

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE INDIANS who are members)	Docket No. 283
of THE COLORADO RIVER INDIAN)	
TRIBES, et al.,)	
)	
MOHAVE TRIBE OF INDIANS OF Arizona,)	Docket No. 295
California and Nevada, et al.,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 29, 1971

Appearances:

Charles MacPhee Wright, Attorney for Plaintiffs in Docket No. 283.

Raymond C. Simpson, Attorney for Plaintiffs in Docket No. 295.

Marvin E. Schneck with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

This is the offset phase of a cause of action in which plaintiffs claimed aboriginal title to certain lands in Arizona, California and Nevada. During the title phase of these consolidated cases, the Commission decided that plaintiffs had aboriginal title to 1,006,300 acres located in the areas stated above, title to which was extinguished in 1853 and 1865, 7 Ind. Cl. Comm. 219 (1959). Subsequently, it was determined that these lands had a fair market value of \$600,000.00, 23 Ind. Cl. Comm. 87 (1970).

Defendant has asserted offsets in a total amount of \$299,038.82 for gratuitous expenditures made for the benefit of the Mohave Tribe. Plaintiffs urge that the offset claims be denied for two reasons. The first argument made by plaintiffs is that defendant's proposed offsets are unconscionable in light of the entire course of dealings between the Mohave Tribe and the government. Plaintiffs rely on the "good conscience" clause of Section 2 of the Indian Claims Commission Act, 60 Stat. 1049.^{1/} Plaintiffs have argued that the Commission has awarded them too small an area in the title phase of this case,^{2/} that the \$600,000.00 valuation determination was too low, and that the Indians could have realized substantial interest payments if the \$600,000.00 had been available to them over 100 years ago and invested at 4% compounded interest. The Commission's decisions in this case have been made in accordance with our view of the evidence, legal precedents, and the provisions of the Indian Claims Commission Act. The fact that plaintiffs feel they have not recovered a large enough award is no basis for denying defendant credit for allowable gratuitous offsets.

Defendant has recited in its proposed findings and brief various projects undertaken by the United States to insure good relations and

^{1/} ". . . the Commission may also inquire into and consider all money or property given to or funds expended gratuitously for the benefit of the claimant and if it finds that the nature of the claim and the entire course of dealings and accounts between the United States and the claimant in good conscience (emphasis added) warrants such action, may set off all or part of such expenditures against any award made to the claimant, except that" Id. at 1050.

^{2/} Plaintiffs regard the exclusive use and occupancy requirements to establish aboriginal Indian title to be an unfair application of "defendant's law" which is contrary to the indigenous practice of the Indians.

fair dealings between the Government and the Mohave Tribe. Plaintiffs have made no objections to those matters presented by the defendant. We have considered the course of dealings and accounts between the United States and the Mohave Tribe, and we are satisfied that the dealings between the plaintiffs and the defendant have not been such that the United States is prohibited from receiving credit for such gratuitous offsets as may be otherwise allowable.

Plaintiffs object to defendant's allocating gratuitous payments to the Mohave Tribe in proportion to all the Indians on the Colorado River Indian Reservation for the respective years listed (1867-1951). This Commission has on a number of occasions utilized the method of proration in determining gratuitous expenses when a number of tribes are involved. Peoria Tribe v. United States, Docket 314, 9 Ind. Cl. Comm. 274, 281-282 (1961), Pottawatomie Tribe v. United States, Dockets 15-B and 111, 3 Ind. Cl. Comm. 540, 556-557 (1955). In Pottawatomie, supra, the Commission stated:

" . . . While the record of such expenditures does not show how much of the aggregate amount was actually expended for a particular tribe or band, the procedure of allocating a proportionate amount of the total expenditures to each tribe on a population basis has the approval of the Court of Claims and this Commission."

Plaintiffs also fault the defendant for averaging population percentages of the Mohave Tribes over several years. Again, this Commission has sanctioned the use of averaging population figures in allocating gratuities. Peoria Tribe v. United States, supra, at 281, Pottawatomie Tribe v. United States, supra, at 557-558.

Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050, sets forth the criteria for the consideration of gratuitous offsets if the entire course of dealings and accounts between the United States and the plaintiffs warrant such action. That section sets forth a number of prohibited categories of gratuities for which offsets may not be allowed. These prohibited categories include removal expenses and moneys spent for agency or other administrative, educational, health or highway purposes. We have examined all gratuitous offset claims made by defendant on an item by item basis to determine if any of them fall within the scope of the excepted categories of the Act. We have also considered whether the expenditures were for a tribal benefit or purpose, as opposed to an individual benefit.

Defendant sets forth expenditures, in Part III, Sections D and E of the General Accounting Office report, made through the school superintendent of the Fort Mohave School in Arizona. The defendant has stated that the expenditures claimed under these sections were purchases made for noneducational purposes or for the benefit of the Indians living under the jurisdiction of the school. An examination of the vouchers leads this Commission to believe that a portion of these expenditures were utilized for the benefit of the school. Such expenditures are prohibited as gratuitous offsets under Section 2 of the Indian Claims Commission Act. Since, it is not possible to determine what portion of these disbursements were allocated for noneducational purposes, we have decided that all expenditures made under Sections D

and E of the General Accounting Office Report should be disallowed. See Pueblo de Zia v. United States, Docket 137, 26 Ind. Cl. Comm. 218, 223 (1971).

Defendant has also claimed credit for expenditures totalling \$30,343.58 made for the benefit of indigent Indians. These disbursements were made to benefit individual Indians. We are disallowing all claimed offsets in this category. See Seminole Indians v. United States, Dockets 73 and 151, 24 Ind. Cl. Comm. 1, 6 (1970).

We have examined on an item by item basis all expenditures pertaining to agricultural aid; agricultural implements and equipment; clothing; fuel and light; hardware, glass, oils and paints; household equipment and supplies; hunting and fishing equipment; Indian dwellings; purchase, feed and care of livestock; mills and shops; miscellaneous building materials; payment for inspection of beef hides; and provisions. We have allowed certain expenditures in these categories considering the amount and character of the offset in light of the tribal population and the period of years over which these disbursements were made. These expenditures are detailed in our findings 46 to 64 in accordance with the holding in Delaware Tribe of Indians v. United States, Dockets 27-A and 241, 26 Ind. Cl. Comm. 387 (1971). We have disallowed a number of items in these categories where we found that a tribal benefit was not involved or where the expenditures were prohibited as gratuitous offsets under Section 2 of the Act.

The defendant has claimed offsets for the pay and expenses of agency personnel in the amount of \$51,530 expended between 1869 through 1938.

This amount was disbursed for the salaries of herders, stockman, laborers, adobe makers, blacksmiths, carpenters, butchers, engineers and teamsters. Additionally, defendant requests gratuitous offsets for the salaries of forest guards and conservationists totalling \$7,819.49. Payments of these salaries are disallowed as gratuitous offsets as these employees (like the agent, himself) were a part of the agency or administrative service. See Red Lake, Pembina and White Earth Bands v. United States, Dockets 18-A, 113, 191, 9 Ind. Cl. Comm. 457, 464, 478 (1961), aff'd, 164 Ct. Cl. 389 (1964), Kickapoo Tribe v. United States, Docket 316, 15 Ind. Cl. Comm. 628, 645 (1965).

Defendant claims an expenditure of \$196.80 made in 1890 for the purpose of enabling the Chief of the Mohaves and his interpreter to visit the Haskell Institute in Lawrence, Kansas. This expenditure is prohibited by Section 2 of the Indian Claims Commission Act as it was clearly disbursed for an educational purpose. Therefore, the expenditure is disallowed as a gratuitous offset.

The defendant has claimed transportation expenditures in an aggregate amount of \$18,632.07. An examination of these expenditures reveal that in the various categories claimed by defendant, the transportation costs cannot be identified with allowable offset items. In certain years, transportation costs were expended where there was no purchase of the related item. For these reasons, we are disallowing all claimed offsets in this category.

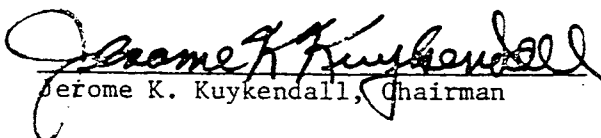
In finding 67, we have summarized the amounts which are allowed in each of the categories for which the defendant has claimed credit. The allowable gratuitous offsets total \$171,641.93.

The gross amount of the award to the plaintiffs was \$600,000.00. From this sum, the deduction of offsets in the amount of \$171,641.93 leaves a net amount of \$428,358.07 for which an order of final judgment will be entered.

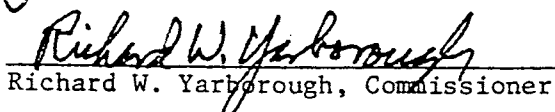


John I. Vance, Commissioner

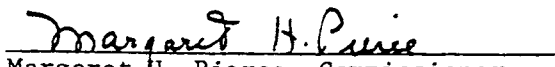
We Concur:



Jerome K. Kuykendall, Chairman



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner