

BEFORE THE INDIAN CLAIMS COMMISSION

THE ASSINIBOINE TRIBES OF INDIANS,)	
)	
Intervenors,)	
)	
v.)	Docket No. 279-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 30, 1969

Appearances:

Marvin J. Sonosky, Attorney for Plaintiff.

Ralph A. Barney and Howard G. Campbell, with whom was Mr. Acting Assistant Attorney General Glen E. Taylor, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the Opinion of the Commission.

This Commission determined that the original plaintiffs, the Blackfeet and Gros Ventre Tribes of Indians residing upon the Blackfeet and Fort Belknap Reservations in the State of Montana, were entitled to damages for loss of land amounting to \$11,125,606.40. Blackfeet and Gros Ventre Tribes, et al. v. United States, 18 Ind. Cl. Comm. 241 (1967). In the same decision, the Commission determined that the Sioux Tribe, intervenor, was entitled to \$2,364,216.80 and that the Assiniboine Tribes, intervenors, were entitled to \$3,108,506.40. The Commission stated that the respective awards were gross, that each was subject to deduction of consideration and offsets, if any (id., at 287, 288, 347).

Subsequently the original plaintiffs and the Sioux intervenor entered into compromise agreements with the defendant by which the Blackfeet received \$8,679,814.92 and the Sioux received \$1,161,354.41 (Journal Nos. 1141, 1142). Since Docket No. 279-A is pending only with respect to the Assiniboine intervention, this opinion is headed to so reflect.

There are two issues: First, whether consideration ought to be deducted from the gross award and, if so, in what amount. Second, whether any of a number of claimed offsets ought to be deducted from the gross award.

That consideration is a controversy at all stems from an early decision of the Court of Claims in which the Assiniboines sought to recover for the loss of land not involved in the case at bar. In that decision the Court concluded that the award should be \$3,238,970; that the Government was entitled to offset an aggregate of \$4,227,474.56; and that there would be no recovery. Assiniboine Indian Tribe v. United States, 77 Ct. Cl. 347 (1933), cert. den. 292 U.S. 606 (1934). Since the allowable offsets, including consideration under the Act of May 1, 1888 (25 Stat. 113), which is involved in the case at bar, exceeded the award, it could be said that the defendant had offsets "left over" which could be applied against the award in the case at bar. Since the Court had no occasion to specify just which offsets were used to equal the \$3-million-plus award, and did not so specify, the defendant contends that the only "fair" way to resolve that question is to apply a proportional percentage of the offsets claimed in 1933, computed under the "Kaw" formula (Kaw Tribe v. United States, 2 Ind. Cl. Comm. 144 (1952)).

The Commission does not agree. The second jurisdictional act under which the 1933 litigation was conducted contained this provision:

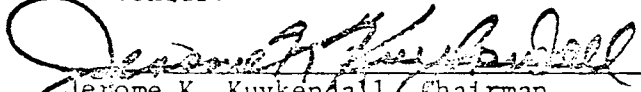
"Provided, however, That if the courts shall award damages for land appropriated by the said treaty of 1855; and/or the said act of Congress of 1874, the United States shall be allowed credit for any sum or sums paid the Assiniboine Indian Nation under the act of Congress of May 1, 1888." [Senate Joint Resolution No. 167, approved June 9, 1930.]

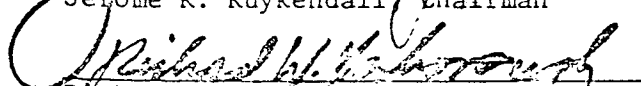
Congress directed the Court of Claims to deduct all the 1888 Act consideration from any award for the 1933 Assiniboine litigation; there is no reason to suppose that the Court of Claims refused or failed to comply. Accordingly, it is the view of this Commission that over three decades ago the defendant received the benefit of 100 per cent of the consideration which it paid the plaintiff on the Act of May 1, 1888. The defendant cannot secure credit for the same sum again and in the case at bar.

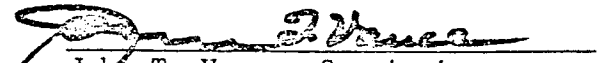
The claimed deductions, including the matter of consideration discussed above, are treated sufficiently in the concurrent findings of fact this date entered in the case at bar. It will be noted that this Commission, upon review of the entire course of dealings between the parties, has concluded that it cannot in good conscience sanction the offset of any of the particular gratuities claimed by the defendant.

A final order consonant with the findings has been entered.

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


John T. Vance, Commissioner


Margaret G. Pierce, Commissioner


Brantley Blue, Commissioner