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E. E. White

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IN THE SENATE OF THE UNITED STATES.

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JUNE 6, 1894.—Referred to the Committee on Appropriations and ordered to be printed.

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Mr. JONES, of Arkansas, presented the following

PETITION FROM E. E. WHITE, FOR RELIEF.

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*To the Congress of the United States:*

Your petitioner respectfully states that from the 19th day of October, 1885, to the 21st day of February, 1889, he was a duly and regularly appointed, qualified, and acting special U. S. Indian agent. As such special agent the act of July 4, 1880, allowed him a fixed per diem for traveling and incidental expenses as follows:

Special agents shall be allowed three dollars per diem for traveling and incidental expenses while traveling or actually on duty in the field, exclusive of cost of transportation and sleeping-car fare.

On the 18th day of October, 1887, he was assigned, as such special agent, temporarily to the charge of the Kiowa, Comanche, and Wichita Indian Agency, in the Indian Territory, by Indian Inspector Marcum, whose report thereof was as follows:

[Telegram.]

ANADARKO, IND. T., *October 18, 1887.*

The SECRETARY OF THE INTERIOR,  
*Washington, D. C.:*

I have this day suspended Agent J. Lee Hall from office and have placed Special U. S. Indian Agent Eugene E. White temporarily in charge of agency. Report sent by mail.

MARCUM, *Inspector.*

Afterwards, to wit, on the 1st day of December, 1887, and while still in charge of said agency, he was ordered peremptorily by the Secretary of the Interior to report in person in Washington immediately, the order reading as follows:

[Telegram.]

WASHINGTON, D. C., *December 1, 1887.*

Special Agent WHITE,  
*Anadarko, Ind. T.:*

Report here in person immediately.

L. Q. C. LAMAR,  
*Secretary.*

In obedience to that order he arrived in Washington, December 7, 1887, and remained here until the 1st day of February, 1888, on which day he departed from this city to return to the said agency, "to continue the duty on which he was engaged there," in obedience to the following letter from the Commissioner of Indian Affairs, to wit:

OFFICE OF INDIAN AFFAIRS,  
*Washington, January 31, 1888.*

SIR: Having completed the duty for which you were ordered to report here by office telegram of 1st ultimo, you will immediately return to Kiowa, Comanche, and Wichita Agency, Ind. T., to continue the duty on which you are engaged there.

Respectfully,

J. D. C. ATKINS,  
*Commissioner.*

E. E. WHITE,  
*Special Indian Agent, Present.*

He continued in temporary charge of said Agency until September 10, 1888, when he was relieved by Agent Myers, in obedience to the following notice and order of the Indian Office, to wit:

INDIAN OFFICE, *Washington, August 28, 1888.*

SIR: The President has appointed William D. Myers to be agent for the Indians of the Kiowa Agency in the Indian Territory. \* \* \* By letter of this date he was instructed to relieve you without delay. \* \* \*

Respectfully,

A. B. UPSHAW,  
*Acting Commissioner.*

E. E. WHITE,  
*Special Agent, Kiowa Agency, Ind. T.*

In the final settlement of his account as such special agent by the honorable Second Comptroller, on the 23d instant, credit was refused him for the said per diem for the time that he was so on duty here in Washington under the order of the Secretary of the Interior as aforesaid, amounting to the sum of \$165, the ruling being that—

Washington may very properly be regarded as the home of all Government agents and employes, and while in this city such agents can not be said to be on duty in the field.

The truth is, your petitioner was performing double duty. He was not in Washington on leave of absence, nor of his own volition, and he was not ordered here by the Commissioner of Indian Affairs, his immediate superior in office, nor for duty in the Indian Office, but by the Secretary of the Interior himself, and for special, important, and arduous service in his Department and before the President.

And when he was thus required to come to Washington he was not relieved of the charge of the said Indian agency, nor of his liability on his official bond for the conduct of the same. In every week of his said detention here in Washington receipts for large quantities of annuity goods and subsistence supplies were sent to him by the clerk of the said agency for his signature, and he signed them as he was required by law and the orders of his superiors in office to do. In fact, during the whole of the time that he was so detained here he was actually in charge of the said agency and performing all the duties that were required by law to be performed by the special agent in charge in person, and the said agency was being conducted entirely upon his official responsibility, as the records of the Indian Office show.

Special agents are held to be on duty in the field and entitled to the per diem while in charge of an agency. But the effect of the decision in this case is to deny your petitioner credit for the per diem both in

Washington and at the said agency, which seems to him most grievously unjust and contrary to the spirit of the law above quoted. By refusing him this credit a balance of \$95.51 is found against him in favor of the Government.

To allow this credit there would be a balance of \$69.49 in his favor. And above and beyond his right to the credit as special agent in charge of an agency for the time being, your petitioner respectfully contends that while he was on special, temporary, and irregular duty here in Washington, he was "on duty in the field" in the spirit of the law, and entitled to the per diem. His home was at Prescott, Ark., as it is now, and not in Washington. The law did not require him to live in Washington, nor fix his place of duty there, nor at any other particular place, nor prescribe any regular or permanent duty for him to perform. His very purpose under the law was to be employed in locomotion, and at special, temporary, and irregular service.

His field of duty embraced all the States and Territories, including the District of Columbia and the city of Washington, and he was required to go anywhere and everywhere that he was ordered by his superiors in office, and any place and every place within the boundaries or jurisdiction of the United States where he happened to be so ordered on duty, as he was in this case, except at his home, wherever it may actually have been was to him "in the field" in the sense that it subjected him to the extra expense for which the per diem was intended to indemnify him. Your petitioner does not except Washington, because, as this city was not in fact his home, it was to him as much in the field in fact and in the spirit of the law as he views it as any Indian agency. The fact that it is the capital and the headquarters of the Indian Bureau does not alter the case a particle. The fact that he happened to be ordered here on duty for a short time did not make it his home any more than his being ordered to an Indian agency for temporary duty there made that place his home.

It is manifest that Congress realized the impossibility for special agents to remain at their homes, no matter where they might be located, and perform the duties required of them; and it is obvious that the reason for allowing them a fixed per diem for personal expenses was to put them on an equal footing with officers and employes whose places of duty are fixed, and who may live with their families or at permanent rates of board, while the special agents are compelled to support their families at home and live themselves separately from them at expensive transient rates. Of course, if a special agent was on official duty at his home, as, for instance, if he actually lived in Washington and was ordered here on duty, or if he lived at an Indian agency, or anywhere else, and was ordered there on duty, he would not be entitled to the per diem for the time that he remained on duty there. Nor would he be entitled to the per diem for any time that he was not on duty, as, for instance, if he was absent from duty, either with leave or without leave; or was on furlough, or laid off by the Department, or was without orders, as, for instance, if the Department had nothing for him to do for the time being. And these, your petitioner holds, are the only limitations that ought to be placed upon the words "on duty in the field."

But the petitioner respectfully submits that whether, under a strict construction of the statute relating to said per diem he is entitled to credit therefor or not, that under all the facts and circumstances in his case he is fairly and equitably entitled to the credit.

Wherefore the petitioner respectfully prays that he be allowed credit for the said sum of \$165, and that of that amount he be paid \$69.49, the residue of the said sum of \$165 that will be due him after offsetting the said balance of \$95.51 found against him by the refusal of said credit.

Very respectfully,

E. E. WHITE.

WASHINGTON, D. C., *May 25, 1894.*

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