

BEFORE THE INDIAN CLAIMS COMMISSION

MINNESOTA CHIPPEWA TRIBE, ET AL.,	)	
ON BEHALF OF THE CHIPPEWA INDIANS	)	
OF THE MISSISSIPPI AND LAKE SUPERIOR,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 18-T
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 31, 1972

Appearances:

Rodney J. Edwards, Attorney for Plaintiffs,  
Marvin J. Sonosky was on the brief.

Craig A. Decker, with whom was Mr. Assistant  
Attorney General Shiro Kashiwa, Attorneys  
for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

On August 20, 1968, 19 Ind. Cl. Comm. 341, the Commission held that the Chippewa Indians of the Mississippi and Lake Superior were the owners by recognized title of the land (Royce Area 268) ceded by them to the United States by the Treaty of August 2, 1847 (9 Stat. 904).

On March 30, 1971, 25 Ind. Cl. Comm. 157, the Commission determined that the fair market value of the land as of the valuation date, April 3, 1848, was \$600,000 and that the consideration for the cession, amounting to \$80,000, was so grossly inadequate as to render that consideration unconscionable within the meaning of Clause 3, Section 2 of the Indian Claims Commission Act.

This claim is now before the Commission for determination of the amount of the defendant's payments on the claim and entry of a final award. The defendant stated that it will not present any claim for gratuitous offsets.

In the Treaty of August 2, 1847, supra, the recited consideration called for \$17,000 in specie to the Chippewas of the Mississippi and \$17,000 in specie to the Chippewas of Lake Superior. These sums were to be paid within six months of ratification. In addition, an annuity of \$1,000 for 46 years was to be paid to the Mississippi Chippewas. The treaty also provided for the establishment of schools and the employment of blacksmiths and laborers for the Mississippi Chippewas.

Article 5 of the Treaty of 1867 (16 Stat. 719) modified Article 3 of the Treaty of 1847 to the extent that the annuity of \$1,000 which was payable to the Chippewas of the Mississippi under the 1847 Treaty was to be paid to Chief Hole-in-the-Day and to his heirs.

The United States entered into a total of seven treaties with the plaintiffs alone or with the plaintiffs and other Indian tribes. The moneys Congress appropriated to carry out the provisions of these treaties were pooled and disbursed from two funds entitled "Fulfilling Treaties with Chippewas of Lake Superior and the Mississippi" and "Fulfilling Treaties with Chippewas of the Mississippi, Act of 22nd February, 1855."

The General Accounting Office report, prepared on March 27, 1952, discloses payments of \$79,948.08 which defendant alleges were made pursuant to the 1847 Treaty provisions and which sum should be allowed as payment on the claim.

The plaintiffs' first objection is based on allegations that the defendant has not proved that the consideration was actually received by the Chippewa Indians of the Mississippi River and Lake Superior.

The Commission finds the report prepared by the General Accounting Office to have been carefully and objectively prepared. In addition to the General Accounting Office report the defendant introduced five representative accounting documents. Mr. James Bell, an experienced accountant for 22 years in Indian accounting cases and presently with the Indian Tribal Claims Branch of General Services Administration, testified that the Accounting Report was objectively prepared, and it was his opinion that it was both accurate and correct in showing that the amount of \$79,948.08 had been expended pursuant to the 1847 Treaty.

The Commission believes that the accounting specialists utilized all applicable and available records in order to prepare the accounting report in issue. Since plaintiffs did not offer proof of error or inaccuracy, we hold that the defendant's report is prima facie proof of payments as therein set forth. Furthermore, there is no doubt or dispute on the issue of whether Congress made the appropriations to carry out the obligations under the Treaty of 1847 with the plaintiffs.<sup>1/</sup>

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<sup>1/</sup> In Duwamish Tribe v. United States, 79 Ct. Cl. 530, 612 (1934) the Court of Claims stated ". . . Congress made the appropriations; this fact is not open to dispute. The reports of the Indian agents and the files of the Interior Department were all available to the General Accounting Office, and in face of this documentary evidence, in nowise contradicted except by oral statements of individual Indians that they did not receive what the treaties said they should receive, the court is bound to give effect to the complete audit of the affairs of the Indians from 1855 to date. . . ."

We now turn to plaintiffs' argument with reference to the propriety of pooling funds appropriated to carry out the 1847 Treaty with funds appropriated to carry out other Chippewa treaties. The Commission finds plaintiffs' argument on this issue without merit. The vital question is whether or not the plaintiffs were paid the consideration as stated in the Treaty of August 2, 1847, supra. The pooling of funds from various congressional appropriation acts to fulfill the provisions of other treaties with the same Indian tribe does not warrant a holding of malfeasance on the part of the defendant. We have already stated that there is no dispute as to whether the funds were appropriated. The GAO report clearly reflects the disbursements of funds to the tribe in question and, in particular, with reference to the specific treaty. In summary we are convinced that although the funds were pooled each tribal group was paid to the extent listed in the GAO report.

The General Accounting Office Report lists the disbursements made by the United States for the benefit of the plaintiffs pursuant to the 1847 Treaty as follows:

Chippewa Indians of Lake Superior

Article 3

Cash payment	\$17,000.00
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Chippewa Indians of the Mississippi

Article 3

Agricultural aid	8,948.08
Annuity to Chief Hole-in-the-Day	26,000.00
Cash payment	18,000.00
Payments to chiefs	<u>10,000.00</u>
	\$79,948.08

We now consider the issue of whether or not the disbursements listed above are in accordance with the provision of the 1847 Treaty as modified by Article 5 of the Treaty of 1867, supra.

1. Cash payment to the Chippewas of Lake Superior - \$17,000.00.

Article 3 of the Treaty of August 2, 1847, supra, specifically provided for the payment of \$17,000.00 in specie to the Chippewas of Lake Superior to be paid within six months of ratification of the treaty. The moneys appropriated by Congress to fulfill this obligation were set up on the books of the Treasury under the heading "Fulfilling Treaties with Chippewas of Lake Superior and the Mississippi," and the GAO Report discloses that \$17,000 was disbursed from that account.

Plaintiffs contend that there is no evidence that \$17,000, which was disbursed from the fund entitled "Fulfilling Treaties with Chippewas of Lake Superior and the Mississippi", was paid to the Chippewas of Lake Superior in satisfaction of Article 3 of the 1847 Treaty. The basis of plaintiffs' argument is the fact that the GAO Report does not reflect disbursements from a fund set up in satisfaction of the 1847 Treaty.

We find plaintiffs' argument without merit. The issue is whether the plaintiffs received the consideration. The defendant placed in evidence a receipt which reflects that on October 6, 1848, the sum of \$33,283.12 was paid to the Chippewas of Lake Superior by the Superintendent of Indian Affairs for their proportion of the annuities due to the Chippewas of Mississippi and Lake Superior for the year 1848 under Article 2

of the 1837 Treaty, Article 4 of the 1842 Treaty, and Article 3 of the 1847 Treaty. We find this is sufficient evidence of payment on the claim for \$17,000 to satisfy the particular provision of the Treaty of 1847. We see no reason for the plaintiffs to complain when they state that the receipted amount of \$33,282.12 "in coin" exceeded the total amount due the Lake Superior Group (\$28,000) under all three treaties.

Accordingly, the defendant is entitled to the allowance of \$17,000 as payment on the claim.

2. Agricultural aid - \$8,948.08. The Commission finds no provision in the 1847 Treaty that provides for expenditures for agricultural aid. The expenditure is not authorized as a payment on the claim. Accordingly, the amount of \$8,948.08 cannot be considered as part of the consideration paid pursuant to the 1847 Treaty.

3. Annuity to Chief Hole-in-the-Day and his heirs - \$26,000.00. The GAO report discloses a disbursement of \$26,000 from a fund entitled "Fulfilling Treaties with the Chippewas of the Mississippi, Act of 22nd February 1855." Article 5 of the Treaty of 1867 modified the 1847 Treaty by providing that payments of \$1,000 a year due under the provisions of the 1847 Treaty be made to Chief Hole-in-the-Day. Therefore, any payments the defendant made to Chief Hole-in-the-Day pursuant to the 1867 Treaty are authorized expenditures. Accordingly, the defendant is entitled to an allowance of \$26,000 as payment on the claim.

4. Cash payment to Chippewas of the Mississippi - \$18,000. The plaintiffs contend that there is no evidence that \$18,000, which was disbursed from the fund entitled "Fulfilling Treaties with Chippewas of Lake Superior and the Mississippi" was paid to the Chippewas of the Mississippi in satisfaction of Article 3 of the 1847 Treaty. We think otherwise.

The Commission makes reference to a receipt dated November 8, 1848, in the amount of \$22,642.12. This receipt which was placed in evidence by the defendant discloses the following:

1. Paid to the signers of the receipts	\$17,537.00
2. Paid for delivery to absentee Indians	3,705.00
3. Surplus annuities paid to chiefs	400.13
4. Salaries for services by chiefs	<u>1,000.00</u>
Total	\$22,642.13

We the Chiefs, headmen, heads of families and individuals of the Mississippi Bands of the Chippewa tribe of Indians hereby acknowledge to have received this 8th day of November 1848, from A. E. Fletcher, U. S. Agent, Twenty two thousand and six hundred forty-two dollars and 13/100. . . . being our proportion of the above amount of annuity in specie due our said tribe for the year 1848. (Defendant's Exhibit C-5)

Based upon this evidence which reflects the respective payments to the Chippewas of the Mississippi and the year of payment to them, we find there is sufficient basis for our finding that the Chippewas of the Mississippi received \$18,000 under the provisions of the 1847 Treaty. Accordingly, defendant is entitled to an allowance of \$18,000 as payment on the claim.

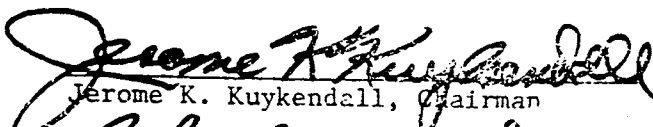
5. Payment to chiefs - \$10,000. Plaintiffs concede and we so find that although the 1847 Treaty does not provide for payments to chiefs, the payment of \$10,000 represents annual installments of \$1,000 which were due under the 3rd Article of the subject treaty. Moreover, there is sufficient evidence in the record that \$10,000 was actually distributed to the bands of Mississippi Chippewas.

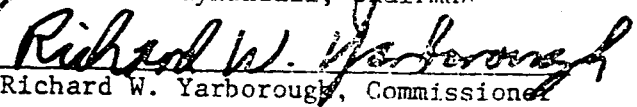
CONCLUSION

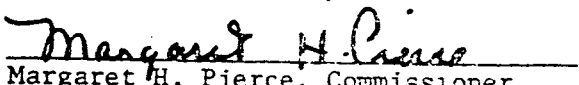
For the foregoing reasons stated in this opinion the defendant is entitled to certain allowances as payments on the claim under Article 3 of the 1847 Treaty, as modified by Article 5 of the 1867 Treaty. Accordingly, the defendant is entitled to a credit of \$71,000 as payment on the claim against the \$600,000 previously awarded to the Chippewa Indians of the Mississippi and Lake Superior. We, therefore, grant the plaintiffs a net final award in the amount of \$529,000.

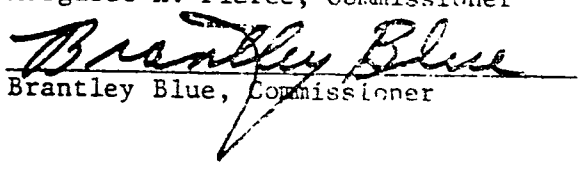
  
John F. Vance, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner