

BEFORE THE INDIAN CLAIMS COMMISSION

THE PAPAGO TRIBE OF ARIZONA,)	
)	
Plaintiff,)	
)	Docket No. 102
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 16, 1971

OPINION

Commissioner Yarborough delivered the opinion of the Commission.

This case is before the Commission on plaintiff's motion of June 14, 1971 for an order to compel the defendant to make a proper and more detailed accounting as to the following information:

(1) a full and complete accounting for the period July 1, 1951, to the present date;

(2) a full and complete history of the certificates of deposit and receipt covering warrants relating to petitioner's funds, together with the amounts thereof, and an explanation of Treasury Department procedures concerning the deposit of such funds, and how interest thereon was computed at all relevant times;

(3) a full and complete report upon the dates funds belonging to petitioner were received by the Government's agents in the field and the dates such funds commenced to earn interest;

(4) a full and complete statement of the balances in petitioner's interest-bearing accounts and in petitioner's non-interest bearing accounts on the various dates funds were withdrawn from the former; and

(5) a full and complete statement with respect to each withdrawal from petitioner's interest-bearing accounts on the date when such withdrawal was made, and the date or dates when the funds so withdrawn actually were expended.

Plaintiff's criticism of the General Services Administration report completed July 24, 1970, is that it is so completely inadequate that it gives them no opportunity to determine whether the defendant has managed plaintiff's funds properly, or whether the plaintiff has a cause of action against the defendant for deficiencies, and, if so, in what amount.

The defendant in response states that things complained of in the plaintiff's motion are identical in form, substance, and purpose with the matters contained in plaintiff's exceptions to the answer to the petition filed by defendant, including the General Services Administration Report pertaining to Papago monies, and, further, that defendant's response to the aforementioned exceptions is pertinent and applicable to the "Motion to Compel Production of Data."

In further defense the defendant states that, in any event, the General Services Administration Report has disclosed all the pertinent information in its possession, and that pursuant to Section 14 of the Indian Claims Commission Act, 25 U.S.C. §70m (1970), the records on which the report is based are as available to the plaintiff as to the defendant. In addition, the defendant states that it is impossible to submit such an itemized statement as the plaintiff demands, due to the facilities of the accounting office staff, that such a requirement would not be reasonably justified based on the small amount of monies held for the plaintiff at any and all times, as compared to the substantial expense involved in attempting to compile such a detailed report as the plaintiff demands.

The further contention that, by reason of the jurisdictional limitations contained in the Indian Claims Commission Act, 25 U.S.C. §70 (1970), limiting the date of all claims subject to the Commission's jurisdiction to August 13, 1946, the plaintiff is not entitled to a further accounting beyond the 1946 date, has been decided adversely to the defendant by the Court of Claims. See United States v. Southern Ute Tribe or Band of Indians, 191 Ct. Cl. 1, 423 F.2d 346 (1970), rev'd on other grounds, 402 U.S. 159 (1971) (aff'g Docket 328, 17 Ind. Cl. Comm. 28 (1966)). In the Southern Ute case the Court of Claims affirmed this Commission's determination that it had jurisdiction to order the Government to produce an up-to-date accounting. Specifically, the court stated:

. . . 25 U.S.C. 70a (1964) on its face bars the Commission from considering any claims accruing after August 13, 1946. In a previous interpretation of this section, however, we have said that where the Government's initial wrongdoing giving rise to a claim accruing before August 13, 1946, but continued past this time, the Indian Claims Commission was free to determine the extent of its jurisdiction in framing an award. Gila River Pima-Maricopa Indians, et al. v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962). We expressed agreement in that case with the established principle that "a court once having obtained jurisdiction of the persons and subject matter of a suit, retains such jurisdiction for all purposes including the awarding of all damages accruing up to the date of judgment." We hereby reaffirm our adherence to this principle and hold the Commission correctly ordered an up-to-date accounting for continuing Government wrongdoings which predated and postdated the statutory time bar. (191 Ct. Cl. at 31)

We have not overlooked the fact that, on appeal, the Supreme Court reversed the Court of Claims and dismissed Southern Ute, supra, on the ground that the doctrine of res judicata was applicable. Nevertheless, we have no reason to believe that the Court of Claims would not reach the same result if the same question were again presented to it. In any event, Gila River Pima-Maricopa Indians v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962), upon which the Court of Claims relied in Southern Ute, supra, still stands and supports the conclusion we reach. Accordingly, the Commission has jurisdiction to order the production of further data regarding wrongdoings accruing before August 13, 1946, and continuing thereafter.

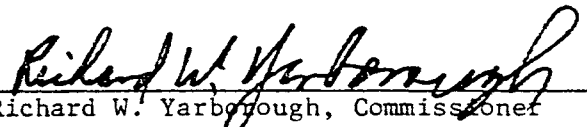
Particular cases may require a different breadth of accounting to provide evidence on the claims within the Commission's jurisdiction. In this case, we deem it appropriate that there should be some further proceedings for definition of those wrongdoings regarded as continuing before a motion as broad as the plaintiff's is granted.

With regard to plaintiff's further requests the Commission is of the opinion that the General Services Administration report is inadequate with

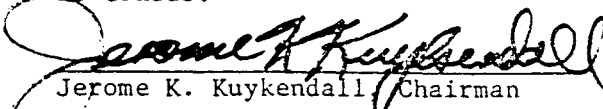
respect to the matters raised in paragraphs (2) through (5) of plaintiff's motion. We have held previously that the burden is on the United States to provide a report in such detail from all available data that it may be readily ascertained whether plaintiff's funds were properly managed. It is not up to the plaintiff to cull through raw data to arrive at this conclusion. Mescalero Apache Tribe v. United States, Docket 22-G, 23 Ind. Cl. Comm. 181 (1970).

We suggest to the parties that pretrial proceedings would be the most expeditious method of narrowing the issues and providing guidelines for the production of further evidence.

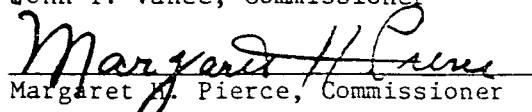
Plaintiff's request for a full and complete accounting for the period July 1, 1951, to the present date will be denied without prejudice pending further proceedings to define the continuing wrongs requiring the defendant to account further to the plaintiff tribe. Plaintiff's motion will be granted to the extent that the defendant will supplement its 1970 accounting report by including the information requested by the plaintiff as set forth in paragraphs (2) through (5).


Richard W. Yarborough, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner