

BEFORE THE INDIAN CLAIMS COMMISSION

ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)
 DELAWARE NATION, EX REL., W. E.)
 EXENDINE AND MYRTLE HOLDER,)
)
 Petitioners,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 337

Decided: June 22, 1961

Appearances:

Stanford Clinton and
 Louis L. Rochmes
 Attorneys for petitioners.

Francis J. Clary, W.
 Braxton Miller, and Mr.
 Assistant Attorney General
 Ramsey Clark, attorneys for
 Defendant.

OPINION OF THE COMMISSION

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

In the course of its deliberations in Docket 27-A, 241 consolidated, and Docket 67 consolidated, the Commission made certain findings which decided three important questions vital to the claims asserted herein: Upon the evidence, findings of fact, and conclusions of law made in these two cases the Commission determined the following:

1. That the petitioner herein, the Absentee Delaware Tribe of Oklahoma, on behalf of the Delaware Nation, has the right and capacity to present and maintain this claim for additional compensation for the 1818 Delaware cession to the United States of all its interest to certain lands in Indiana;

2. That as of October 7, 1818, the Delaware Nation had a recognized one-half interest in 3,859,000 acres of land in southern Indiana located in that area known as Royce Area 99, and,

3. That as of October 6, 1818, the agreed date of evaluation, the subject lands had a fair market value of \$1.15 per acre.

As matters now stand the Commission feels that all remaining issues in Docket 337, the instant case, can now be resolved without resorting to further consolidation with other pending claims. Therefore, the Commission has included in Findings 1 and 2 herein those prior determinations, which were made in the two consolidated dockets, and which are cited in the initial paragraph of this opinion. In so doing, however, the Commission will keep as part of the record all findings of fact made in those consolidated dockets that are relevant to the issues involved in the suit now before us. In addition, the Commission has decided to strike as superfluous those Findings numbered 47 through 53, which were entered on September 20, 1957, in Docket 337 (5 Ind. Cl. Comm. 489), and upon which findings the Commission decided the issue of petitioner's capacity to bring suit herein. Findings 47 through 51 are the same as Commission's Findings 5 through 9 in Docket 27-A, 241 consolidated, and Findings 52 and 53 are nothing more than conclusions drawn from the former, and said conclusions are now embodied in the Commission's Finding 1 herein. An appropriate order will be entered to accomplish this, and also to amend the Commission's order of the same date relative to those findings.

The precise question before us now involves the nature and value of the consideration that passed to the Delaware Tribe of Indians from

the United States for the cession of the subject lands under the Treaty of October 3, 1818 (7 Stat. 188).

Beginning with Article 2 of the 1818 Treaty, the Commission finds that the United States agreed "in consideration of the aforementioned cession" to provide the Delaware Indians with a permanent residence on the west side of the Mississippi River. The fulfillment of this promise was finally accomplished some 11 years later, when by virtue of the supplemental Treaty of September 24, 1829 (7 Stat. 327), the Delaware Nation was granted a large reservation on the west side of the Mississippi River in Kansas. For the sake of identification this tract begins in the fork of the Kansas and Missouri Rivers and as shown in Royce's map of Kansas No. 2, is composed of Royce Areas 263, 316, 317, 425, and 488.

While the Commission has found that this grant was part of the consideration for the 1818 cession, our immediate problem is to affix to it a suitable value.

In the absence of any agreement between the litigants as to what this value should be, or how to proceed further, in making a rational determination thereof, the Commission is of the opinion that its decision on this point must be based upon the fair market value of the entire reserve as of the effective date of the 1829 Treaty. We realize, of course, that this will require an immediate hearing limited to that purpose. We say an immediate hearing because it is apparent that the Commission has given some thought to this problem before but the entire matter since that time has been resting on dead center.

Moving on to Section 3 of the 1818 Treaty, the Commission finds that the United States promised to pay the Delaware Indians for their improvements on the ceded lands as well as the costs of their removal to

the west side of the Mississippi River. Although the United States took special pains to secure an independent appraisal of the Delaware improvements before making payment of \$4,501.00, the Commission feels that this particular transaction is part and parcel of the principal negotiations surrounding the actual purchase of the land, and as such forms part of the consideration. This being our conclusion, we have drawn our finding of fact accordingly.

The Commission believes further that the payment of the removal costs should be treated in similar fashion. We therefore reject the petitioners' contention that these removal expenses were nothing more than "an obligation incurred in consideration of removal and not as consideration for the land itself."^{1/} First of all it is well known that during this particular period of our history, the securing of land by purchase from Indian tribes was in furtherance of our avowed policy to eventually remove all Indian tribes to new homes farther west. We know also, that in many instances the impoverished conditions of these Indian tribes made their actual removal an almost intolerable financial as well as a physical burden. By assuming the costs of removing an entire Indian nation to a new location, the United States offered a still further inducement to that nation to cede its lands. In fact, in some situations it may well have been the prime consideration for the particular Indian tribe to move on. The Commission, at least in this case, finds that the Delaware removal costs, which amounted to \$9,895.98, form part of the overall consideration for the 1818 cession of its Indian lands.^{2/}

^{1/} P. 16, Petitioners' proposed Findings and Brief on Consideration

^{2/} See also the Quapaw Tribe of Indians, et al., v. United States, 1 Ind. Cl. Comm. 469, 666.

Under Article 5 of the 1818 Treaty the United States agreed to pay the Delaware Indians a permanent annuity of \$4,000.00. The Government made regular payments on this commitment until 1854. On May 6, 1854, a treaty was concluded with the Delaware Nation whereby the tribe agreed to commute all of its annuities for \$148,000.00, which sum was promptly paid.^{3/} Of this amount \$78,514.58 represents the commuted value of the 1818 annuity, and, being consistent with our holding in the Miami case, the Commission finds this sum to be part of the consideration for the 1818 cession.^{4/}

As set forth in Article 6 of the 1818 Treaty, the United States agreed to furnish a blacksmith for the benefit of the Delawares once they had removed themselves to the west side of the Mississippi. The annual sums made available by the Government to carry out this obligation were disbursed and accounted for in the same manner as annuity payments. In the 1854 Treaty this "Blacksmith annuity" was assigned a value of \$940.00 per annum, and then commuted in the amount of \$18,450.92. This commuted value, the Commission finds to be part of the 1818 Treaty consideration.

Lastly, we find as part of the consideration for the 1818 cession \$13,312.25 which is the amount the United States obligated itself to pay when it promised under Article 8 of the 1818 Treaty to liquidate certain claims against the Delaware Indians. This sum was duly appropriated and disbursed by the Government in satisfaction of these claims.

^{3/} 10 Stat. 1048

^{4/} The Miami Tribe of Oklahoma, et al., v. United States, 4 Ind. Cl. Comm. 346; 5 Ind. Cl. Comm. 494, 501.

Needless to say, the Commission regrets its inability to resolve completely at this time the question of the value of the 1818 Treaty consideration, but until the 1829 fair market value of the Kansas grant can be determined, the real issue of whether or not the United States is liable under our Act to the Delaware Nation for additional compensation must remain open for the present time.

Arthur V. Watkins
Chief Commissioner

Concurring:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner