

BEFORE THE INDIAN CLAIMS COMMISSION

THE PONCA TRIBE OF OKLAHOMA,)	
)	
and)	
)	
WILLIAM OVERLAND, METHA COLLINS,)	
and JOHN WILLIAMS, as)	
representatives of the)	
PONCA TRIBE, and all the)	
members thereof,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 322
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 8, 1971

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the previously made findings of fact numbered 1 through 25 at 12 Ind. Cl. Comm. 265 (1963), and numbered 26 through 46 at 20 Ind. Cl. Comm. 272, 281 (1969).

47. Loss of Ponca Lands. The Commission previously found that the plaintiffs ceded their aboriginal title to 2,334,000 acres of land to the United States for an unconscionable consideration, reserving a 96,000 acre tract of land for permanent use and occupancy pursuant to the Treaty of March 12, 1858 (12 Stat. 997) (12 Ind. Cl. Comm. 292 (1963)). The United States promised "to protect the Poncas in possession" of their reservation according to Article II of the 1858 Treaty. Despite this pledge and without the plaintiffs' knowledge or

consent, the defendant erroneously included the plaintiffs' reservation within the description of the land reserved for use by the Sioux Indians pursuant to the Treaty of April 29, 1868 (15 Stat. 635).

Assuming that the Poncas were trespassers, bands of marauding Sioux Indians made hostile raids upon Ponca settlements demanding horses and provisions as tribute. The plaintiffs requested that defendant protect them against these raids and restore the 1858 treaty boundary. In an attempt to lessen hostilities, United States military forces were stationed near the Ponca Indian Agency; however, some harassment continued.

48. Preparations for Removal. In 1873, plaintiffs indicated a willingness to remove to the Omaha Indian Agency and share a reservation with the Omaha Indians with whom they shared much in common. Negotiations with the Omaha Indians proved unsuccessful, and the federal government proposed as an alternative that the Poncas remove themselves to the Oklahoma Indian Territory.

A document signed by a representative of the Poncas directed to the President of the United States indicated the Tribe's willingness to remove to Indian Territory in 1875. But the Tribe was adamant in its refusal to be forceably removed from the Nebraska Reservation. Expenditures were authorized to remove the Poncas to the Indian Territory pursuant to the Act of August 15, 1876 (19 Stat. 176), in the following manner:

. . . That the Secretary of the Interior may use of the foregoing amounts the sum of twenty-five thousand dollars for the removal of the Poncas to the Indian Territory, and providing them a home therein, with the consent of said band.

United States Indian Inspector E. C. Kemble was assigned to the Poncas with instructions to persuade the tribe to remove and was authorized to make an exploratory trip to the Indian Territory with ten members of the Ponca Tribe for the purpose of investigating possible reservation sites. Apparently guided by his instructions to accomplish removal, Kemble used the inspection trip as a means to force the Poncas to accept removal to the Indian Territory despite the statutory language requiring tribal consent. Kemble left the Ponca Agency with the exploratory group on February 2, 1877, and arrived at the Osage Agency, Indian Territory, on February 9, 1877. No preparations had been made at the Osage Agency to receive the Ponca delegation, and for five days it was weatherbound and confined to an uncomfortable cabin. After observing several possible sites for a reservation and not being favorably impressed with the sites, the Ponca exploration party requested that Kemble return them to the Nebraska reservation. Kemble declined and eight members of the group left the delegation and returned on foot to Nebraska on February 20, 1877. Kemble requested further instructions from the Department of the Interior and was informed that although the Poncas had withdrawn their consent, removal to Indian Territory was required.

49. Removal of the Poncas. Upon returning to the Nebraska Reservation, Kemble found strong opposition to removal. In a report to the Commissioner of Indian Affairs dated April 12, 1877, Kemble explained the manner in which opposition was overcome:

* * * I dismissed [the dissident group] with the simple assurance that I should tomorrow start with all the tribe who would go peaceably with me. As for those who refused to leave, I left them in no doubt that they would be required to follow, while those who should undertake to make trouble were reminded that the commanding officer of the Great Father's soldiers was here to look after them. I then said I would hold no more councils on the subject, and would turn the rebellious members of the tribe over to the military.

Although no physical force was used by defendant to remove the Poncas to the Indian Territory in 1877, United States military forces were in the vicinity of the Ponca Reservation and the presence of the cavalry no doubt persuaded the plaintiffs to leave their ancestral land. During the 65 day march to the Indian Territory, the plaintiffs experienced severe climactic conditions resulting in illness and death to many of the tribal members. Arriving in the Indian Territory in 1877, plaintiffs spent the winter on the Quapaw Reservation but were ill-prepared for the harsh weather, and further illness and death occurred. Over one-third of the tribe, 250 Poncas, died during the two and one-half year period following removal.

In the spring of 1878, plaintiffs were directed to use a 101,894 acre tract of land owned by the Cherokee Nation pursuant to the Act of May 27, 1878 (20 Stat. 63, 76). The Poncas did not obtain trust title to this land until 1881 when \$48,389.46 was appropriated to

purchase the reservation from the Cherokee Nation pursuant to the Act of March 3, 1881 (21 Stat. 414, 422). The purchase price has been held to be a payment on the claim in Docket No. 323, by the Court of Claims (Ponca Tribe of Indians v. United States, 183 Ct. Cl. 673, 692 (1968)).

50. The Standing Bear Case. During January 1879, Ponca Chief Standing Bear and 66 members of his clan attempted to return to Nebraska to bury Standing Bear's eldest son within the former Ponca Reservation. Upon the request of the Secretary of the Interior, the burial party was arrested by United States military forces and held at Fort Omaha. However, the United States Circuit Court for Nebraska issued a writ of habeas corpus releasing the Indians and permitting them to resettle upon the land formerly within the Ponca Reservation in Nebraska. United States v. Crook, 25 Fed. Cas. 695 (No. 14891) (C.C. Neb., 1879). Thereafter, the Poncas living in Nebraska secured allotments pursuant to the Acts of April 30, 1888 (25 Stat. 94, 99), and March 2, 1889 (25 Stat. 888, 892), resulting in the permanent division of the Ponca Tribe of Indians.

51. Opposition to Allotment. After enactment of the General Allotment Act of February 8, 1887 (24 Stat. 388), the Federal Government attempted to convince the Ponca Tribe in Indian Territory to allot their tribal lands in severalty and to sell the surplus lands not actually needed for allotments to the United States for white settlement. The Dawes Commission was dispatched to the Ponca

reservation to negotiate with the tribe in an attempt to induce the Indians to execute an allotment agreement. But the Poncas steadfastly refused to voluntarily consent to the allotment of their reservation, and the Dawes Commission reported its failure to Congress. Finally, in 1894, a special allotting agent persuaded about two-thirds of the tribal members to accept allotments. No further attempts were made at this time by the Federal Government to acquire the surplus tribal lands.

Pursuant to Sec. 8 of the Act of April 21, 1904 (33 Stat. 189, 217), the Secretary of Interior was authorized to make allotments to unallotted Ponca Indians from the remaining tribal lands. A 640 acre tract of land was reserved for tribal use, and the boundaries of the reservation were abolished. The Ponca tribe did not consent or agree to allotment of the remaining tribal lands, and the United States did not secure an allotment agreement.

52. Management of Indian Lands. In 1898 unallotted land in the Ponca Indian Territory Reservation was leased, in a fraudulent manner, to non-Indians for cattle grazing. The lessees had bribed the reservation agent, Asa C. Sharp, to obtain his approval of bids which were lower than the current market value of these leasehold interests. In an attempt to conceal the fraud, associates of the lessees had submitted lower bids, but the collusive scheme was discovered when other higher bids were submitted reflecting the true market value of the leasehold interest. Indian Agent Sharp was dismissed from office for malfeasance, but the defendant took no further action to reform the leases or

compensate plaintiffs for their loss.

53. Results by 1930. In 1930, a Subcommittee of the U. S. Senate Indian Affairs Committee investigated the conditions of the Oklahoma Indians. The Superintendent of the Ponca Agency remarked that the condition of the Ponca Indians was the lowest among the five tribes under his jurisdiction. The Superintendent's testimony as applicable appears as follows (Hearings Pursuant to Senate Resolution 79, 71st Cong. 3rd Sess. part 15, pp. 6922-23 (1930)):

Senator Thomas. Now, of all these tribes, which ones are in the best condition, generally speaking?

Mr. Snyder. The Pawnees.

Senator Thomas. The Pawnees stand No. 1. What tribe would come next?

Mr. Snyder. I would say the Kawas.

Senator Thomas. And third?

Mr. Snyder. The Otoes.

Senator Thomas. Fourth? The Tonkawas and the Poncas about a standoff?

Mr. Snyder. Just about a standoff.

Senator Thomas. That puts the Tonkawas and the Poncas rather low on the scale in connection with Indian affairs, does it not?

Mr. Snyder. Yes, sir.

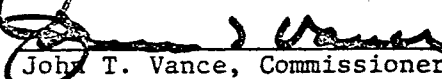
54. Need for Gratuities. An examination of the Accounting Report of the Indian Tribal Branch of the General Services Administration filed on April 7, 1969, indicates that subsistence type expenditures by the United States were greater during the period of the removal and resettlement of the Ponca Tribe. For example, expenditures for provisions during the several years of the removal and after were as follows: 1878 - \$30,905.18; 1881 - \$21,083.91; 1882 - \$27,277.85; 1883 - \$18,118.66; 1884 - \$13,409.14; 1885 - \$12,620.89; and 1886 - \$146.00. Accordingly, the

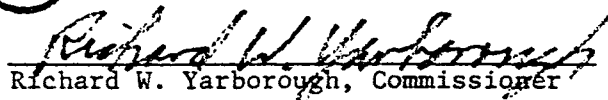
Commission infers that the increased expenditures were related to the unfair conduct of the Federal Government.

55. Conclusion. Upon consideration of the entire course of dealings and accounts between the United States and the plaintiffs as related in the findings of fact issued this date and in the litigation regarding Docket No. 323 before this Commission (17 Ind. Cl. Comm. (1966)), and the Court of Claims (183 Ct. Cl. 673 (1968)), the Commission concludes that good conscience, as that term is used in Sec. 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050), does not warrant the allowance of any of the claimed offsets.

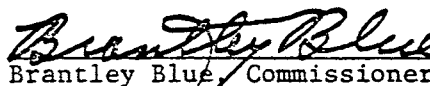
The Commission therefore finds that the plaintiffs may be awarded a net judgment in the case at bar of \$1,878,500.00, this sum being in full satisfaction of all the claims in Docket No. 322.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner