

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket Nos. 69, 299, and 353
)	(Accounting Claims)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 4, 1975

Appearances:

William C. Schaab, Attorney for the Plaintiff.

Dean K. Dunsmore, with whom was Wallace H. Johnson,
Assistant Attorney General, Attorneys for the
Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This is an accounting case in which the customary procedural steps have been taken, including the filing of the accounting report by the defendant and the filing of exceptions, amended exceptions, and a motion for partial summary judgment by the plaintiff.

By an order issued on July 25, 1973, the Commission determined that the amount of \$10,584.76 had been improperly expended by the defendant from plaintiff's tribal funds for "miscellaneous agency expenses," which expenses were the obligation of defendant and not the plaintiff, and granted partial summary judgment to plaintiff and against defendant for

\$10,584.76. 31 Ind. Cl. Comm. 40,50. Defendant's subsequent motion for rehearing of this issue was denied. 34 Ind. Cl. Comm. 432, 434 (1974).

On June 12, 1975, defendant moved for an order vacating a portion of the summary judgment--the sum of \$1,557.42, which was alleged to consist of six disbursements made by defendant after August 13, 1946, the date of approval of the Indian Claims Commission Act. Defendant asserted that the Commission had no jurisdiction by virtue of section 2 of our act, 25 U.S.C. § 70a, and the Commission's Rule 11 (h), 25 C.F.R. § 503.11 (h), which requires the Commission to dismiss an action over which it has no jurisdiction.

Plaintiff has filed a response to defendant's motion wherein it has alleged that the defendant launched a course of wrongdoing in expending tribal funds for miscellaneous agency expenses prior to August 13, 1946, and continued to do so thereafter, and that all such disbursements, whether made before or after August 13, 1946, were an integral part of the total continuing wrong.

Defendant's reply pointed out that the Commission has not made any determination concerning disbursements made after August 13, 1946, and that the portion of the judgment awarding the \$1,557.42 obviously was inadvertent.

The law is well settled that the Commission has jurisdiction to award all damages which have accrued in cases where the initial wrongdoing

occurred prior to August 13, 1946, and continued thereafter. Gila River Pima-Maricopa Indians v. United States, 135 Ct. Cl. 180, 186 (1956), 157 Ct. Cl. 941 (1962), Fort Peck Indians v. United States, 34 Ind. Cl. Comm. 24, 29 (1974). We therefore disagree with defendant's argument that we have no jurisdiction over post-August 13, 1946, expenditures.

Nevertheless, we agree with defendant that the inclusion of the \$1,557.42 disbursed after the cut-off date in the total judgment was inadvertent and improper. Cf. Three Affiliated Tribes v. United States, 36 Ind. Cl. Comm. 116, 151 (1975).

The proper procedure in accounting cases where a continuing wrong is disclosed, is for the plaintiff to allege specifically the continuing course of wrongful action by the defendant by reference to the exceptions to the accounting report, and to move for an up-to-date accounting. Hopi Tribe v. United States, 33 Ind. Cl. Comm. 74 (1974).

Plaintiff's response to defendant's motion, coupled with its earlier exception (h), requesting an up-to-date accounting, contain all the elements of such a request as to "miscellaneous agency expenses" in exception (g), although plaintiff has not formally moved therefor.

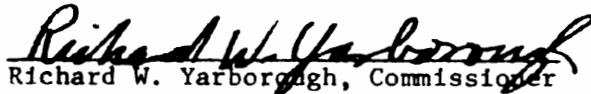
Under these circumstances, we will grant defendant's motion for an order vacating a portion of the summary judgment, will excise the sum of \$1,557.42 therefrom and will deem plaintiff's response

to defendant's motion of June 12, 1975, and its previous exception (h) requesting an up-to-date accounting, to be a motion for an up-to-date accounting as to "miscellaneous agency expenses" in exception (g), and will allow defendant a reasonable time to respond to such motion.


Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner