

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: December 14, 1989
CASE NO. 85-CPA-17

IN THE MATTER OF

CENTRAL TRIBES OF THE
SHAWNEE AREA, INC.,

COMPLAINANT,

v.

U.S. DEPARTMENT OF LABOR,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981).^{1/} On June 2, 1988, Administrative Law Judge (ALJ) Quentin P. McColgin, issued a Decision and Order (D. and O.) affirming the Grant Officer's disallowance of \$10,981 in charges made by the Central Tribes of the Shawnee Area, Inc. (CTSA), pursuant to its CETA grants, and reversed that part of the Grant Officer's final determination disallowing \$49,164.^{2/}

^{1/} CETA has been repealed and replaced by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1781 (1982). Pending CETA administrative and judicial proceedings continue to be adjudicated under CETA. 29 U.S.C. § 1591(e).

^{2/} In the Matter of Central Tribes of the Shawnee Area, Inc., v. U.S. Department of Labor, Case No. 85-CPA-17, D. and O. at 8-9. The Grant Officer previously had allowed \$1,815, reducing the
(continued...)

The Grant Officer timely excepted to the **ALJ's** decision, and on July 21, 1988, the Secretary asserted **jurisdiction.**^{3/}

BACKGROUND

CTSA is a private, non-profit corporation which provided employment training services for Native Americans residing in Cleveland, Lincoln, Potawatomie and Payne counties in Oklahoma under CETA **grants**. An audit of **CTSA's** costs charged to its **CETA** grants from October 1, 1979, through September 30, 1981, resulted in the Grant Officer's disallowance of **\$60,145.**^{4/} The Final Determination was appealed to the Office of **Administrative Law** Judges by CTSA and its request for a hearing was granted on February 26, **1985.**^{5/} A formal hearing was held on July 23 and 24, 1987. D. and O. at 1.

DISCUSSION

The only issue before me is that part of the **ALJ's** decision excepted to by the Grant Officer's **counsel,**^{6/} specifically the

^{2/} (. . .continued)
disallowed costs to \$60,145, rather than \$61,960 as stated in the D. and O.

^{3/} In the Matter of Central Tribes of the Shawnee Area, Inc., v. U.S. Department of Labor, Case No. 85-CPA-17, Secretary's Order Asserting Jurisdiction and Notice of Briefing Schedule.

^{4/} Final Determination, dated December 3, 1984; Administrative File (A.F.) at 9-17.

^{5/} A.F. at 1-4.

^{6/} **CTSA** has submitted three filings. The first, dated July 18, 1989, opposes the Grant Officer's exceptions and asserts that the
(continued...)

allowance of \$29,069 disallowed by the Grant Officer in **findings 1(a)** and 4 of the Final Determination.' Both of these findings pertain to costs incurred by **CTSA** when it paid CETA participants enrolled in classroom training programs for more time than they were actually attending **class.**^{9/} These payments by CTSA contravened the regulation governing the payment of allowances by Native American CETA **grantees.**^{9/} CTSA conceded that the payments were not properly incurred, asserting that they were made based on a misunderstanding by the former CETA director concerning the allowability of compensation to classroom training participants for study **time.**^{10/} D. and O. at 3-4.

The **ALJ** allowed these costs, based on his finding that the five conditions required by the CETA regulation which permits the

^{9/} (. . .continued)

ALJ's decision should be upheld. The second, dated August 4, 1989, seeks waiver of the \$10,981 which the **ALJ** disallowed. As an exception to the **ALJ's** June 2, 1989, D. and O., this request is untimely, 20 C.F.R. § 676.91(f), and it is denied. **CTSA's** third filing dated August 22, 1989, has been considered as **CTSA's** response to the exceptions and brief of the Grant Officer.

^{7/} D. and O. at 3-4.

^{8/} A.F. at 22 and 25. Finding 1(a) disallowed \$23,956 and finding 4 disallowed \$5,113.

^{9/} The applicable regulation is entitled "[p]ayment of allowances," and provides in pertinent part: "(a) General. (1) Except for persons receiving incentive allowances, a basic hourly allowance shall be paid to participants for time spent in classroom training." 20 C.F.R. § 688.82-2.

^{10/} Case Record at tab G. Letter from Robert A. West, Jr., Executive Director, CTSA, to Ronald L. Conrad, Managing Partner, Conrad & Associates, (auditors of the subject CETA grants), dated August 29, 1983, at **1-2**.

allowability of certain questioned costs had been met.^{11/} D. and 0. at 4. This regulation, however, applies only to questioned costs associated with ineligible participants and public service employment programs. Section 106(d)(2) of CETA grants the Secretary authority to waive repayment of misspent funds in public service employment programs upon a showing of unusual circumstances. 29 U.S.C. § 816. The costs at issue here are not associated with ineligible participants or public service employment but involve additional allowances paid to participants in classroom training programs. As such, the ALJ erred in relying on 20 C.F.R. § 676.88(c) as authority to waive repayment

^{11/} The regulation is entitled "[i]nitial and final determination: request for hearing at the Federal level," and provides in pertinent part:

(c) Allowability of certain questioned costs. In any case in which the Grant Officer determines that there is sufficient evidence that funds have been misspent, the Grant Officer shall disallow the costs, except that costs associated with ineligible participants and public service employment programs may be allowed when the Grant Officer finds:

(1) The activity was not fraudulent and the violation did not take place with the knowledge of the recipient or subrecipient; and

(2) Immediate action was taken to remove the ineligible participant; and

(3) Eligibility determination procedures, or other such management systems and mechanisms required in these regulations, were properly followed and monitored; and

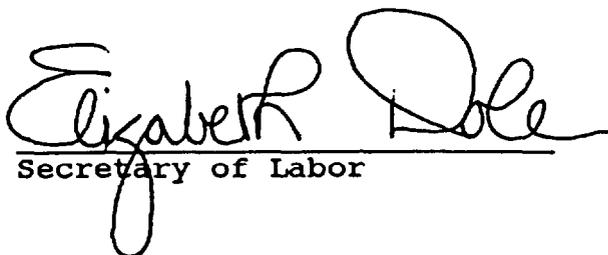
(4) Immediate action was taken to remedy the problem causing the questioned activity or ineligibility; and

(5) The magnitude of questioned costs or activities is not substantial.

of the misspent classroom training funds. The **ALJ** cited no other authority for his ruling, nor has any been suggested by CTSA. I find **that it was** error to waive repayment of these misspent funds, U.S. Department of Labor v. California Indian Manpower Consortium, Inc., Case No. 85-CTA-124, **Sec.** Final Dec. and Order October 25, 1988, slip op. at 6, and that portion of the **ALJ's Decision** and Order IS REVERSED.

Accordingly, the Central Tribes for the Shawnee Area, Inc., is ordered to pay to the Department of Labor from non-federal funds the sum of **\$40,050.**^{12/}

SO ORDERED.


Secretary of Labor

Washington, D.C.

^{12/} In so ordering I reject **CTSA's** argument in its July 18, and August 22, filings, supra n.6, that repayment to the Department be limited to \$10,981, the alleged amount of a pre-hearing settlement offer that CTSA rejected. Aside from the fact that this alleged offer is outside the record, "evidence of ... offering ... a valuable consideration in ... attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount.*@ Fed. R. Evid. 408. While hearings under CETA are not conducted pursuant to strict evidentiary rules, 20 C.F.R. § 676.90(c), Rule 408 "reflects the reality that permitting consideration of settlement offers as reflecting an admission of liability in the amount of the offer would discourage parties from discussing settlement or making settlement offers." Chevenne River Sioux Tribe v. United States, 806 F.2d 1046, 1050 (Fed. Cir. 1986). As the court in Chevenne River Sioux Tribe noted, "[u]nless a case is settled with the consent of the parties, the duty of the court is to determine the merits and enter judgment accordingly." 806 F.2d at 1050.

CERTIFICATE OF SERVICE

Case Name: In the Matter of Central Tribes of the Shawnee Area, Inc. v. U.S. Department of Labor

Case No. : 85-CPA-17

Document : Secretary's Final Decision and Order

A copy of the above-referenced document was sent to the following persons on DEC 14 1989

Kathleen Gorham

CERTIFIED MAIL

Robert A. West, Jr.
Executive Director
Central Tribes of the
Shawnee Area, Inc.
624 N. Broadway
Shawnee, Oklahoma 74801

Associate Solicitor for Employment
and Training Legal Services
Attn: Neilda C. Lee, Esq.
U.S. Department of Labor
Room N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

REGULAR MAIL

James E. White, Esq.
Regional Solicitor
Attn: Denise Howard, Esq.
U.S. Department of Labor
525 Griffin Street
Suite 501
Dallas, TX 75202

Hon. Nahum Litt
Chief Administrative Law Judge
Office of Administrative Law Judges
Suite 700
1111 20th Street, N.W.
Washington, DC 20036

Hon. John M. Vittone
Deputy Chief Administrative Law
Judge
Office of Administrative Law Judges
Suite 700
1111 20th Street, N.W.
Washington, DC 20036

Hon. Quentin P. **McColgin**
Office of Administrative Law Judges
Heritage Plaza Bldg., 5th Floor
111 Veteran's Memorial Blvd.
Metairie, LA 70005

David O. Williams
Office of Financial
and Administrative Management
Charles Wood
Office of Audit Resolution
Linda Kontnier
Office of Debt Management
U.S. Department of Labor/ETA
Room N-4671
200 Constitution Ave., N.W.
Washington, D.C. 20210