

BEFORE THE INDIAN CLAIMS COMMISSION

THE KIKIALLUS TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 263
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 7, 1972

Appearances:

Frederick W. Post, Attorney for Plaintiff.

Richard L. Beal, with whom was Mr. Assistant Attorney General Kent Frizzel, Attorneys for Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This phase of Docket 263 deals with the question of what gratuitous offsets, if any, will be allowed under the Indian Claims Commission Act against an interlocutory award of \$6,026.69.

In its decision on the title issue of this case, the Commission found that plaintiff held original Indian title to a tract of land encompassing 8,060 acres. 7 Ind. Cl. Comm. 456 (1959). In its decision on the valuation issue the Commission found that the 8,060-acre tract had a fair market value of \$12,000. 25 Ind. Cl. Comm. 83 (1971).

This suit was previously consolidated with the other Point Elliott Treaty cases for the limited purpose of allocating the consideration paid to the various tribes who were parties to that treaty. Pursuant

to the consolidated proceeding the Commission found that the Kikiallus Tribe's pro rata share of the consideration was \$5,973.31. Upper Skagit Tribe v. United States, Dockets 92, 93, et al., 13 Ind. Cl. Comm. 583, 591 (1964).

On June 9, 1971, defendant filed its amended answer setting forth its offset claims. The amended answer incorporated relevant portions of a motion for determination of offsets allocable to each plaintiff, filed on May 8, 1968, in this case and 12 other cases involving tribes of Indians which were parties to the Point Elliott Treaty of January 22, 1855, 12 Stat. 927.

The Commission held a trial on the matter of offsets on February 3, 1972, at which it heard the testimony of defendant's expert witness, Mr. Benjamin Spaulding, and accepted into evidence representative vouchers.

Defendant initially claimed gratuitous offsets totalling \$2,751.24. Defendant limited proof at the trial to certain expenditures, totalling \$598.10, inasmuch as it had determined there was no proof as to other items in the \$2,751.24 claim. The claimed gratuities consist of expenditures for clothing, provisions and transportation of provisions, subsistence of indigent Indians, and the expenses of the care and sale of timber. The expenditures were made from appropriations for groups of tribes, most frequently from appropriations for those tribes which were parties to the Point Elliott Treaty, supra, but the vouchers and disbursement records do not specify individual tribes as recipients.

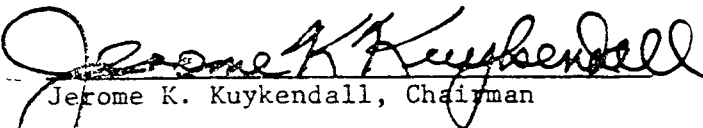
The Commission has heretofore determined that in these circumstances the expenditures may be allocated in accord with the ratio of the total number of the recipient population to the number of members of the plaintiff tribe in that population. Suquamish Tribe v. United States, Docket 132, 24 Ind. Cl. Comm. 34 (1970).

In the same Suquamish case, the Commission concluded that the expenditures therein claimed for provisions and transportation of provisions, and for clothing, could not be considered of tribal benefit when the amount and character of the sums spent was considered. The facts of the present case do not differ in any substantial degree from Suquamish, and we reach the same conclusion here. These disbursements can only be viewed as benefiting individual Indians, and certainly cannot be held to constitute tribal benefits.

Claims to allow as offsets expenses for subsistence for indigent Indians have been repeatedly and consistently denied by this Commission. Red Lake, Pembina and White Earth Bands v. United States, Dockets 18-A, 113 and 191, 9 Ind. Cl. Comm. 457 (1961), aff'd, 164 Ct. Cl. 389 (1964). We reaffirm that principle, and conclude that such expenditures are to be considered for the benefit of individual Indians, and so disallowed.

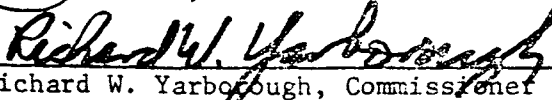
Defendant's remaining claim is for expenditures totalling \$304.58 for the care and sale of timber. These expenditures were for payments to workers and purchases of equipment. Defendant introduced no evidence to show how these expenditures were of any benefit to the tribe. In the absence of such evidence, we conclude that there was no tribal benefit.


We have found, therefore, that the United States is not entitled to any credits for gratuitous offsets against the previous award to the plaintiff of \$6,026.69. Accordingly, the plaintiff is entitled to recover from the defendant the sum of \$6,026.69. Judgment in this amount will be entered.


Jerome K. Kuykendall, Chairman

We Concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner