

BEFORE THE INDIAN CLAIMS COMMISSION

LOWER SIOUX INDIAN COMMUNITY)	
IN MINNESOTA, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 363
)	
THE UNITED STATES OF AMERICA,)	(Second Claim,
)	Act of 1904)
Defendant.)	

Decided: January 16, 1974

Appearances:

Marvin J. Sonosky, Attorney for Plaintiffs.

Bernard M. Sisson with whom was Assistant
Attorney General Kent Frizzell, Attorneys
for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

On June 30, 1973, the Commission entered an opinion, findings of fact, conclusions of law, and an interlocutory order holding the United States liable for the Fifth Amendment takings on various dates of reservation lands of plaintiffs. 30 Ind. Cl. Comm. 463. The Commission ordered that the case proceed for the purpose of determining the amount of payments and offsets allowable, if any.

A pretrial notice was issued to the parties on July 11, 1973. The parties responded with pretrial statements in accord with pretrial instructions contained in the Commission's General Policy Statement § 101.

After a pretrial hearing on July 26, 1973, the parties filed proposed pretrial orders, and plaintiffs filed a response to defendant's proposed pretrial order. In their proposed pretrial orders, the parties included proposed findings of fact and final judgments.

Pursuant to the foregoing, defendant submitted accounting reports and records that are received in evidence by consent of the parties. The parties are in agreement concerning the dates and amounts of payments, and concerning gratuities. Furthermore, the parties are in agreement that the Commission should direct that a final judgment be entered as to the award covered by this phase of Docket 363, in accordance with Rule 54(b), F.R. Civ. P., relating to multiple claims in a single action.

On the basis of the entire record, we conclude that there are no significant issues of fact between the parties requiring trial, and we have entered findings of fact concerning payments and offsets.

Furthermore, we have examined the parties' contentions as to the law, and have determined that all legal questions may be readily decided without the necessity for, or delay occasioned by, further briefing or argument. Our determinations concerning issues of law follow. On the basis of our conclusions, we are in a position to enter an order to show cause why a final judgment should not be entered.

Before addressing the questions of payments on the claim, however, we will dispose of one peripheral issue raised by plaintiffs. In plaintiffs' pretrial statement of July 16, 1973, plaintiffs propose a change in finding 7. Plaintiffs' concern is with the nature of congressional action

in passing the Act of April 27, 1904, 33 Stat. 319. Plaintiffs point to language in the opinion, 30 Ind. Cl. Comm. at 472, that states that Congress amended the agreement of 1901 unilaterally and without the consent or participation of the Indians by passing the 1904 act. Finding 7 is not complete in this regard, and we have amended it in accord with the evidence of record.

We now proceed to consider the payments on the claim.

Amounts and Dates of Payments

The parties are in agreement concerning the amounts and dates of payments. Their only disagreement concerns the allowability of two small payments made by defendant. These payments were of interest earned on portions of defendant's payments on the claim which had been placed in interest-bearing accounts. The payments were not made out of funds appropriated by defendant, but were interest that plaintiffs' funds had earned. Such payments are not allowable as payments on the claim. See Cherokee Nation v. United States, Docket 173-A, 27 Ind. Cl. Comm. 23 (1972), aff'd in part, rev'd in part, 200 Ct. Cl. 583 (1973).

Since defendant is not claiming gratuities in this proceeding, we do not decide whether these interest payments are deductible as gratuities, as was considered by the Court of Claims in affirming in part and reversing in part the Commission's Cherokee decision.

The expenditures made by defendant which are allowable as payments on the claim may be represented in tabular form as follows:

TABLE I

<u>Item</u>	<u>Amount</u>	<u>Date of Payment</u>
2a - 2e	\$ 79,852.00	January 1, 1892
3a, 3b, 4	52,000.00	May 20, 1904
5	3,120.00	July 1, 1910
6	375,542.79	May 1, 1907

Method of Computation

We decided in our earlier opinion that a rate of 5 percent is applicable as a measure of just compensation in this proceeding. However, the parties in their pretrial statements use markedly different methods of computing just compensation.

The dates of payment agreed on above are not identical with the dates of valuation previously determined herein. As to all items except Item 5, the dates of payment precede the dates of valuation. The difference between the parties concerns the consequences of this fact.

Plaintiffs allege that there is no precedent dealing with prepayments. Plaintiffs submit that the judgment on all items other than Item 5 should be computed by figuring interest to June 30, 1973, and adding this to the principal of the award. Then the payments on the claim should be deducted from the total. Computed accordingly, and including their computations for item 5 (which are discussed separately below), plaintiffs arrive at a judgment figure, as of June 30, 1973, of \$9,922,425.

Defendant, on the other hand, calculates interest on the debt on one

side, and interest on the payments on the other. Then total payments and interest on each item are deducted from the total award and interest thereon. Computing accordingly, defendant arrives at a judgment figure, as of June 30, 1973, of \$8,125,931.

Plaintiffs' contention as to computation is plainly without merit. If payment is made simultaneously with extinguishment of title, or later, payment is deducted from the value and interest runs on the remainder (as plaintiffs concede with respect to Item 5). The effect of plaintiffs' contention is to penalize defendant for prepayment. There is no precedent for this proposition, and we reject it.

The remaining question as to payments, therefore, is whether defendant should be allowed to credit interest on the prepayments during the interval between the date of payment and the date of valuation. We think not.

The parties did not at the time of payment consider the expenditures to be prepayments. The dates of extinguishment of title, based on median dates of patent and median dates of entry, are artificial constructs for purposes of valuation. Defendant argued in the valuation phase that the date of taking as to the crucial item 6 lands was before the date of payment. (See finding 9, supra.) In these circumstances, we think it appropriate to deduct payments from market value as of the valuation date, and compute the interest on the amounts owing from that date.

With regard to instances in which payment is made after the valuation date, as is the case concerning Item 5, the applicable method of computation of just compensation is well established. Uintah and White River

Bands v. United States, 139 Ct. Cl. 1, 11, 152 F. Supp. 953, 959 (1957); Ponca Tribe v. United States, Docket 323, 24 Ind. Cl. Comm. 339, 347-48 (1970), aff'd in part, remanded in part, 197 Ct. Cl. 1065 (1972); Three Affiliated Tribes of Fort Berthold Reservation v. United States, Docket 350-F, 28 Ind. Cl. Comm. 264 (1972), appeal docketed, No. 17-72, Ct. Cl., Dec. 21, 1972.

The payment is apportioned as between principal and interest owing to date of payment by the following formula:

$$\frac{\text{Principal plus accumulated interest}}{\text{Principal}} = \frac{\text{Amount of payment}}{\text{Portion of payment allocated to principal}}$$

With respect to Item 5, the payment of \$3,120 was made on July 1, 1910, six years and 28 days after the valuation date of June 2, 1904. We calculate that the accumulated interest owing on the \$7,000 principal at the time of payment was \$2,126.85. Using the foregoing formula, we arrive at the following equation to determine the portion of the payment allocated to principal:

$$\frac{\$7,000.00 + \$2,126.85}{\$7,000.00} = \frac{\$3,120}{X} \quad \text{or } X = \$2,392.94$$

The calculations of the parties with respect to Item 5, which have somewhat different bases from the foregoing are rejected.

Computations of Interest and Unpaid Principal

We are now in a position to compute the final award in this case. We will start with Item 5, which involves relatively complicated computations.

As we have stated above, \$3,120 was paid for the Item 5 lands, of which \$2,392.94 is allocated to principal. The remainder of the payment, \$727.06, is allocated to interest. The interest due as of the date of payment was \$2,126.85. (That is, 5 percent applied to the valuation of \$7,000 from valuation date to the date of payment.) The amount of interest unpaid after the payment (\$2,126.85 less \$727.06) therefore was \$1,399.79.

The amount of principal unpaid (\$7,000 less \$2,392.94) was \$4,607.06. Interest computed on the unpaid principal from and including date of payment through December 31, 1973 totals \$14,628.36.

We may therefore calculate the total due plaintiffs under Item 5 as follows:

Interest from date of payment	\$14,628.36
Unpaid interest as of date of payment	1,399.79
Unpaid principal	<u>4,607.06</u>
Total	\$20,635.21

As to the other payments made by defendant, the following recapitulation shows the payments applied to the valuation figures previously determined herein, and the resultant balances to which interest must be applied to arrive at just compensation.

TABLE II

<u>Item</u>	<u>Acreage</u>	<u>Payment</u> <u>1/</u>	<u>Value</u>	<u>Balance</u>
1	11,313.08	\$ N o n e	\$ 55,236.19	\$ 55,236.19
2a	59,143.68	72,760.28	402,347.00	329,586.72
2b	269.99	332.15	2,200.00	1,867.85
2c	1,903.70	2,341.99	12,100.00	9,758.01
2d	1,280.00	1,574.70	3,500.00	1,925.30
2e	2,310.85	2,842.88	6,700.00	3,857.12
3a	5,774.01	20,121.60	81,600.00	61,478.40
3b	6,713.94	23,397.11	87,225.00	63,827.89
4	2,433.75	8,481.29	38,950.00	30,468.71
5	799.45	2,392.94	7,000.00	4,607.06 <u>2/</u>
6	<u>90,138.15</u> 170,747.52 <u>3/</u>	<u>375,542.79</u> \$509,787.73	<u>1,701,092.00</u> \$2,397,950.19	<u>1,325,549.21</u> \$1,888,162.46

1/ The \$79,852 payment (finding 28) for Item 2 lands is prorated among Items 2a through 2e. The \$52,000 payment (finding 29) for Item 3 and 4 lands is prorated among Items 3a, 3b and 4.

2/ Computations for Item 5 discussed above.

3/ Excludes loss of use of 11,313.08 acres of Item 1 land.

Using the above balances, we may compute the just compensation owed plaintiff measured by interest at 5 percent per year as in the following table:

TABLE III

<u>Item</u>	<u>Acreages</u>	<u>Value Date</u>	<u>Principal</u> <u>1/</u>	<u>Simple Interest</u> <u>2/</u>	<u>Total</u>
1	11,313.08	1/1/1880	\$ 55,236.19	\$ 259,610.09	\$ 314,846.28
2a	59,143.68	1/1/1897	329,586.72	1,268,908.87	1,598,495.59
2b	269.99	1/7/1897	1,867.85	7,189.68	9,057.53
2c	1,903.70	10/10/1895	9,758.01	38,165.85	47,923.86
2d	1,280.00	2/5/1885	1,925.30	8,558.36	10,483.66
2e	2,310.85	2/23/1884	3,857.12	17,329.11	21,186.23
3a	5,774.01	7/15/1904	61,478.40	213,528.26	275,006.66
3b	6,713.94	7/8/1904	63,827.89	221,749.60	285,577.49
4	2,433.75	6/2/1904	30,468.71	106,003.64	136,472.35
5	779.45	6/2/1904	4,607.06	16,028.15 <u>3/</u>	20,635.21
6	<u>90,138.15</u>	1/1/1910	<u>1,325,549.21</u>	<u>4,241,757.47</u>	<u>5,567,306.68</u>
	170,747.52 <u>4/</u>		\$1,888,162.46	\$6,398,829.08	\$8,286,991.54

1/ Reflecting balance in Table II, above.

2/ Simple interest at 5 per cent per annum from and including value dates through December 31, 1973.

3/ See explanation above.

4/ Excludes loss of use of 11,313.08 acres of Item 1 land.

Conclusions of Law

The Commission, for the reasons expressed above, concludes as a matter of law as follows:

1. That defendant be credited with the sum of \$507,394.79 in payments against the gross judgments for Items 2, 3, 4 and 6, and with the sum of \$3,120 against the gross judgment and damages measured by interest for Item 5.

2. That by agreement of the parties, defendant reserves the right to assert any offset for gratuities that defendant, now or hereafter, may have against plaintiffs, in any other claim of plaintiffs' before the Commission.

3. That plaintiffs have and recover from defendant the sum of \$8,286,991.54, as hereinafter set forth:

For item 1 the plaintiffs are entitled to recover \$55,236.19 plus a sum measured by interest at 5 percent per annum from and including January 1, 1880, through December 31, 1973, which amounts to \$259,610.09, for a total of \$314,846.28 as of December 31, 1973.

For item 2a the plaintiffs are entitled to recover \$329,586.72, plus a sum measured by interest at 5 percent per annum from and including January 1, 1897, through December 31, 1973, which amounts to \$1,268,908.87, for a total of \$1,598,495.59 as of December 31, 1973.

For item 2b the plaintiffs are entitled to recover \$1,867.85, plus a sum measured by interest at 5 percent per annum from and including January 7, 1897, through December 31, 1973, which amounts to \$7,189.68, for a total of \$9,057.53 as of December 31, 1973.

For item 2c the plaintiffs are entitled to recover \$9,758.01, plus a sum measured by interest thereon at 5 percent per annum from and including October 10, 1895, through December 31, 1973, which amounts to \$38,165.85 for a total of \$47,923.86 as of December 31, 1973.

For item 2d the plaintiffs are entitled to recover \$1,925.30, plus a sum measured by interest at 5 percent per annum from and including February 5, 1885, through December 31, 1973, which amounts to \$8,558.36, for a total of \$10,483.66 as of December 31, 1973.

For item 2e the plaintiffs are entitled to recover \$3,857.12, plus a sum measured by interest at 5 percent per annum from and including February 23, 1884, through December 31, 1973, which amounts to \$17,329.11 for a total of \$21,186.23 as of December 31, 1973.

For item 3a the plaintiffs are entitled to recover \$61,478.40, plus a sum measured by interest at the rate of 5 percent per annum from and including July 15, 1904, through December 31, 1973, which amounts to \$213,528.26, for a total of \$275,006.66 as of December 31, 1973.

For item 3b the plaintiffs are entitled to recover \$63,827.89, plus a sum measured by interest at the rate of 5 percent per annum from and including July 8, 1904, through December 31, 1973, which amounts to \$221,749.60 for a total of \$285,577.49 as of December 31, 1973.

For item 4 the plaintiffs are entitled to recover \$30,468.71, plus a sum measured by interest at the rate of 5 percent per annum from and including June 2, 1904, through December 31, 1973, which amounts to \$106,003.64 for a total of \$136,472.35 as of December 31, 1973.

For item 5 the plaintiffs are entitled to recover \$7,000.00, less a portion of a payment of \$3,120.00 made 6 years and 28 days after the value date; that such payment shall be apportioned between principal and interest, with application of \$2,392.94 applied to principal and \$727.06 applied to interest accruing between the value date of June 2, 1904, and date of payment of July 1, 1910; and that the unpaid interest on date of payment was \$1,399.79, which, added to interest at 5 percent per annum on the unpaid balance of \$4,607.06, amounts to \$16,028.15 through December 31, 1973, and, added to the principal of \$4,607.06, makes a total of \$20,635.21, as of December 31, 1973.

For item 6 the plaintiffs are entitled to recover \$1,325,549.21, plus a sum measured by interest at the rate of 5 percent per annum from and including January 1, 1910, through December 31, 1973, which amounts to \$4,241,757.47, for a total of \$5,567,306.68 as of December 31, 1973.


For the reasons stated herein, we will issue an order to show cause why a final award for \$8,286,991.54, plus simple interest at 5 percent per annum on the principal sum of \$1,888,162.46 from and including January 1, 1974, until paid, should not be entered.

We concur:


John T. Vance, Commissioner


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner