No. 9, Original

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

REPLY MEMORANDUM FOR THE UNITED STATES

WADE H. McCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

BRUCE C. RASHKOW
MICHAEL W. REED
MARGARET STRAND
Attorneys
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 9, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA, ET AL.

ON THE REPORT OF THE SPECIAL MASTER

REPLY MEMORANDUM FOR THE UNITED STATES

STATEMENT

The present memorandum is confined to what the Special Master has labelled the "First Issue": whether the United States owes interest on, or a sum representing the value of the use of, the funds for some years "impounded" in the federal Treasury which were ultimately determined to belong to the State of Louisiana. Except for some split-lease revenues, the United States has long since paid over to the State its share of the impounded funds, but Louisiana objected that the payments included no interest or like increment. The Master rejected that objection (Report 4-15), and the State has now excepted. Although Louisiana has filed four exceptions, they all challenge the same ultimate ruling.

The question arises because, pursuant to a so-called Interim Agreement between the parties dated October 12, 1956, the United States collected and retained payments from mineral lessees in respect of disputed offshore areas, some of which were eventually adjudicated to Louisiana. Specifically, the Agreement provided that the United States would "impound [such receipts] in a separate fund in the Treasury" (para. 7(a)),[1] where they would be "held intact, in a separate account * * * until title to the area affected is determined" (para. 9), at which time, "[a]ny funds derived from an area finally determined to be owned by the State of Louisiana * * * shall be taken from the separate and impounded fund in the Treasury" and paid over to the appropriate State officer (para. 9(b)). In what it deemed compliance with these provisions, the United States established a separate account to which was credited every receipt from the disputed area—albeit the lessees' checks were cashed and the cash was commingled with the Treasury's general funds and used in ordinary governmental operations. And, whenever affected areas were adjudicated to Louisiana, the United States paid over to the State the full amount derived from such areas, but without interest or other increment.

For at least a decade after the execution of the Interim Agreement of 1956, Louisiana was apparently content with this understanding of the Agreement. Thus, in 1965 the parties agreed to a partial judgment which involved paying over some $34 million of impounded funds to the State. See 382 U.S. 288, 293. Yet, that payment was made without interest or any request for interest.[2] Two

---

[1]The full text of the Interim Agreement is reproduced as an appendix to our Memorandum in Support of Exception. The provisions cited here appear at pages 8a and 13a.

[2]In 1975, as part of its objections to our recent accounting, Louisiana, for the first time, demanded interest or a like increment in respect of the $34 million disbursed in 1966.

years later, it is true, the Louisiana Legislature formally "requested" that henceforth impounded funds be invested so as to earn interest. But the State then asserted neither an existing legal obligation on the part of the United States to effect such investments nor a present right in the State to receive any increment unless the United States actually invested the funds. And the matter was not pursued when the United States declined the proposal. The first claim to interest or "compensation" as of right came in 1975.

Before the Special Master (as now before the Court) Louisiana seemed to be asserting, without complete consistency, that the United States had breached the Interim Agreement in two respects: (1) by failing to *invest* the impounded monies, so as to increase the fund for the benefit of both parties when it came to be divided; and (2) by *freely using* the cash receipts, thereby reducing its borrowing needs and unjustly enriching itself. The Master rejected both arguments.

The Report began by noting that "[i]ndisputably the Interim Agreement does not specifically provide for the payment of interest upon any part of the funds impounded pursuant to it" (Report 5). Then, addressing the suggestion of an implied undertaking to invest the funds, the Master reviewed the testimony of the negotiators and concluded that "the evidence in this case clearly negatives any such understanding upon the part of the parties to the Interim Agreement" (*id.* at 7-8). To the contention that the United States should be made to disgorge its "unjust enrichment" from using Louisiana's share of the impounded fund, the Master answered that the handling of the receipts by the Treasury was—as Louisiana had accepted for two decades—in no way inconsistent with the Interim Agreement, (Report 13), that the requirement to keep the funds "intact" "[o]bviously * * * does not mean that the actual dollars received from oil and gas leases in the disputed area should retain their identity" (*id.* at 14), and that the Agreement was fully satisfied by the maintenance of the special deposit account, which accurately recorded the increasing potential liability of the United States and against which "[n]o other liabilities have ever been charged" (*id.* at 14-15). The Special Master concluded that "the United States has no further obligations beyond those it has performed" (*id.* at 15).

Louisiana has now renewed its arguments before the Court.

ARGUMENT

A. INTRODUCTION AND SUMMARY

On the "interest" issue, we primarily rely on the Special Master's Report rejecting Louisiana's claim. Because that Report fully answers most of the State's arguments, we confine ourselves to an unusually brief submission.

Although Louisiana has advanced a number of alternative contentions, there is, at the end of the day, only one question: Was the United States required to add interest when it distributed to the State its share of the mineral revenues that had been "impounded" in the federal Treasury? We put the matter this way because, when all is said and done, the United States was acting in the role of a bank holding its depositor's money and the nub of the controversy is whether the account representing those deposits should have been a "savings account" bearing interest, instead of an ordinary "checking account." Obviously, in either case, the Treasury, like the bank, would enjoy unrestricted use of the actual cash. And, since it is common ground that any "investment" would have been in Treasury securities, it is irrelevant whether embossed certificates were placed in the account or whether interest was simply "credited" to the account on the same terms.

Our answer is that the Interim Agreement of 1956 did not provide, expressly or impliedly, for the establishment of an interest bearing account. This was well understood at the time the Agreement was executed, and the actual practice was known and acquiesced in by Louisiana for two decades thereafter. Nor could an obligation to invest the funds or pay interest arise by operation of law, for, except as the Constitution, an Act of Congress, or a valid agreement expressly provides for it, interest is not collectible from the United States.

B. The Handling of the Money

As we have noted, the Interim Agreement of 1956 provided that the payments made to the United States on federal leases within the disputed area would be "impound[ed] in a separate fund in the Treasury," there to be "held intact, in a separate account," until title to the affected tract was determined. At times, Louisiana appears to suggest that these words required the United States to preserve the checks received from lessees, or the cash proceeds, in the equivalent of an office safe. But that is, of course, wholly unreal. Everyone obviously understood that the Treasury does not segregate cash: it all goes to the general fund, where it is used to pay current governmental expenses—just as a bank commingles and freely uses its depositors' money. And that would be true whether the Treasury "bought" an interest-bearing security in the name of the impounded fund or simply placed in the account an "I.O.U.", with or without stipulation of interest.

It does not by any means follow, however, that the "impoundment" of the disputed off shore mineral revenues was wholly without practical effect. The establishment of a special account was more than a record keeping device. For budgetary purposes, the disputed off shore receipts were not treated as revenues. And, importantly, the recognition of a contingent liability corresponding to the cash deposited enabled the United States to make prompt payment to the State without any special congressional authorization or appropriation. In sum, the impoundment served its intended purpose.

We now turn to the only real question: whether the account established to "impound" the disputed revenues should have provided for the earning of interest.

C. The Obligation to Invest or Pay Interest

We have already noted that, in the circumstances, it can make no difference whether the Treasury formally "purchased" its own short-term securities to be held in the special "tidelands" account, or simply credited that account with interest at a corresponding rate. The question is whether the Treasury was required to do either. In our view, the answer is plainly "No."

1. The dispositive fact is that the Interim Agreement does not provide for the investment of the impounded funds or the payment of interest on distribution. There is not a word about investment or interest in the entire document. Indeed, the provision of the Agreement

relating to disbursement of the accumulated revenues upon resolution of the boundary dispute strongly suggests the opposite: the "funds * * * shall be taken from the separate and impounded fund in the Treasury * * *" and paid to the State (para. 9(b)). There is no mention of "principal and interest," as one would expect if the fund were to be earning interest.

2. It will not do to suppose that the duty to invest or pay interest was not spelled out because it "goes without saying" that a custodian of monies in the position of the United States has such an obligation. There is no such general rule of law—certainly not as applied to the United States. The term "impoundment" simply cannot carry so much weight. At least in the case of the United States, an express stipulation to invest or pay interest is necessary. *Smyth* v. *United States*, 302 U.S. 329, 353 (1937); *United States* v. *N.Y. Rayon Importing Co.*, 329 U.S. 654, 658-659 (1947). See, also, 28 U.S.C. 2516(a).

3. Moreover, in the present instance, the omission of any provision for interest was conscious. When the Interim Agreement was signed, almost $60 million in disputed revenues had already accumulated and the potential importance of interest was obvious. As two of Louisiana's negotiators candidly testified, they did not insist on an interest clause only because they knew the United States would not agree. Tr. 70, 95, 98, 99, 102, 103, 163.

It is now suggested that Louisiana was willing to pass the matter in silence because the Agreement was expected to be short-lived. We note, however, that the Agreement itself had no term and that it expressly provided for operations after a year has elapsed. See para. 13. Moreover, given the dilatory maneuvers the State had already initiated,[3] one may doubt if it anticipated a quick resolution of the boundary question. But, at all events, the remedy for failure to stipulate for interest was express amendment of the Agreement, not a unilateral retroactive rewriting twenty years later.

4. Finally, there can be no claim that Louisiana was unaware that the funds were not invested or that, regardless of investment, the United States did not hold itself accountable to pay interest. As the Agreement required (para. 8), the State received regular monthly reports of the amounts credited to the "tidelands" account, which, on their face, reflected that interest was not being earned. And, among other indications that the State was fully aware of the actual handling of the impounded funds are the several communications during 1960 from the State Attorney General, Louisiana's Senators and Congressmen and the State Legislature, all requesting the Treasury to deposit some of the "tidelands" monies in Louisiana banks—presumably so that they might enjoy free use of the funds. See. La. Exh. 1-LP1 Nos. 25, 26, 28 and 29. But Louisiana's knowledge and acquiescence in the status quo is most clearly revealed by its acceptance, without the mildest objection to the failure to include interest, of some $34 million of accumulated impounded revenues, pursuant to this Court's decree of December 13, 1965. See 382 U.S. 288, 293.

To be sure, in mid-1967, the Louisiana Legislature asked that the impounded funds be invested. But this was a request for a *change* of status. If the State had believed the United States was violating the Agreement by failing to invest the revenues, it would not have

---

[3]See our opening Memorandum, at 6 n.4, 13, 15-17.

accepted the government's answer, but, instead, would have applied to this Court for relief. In fact, the State made no further attempt to secure investment of the funds, by amendment of the Agreement or otherwise.

In sum, the obligations of the United States in this matter were defined by the Interim Agreement and cannot be extended beyond the requirements there set out. The bargain was made; it was never changed; and both parties remain bound by it. Any benefits accuring to the United States from administration of the fund were no more than collateral consequences, foreseen by the State, and accepted as one aspect of the considerations that produced the Interim Agreement. There being no liability for interest under the Agreement, none can arise outside of it.

CONCLUSION

For the foregoing reasons, the exceptions of the State of Louisiana to the Special Master's Report should be overruled.

Respectfully submitted.

WADE H. MCCREE, JR.
Solicitor General

JAMES W. MOORMAN
Assistant Attorney General

LOUIS F. CLAIBORNE
Deputy Solicitor General

BRUCE C. RASHKOW
MICHAEL W. REED
MARGARET STRAND
Attorneys

DECEMBER 1979

DOJ-1979-12