

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

ADDITIONAL FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to findings numbered 1 through 12, 7 Ind. Cl. Comm. 456 (1959), and findings numbered 13 through 30, 25 Ind. Cl. Comm. 83 (1971).

31. On May 8, 1968, the defendant filed a motion for determination of offsets, a portion of which was addressed to those tribal entities who participated in the 1855 Point Elliott Treaty and who had filed law suits before the Commission. By its amended answer of June 9, 1971, the defendant incorporated certain portions of the 1968 motion insofar as they set forth gratuitous expenditures on behalf of the Kikiallus Tribe in the amount of \$2,751.24.

In order to prorate the claimed gratuitous expenditures which were made in common to all the Point Elliott Treaty participants without distinction, the defendant has advocated the same procedure that was adopted by the Commission to allocate the 1855 Point Elliott Treaty consideration. Upper Skagit Tribe v. United States, 13 Ind. Cl. Comm. 583

(1964). Under this allocation method, the membership of Kikiallus Tribe constituted, as of the effective date of the 1855 Point Elliott Treaty, 2.1 percent of the total population of those Point Elliott Treaty participants who have filed suits before the Commission. The population of this latter group constituted 81.7 percent of the total group of Indians which participated in the 1855 Treaty. Thus, 2.1 percent of 81.7 percent, or 1.7 percent gives the proper percent of the total Point Elliott gratuitous expenditures which should be charged to the Kikiallus Tribe. The population of the Kikiallus Tribe as of the effective date of the 1855 Point Elliott Treaty was 75 Indians.

32. At trial the defendant proved through representative vouchers \$33,743.01 in claimed expenditures for all the Point Elliot Treaty tribes. Plaintiff's allocated share is \$598.10, which claimed gratuities were limited to certain items, "provisions," "transportation of provisions," "clothing," "indigent Indians, subsistence," and "expenses, care and sale of timber".

33. The defendant has claimed \$255.80 for provisions attributable to the Kikiallus Indians spent over the period from 1858 through 1902. In only two years did the expenditures exceed \$15, and then they totaled \$47.08 and \$27.19. In addition, defendant claims a total of \$13.51 for transportation of provisions spent in thirteen different years. In view of the very small annual disbursements, and their character as indicated from the representative vouchers, the Commission finds that they did not constitute benefits to the tribe. Accordingly these disbursements for provisions and transportation of provisions are disallowed as gratuitous offsets.

34. Defendant also claims a total of \$12.77 for clothing attributable to Kikiallus Indians, spent in ten different years. The size and character of these disbursements are such that the Commission finds that they did not constitute benefits to the tribe. Accordingly these disbursements for clothing are disallowed as gratuitous benefits.


35. Defendant claims \$11.45 for expenditures for subsistence of indigent Indians attributable to the Kikiallus Indians. Expenditures for indigent Indians are not considered by this Commission to be of tribal benefit. Accordingly these disbursements are disallowed as gratuitous benefits.

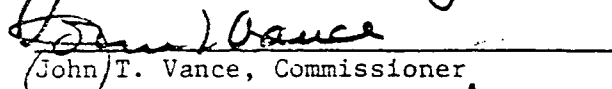
36. Defendant claims \$304.58 for care and sale of timber attributable to the Kikiallus Indians. These expenditures were made from 1861 through 1909, and included payments to Indians working on logging operations, purchases of equipment, and payments to mill operators and sawyers. Defendant offered no evidence showing a tribal benefit from these expenditures. Accordingly these disbursements are disallowed as gratuitous offsets.

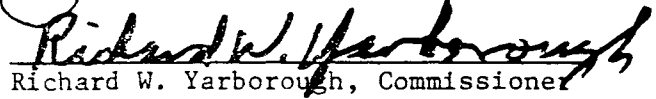
CONCLUSIONS OF LAW

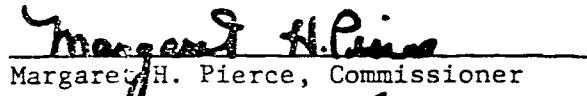
37. On the basis of the evidence of record and the foregoing findings of fact, this Commission concludes as a matter of law that the defendant is entitled to no gratuitous offsets under section 2 of the Indian Claims

Commission Act, 60 Stat. 1049, 25 U.S.C. §70a, against the interlocutory award of \$6,026.69.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner