

BEFORE THE INDIAN CLAIMS COMMISSION

THE PEORIA TRIBE OF INDIANS OF )  
 OKLAHOMA; and GUY FROMAN on )  
 Behalf of the PEORIA NATION, )  
 FRED ENSWORTH on Behalf of the )  
 KASKASKIA NATION, AMOS ROBINSON )  
 SKYE on Behalf of the WEA NATION, )  
 and MABEL STATON PARKER on Behalf )  
 of the PLANKESHAW NATION, )  
 )  
 Petitioners, )  
 )  
 vs. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 65

Decided: September 12, 1962

Appearances:

Jack Joseph, with whom was  
Louis L. Rochmes, Attorneys  
for Petitioners

Ralph A. Barney and Craig A.  
Decker, with whom was Mr.  
Assistant Attorney General,  
Ramsey Clark, Attorneys for  
Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

By previous determination of this Commission, in a consolidated proceeding involving the subject claim and some six other claims filed by the Peoria Indians, it was found that the Peoria Tribe of Indians of Oklahoma was duly incorporated under the Act of June 26, 1936 (49 Stat. 1967) and has been recognized by the Secretary of the Interior as having

authority to represent the respective tribal groups which, prior to the incorporation of said petitioner, were known and recognized as the Peoria, Kaskaskia, Wea and Piankeshaw tribes or nations, in the prosecution of the claims set forth in the respective dockets, including Docket No. 65 (4 Ind. Cl. Comm. 223, 238). The petition in the subject action was filed on June 30, 1950, and was amended on August 11, 1951. Under the petition, as amended, petitioners sought an accounting under some thirteen treaties between the defendant and the petitioner tribes or their ancestors. Defendant has filed detailed accounting reports with respect to the treaties enumerated in the petition. Petitioners, having expressed their satisfaction with the accountings furnished with respect to all treaties except the Treaty of May 30, 1854, there remains for consideration in this case two causes of action, both arising under the May 30, 1854 Treaty. The causes of action are:

1. That the commuted value of the annuities set forth in Article 6 of the Treaty of May 30, 1854, was less than the fair value thereof, and
2. That the defendant failed to comply with the provisions of Article 4 of the Treaty of May 30, 1854, requiring that the Indians' land be sold by the United States on a freely competitive market, with the proceeds to be paid to the Indians but rather permitted non-Indian citizens to trespass upon the land and to purchase the land at artificially low appraised values, far below market price.

Claim I

With respect to the cause of action which we have enumerated Claim I, the Treaty of May 30, 1854, provided, in Article 6, that the petitioners were to relinquish their permanent annuities amounting to \$3800.00 per year. In consideration for the relinquishment the United States agreed to pay \$66,000.00 in six annual installments and to furnish an interpreter, a blacksmith, and to supply the smithshop with iron, steel and tools for five years. Article 7 of the treaty provided for use of certain portions of the cash payments for specified purposes.

Petitioners have contended that the United States is entitled to credit for some \$76,120.00 which has been commuted to a treaty date value of \$67,653.25. Defendant has accepted the \$76,120.00 figure but show a commuted value of \$68,908.91.

It is true that the law as set forth by the Court of Claims in The Miami Tribe of Oklahoma v. The United States, \_\_\_ C. Cls. \_\_\_, 281 F. 2d, 202 (July 15, 1960) required that payments made in installments over a period of time should be commuted to arrive at a treaty date value. However, the Court of Claims in the Pawnee Indian Tribe of Oklahoma v. The United States, \_\_\_ C. Cls. \_\_\_, 301 F. 2d, 667 (April 4, 1962) decided that its decision on this point in the Miami case was in error, and any requirement that deferred payments be commuted to a cash value at the date of the treaty was tantamount to charging the United States with interest--contrary to well established law that the United States is not liable for interest, in the absence of a contractual or statutory

requirement to pay interest. In this case the defendant is entitled to full credit for all disbursements made under Article 6 even though the payments extended over a five year period.

Petitioners' contention that \$76,120.00 was the total sum of defendant's payments (a sum to which defendant does not object) does not appear correct. Petitioners have taken the total of the moneys appropriated by defendant (less a questionable appropriation of \$8,164.51) to arrive at the \$76,120.00 figure. However, defendant's accounting report lists the disbursements made in fulfilling the Article 6 obligations. As set forth in our Finding of Fact No. 15, those disbursements totaled \$70,820.00, and this figure, rather than the total amount of the appropriations made, is the sum for which defendant is entitled credit as payments made in discharge of its Article 6 obligations.

The disbursements in cash or for the items stipulated in Article 7 of the treaty totaled exactly \$66,000.00 to which is added the disbursements for the other Article 6 items which totaled \$4,820.00. It is obvious that defendant complied with the obligations assumed under Article 6 of the treaty.

The only remaining question is whether the provisions of the treaty whereby the Indians relinquished permanent annuities totaling \$3800.00 per year for a consideration which totaled \$70,820.00 was unconscionable or inconsistent with the requirements of fair and honorable dealings.

The petitioners contend that the value of a permanent annuity should be computed at a 5% interest rate which would be \$76,000.00.

We agree that this would be a proper method for valuing the permanent annuity. However, under the provisions set forth in Article 6 this was not a straight cash payment for relinquishment of the annuity. The consideration was to be \$66,000.00 in cash plus furnishing materials and services etc. for five years. It may well have been that the United States anticipated that the materials and services would amount to \$10,000.00 thereby requiring a total of \$76,000.00 to satisfy the obligations under Article 6. In any event it is now evident that the total sum disbursed under Article 6 was \$70,820.00. This is \$5,180.00 less than the value of the permanent annuity if computed at 5%. Thus the Indians received 93% of the "value" of the permanent annuities which they gave up. Under the circumstances we do not consider that the provisions of Article 6 constituted an unconscionable consideration for relinquishment of the permanent annuities or that the provisions were in any way inconsistent with the requirements of fair and honorable dealings. We have found that the disbursements totaling \$70,820.00 fulfilled defendant's obligations under Article 6 of the Treaty of May 30, 1854, and we have found that this payment, as provided in the treaty, did not represent an unfair value for the commuted annuities. Accordingly, the cause of action enumerated Claim I will be ordered dismissed.

#### Claim II

One of the principal elements of proof necessary for a determination of Claim II concerns the fair market value of the petitioners' "trust lands." The Commission has examined the evidence now of record in this

proceeding and finds it is insufficient to enable any determination to be made concerning market value. While there are a few documents relating in general terms to some of the conditions in the Kansas territory and a few references to some contemporary "opinions of value," the record is practically devoid of any proof concerning the various elements which this Commission and the courts have taken into consideration in evaluating land.

At the hearing held on March 6, 1961, petitioners stated that they had "not worked out arithmetically any figure, but certainly we will propose a theory based upon the facts established by the evidence in the record" (Tr. 28). Petitioners have proposed that the Commission enter a finding that "from the evidence in the record, it is apparent that the Indians should have received at least three times the amount for which they (the "trust lands") were sold, and judgment should be entered accordingly" (Petitioners' proposed findings of fact and brief, p. 15). We find no evidence of record to support such a determination.

In view of the foregoing the Commission will not at this time enter any findings with respect to Claim II. The record in this case will be reopened on the question of the fair market value of the "trust lands" which are the subject of Claim II, and the petitioners shall have 60 days within which to supplement the record to support their claim for additional compensation under Claim II.

We concur:

Arthur V. Watkins  
Chief Commissioner

T. Harold Scott  
Associate Commissioner

Wm. M. Holt  
Associate Commissioner