

BEFORE THE INDIAN CLAIMS COMMISSION

THE LUMMI TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 110
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 22, 1970

Appearances:

Frederick W. Post, Attorney
for the Plaintiff.

Frederick C. Ward, with whom were
Craig A. Decker and Mr. Assistant
Attorney General, Clyde O. Martz,
Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This phase of Docket No. 110 deals with the issue of what gratuitous offsets, if any, will be allowed under the Indian Claims Commission Act against an interlocutory award to the plaintiff in the amount of \$57,000.00.

The history of this claim before the Commission is set forth in the Commission's most recent opinion under this claim. See 21 Ind. Cl. Comm. 408 (1969).

Defendant is claiming gratuitous offsets under section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. §70a, aggregating \$5,352.58. These claimed gratuities consist of expenditures for provisions, purchases of land, and funeral expenses made by the defendant over a

period of many years. These expenditures were made from appropriations for groups of tribes, most frequently from appropriations for those tribes which were parties to the Point Elliott Treaty of January 22, 1855 (12 Stat. 927), ratified on March 8, 1859, but the vouchers and disbursement records compiled under these appropriations often do not specify individual tribes as recipients.

In determining the claimed gratuitous offsets chargeable to the Lummi Tribe, the defendant has allocated disbursements in the same manner as described in the Commission's opinion this day in Docket No. 132, The Suquamish Tribe of Indians v. The United States of America. The plaintiff here objects for the same reasons set forth in that opinion.

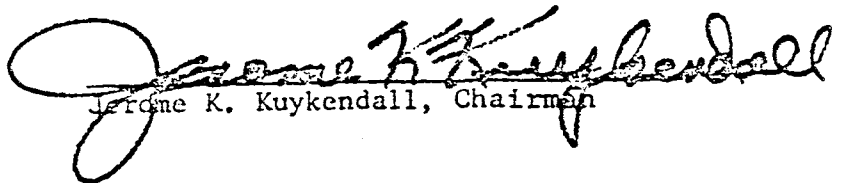
In Findings of Fact 38 and 41, we have adopted the method urged by the defendant of allocating the claimed gratuitous offsets. However, we have concluded on other grounds that none of the claimed gratuitous offsets should be allowed. Our reasons for disallowing the expenditures for provisions and purchases of land are set forth in the opinion of this day in Docket No. 132, supra. Our reason for disallowing the expenditures for funeral expenses is set forth in the opinion issued this day in Docket Nos. 73 and 151, Seminole Indians of the State of Florida v. United States of America and Seminole Nation of Oklahoma v. United States of America.

The Commission has analyzed the claimed offsets in the light of the recent opinions by the Court of Claims in The United States v.

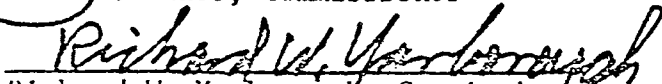
Delaware Tribe of Indians and Absentee Delaware Tribe of Indians, Ct.
 Cl. Appeal No. 6-69, decided June 12, 1970,^{1/} and The United States v.
The Assiniboine Tribes, etc., Ct. Cl. Appeal No. 8-69, decided July
 15, 1970.^{2/}

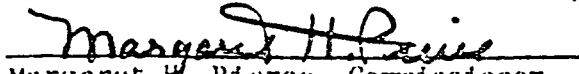
We have found that the United States is not entitled to any credits for gratuitous offsets against the previous award to the plaintiff of \$57,000.00. Accordingly, the plaintiff is entitled to recover from the defendant the sum of \$57,000.00. Judgment in this amount will be entered.

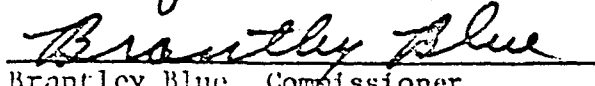
Concurring:


 Jerome K. Kuykendall, Chairman


 John F. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner

^{1/} 192 Ct. Cl. ____, 427 F.2d 1218

^{2/} 192 Ct. Cl. ____, 428 F.2d 1324