BEFORE THE INDIAN CLAIMS COMMISSION

THE WASHOE TRIBE, Plaintiff,	)	
v.	)	Docket No. 288
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: December 2, 1970

Appearances:

Nicholas E. Allen and George F. Wright, Attorneys for Plaintiff.

Bernard Newburg, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

The Commission how has before it the question of allowable offsets against a judgment previously entered in favor of the Washoe Tribe of Indians against the United States.

In 1959 the Commission determined that the United States took from the Washoe Indians their tribal lands in the states of California and Nevada. (7 Ind. Cl. Comm. 266, 792). The effective taking dates were found to be March 3, 1853 and December 31, 1862, respectively. (Id.) In 1969 the Commission further determined that the Washoe tribal lands so taken totaled 1,555,000 acres and that the Washoe

Tribe is entitled to recover $5,053,350 from the United States by reason of the uncompensated taking of these lands and the minerals and timber therefrom. (21 Ind. Cl. Comm. 447).

The United States claims three categories of offsets against the above award: (1) for allotments of about 67,500 acres of land to individual Washoes under Section 4 of the General Allotment Act of 1887 (hereinafter the Dawes Act; 24 Stat. 388), of an undetermined value; (2) for 1020.53 acres of land purchased by the United States allegedly for the Washoe Tribe for value claimed by defendant to be $103,580, and for capital improvements and related expenses in connection with those lands in the claimed amount of $11,516.33; and (3) for $29,233.60 of claimed gratuities to the Washoe Tribe from 1865 through 1951.

On August 13, 1968, plaintiff moved for summary judgment as to the first category of claimed offsets, allotments to individuals, on the ground that such allotments are individual, not tribal, benefits, and therefore are not allowable as offsets under Section 2 of the Indian Claims Commission Act. The allotment issue was taken under advisement by the Commission following a hearing on October 11, 1968. On September 24, 1969, hearings on the remaining categories of offsets were held by the Commission.

The following opinion will rule on the motion for summary judgment, and offsets claimed for lands purchased for the Washoe Tribe and for gratuities for the Tribe.

Land Allotments

The first issue concerns certain allotments of land made to Washoe Indians pursuant to the Dawes Act.

Defendant submitted that allotments of approximately 67,500 acres were made to Washoe Indians pursuant to Section 4 of the Act, and that the value of these allotments should be allowed as an offset against the judgment for plaintiff for the uncompensated taking of plaintiff's aboriginal lands.

The issue to be decided is whether or not as a matter of law such allotments could be construed to be for the benefit of the entire Washoe Tribe. If the benefits were individual rather than tribal in nature, then the allotments would not be allowed as offsets under the Indian Claims Commission Act. Red Lake, Pembina and White Earth Bands v. United States, 9 Ind. Cl. Comm. 457, 513 (1961), aff'd., 164 Ct. Cl. 389 (1964); Kickapoo Tribe of Kansas v. United States, 178 Ct. Cl. 527 372 F.2d 980 (1967).

The legislative history of the Dawes Act (see, e.g., 18 Cong. Rec. 189-192, 224-226) confirms beyond doubt that the purpose of the Act was to encourage individual Indians to become independent of their tribe, to adopt the habits of American life, to become citizens of the United States with the full benefits of such citizenship and to become self-sufficient individual owners of their own lands; in short, to assimilate the Indian into the white man's society. 1/ The weakening

1/ FEDERAL INDIAN LAW, 773-777, Office of the Solicitor, U.S. Department of Interior (1958).

and eventual elimination of tribal relationships was a concommitant goal. The break up of tribal landholdings was one means under the Dawes Act by which this was to be accomplished. Inasmuch as Indian tribal land was fundamental to tribal culture and identity, the thrust of the Act was the very antithesis of any supposed intent to confer benefits upon Indian Tribes. The Indian Service at the time was certainly aware of this, and must be presumed to have been acting accordingly.

Thus the purpose and effect of the Dawes Act clearly was not to build tribal capacity to deal with Indian problems. 2/ At the time of the Act there had been adequate experience with severalty allotments to suggest that they would provide limited benefit to the Indians, and that on a purely individual basis.

The parties in the case argue the applicability of the case of The Ponca Tribe v. United States, 183 Ct. Cl. 673 (1968). Ponca is analogous and supports our conclusion.

In Ponca allotments to individual Indians under a severalty act (The Act of April 30, 1888, ch. 206, 25 Stat. 94) of the same purpose and time as the Dawes Act were ruled not to be "in the nature of a tribal indemnity for the land earlier taken but rather were intended to inure to the benefit of the individual recipients alone." (Id., 692)

2/ Speaking in support of the bill, Senator Dawes stated: "From this time forth under this bill [the Indian] is to be treated as an individual; each individual will stand on his own feet.... As an Indian tribe set apart upon a reservation solitary and separated from the rest of the people of the United States, a quasi-independant people in the midst of the United States, if the bill becomes law he passes out of sight." (Emphasis added. 15 Cong. Rec. 2277).

The court in Ponca noted that the pertinent legislation "was not specifically designed to provide a particular benefit to the Ponca Tribe," and that "there was certainly absent any intention to indemnify the Ponca Tribe for earlier taking of their reservation." (Id., 693.)

The court concluded therefore that the allotments neither constituted a payment on the tribal claim, nor were applicable for offset treatment under the gratuity clause of Section 2 of the Indian Claims Commission Act.

Defendant argues a distinction between the Ponca case and the instant case by claiming that the Poncas received allotments from "their reservation." While the facts in Ponca are complicated, it is clear that the land that individual Ponca Indians received through allotments was land which had been taken from the Ponca Tribe by the government 20 years earlier. That the land had once been a Ponca Reservation, before it had been given to the Sioux for a reservation, is of no significance. The crucial fact is that the Poncas had no rights to the land from the time of the taking from them by the government. Thus the claimed distinction does not exist.

Individual ownership of land by an Indian runs counter to the concept of the tribe. The Dawes Act was passed with precisely this understanding in mind. Thus we must conclude that the beneficiaries of these allotments were individual Washoe Indians, and not the tribe.

Defendant argues that the Commission has considered lands selected by several members of a tribe from unsold public lands of defendant as

of sufficient tribal interest to enable the tribe to claim compensation for their loss, and cites Saginaw Chippewa Tribe v. United States, 2 Ind. Cl. Comm. 380 (1953). But the Commission stated in Saginaw that "whatever rights the individual Indians acquired" stemmed from treaties "brought about by tribal, not individual, action," and "that the defendant in all its transactions with the Saginaw treated that group as an entity." (Id., 394-395).

Saginaw is illustrative of precisely the point we wish to make. The government, in its dealing with the Washoes, had shown no indication, either by negotiating a treaty, creating a reservation, or formal dealings with tribal officials concerning other benefits, that it recognized or was concerned with the Washoe Tribe as an entity. In such circumstances for the government to claim credit for providing tribal benefits in distributing individual allotments is an untenable position.

For the foregoing reasons, we conclude, as a matter of law, that allotments made to individual Washoe Indians under the Dawes Act, whose essential purpose and effect was to benefit individual Indians, in specific contrast to Indian tribes as such, were of individual and not tribal benefit in intent and effect. Petitioner's motion for summary judgment therefore should be and hereby is granted, and allotments made to individual Washoe Indians under the Dawes Act are denied for offset treatment.

Expenditures for Land for Indian Colonies

Defendant claims offsets for money expended on the establishment of three small Indian colonies in 1917, totaling just under 225 acres,[3/] as well as for non-subsistence gratuities spent on improvements for these colonies.

The forty-odd Washoe Indians at the Reno-Sparks Colony represented a small portion, approximately one-fifth, of the total number of Indians on the colonies.[4/] The number of Washoe Indians on the Dresslerville and Carson Colonies is not indicated on the record.

The limited effect of the three small colonies in meeting the land needs of the Washoe Tribe is indicated by the subsequent purchase in 1938 and 1940 of 796 acres for the Washoe Tribe.

Based on the foregoing facts, we conclude that money expended on land and otherwise in connection with the three Indian colonies purchased in 1917 are not allowable as offsets inasmuch as they were to the benefit of individual Washoe Indians, and not the Washoe tribe.

In this regard the reasoning of the Commission above is pertinent wherein the Saginaw case is discussed concerning allotments. Prior to the Indian Reorganization Act of 1934, 48 Stat. 984, the defendant had not treated the Washoe Tribe as an entity. As we stated above, the defendant cannot claim credit for providing tribal benefits when it is providing land for

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3/ Including 8.38 acres acquired in 1927 to augment the Reno-Sparks Colony.

4/ Approximately 40 Washoes in a total of 200 Indians.

limited numbers of individual Indians in transactions not involving tribal action. Similarly, money spent for improvement of the same land cannot be considered of tribal benefit.

Therefore defendant's claims for offsets for the Carson, Dresslerville and Reno-Sparks Colonies, in the amount of $9,580 for land and $11,516.33 for non-subsistence gratuities, are disallowed.

Section 2 of the Indian Claims Commission Act of August 13, 1946, directs that expenditures made under Section 5 of the Indian Reorganization Act of 1934, 48 Stat. 984, 985, may be available for offset purposes. The Commission finds that the entire course of dealings between the parties is such that expenditures under Section 5 of the Reorganization Act of 1934 may be set off. United States v. Emigrant New York Indians, 177 Ct. Cl. 263, 287 (1966). Accordingly, $94,000 spent by defendant in 1938 and 1940 pursuant to the Act for the purchase for Washoe Indians of 796 acres, known as the Gardnerville Indian Colony, is allowed as an offset.

Expenditures for Subsistence Gratuities

Defendant claims offsets for $29,233.60 spent on subsistence gratuities for Washoe Indians.[5/]

Of the total spent on gratuities, $26,469.73 is claimed for money spent for indigent Washoe Indians under the headings: board,

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5/ A year-by-year breakdown can be found in Defendant's Requested Findings of Fact.

cash payments, dwellings, subsistence, and clothing. These expenditures made for indigent Indians are considered by the Commission to be for the benefit of individual Indians, and are disallowed. (Red Lake, supra., 523).

An additional $1,664.42 was spent for indigent Indians on funeral expenses. This also is considered to be for the benefit of individual Indians, and is disallowed. (Seminole Indians v. United States, 24 Ind. Cl. Comm. 1, (1970).)

Gratuities for the Dresslerville Colony totaling $263.32 are disallowed as being for indigent Indians and of benefit only to individual Indians.

With regard to the remaining gratuities made between 1865 and 1920 and totaling $900.13, there is nothing in the record to indicate that they involved in any way the Washoe Tribe as an entity. They are consequently considered to be for the benefit of individual Indians, and are disallowed. (Saginaw Chippewa Tribe, supra.)

Conclusions

We conclude, therefore, that defendant is entitled to an offset of $94,000 for expenditures for plaintiff made under Section 5 of the Indian Reorganization Act of 1934, supra. There being no outstanding consideration to be deducted from the gross award to plaintiff, the claimed land allotments of defendant being disallowed by summary judgment, and remaining claimed offsets being disallowed, plaintiff

may have of and from the defendant in the case at bar a net judgment of $4,959,350.

John T. Vance, Commissioner

We Concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner