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R_P of Wolff and Brown

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Recommended Citation

S. Rep. No. 166, 46th Cong., 2nd Sess. (1880)

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IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1880.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Claims, submitted the following

REPORT:

The Committee on Claims, to whom was referred the petition of Wolff & Brown, have carefully examined the same, and submit the following report:

The petition of the claimants is addressed to Congress, is not verified by affidavit, was not accompanied by any evidence or papers, and is as follows, to wit:

To the Senate and House of Representatives of the United States of America in Congress assembled:

Your petitioners respectfully represent: That on or before February 20, 1865, Col. Thomas Moonlight, being then commander, of Colorado military district, and an officer of the United States Army, did, by his authority, enter upon our premises in Jefferson County and Territory of Colorado, and press certain horses, to wit, one sorrel horse and one black horse, into the service, in the name of the United States; that said horses were taken to the headquarters of said Moonlight, appraised, and receipted for—the sorrel at \$250, the black at \$225; that we were promised the regulation price, 40 cents per day, for each horse until returned; that we have exhausted all our legal remedies, and the War and Treasury Departments both refuse to pay us. We therefore pray that Congress order us paid according to the terms of the contract; that our horses never having been returned or paid for, the legal presumption is that they are still in the service, and the bill is necessarily accumulating.

We further respectfully represent that the taking of our horses in the spring time was greatly to our damage, and we have been further damaged by the delay and refusal to pay, by which we have been deprived of the use of our property now 14 years.

WOLFF & BROWN,
Per JOHN B. WOLFF.

Your committee addressed a letter of inquiry to the Secretary of War and received through him the following letter and accompanying papers from the Adjutant-General, to wit:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, January 19, 1880.

SIR: I have the honor to return herewith letter of December 22, 1879, from the Hon. F. M. Cockrell, requesting certain information in the matter of a petition of Wolff & Brown for compensation for horses alleged to have been taken by Col. Thomas Moonlight, in Jefferson County, Colorado, in 1865, and to report thereon as follows:

Col. Thomas Moonlight, Eleventh Kansas Volunteer Cavalry, at the time of the impressment of the horses mentioned in the petition, was in command of the district of Colorado, with headquarters at Denver. He directed Capt. W. H. Evans, Eleventh Ohio Cavalry, stationed at Camp Collins, Colo., to press horses into service, for which, after appraisement by a board, certificates were to be given the owners. There is no record of a report of appraisement having been made by any board or any evidence that receipts were given to the petitioners, Wolff & Brown, on file in this office, or

with records of discontinued commands filed here, and no record of any claim in their favor for compensation for the horses alleged to have been seized.

In connection with the matter of seizure by the military of horses in Colorado in 1865, and the necessity therefor, I have respectfully to inclose herewith copies of Colonel Moonlight's orders in the premises.

I have the honor to be, sir, very respectfully, your obedient servant,
E. D. TOWNSEND,
Adjutant-General.

To the Hon. the SECRETARY OF WAR.

HEADQUARTERS DISTRICT OF COLORADO,
Denver, February 6, 1865.

[General Orders No. 10.]

Hon. SAMUEL H. ELBERT,
Secretary of Colorado Territory:

I. In view of the threatening attitude of the Plain Indians, and the ravages they are committing on the citizens and Territory, as also the cutting off of our lines of communication, the scarcity of troops in this district, and the impracticability of expecting re-enforcements from the general government until the opening of spring, I respectfully call upon your honor, as the acting chief executive of this Territory, for three hundred and sixty mounted men for ninety days' service, unless sooner discharged, in companies of sixty, under a competent field-officer, to open the overland route as far as Julesburg, and keep the same open, that business may run on in the usual channel, and that the firesides and lives of this people may be spared from the merciless visitations of the inhuman savages, who swear eternal vengeance on all white men.

II. To insure a prompt response to your call, and that all classes of men may feel the importance of this step and the imperative necessity which demands such action, martial law is hereby proclaimed throughout this district, to take effect on the 8th instant, and all labor and business is suspended until the number of men called for be organized and placed under my command, to operate in conjunction with the troops now holding the Indians in check. Each man should come provided with a horse, at least two blankets, and, if possible, a revolver. All other arms and accouterments, including saddles and bridles, camp equipage, forage, rations, ammunition, &c., I will issue in behalf of the government.

III. While I regret the existence of a state of affairs which demands action of this kind, I earnestly call upon all men to drop private animosities and strife, and join hands together in a work of humanity, which will redound to the honor and glory of Colorado. If horses cannot be procured voluntarily I will be compelled to press them into service wherever found. Horses furnished for service will be appraised by a board, hereinafter appointed, who will give the owner a certificate of appraisement, so that, in case of loss or injury, remuneration may be claimed and obtained.

IV. As soon as a county has furnished the quota of men and horses apportioned by the acting chief executive, martial law will be suspended in that county and business again resumed.

V. The assistant provost-marshal-general of the district will take such steps as will insure a faithful execution of this order; to him, and such deputies as he may appoint, is intrusted the work of seeing that all houses of business, drinking saloons, places of amusements, &c., be kept closed, except between the hours of two and three each afternoon. This refers only to merchandising—drug-stores, eating-saloons, hotels, butcher-stalls, and bakeries will be allowed to continue their business; but saloons of hotels must be kept closed until martial law is suspended and the civil officers again invited to resume their duties.

VI. The following are the officers and citizens appointed to appraise the horses furnished for service under Paragraph III of this order:

1. Capt. C. L. Gorton, A. Q. M., U. S. Volunteers.
2. Mr. W. G. Long, master of transportation, Denver.
3. Mr. John Cree, Denver City.

T. MOONLIGHT,
Colonel Eleventh Kansas Cavalry, Commanding.

Official copy.

R. C. DRUM,
Assistant Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, January 19, 1860.

HEADQUARTERS DISTRICT OF COLORADO,
Denver, Colo., February 7, 1865.

Capt. W. H. EVANS,
Eleventh Ohio Cavalry, commanding Camp Collins, Colo.:

SIR: I have found it necessary to proclaim martial law in this district, to enable me to raise men and horses to go out and open the overland road.

It will be pretty difficult to obtain the number of horses, and I understand that there are a good many in your section of country.

I therefore respectfully request that you press into service and send down here, with their owners, from thirty to fifty horses fit for service. They will be received under General Order No. 10, from these headquarters.

This is merely a loan of horses for ninety days, unless sooner discharged, and is a work of necessity for the salvation of this country.

I shall look for the horses in a few days.

Respectfully, your obedient servant,

T. MOONLIGHT,
Colonel Eleventh Kansas Cavalry, Commanding.

HEADQUARTERS DISTRICT OF COLORADO,
Denver, February 12, 1865.

WALT. ST. CLAIR,
Detective and Scout:

SIR: You will proceed to-morrow morning in the direction of Cañon City and press into service fifty horses, fit for cavalry service, for the purpose of mounting the militia now called into service, as it is impracticable to obtain a sufficient number of horses from the counties called on by the governor to fill a quota.

The owners of horses pressed can accompany them to this place, if they desire, so as to obtain a certificate from the board of appraisers.

Care will be taken to have the pressure fall equally, if possible, on all men in the neighborhood where the horses are found.

Should disloyal men be found, take their horses in preference to the loyal, and where you find a number of horses or few, leave sufficient to carry on the work of the farm, or as the case may be.

A squad of soldiers will accompany you to assist in carrying out these instructions.

Respectfully,

T. MOONLIGHT,
Colonel Eleventh Kansas Cavalry, Commanding.

HEADQUARTERS DISTRICT OF COLORADO,
Denver, Colo., April 9, 1865.

Capt. GEORGE F. PRICE,
Acting Assistant Adjutant-General, District of the Plains, Denver, Colo.:

CAPTAIN: In obedience to instructions from Brigadier-General Connor, commanding District of the Plains, I submit the following statement as to how the First Regiment Colorado Mounted Militia was raised:

* * * * *
 On the 8th of February I proclaimed martial law, as per General Order No. 10, herewith inclosed, and called for six companies of mounted militia, of sixty men each, to open communications with the East, and keep it open, as well as to protect the lives and property of citizens. Some of these companies were enlisted in a few days, as militiamen for home protection; but to enable me to issue quartermaster, commissary, and ordnance stores to the officers commanding companies, and to impress upon the minds of the officers and soldiers that they were under the orders only of the Government of the United States, I directed the assistant commissary of musters of the district, Capt. J. C. Anderson, to verify the presence of the men by calling the roll, and certifying on that roll that they were duly mustered in, as set forth on the dates.

This I considered prudent and necessary, both to insure justice to the men and protect the government.

Officers and men distinctly knew from the beginning that they would receive no pay from the government directly, but that the Territory would pay them and be reimbursed by the Federal Government on the action of Congress, who will undoubtedly legislate in favor of my action and in justice to the Territory.

The general order proclaiming martial law prescribes what the government would

do in the way of arming and equipping, and the tenor of that order has been strictly observed by me.

The companies were mustered in for three months' service. The horses belong to the Territory. The arms and accouterments for men and horses belong to the government, except the pistols, which belong to individuals. No clothing of any description has been issued to officers or men. The camp and garrison equipage belongs to the government.

In conclusion, I would say that the Territory responded promptly to the call for troops, and to this promptitude is the country westward indebted for the free, open lines of communication.

I am, with respect, your obedient servant,

T. MOONLIGHT,
Colonel Eleventh Kansas Cavalry, Commanding.

Official copy:

R. C. DRUM,
Assistant Adjutant-General.

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE, January 19, 1880.

Your committee then addressed a letter of inquiry to the Secretary of the Treasury, and received through him the following letter from the honorable Third Auditor, to wit:

TREASURY DEPARTMENT, THIRD AUDITOR'S OFFICE,
Washington, D. C., January 24, 1880.

HON. H. F. FRENCH,
Assistant Secretary of the Treasury:

SIR: I herewith return the communication addressed to the Secretary of the Treasury, on 21st instant, by the chairman of the Senate Committee on Claims, and also the petition by Wolff & Brown for compensation for two horses. Their claim is now pending in this office. It has not been finally disposed of, because the attorney through whom it was presented asked delay. But as nothing has been heard from him, relative to the case, for a long time, I purpose now to decide it, and transmit the papers to the Second Comptroller.

These parties seem to have no just claim against the United States. If they have not been paid for the horses, or did not receive them back, or receive others as equivalents, their claim would seem to be against either the Territory of Colorado or the county of Jefferson, of said Territory.

In some emergency, early in 1865, the governor of Colorado called out the Territorial militia, and put their service at the command of Col. Thomas Moonlight, then commanding United States forces in that region. The arrangement by the Territorial authorities was that each county, through its commissioners, should procure from the citizens of the county or as they could the horses to mount the county's quota of militia. The commissioners of Jefferson County seem to have obtained two horses from Wolff & Brown, and these they turned over to the Territory with the others as the quota of that county, and the Territorial authorities mounted militiamen thereon.

During the service of the militia, all horses so used remained in the hands of the militia, and when the service terminated the horses went into the custody of the Territorial authorities.

The two horses of Wolff & Brown were never in the custody of the United States, nor were they ever in the military service of the United States, in any other way than as ridden by militia which, without being mustered into the service of the United States, were acting as an auxiliary force.

The commissioners of Jefferson County made claim upon the Territory for the value of the two horses, and the Territory satisfied the demand in full, so that the commissioners receipted to the Territory for the payment, November, 1866, of \$655, as the value of three horses—one in the name of J. H. Brown, and two in the name of J. B. Wolf.

The Territory made claim upon the United States for reimbursement of expenses connected with raising such militia, which claim was adjusted under the provisions of the deficiency act of July 28, 1868 (see under head of "Rock Island Arsenal").

Inasmuch as none of the horses used by the militia passed into the custody of United States officers, but were retained by the Territorial authorities when the militia were discharged, the Territory was not allowed the value of these two horses, but was allowed forty cents per diem for the use and risk of each for the period of service.

Very respectfully, your obedient servant,

E. W. KEIGHTLEY,
Auditor.

The act of Congress referred to in the foregoing letter is entitled "An act making appropriations and to supply deficiencies in the appropriations for the service of the government for the fiscal year ending June 30, 1868, and for other purposes," and was approved July 25, 1868, and the clause referred to is as follows, to wit:

For the payment to the Territory of Colorado for the services of the first regiment of the Colorado mounted militia, called into the service of the United States on the requisition of Col. Thomas Mounlight; and for the services of any other militia forces of the said Territory which were employed in the service of the United States, on the call of the governor of the Territory, in the year eighteen hundred and sixty-four, the sum of fifty-five thousand two hundred and thirty-eight dollars and eighty-four cents, being the amount found to be justly due and recommended to be allowed on the account as presented by Thomas M. Vincent, assistant adjutant-general, in his letter to the Secretary of War, dated Washington, October thirty-first, eighteen hundred and sixty-seven: *Provided*, That said amount shall be taken and deemed to be in full satisfaction of the claims of the said Territory: *And provided further*, That no money shall be paid from the Treasury on said account until the public property issued to the forces shall have been properly accounted for to the satisfaction of the proper officers of the Treasury.

On reading the petition of claimants it would seem that they had made strenuous efforts before the Treasury and War Departments for payment of their claims. The truth is, according to the letter of the Adjutant-General, they never have presented any claim to the War Department; and according to the letter of the Third Auditor, the claim was still pending in his office when your committee made inquiry for the facts in the case, and had not been finally disposed of "because the attorney through whom it was presented asked delay," and as nothing had been heard from this attorney relative to the case for a long time, the auditor has just made his decision, which is that "these parties seem to have no just claim against the United States. If they have not been paid for the horses, or did not receive them back, or receive others as equivalents, their claim would seem to be against either the Territory of Colorado or the county of Jefferson, of said Territory." It further appears from the letter of the auditor that "the commissioners of Jefferson County made claim upon the Territory for the value of the two horses, and the Territory satisfied the demand in full, so that the commissioners receipted to the Territory for the payment, November, 1866, of \$655, as the value of three horses; one in the name of J. H. Brown, and two in the name of J. B. Wolff. The Territory made claim upon the United States for reimbursement of expenses connected with raising such militia, which claim was adjusted under the provisions of the deficiency act of July 25, 1868." "Inasmuch as none of the horses used by the militia passed into the custody of United States officers, but were retained by the Territorial authorities when the militia were discharged, the Territory was not allowed the value of these two horses, but was allowed forty cents per diem for the use and risk of each for the period of service."

Your committee concur with the auditor in his decision. The petitioners have no ground for any claim against the United States. Congress cannot properly assume jurisdiction to audit and adjust claims of the character set forth in this petition. Your committee, therefore, recommend that the claim of these claimants be not allowed, and that your committee be discharged from its further consideration.