

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS and THE)	
ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)	
)	
Plaintiffs,)	
)	
v.)	Docket Nos. 27-A and 241
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 4, 1969

ADDITIONAL FINDINGS OF FACT

In the matter of allowable deductions, offsets, payments on the claim, and counterclaims, the Commission makes the following Findings of Fact which are supplementary to the Findings numbered 1 through 53 heretofore entered in the above-captioned cases.

54. By Section 68 of an Act of July 1, 1902 (32 Stat. 716, 726), Congress conferred jurisdiction upon the Court of Claims to examine, consider, and adjudicate "...any claim which the Cherokee Tribe, or any band thereof, arising under Treaty stipulations may have against the United States...."

Pursuant to the authority of this Act the Delaware Tribe filed twelve Petitions in the Court of Claims, numbered 23104, 23162, 24067, 24645, and 24926 through 24933. Of these, Petition No. 24928 comprehended the Delaware Outlet claim. In order to buy peace from the potential litigation represented by these twelve Petitions, the United States elected to settle all twelve claims by an aggregate payment of \$150,000.00, which sum was appropriated by Section 21 of an Act of April 21, 1904 (33 Stat. 222), and subsequently disbursed to the Delaware Indians.

The Petitions were dismissed by stipulation of the parties on January 9, 1905.

55. The release which the United States secured for the price of \$150,000.00 was a payment on the claim and, as such, must be deducted from one -- but only one -- judgment secured by the Delaware Indians. Since the cases at bar are ripe for final judgment, the \$150,000.00 payment on the claim has been deducted from the earlier award of \$607,980.00, with the result that the gross [pre-offset] award is \$457,980.00. In the event that the Delaware Indians secure a money judgment against the United States on some other cause of action at some future date, this payment on the claim will not be available to the United States for pleading in reduction of such other money judgment.

56. The Commission has previously made findings on the wanderings of the Delaware, see our Findings 1 through 9 herein, 2 Ind. Cl. Comm. 254-261. Pertinent extracts relating to the Absentee Delaware are restated here for convenience:

"....On January 4, 1793, Baron Carondelet, the Spanish Governor at St. Louis, granted certain bands of Delaware and Shawnee Indians who wished to move beyond the Mississippi from Ohio and Indiana, a tract of land at Cape Girardeau in Missouri on the Mississippi River (Area 125, Royce, Missouri 2). A number of these two tribes removed to this grant, but during the years 1807 to 1815, the pressure from white settlements, and depre-dations by the Osage Indians, caused a number of the Delaware at Cape Girardeau to seek new places of abode, some going to Arkansas, some to Texas, which was then Spanish Territory, where, by 1820, the Delawares numbered some 700.

[6.] Many Delaware Indians moved onto the land assigned to them in Kansas. A portion of the members of the Delaware Tribe,

however, remained in sections of Oklahoma and Texas: A group of Delaware Indians on its way from Texas to Kansas in 1855 obtained permission from the Choctaw Nation in Oklahoma to stay on its land as tenants at will, reserving the right to return to their own country in Kansas at any time, and the Choctaws reserving the right to expel them at any time. Some of them subsequently did move to Kansas where they were accepted as citizens with rights equal to those of the Delawares who had preceded them there.

* * * * *

[9.] Some of the Delawares living south of Arkansas had gone to live with their compatriots in Kansas before removal to the Cherokee territory. Some of the so-called southern Delawares, together with some of the Kansas Delawares, and at a later period some of the Cherokee Delawares, came to live in the Anadarko, Oklahoma, area after the treaty of 1829; these Delawares, and their descendants, maintained group identity, having chiefs and a tribal council up until and at the present time, and known as Absentee Delawares, and the Delaware Tribe of Indians, under the jurisdiction of the Western Oklahoma Consolidated Agency, Anadarko, Oklahoma. They are the petitioners in Docket No. 241." 2 Ind. Cl. Comm. 259-261.

57. Since before 1859 the Delawares were one of the components of "the Wichitas and their affiliated bands." The Wichita Indians, et al. v. United States, 89 Ct. Cl. 378 (1939). No satisfactory evidence determines when the affiliation began, perhaps in the early 1800's, perhaps after the 1839 Texas Cherokee expulsion, but certainly by 1855. A Delaware village was established near the Wichita, and these Absentee Delaware remained in close association with the Wichita during subsequent years. Though maintaining certain contacts and rights within the main Delaware tribe, these Delaware were treated as a component of the Wichita group, and through that affiliation have the same status of tenure on the reservation as the Wichita themselves.

58. The Wichita and Affiliated Bands, including the Absentee Delawares, had lived and hunted a part of the time on the south bank of the Red River in what is now Texas and a part of the time on the north bank of said river in territory which later became a part of Oklahoma. Under Article 9 of the Treaty between the United States and the Choctaw and Chickasaw Indians of June 22, 1855, 11 Stat. 611, 613, the United States acquired from those tribes a lease on a large tract of land in the present State of Oklahoma for the purpose of settling thereon the Wichita and other tribes or bands of Indians. While this area became commonly known as the Leased District, it was subsequently ceded outright to the United States by the Choctaw and Chickasaw Indians under Article 3 of the Treaty of April 28, 1866, 14 Stat. 769. On September 20, 1859, the Superintendent of the Southern Superintendency, acting under the authority of the Commissioner of Indian Affairs, set aside a portion of the Leased District "for the Delawares and Caddos, heretofore affiliated with the Wichitas * * * and for the latter, and the bands of Kechais affiliated with them * * *"

On October 19, 1872 an agreement was concluded between the Commissioner of Indian Affairs and representatives of the Wichita and Affiliated Bands, which provided for a reservation to be set aside in consideration whereof

"the said Wichitas and other affiliated bands hereby cede and relinquish to the United States all right, title, interest or claim of any nature whatsoever in and to any lands in Texas, Louisiana, Indian Territory, or elsewhere within the limits of the United States."

The reservation was described as follows

"Commencing at a point in the middle of the main channel of the Wachita River where the 98th meridian of west longitude crosses the same, thence up the middle of the main channel of said river to the line of 98° 40' W.L., thence on said line of 98° 40' due north to the middle of the main channel of the main Canadian River, thence down the middle of said main Canadian River to where it crosses the 98th meridian, thence due south to the place of beginning."

This was the tract subsequently known as the Wichita Reservation. It was located within the Leased District referred to above and is identified by Royce as Area 540-A (Indian Territory and Oklahoma 3).

Although the Commissioner of Indian Affairs recommended ratification, Congress did not act upon the agreement. Nevertheless, the territory described therein has, since the agreement, been inhabited by the Wichita and Affiliated Bands.

Commencing in 1873, and continuing until 1891, Congress in its appropriation acts regularly referred to the Wichita and others in the words quoted, or language substantially the same, as Indians "who have been collected upon the reservations set apart for their use and occupancy."

59. When the Wichitas and their affiliated bands consented to being concentrated on a reservation a fraction the size of the lands over which they had ranged, they did not accept the reservation as a gratuity and in fact it was no gift. There was consideration flowing from the Wichitas and their affiliates to the United States consisting of relinquishment of their traditional unfettered way of life. There was a relinquishment of an assertion of a right to roam over their entire former area. It was an object of United States policy to settle the tribes, and reduce the former

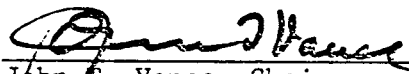
hostilities from encounters between tribes. Thus the Wichita and Absentee Delaware interest in the reservation was not acquired as a gratuity and cannot be the basis of an offset.

60. General Gratuities. The defendant represents, in proposed findings of fact numbered 63 through 70, that it is entitled to have offset against the plaintiffs general subsistence-related gratuitous expenditures aggregating \$72,600.37. The following tabulation by fiscal years of the pro rata amounts of claimed expenditures that make up the sum of \$72,600.37 was prepared on the basis of the Delaware population percentages used by the defendant in its proposed findings and the disbursement schedules and portions of disbursement schedules and other information in the General Accounting Office Report referred to and used by the defendant in the proposed findings, i.e., the amounts represent the defendant's maximum offset claim.

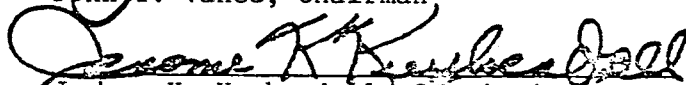
<u>Fiscal Year</u>	<u>Amount</u>
1860	\$ 2,521.26
1861	3,519.54
1864	699.92
1865	83.12
1866	249.06
1867	1,655.89
1868	1,410.01
1869	4,434.09
1870	210.04
1871	54.45
1872	2,739.57
1873	2,404.16
1874	2,279.26
1875	3,720.00
1876	1,079.73
1877	1,535.25
1878	1,671.49

<u>Fiscal Year</u>	<u>Amount</u>
1879	\$ 2,404.58
1880	2,516.87
1881	2,637.94
1882	3,210.42
1883	4,207.64
1884	3,037.01
1885	2,539.99
1886	3,226.83
1887	2,153.06
1888	1,888.42
1889	1,934.15
1890	1,424.08
1891	1,176.10
1892	1,132.20
1893	1,521.08
1894	1,508.57
1895	1,312.12
1896	1,284.16
1897	394.74
1898	92.41
1899	9.13
1900	467.61
1901	641.64
1902	460.54
1903	400.39
1904	159.44
1905	91.44
1906	105.28
1907	92.00
1908	98.16
1909	45.31
1910	109.78
1911	.05-
1912	.46
1913	.07
1914	.97
1915	.30
1916	1.66
1917	1.08
1918	1.49
1920	3.97
1921	1.15
1942	39.34
Total	<u>\$72,600.37</u>

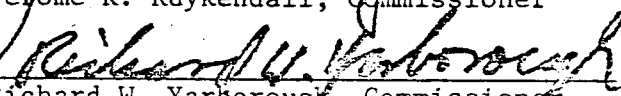
Accepting the defendant's allegation that all of the said sum of \$72,600.37 was expended for the benefit of the Delaware Tribe, it is nonetheless evident in the foregoing tabulation that the disbursements involved in this sum in any single annual period did not exceed more than a small fraction of the \$30,400.00 additional annual income that the Delaware Indians should have had if they had received the full compensation they should have received when they relinquished the Delaware Outlet. For reasons indicated in the preceding opinion, we find that all of the defendant's claimed offset of \$72,600.37 against the plaintiffs for general gratuities should be denied.



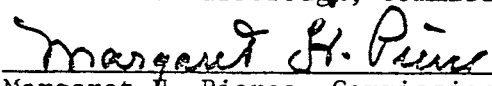
John F. Vance, Chairman



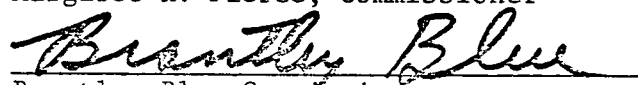
Jerome K. Kuykendall, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner