

BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 332-D
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: November 12, 1976

Appearances:

Jerry C. Straus, Attorney for Plaintiff.
Wilkinson, Cragun & Barker, and Patricia L.
Brown were on the briefs.

Marvin E. Schneck, with whom was Assistant
Attorney General Wallace H. Johnson,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

On November 21, 1975, the Commission issued an order for plaintiff to show cause why its claim in this docket for a post-1951 accounting should not be dismissed. 37 Ind. Cl. Comm. 64, 94.

The peculiar circumstances of this case were that the parties arrived at a compromise settlement of plaintiff's accounting claim in this docket through June 30, 1951, but reserved the issue of any claims plaintiff might have for an accounting for the period commencing July 1, 1951. 28 Ind. Cl. Comm. 367 (1972). In our 1975 decision we determined that a motion of plaintiff for a general accounting for the post-1951 period would be denied, and stated,

* * * In order to secure a supplemental accounting for the post-1951 period, plaintiff is first required to show specific wrongdoing which occurred before August 13, 1946. Having shown such specific wrongdoing, plaintiff must then show that such specific wrongdoing can be reasonably expected to have continued (in this particular case, without interruption, until after June 30, 1951). If these can be shown, the supplemental accounting of relevant particular accounts will then be ordered.

At the hearing upon the compromise settlement under Docket 332-B, counsel for plaintiff described his familiarity with the status of plaintiff's accounts through June 30, 1951, in the following terms:

Mr. Iadarola: . . . I do want to say that Mr. Schneck and I spent about a month behind closed doors trying to come to a settlement.

. . . we did hammer it out, and it was in the interests in [sic] our part and the Government's part to settle the case. . . .

We took each account, each item, item by item, dollar by dollar, and we went through them, and we hammered away, why this one should be treated as mismanaged, and why this one was not, so this was really a very tiresome task, and it took a long time to put these figures together.

There were points we disagreed on, and on these we tried to work out a compromise, and there were points that Mr. Schneck convinced me we were wrong, and there were points we convinced him we were right, and he accepted it, so I think we worked out a very, very good settlement for both sides in this case. [Tr. at 47-48; emphasis added.]

With such extensive knowledge of each and every account through June 30, 1951, plaintiff should be readily able to show specific wrongdoing which began before August 13, 1946, and did, in fact, continue without interruption until June 30, 1951. If plaintiff is able to show such wrongdoing over that period, it should not be too difficult for the plaintiff to convince the Commission that these wrongs can reasonably be expected to have continued after June 30, 1951. [37 Ind. Cl. Comm. 75-76.]

Plaintiff filed its response to our show cause order on February 5, 1976, defendant filed its reply on July 6, 1976, and plaintiff filed a reply on October 1, 1976.

Plaintiff's response alleges that

* * * the defendant has followed the consistent policy of using tribal funds, in derogation of its fiduciary responsibilities, for its own administrative and non-tribal purposes. * * * Such expenditures did not occur in every year from every tribal fund. However, the policy was consistent and unabating for the entire period for which the defendant has accounted. * * *

In support of this allegation, plaintiff refers first to the accounting report in this docket (certified by the General Services Administration under date of August 5, 1965), wherein expenditure of nearly one-quarter million dollars of 1858 treaty ^{1/} monies for pay of agency employees are recorded. However, plaintiff concedes that these payments were completed by fiscal year 1909.

Plaintiff refers then to expenditure of funds under the Agreement of 1892. ^{2/} However, plaintiff cites no incidents of such expenditures after fiscal year 1930.

Finally, plaintiff alleges that disbursements from plaintiff's Indian Moneys, Proceeds of Labor (IMPL) funds for categories such as "Pay of Clerks" and "Miscellaneous Agency Expenses" began in fiscal year 1903 and continued through 1951. Defendant's reply points out, however, that as to these two categories, the last expenditures occurred in fiscal years 1906 and 1922, respectively.

Therefore, while plaintiff's allegations are of wrongdoings which were or may have been continuous for a period, there is nothing in the record to suggest that they were continuing as of June 30, 1951. To the contrary, review of the accounting report indicates that the specified wrongdoings ceased well before 1946.

^{1/} Treaty of April 19, 1858, 11 Stat. 743.

^{2/} Agreement of December 31, 1892, 28 Stat. 314.

We conclude therefore that plaintiff's response has not been adequate as to the foregoing categories of expenditure to secure a post-1951 accounting.

Plaintiff's response next requests a post-1951 accounting for disbursements under the 1868 Treaty and 1876 Agreement. ^{3/} Plaintiff states:

The Yankton Tribe was not a signatory to the Treaty of April 29, 1868 or the Agreement of September 26, 1876. Therefore, the plaintiff would consider any expenditures made under these treaties on behalf of the plaintiff to be gratuities and would not and have not demanded an accounting for the proceeds. However, the defendant has taken the position in Docket No. 332-C, involving Yankton offsets, that expenditures made under these treaties were in fact consideration for the cession of the interests in the lands involved Plaintiff believes that this position is totally untenable. However, in the event that the Commission rules in favor of the defendant on the issue, thus considering payments under these treaties as consideration, the plaintiff would be entitled to an accounting for the proceeds in the post-1951 period. [Footnotes omitted]

Inasmuch as defendant is raising the issue in Docket 332-C, that docket is the proper place for plaintiff to raise any objections to the treatment of disbursements pursuant to the 1868 Treaty or 1876 Agreement. Moreover, as our 1975 opinion herein, supra, indicates, we are limited in this stage of this proceeding to consideration of continuing wrongdoings covered by defendant's 1965 GSA accounting report. As plaintiff notes, since the Yankton Sioux were parties to neither agreement, the accounting report covers neither agreement.

We therefore conclude that plaintiff's request for a post-1951 accounting for disbursements under the 1868 Treaty and 1876 Agreement should be denied.

^{3/} Treaty of April 29, 1868, 15 Stat. 635; and the so-called Agreement of September 26, 1876, Act of February 28, 1877, 19 Stat. 254.

Plaintiff next alleges that defendant had a policy commencing in 1930 and continuing into the 1960's of improperly failing to pay interest on tribal funds, and that this constituted a continuing wrong.

Plaintiff's first example of this policy concerns so-called Individual Indian Money (IIM) accounts. However, plaintiff's response states that the accounting report fails to account for IIM funds. Plaintiff made no exception to the accounting report concerning IIM funds.^{4/} Thus, we have been presented with no evidence that defendant maintained any such funds for plaintiff. Since there is no evidence of pre-1946 wrongdoing, we conclude that plaintiff's request for continuing damages as to IIM accounts should be denied.^{5/}

Plaintiff's second example of this policy concerns defendant's alleged policy after 1930 of not investing interest on IMPL accounts. According to defendant's accounting report, plaintiff's "Interest on Proceeds of Labor" account received its first deposit in 1931 (in the amount of \$45.04), and did not show a balance in excess of \$500 until 1939. The balance remained in excess of \$500 only until 1941, when it dropped below that figure. The balance did not rise above \$500 again in the period through August 13, 1946, our jurisdictional cut-off date. (See defendant's 1965 GSA report, vol. III, pp. 512-13, and p. 333.)

^{4/} Plaintiff's exception 7(e) deals with failure to pay interest on certain accounts, and cites several examples, but does not mention IIM funds.

^{5/} Plaintiff's reply refers to a motion of plaintiff for a call for documents relating to IIM accounts, among other things, filed September 15, 1976, and implies that these documents may be germane to our instant decision. That motion requests of defendant documents concerning the post-1946 period. Such documents are not germane to a decision of whether there has been a pre-1946 wrongdoing.

By the Act of June 13, 1930, 46 Stat. 584, the Treasury was required to pay interest on tribal trust funds carried in principal accounts when the balances thereof were in excess of \$500. We think that if there were an obligation to pay interest on funds consisting of interest on IMPL accounts, such an obligation would similarly be applicable only to balances in excess of \$500.

Therefore, even if we accept plaintiff's contentions as to the law, while there may have been wrongdoing with respect to defendant's failure to invest plaintiff's interest on proceeds of labor account funds at some point before 1946, there is nothing in the record to show a course of continuing wrongdoing as of August 13, 1946.

We therefore conclude that plaintiff's request for a post-1951 accounting concerning interest on tribal funds should be denied.

Plaintiff's final request for a post-1951 accounting concerns plaintiff's property other than money. Plaintiff refers to information in the accounting report which shows that defendant expended, over the course of several years starting in 1937, more than \$90,000 to purchase tribal trust land. Plaintiff alleges that "defendant followed a consistent policy from the date of purchase of allowing itself and others to use the land without fair compensation," and that defendant "did not take reasonable and prudent steps to make this costly capital acquisition productive."

Defendant's reply argues that plaintiff fails to document or make specific these allegations, and that plaintiff has failed to show government wrongdoing, continuing or otherwise.

The only argument plaintiff offers to support its claim is the reference in the accounting report to "proceeds of the Tribe's IMPL account (the account to which proceeds of the Reservation would be placed)." Plaintiff points out that total proceeds in that account, from all sources, during the period 1937 through 1946 amounted to only \$345.94. Plaintiff maintains that this shows that defendant allowed free use of plaintiff's land.

On the basis of the record, we agree with defendant's contention that plaintiff has failed to show government wrongdoing. There is no evidence that anybody used plaintiff's land. Furthermore, there is nothing in the record, not even an allegation, to indicate that the lands which were purchased were intended to be used as income property for the tribe.^{6/} See Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65, 77 (1973).

We therefore conclude that there is no evidence of pre-1946 wrongdoing by defendant in the management of plaintiff's property other than money that would justify a post-1951 supplemental accounting.

CONCLUSION

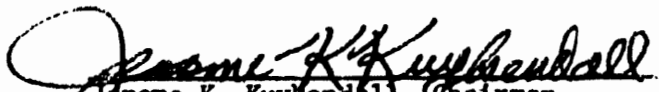
Plaintiff has failed to offer the proof that we stated was required in order to show cause why the claim hereunder for a post-1951 accounting

^{6/} Plaintiff's reply refers again to the aforementioned (footnote 5) call for documents, this time concerning post-1946 records with reference to the lands in question. Such documents are not germane to a decision of whether there had been a pre-1946 wrongdoing.

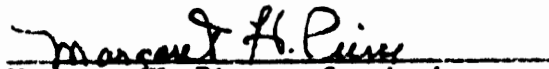
should not be dismissed. We will therefore order plaintiff's claim for a post-1951 accounting to be dismissed.


John T. Vance, Commissioner

We concur:


Jerome K. Kuykendall, Chairman


Richard W. Varborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner