

BEFORE THE INDIAN CLAIMS COMMISSION

THE SUQUAMISH TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 132
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 22, 1970

Appearances:

Mr. Frederick W. Post, Attorney for the Plaintiff.

Edwin B. Hatch, with whom was 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. 132 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 \$42,170.49.

The history of this claim before the Commission is set forth in the Commission's most recent findings and opinion under this claim. See 16 Ind. Cl. Comm. 479 (1966).

Defendant is claiming gratuitous offsets under section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C. §70a, aggregating

\$2,965.26. These claimed gratuities consist of expenditures for provisions, clothing, 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.

Therefore, in determining the claimed gratuitous offsets chargeable to the Suquamish Tribe in such cases, the defendant has allocated the total expenditures of the type it claims as gratuitous offsets to the Suquamish Tribe among all the recipient tribes based upon the proportion of the members of the Suquamish Tribe to the members of all the recipient tribes. While this method is based upon that adopted by the Commission in its earlier decision, 13 Ind. Cl. Comm. 583, in which was determined the consideration received by each of the signatory tribes under the Point Elliott Treaty, the defendant has here urged that, in the case of certain claimed gratuitous offsets, the percentage allocation should be based on tribal population figures on or about the time the disbursements were made rather than as of the date of ratification of the Point Elliott Treaty.

Plaintiff has argued that allocation of gratuities on a percentage basis is invalid since it fails to establish that the Suquamish Tribe

actually received the benefit of the gratuities. Thus, asserts plaintiff, the defendant's burden of proof that gratuities were expended "for the benefit of the claimant" (section 2 of the Act) is not met by the simple device of allocating the sums from disbursement schedules among the various tribes.

In Findings of Fact 55, 57 and 59, we have adopted the method urged by the defendant of allocating the claimed gratuitous offsets except that we have found that the Port Madison (Suquamish) Reservation population was less than the 8 percent of the population of the Tulalip Agency asserted by the defendant in allocating the claimed gratuitous offsets under Part III, Section AA of the GAO Report. However, we have concluded on other grounds that none of the claimed gratuitous offsets should be allowed. We will now proceed to a discussion of our conclusions.

This Commission in Red Lake, Pembina and White Earth Bands, et al. v. United States, 9 Ind. Cl. Comm. 457, 517, 519, (1961), aff'd 164 Ct. Cl. 389 (1964), discussed at length the criteria for determining the allowability of claimed offsets. With regard to expenditures for provisions, transportation of supplies, and clothing, important among these criteria are the amount and character of an expenditure claimed as an offset.

In the instant case, when the total for each of these types of expenditures is examined on an annual basis, taking into consideration the tribal population among whom these expenditures were disbursed and the character of the expenditures as indicated by the representative vouchers, it is apparent that the disbursements were very small. Thus, it is the opinion of the Commission that these disbursements can only be

viewed as benefiting individual Indians, and certainly cannot be held to constitute tribal benefits.

We have disallowed the claim for expenditures for the purchase of land because we have found from our reading of the vouchers for these expenditures that they were necessary to settle individual claims by settlers to lands which were selected as the site of the Suquamish Reservation at Port Madison. Under Article 2 of the Point Elliott Treaty, lands were reserved to the tribes for reservations. Settlement by the defendant of claims to these lands was necessary to satisfy the provisions of the Treaty. Since this is so, these expenditures were not gratuitous and, therefore, do not constitute proper offsets under section 2 of the Indian Claims Commission Act.

We have disallowed the claimed offsets for funeral expenses for the reason set forth in our opinion, issued this day in Docket Nos. 73 and 151 entitled Seminole Indians Of The State Of Florida v. The United States of America and Seminole Nation Of Oklahoma v. The United States of America.

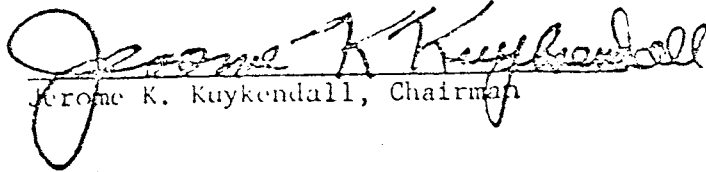
The Commission has analyzed the claimed offsets in the light of the recent opinions of the Court of Claims in The United States v. Delaware Tribe of Indians and Absentee Delaware Tribe of Indians, Ct. Cl. Appeal No. 6-69, decided June 12, 1970,^{1/} and The United States v. The Assiniboine Tribe, etc. 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


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

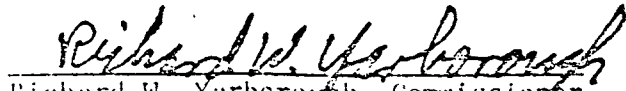
^{2/} 192 Ct. Cl. _____, 428 F.2d 1324

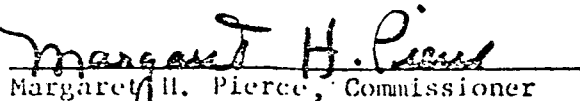
\$42,170.49. Accordingly the plaintiff is entitled to recover from the defendant the sum of \$42,170.49. Judgment in this amount will be entered.



Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner