties. However, defendant has, in its requested findings of fact and brief, set forth the specific treaty articles which, it contends, created the obligations which were discharged by these disbursements.

We have, in Finding of Fact No. 55, set forth our findings with respect to each of defendant's categories. With the exception of three of the categories the Commission has found that the evidence does not support defendant's contention that the expenditures were made to discharge treaty obligations. However, upon reconsideration of the categories covering transportation costs for the steam saw and grist mill; for the supplies for mills and shops, and for annuity goods and supplies, and in view of the evidence now of record, the Commission has concluded that these expenditures should be included as allowable items of consideration.

Under Article V of the 1864 Treaty the United States agreed to furnish for petitioners, at some suitable point, a saw mill. The Commission believes that the transportation costs incurred to locate the mill at Red Lake were part of the obligation assumed by the defendant and we have so found.

Under Article 4 of the 1864 Treaty, the United States agreed, inter alia, to furnish petitioners, for a period of fifteen years, with \$1,500.00 worth of iron and steel, and other articles for blacksmithing purposes and \$1,000.00 for carpentering and other purposes. The expenditures listed in Finding of Fact No. 55(j) were for transportation costs in delivering such items to petitioners. The Commission is satisfied from the evidence of record and an examination of the appropriation acts for the years involved

that the only iron and steel and other supplies for blacksmithing and carpentering furnished the petitioners were in fulfillment of the Article 4 obligations. Accordingly, we believe that the transportation costs for these items were a part of the obligations assumed by the defendant under the 1864 Treaty.

Defendant also expended the sum of \$6,396.04 in transporting annuity goods and supplies. Since the annuity goods and supplies were furnished to discharge treaty obligations we feel that their transportation costs should also be allowed. However, we are revising our previous determination to allow only \$180,000.00 in annuity goods. This represents 95.2% of the listed figure of \$189,125.08 for annuity goods. Therefore, we have found that only this percentage can be properly allowed. We have found that \$6,089.03 (95.2% of \$6,396.04) was expended in transporting allowable annuity goods and this amount is to be included in computing the value of the consideration paid.

The question of the amount constituting the United States' payment on the claim having been reopened by the defendant, the petitioners have urged that the Commission's previous findings should be amended to reduce the consideration paid by the sum of \$39,224.87 which, it is alleged, was erroneously allowed as treaty payments. In Finding of Fact No. 56 we have set forth our findings with respect to each of the items which petitioners claim were improperly included.

Petitioners have objected to the inclusion of \$3,000.90 which represented the expenses of the board of visitors which was provided for in Article 6 of the 1863 Treaty. It is petitioners' contention that these

expenditures should not be included as part of the consideration since "the treaty does not state the tribes were to pay these expenses. And the tribes did not agree to such expenses . . . the board served an administrative and governmental function (and) . . . were agents of the United States, responsible to the United States, performing services for the United States, and reporting to the Secretary of the Interior." (Pet. Br., filed June 16, 1960, page 53). The Commission has found that Article 6 of the 1863 Treaty was a part of that instrument when it was executed by the petitioners on October 2, 1863. There can be no doubt that it provided that the United States should pay for the services for the board of visitors and that such board would serve as agents of the United States. The Commission has also found that the services to be performed by the board of visitors were, in some degree, beneficial to the Indians and that this provision in the 1863 Treaty represented a part of the inducement offered for the cession of the lands involved.

Petitioners have also claimed that the expenses of the board of visitors should have been limited to the 10 cents per mile but not to exceed the \$30 per member provision of Article 6. The Commission has found that the General Accounting Office has included in this category both the per diem pay for the board and the 10¢ per mile traveling expenses. The Commission believes that the expenditures in this category were properly included as part of the consideration.

Petitioners have objected to the inclusion of \$2,766.82 paid for provisions for the Pembina Bands under Article 2 of the 1864 Treaty. It is petitioners' contention that Article 2 provided only for cash

payments per capita. The Commission has found that, in view of the fact that Article 3 of the 1863 Treaty had specifically given authority to the President to apply a portion of the annuity payments toward the purchase of certain articles and in view of the fact that Article 2 of the 1864 Treaty was supplementary to the annuity payment provisions of Article 3 of the 1863 Treaty, the expenditure of this sum for the purchase of provisions was within authority of the United States.

Objection has also been made to the inclusion of the sum of \$9,125.08 under Article 3 of the 1864 Treaty. That is the amount by which the total paid under that article exceeded the stipulated payments, which were \$180,000. The Commission agrees with petitioners that the provisions of Article 3 of the 1864 Treaty created an obligation on the part of the United States in the amount of \$180,000 and that the expenditure of \$9,125.08 in excess of this figure should not be included as part of the consideration.

Petitioners' final objection relates to certain items, totaling \$24,332.07 which they contend were improperly charged under Article 4 of the 1864 Treaty. Under Article 4 the United States undertook to furnish for 15 years the following:

- 1 blacksmith
- 1 physician
- 1 miller
- 1 farmer
- \$1500 worth of iron, steel
and other articles for
blacksmithing processes
- \$1000 for carpentering and
other purposes

The Commission believes that the final provision providing for \$1000 for carpentering and other purposes was restricted to purposes

related to carpentering and that the phrase "other purposes" was not intended as a provision to include all miscellaneous items or services which might be furnished by the defendant during the 15 year period. Accordingly, the Commission has found that those items which clearly do not relate to any of the specified services or items referred to in Article 4 of the 1864 Treaty should not have been allowed as part of the consideration and those items, totaling \$13,805.74 will be deducted from the allowable items of consideration.

In summary then, our previous determination that the amount of the consideration paid petitioners was \$609,480.36 will be amended by adding the following items:

Value of lands allotted to mixed-bloods and 2 chiefs	\$34,043.34
Transportation of steam saw and grist mill	8,652.00
Transportation of supplies	505.96
Transportation of annuity goods and supplies	<u>6,089.03</u>
	\$49,290.33

From this sum will be deducted the following items improperly included as part of the consideration:

Excess of annuity goods over agreed payment of \$180,000 under Article 3 of the 1864 Treaty	\$ 9,125.08
Items improperly charged under Article 4 of the 1864 Treaty	<u>13,805.74</u>
	\$22,930.82

This results in a net figure of \$635,774.87. As we have previously stated in this opinion these allowable items must be commuted to arrive

at the treaty-date value of the consideration paid over a period of years. The parties will now submit such additional evidence as may be required to determine the treaty-date value of the payments which have been allowed.

Defendant has claimed, alternatively, that all items not previously allowed as payments on the claim be allowed as gratuitous offsets. The Commission will consider as possible gratuitous offsets all items which have been disallowed including all amounts which we have excluded as items of consideration in the findings of fact entered this date.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner