

BEFORE THE INDIAN CLAIMS COMMISSION

THE DELAWARE TRIBE OF INDIANS and THE)
 ABSENTEE DELAWARE TRIBE OF OKLAHOMA,)
)
 Plaintiffs,)
)
 v.) Docket Nos. 27-A and 241
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: November 24, 1971

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 59 and in lieu of finding numbered 60 heretofore entered in the above-captioned cases.

60. Claim for General Gratuitous Offsets. The general gratuities for which the United States initially claimed credit total \$72,600.37. At the Commission's request defendant submitted a yearly tabulation of the claimed offsets. The Commission, in considering the claim on an item by item basis, has been required to make further computations within each of the offset categories. As a consequence of these mathematical computations, the resulting total of all claimed general gratuities is \$73,308.64. To this amount there is a claimed "credit" of \$717.30 leaving a net balance of \$72,591.34. This figure represents the total net sum of the defendant's offset claim and is the total figure upon which the Commission's decision is based.

61. Distribution of Gratuities. All of the claimed offsets are for goods or services distributed through or provided at the Wichita Agency. Since that agency exercised jurisdiction over a number of Indian tribes other than the Delaware Tribe, it has been necessary to apportion all the general gratuities on a population basis. The claimed offsets represent a portion of total general gratuities delivered through the Wichita Agency. The percentage thus applied has varied from 2% to 6%, representing that proportion which the Delaware Tribe bore to the entire Indian population under the Wichita Agency in the various years in question. The number of Delaware Indians at the agency varied from 41 to 165.

62. 1860 and 1861 Expenditures. In 1859 the Caddos and several other tribes were removed by forced march from Texas and settled on the Wichita Reservation in Oklahoma. The number of destitute Caddos was 300. Caddo Tribe of Oklahoma v. United States, Docket 226, 19 Ind. Cl. Comm. 385, 390 (1968). The fact that large numbers of destitute Indians who had been removed from Texas were living at the Wichita Agency supports an inference that gratuities were distributed not on a pro rata basis by tribal population but in disproportionate quantities for the relief of the Indians from Texas. Therefore, all claimed offsets for 1860 and 1861 are disallowed as unproved.

63. 1862 through 1868 Expenditures. The report of the General Accounting Office discloses that during the years 1862 through 1868, including the period of the American Civil War, the Delawares and other

bands affiliated with the Wichitas were refugees in Kansas. Relief afforded to them during this period was made available to many Indians who had moved northward in loyalty to the United States.

Plaintiffs in their proposed findings of fact cited the general circumstances which made the Delawares refugees. In his 1863 Annual Report, the Commissioner of Indian Affairs disclosed that refugee Indians from the Southern Superintendency had ". . . been robbed, plundered, and murdered, their homes burned, their fields laid waste, their property seized and destroyed." He pointed out that most of the refugees in Kansas from the Indian Territory were "the old men, women, and children," the able bodied males having joined the federal armies.

We find that the claimed gratuities during this period were made to the Delawares as refugees and not as Indians. Providing such relief was a normal obligation of a government to its loyal citizens. Accordingly, all claimed offsets during the period from 1862 through 1868 are disallowed.

64. Agricultural Aid. Defendant has claimed \$358.83 expended during the period from 1865 to 1942 for agricultural aid for the Delawares.

We find that \$3.55 was expended in 1865 and 1866 when the Delawares were refugees, and this item is disallowed. In 1901 a total of 99 Delaware Indians were allotted 15,722 acres from the Wichita Reservation, and after that date there was virtually no Delaware tribal agricultural activity. Any agricultural aid after 1901 would have been for the

benefit of the individual Delaware allottees. Accordingly, we disallow all the gratuity claims after 1901 in a total amount of \$137.61.

In fifteen of the years between 1871 and 1900 there were expenditures which totaled \$217.67 for such purposes as clearing land, fencing, and seeds. In no one year did the claimed gratuities reach \$50.00. We find these expenditures to have been too small to support an inference that they constituted tribal benefits, and they are disallowed.

65. Agricultural Implements and Equipment. Expenditures claimed as offsets in this category totaled \$251.95 between 1865 and 1908. Outlays amounting to \$9.69 are disallowed because of the refugee status of the Delawares through 1868. A total of only \$97.37 claimed for 9 years ending in 1900 is disallowed as a minimal, nontribal benefit; amounts ranged from \$.07 in 1891 to \$36.00 in 1876.

In view of the allotment of land to individual Delawares in 1901, as discussed above, we find that beginning in that year all gratuity claims relating to agricultural implements and equipment, totaling \$144.89, must be disallowed because of the nontribal nature of the benefits. The defendant's claim in this category is disallowed in its entirety.

66. Clothing. Gratuities claimed in this category amount to \$801.95. From this total \$57.75 is disallowed because of the presence of impoverished Indians at the Delaware Agency in 1860 (see finding 62, supra) and the refugee status of the Delawares from 1862 through 1868 (see finding 63, supra).

We are denying as offsets minimal gratuities totaling only \$73.92 which were expended over a four year period with no single year accounting for more than \$39.38. Those are considered to be in the individual benefit category.

The following amounts were expended gratuitously for clothing for the Delaware Tribe, and they are allowed as offsets:

1869	\$242.09
1870	129.84
1878	105.07
1879	<u>193.28</u>

Total \$670.28

67. Hardware, Glass, Oil, and Paints. The defendant's claim in this category totaled only \$42.23 during the 12 years for which hardware, glass, oil, and paints are listed. The expenditures were too small to support an inference that a tribal benefit was conferred. Accordingly, the total amount of offsets claimed in this category is disallowed.

68. Household Equipment and Supplies. The defendant has claimed as offsets \$577.92 for household equipment and supplies given to the Delawares. After excluding \$300.00 for 1867, when the Delawares were refuge, the largest amount claimed in any one year was \$83.23 for blankets, soap, knives, forks and spoons. The number of items purchased for \$83.23 was too small to have constituted a tribal benefit, and of course likewise for the lesser yearly amounts. It is more likely, or at least equally likely, that only a few individuals were benefited. All claimed gratuities under this category are disallowed.

69. Hunting and Fishing Equipment. The defendant's offset claim in this category totals only \$23.29. Of this total, \$10.80 was spent in 1861 when destitute Indians were present at the agency. The remaining amount was too small to have constituted a tribal benefit. All claimed gratuities in this category are disallowed.

70. Indian Dwellings. For fiscal year 1861, the defendant spent \$6,300.00 for Indian dwellings at the Wichita Agency. From this amount a total of \$252.00 is now claimed as a gratuitous offset benefiting the Delawares.

As set forth in Finding of Fact 63, supra, there were large numbers of destitute Indians living at the Wichita Agency in 1861. Since this fact supports an inference that gratuities were not given on a pro rata basis in that year, we find that the entire claim for Indian dwellings must be disallowed.

71. Feed and Care of Livestock. The defendant has claimed \$42.82 as offsettable gratuities representing outlays for the feed and care of livestock in one year only, 1871. An examination of Disbursement Schedule 61 in Section I of the GAO Report reveals that these expenditures represent mainly the Delawares' pro rata share (6%) of two mules, two horses, and one wagon. Although we agree with defendant that as a general proposition it may be appropriate to offset a proportionate share of expenditures where the goods are such as could be ratably apportioned, we do not consider that two mules, two horses, and a wagon can properly be so apportioned. A single wagon is simply

not subject to division. These items along with another for \$.79 are disallowed. The \$.79 was for an apportioned share of 24 bushels of corn which we find is a minimal, nontribal benefit.

All claimed gratuities under this category are disallowed.

72. Purchase of Livestock. For six of the years between 1860 and 1942 the defendant has claimed credit for the purchase of livestock aggregating \$186.39. Of this amount we disallow \$67.76 for the purchase of cows in 1868 since the Delawares were still refugees in that year. We also disallow expenditures totaling \$118.63 over a five-year period because they were too small to support an inference that a tribal benefit was involved.

73. Provisions. The bulk of the gratuitous offsets claimed by defendant fall in this category. The amount sought is \$66,502.43.

Appended to plaintiffs' memorandum on offsets filed on April 23, 1971, was an excerpt from the 1880 annual report of the Commissioner of Indian Affairs. This excerpt consisted of a letter from the Kiowa, Comanche and Wichita Agency dated September 1, 1880, which described the Indians at that agency as follows:

For some years back their condition has been so near self-supporting that at times only a small ration has been issued to them by the government. Of these bands, the Wichitas are making the greatest improvement and the Caddoes the least. I think the order from your office to stop the rations except beef to the Caddoes and Delawares was a proper one, as they seem to be making little or no effort to better their condition, which is said to be worse to-day than it was some years since. . . . (Annual Report of the Commissioner of Indian Affairs 1880, p. 72) [Emphasis added.]

Another report from the same agency in 1881 appended to the plaintiffs' memorandum indicated that:

The affiliated bands have advanced much further in the ways of civilized life than the Kiowas, Comanches, and Apaches. One traveling through this country will see at nearly every settlement, in addition to the well-inclosed fields of cultivated land, a small, though generally comfortable, log or plant dwelling-house, and very frequently the stable, corn-crib, and other out-houses. Seldom, if at all, would be seen the grass lodge, such as these people formerly occupied. Although some of these Indians lived years ago as I have described above, occupying houses and tilling the soil, their condition has since that time very little improved, and they seem now to be making little or no effort. They belong to the Caddo and Delaware tribes, and, except the disabled and children, they no longer receive rations from the government (Annual Report of the Commissioner of Indian Affairs 1881, p. 78) [Emphasis added.]

Plaintiffs have asserted that these reports show that provisions were not distributed equally among the tribes. From these statements by government agents we have inferred that the only provisions given to the Delawares in 1880 were beef. All other gratuities totaling \$373.12 in the provisions category are disallowed for that year. Additionally, and on the basis of the second statement quoted above, we find that all gratuities in the provisions category beginning in 1881 for the Delawares and amounting to \$34,674.26 should be disallowed.

The presence of destitute Indians at the Wichita Agency in 1860 and 1861 necessitates disallowance of \$5,763.98 for those years, and \$3,537.91 is disallowed because of the Delawares' refugee status in the 1862-1868 period. We allow the following claimed gratuitous

offsets for provisions given to the Delawares in these years:

1869	\$ 4,165.96
1872	1,954.12
1873	2,368.24
1874	2,109.16
1875	3,578.12
1876	957.84
1877	1,395.19
1878	1,463.86
1879	2,075.81
1880	<u>2,084.86</u>

Total \$22,153.16

74. Transportation. The report of the General Accounting Office does not precisely break down all claimed costs of \$4,268.83 in this category. For example, the heading "transportation of supplies" is vague as to exactly which category of claimed offsets (clothing, agricultural aid, purchase of livestock, and others) was being transported.

Since the transportation costs cannot be identified with allowable offset items, we find that all claimed offsets for transportation must be disallowed.

75. Credits Against Offsets. The GAO Report discloses collections made for the account of the Indians and arising from the sale of hides, subsistence, and other items. After deducting disbursements for support from the sale proceeds, a pro rata share of the verified proceeds should be applied to diminish the total amount of offsets allowed against the Delawares. This share of the verified proceeds we find to be \$717.30.

76. Conclusion. To recapitulate, an item by item examination of all the claimed general gratuities has resulted in the following determination with respect to each category.

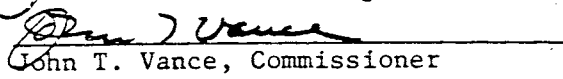
<u>Category</u>	<u>Amount Allowed</u>	<u>Amount Disallowed</u>
Agricultural Aid	\$	\$ 358.83
Agricultural Implements and Equipment		251.95
Clothing	670.28	131.67
Hardware, Glass, Oil, and Paints		42.23
Household Equipment and Supplies		577.92
Hunting and Fishing Equipment		23.29
Indian Dwellings		252.00
Feed and Care of Livestock		42.82
Purchase of Livestock		186.39
Provisions	22,153.16	44,349.27
Transportation		4,268.83
	<u>\$22,823.44</u>	<u>\$50,485.20</u>
Credit for collections made for the Indians' account	717.30	
Net allowable offsets	<u>\$22,106.14</u>	

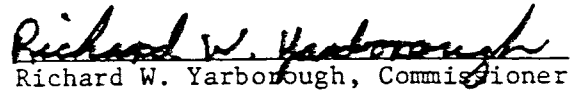
A net amount of \$22,106.14 in gratuitous offsets is properly deductible from the final award. Therefore, the plaintiffs are entitled to a net judgment of \$435,873.86 computed as follows:

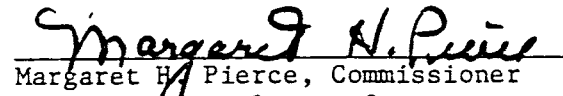
Gross amount of award	\$ 607,980.00
Less payment on the claim	<u>150,000.00</u>
	\$ 457,980.00
Less offsets (general gratuities)	<u>22,106.14</u>
Net Award	\$ 435,873.86

A final award in this amount is entered today.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner