

## BEFORE THE INDIAN CLAIMS COMMISSION

MESCALERO APACHE TRIBE, ET AL.,     )  
   )  
   ) Plaintiffs,     )  
   )  
   ) v.                     ) Docket No. 22-G  
   )  
   ) THE UNITED STATES OF AMERICA,     )  
   )  
   ) Defendant.     )

Decided: June 10, 1970

## Appearances:

I. S. Weissbrodt,  
 Attorney of Record for Plaintiffs.

Weissbrodt & Weissbrodt and Richmond F. Allan,  
 Of Counsel.

Howard G. Campbell, with whom was  
 Mr. Assistant Attorney General Shiro Kashiwa,  
 Attorneys for Defendant.

OPINION

Commissioner Blue delivered the opinion of the Commission.

This case is before the Commission on plaintiffs' motion for an order to compel the defendant to make a proper and more detailed accounting which shall disclose the state of plaintiffs' accounts with defendant and for a determination of an issue of law relating to the alleged obligation of the United States to pay interest at the rate of 5% per annum on funds in the plaintiffs' account designated "Indian Moneys, Proceeds of Labor, Mescalero Indians, New Mexico."

Plaintiffs filed a second amended petition with the Commission on October 14, 1959, containing two counts. Count I involved claims

for trespass and Count II an accounting claim. The trespass claims were dismissed pursuant to a stipulation upon which final judgment was entered on April 27, 1967, in a companion docket, 22-B, 18 Ind. Cl. Comm. 367. Therefore, the present matter involves only plaintiffs' suit for a general accounting.

In response to plaintiffs' request, the United States filed a report prepared by the General Services Administration dated June 18, 1969. The information and data contained in the report were compiled from records of the General Accounting Office and supplemented by information obtained from the Bureau of Indian Affairs, and other sources.

The report does not give sufficient details concerning either receipts or disbursements. All the categories are gross, i.e., under receipts are "Reimbursable agreements" or "Timber receipts"; under the heading of disbursements there are listings by year of such items as "Agency buildings and grounds, maintenance and repairs" or "Automobiles, vehicles, maintenance and repairs."

The plaintiffs are critical of the report and have filed certain exceptions to it. They claim the report fails to disclose:

- 1) Dates and nature of all transactions which produced funds which were deposited in plaintiffs' principal account.

- 2) Whether the sums deposited in the account represent the entire proceeds derived from the transactions which produced them or net proceeds after deduction by the defendant of administrative or other charges or expenses.

- 3) The amounts and character of and the authority for any charges made by the defendant.
- 4) The dates when funds were removed from plaintiffs' accounts to pay obligations, the precise nature of such obligations and the dates on which they were paid.
- 5) The state of the accounts on an annual or other periodic basis so that the interest which should have been earned may be calculated.
- 6) The meaning and content of the terms and categories used in the report.
- 7) Any information about the state of plaintiffs' accounts with the defendant subsequent to June 30, 1951, although the accounts continue to the present time.

The moneys involved in this case are from the fund "Indian Moneys, Proceeds of Labor" which was established pursuant to the Act of March 3, 1883 (22 Stat. 582, 590) which stated, in part:

The proceeds of all pasturage and sales of timber, coal, or other product of any Indian reservation, except those of the five civilized tribes, and not the result of the labor of any member of such tribe, shall be covered into the Treasury for the benefit of such tribe under such regulations as the Secretary of the Interior shall prescribe; and the Secretary shall report his action in detail to Congress at its next session.

The first report of money received in the account is recorded for November 15, 1887.

These funds were disbursed from time to time in accordance with the Act of March 2, 1887 (24 Stat. 463) "...for the benefit of the

several tribes on whose account said money was covered in, in such way and for such purposes as in his (Secretary of Interior) discretion he may think best, and he shall make annually a detailed report thereof to Congress" (emphasis supplied). Disbursements were begun in 1898.

These Acts were amended on May 17, 1926 (44 Stat. 560). Thereafter expenditures of "Indian Moneys, Proceeds of Labor" being "miscellaneous revenues derived from Indian reservations, agencies and schools," could be spent "... for the benefit of the Indian tribes, agencies and schools on whose behalf they are collected ...."

A further amendment of the Acts of 1883 and 1926 occurred on June 13, 1930 (46 Stat. 584) when all tribal funds in "Indian Money, Proceeds of Labor" were, after July 1, 1930, to be carried in separate accounts for the respective tribes and were to bear simple interest at 4%. As a result of this, interest on the Treasury books amounted to \$46,190.41. The General Services Administration report indicates disbursements for the plaintiffs under the Acts of March 3, 1883 (22 Stat. 582) and June 13, 1930 (46 Stat. 584) in the total amount of \$1,654,158.43. Receipts or incoming revenues amounted to \$1,672,655.19.

Plaintiffs' aforementioned criticisms of the General Services Administration report amount to a general contention that it is so completely inadequate that it gives them no opportunity to determine whether the United States has managed plaintiffs' funds properly or

whether the plaintiffs have a cause of action against the defendant for deficiencies, and, if so, in what amount.

In response defendant states that plaintiffs' exceptions to the report are not specific but that in any event the report has disclosed all pertinent information in its possession and that pursuant to Sec. 14 of the Indian Claims Commission Act, 25 U.S.C. §70m, 60 Stat. 1052, the underlying records on which the report is based are as available to plaintiffs as to defendant.

It is our view that plaintiffs' contention concerning the inadequacy of the report is correct. The burden is on the United States to provide a report in such detail, from all available data, so that it may be readily ascertained whether plaintiffs' funds were properly managed. It is not up to plaintiffs to cull through raw data to arrive at this conclusion. Defendant will be ordered to supplement the accounting report to include the information sought by plaintiffs.

Since the report only provides information concerning plaintiffs' accounts up to June 30, 1951, plaintiffs have requested that a proper accounting include current data. The recent decision by the Court of Claims in Southern Ute Tribe or Band of Indians v. United States (Ind. Cl. Comm., Docket No. 328, App. No. 7-66, March 20, 1970), 191 Ct. Cl. \_\_\_\_\_, (Slip op., page 27), 423 F. 2d 346, 362-363, speaks to this issue and is decisive. The Court of Claims refers to the case of Gila River Pima Maricopa Indians, et al v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962) and endorses the principle established there that the Government must provide an up-to-date

accounting for continuing Government wrongdoings which predated and postdated the statutory time bar. Accordingly, plaintiffs' request is granted and defendant will furnish an up-to-date accounting for all matters originating prior to August 13, 1946, and which have continued past that statutory time bar.

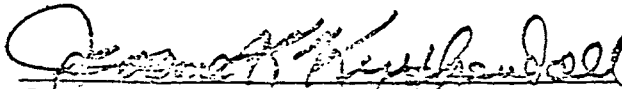
The plaintiffs have also taken exception to the accounting report as incomplete and erroneous in that it fails to reflect that prior to and through June 30, 1930, funds on deposit in the principal account were required to be managed by the defendant in such manner as to produce not less than 5% interest per annum compounded annually. Plaintiffs have requested the Commission to determine as a matter of law that through June 30, 1930, the defendant owed plaintiffs the duty to manage their funds to produce such interest.

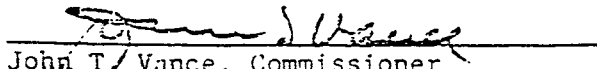
The Commission is taking the same position here that it has taken recently in Te-Moak Bands of Western Shoshone Indians of Nevada v. United States, Docket 326-A, 23 Ind. Cl. Comm. 70, April 29, 1970. The Commission there, as here, was well aware of the fact that there is much legislative material bearing on the Congressional intent and scope of the statutes cited by the plaintiffs as well as other pertinent statutes affecting the status of Indian funds and the question of the payment of interest thereon. In view of this it is important for the Commission to have available all of the material possibly in point and therefore we have decided not to rule on the issue of interest until the parties have done more exhaustive research and supplied the Commission with supplementary briefs.

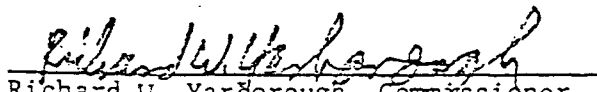
However, while this is being accomplished, the defendant can be preparing a more detailed accounting report. The facts concerning the handling of plaintiffs' funds are not in any way dependent on a resolution of the legal issue of plaintiffs' potential entitlement to interest pre-1930.

  
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Brantley Blue, Commissioner

Concurring:

  
\_\_\_\_\_  
Jerome K. Kuykendall, Chairman

  
\_\_\_\_\_  
John T. Vance, Commissioner

  
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Richard W. Yarborough, Commissioner

  
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Margaret J. Pierce, Commissioner