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Cornelius Wilson and James Carter. (To accompany bill H.R. no. 590.)

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CORNELIUS WILSON AND JAMES CARTER.

[To accompany bill H. R. No. 590.]

AUGUST 20, 1842.

Mr. BURKE, from the Committee of Claims, submitted the following

REPORT:

*The Committee of Claims, to which were referred the memorials of William W. Peden, report:*

That the memorialist represents, in behalf of himself and the company under his command, being a portion of the militia of Wilkes county, North Carolina, that, in the year 1838, he and said company volunteered their services, agreeably to a requisition of the War Department, to aid in the removal of the Cherokee Indians west of the Mississippi river; that, when called into service, they understood that they were engaged for six months, under the act of May 23, 1836; that they marched from Wilkesborough, North Carolina, on the 3d of May, 1838, and arrived at Franklin, the headquarters, a distance of 185 miles, on the 14th day of the same month, and reported themselves for duty the next morning; but instead of inspecting them, and receiving them into service, Lieutenant Montgomery, of the regular army, did not perform that duty until the 24th day of May, by which time the act of 1836 had expired; that they remained in service until the 27th day of June following, when they were ordered to Asheville, in Buncombe county, and discharged from service; and that they received for their services only \$27 22 per man, which was the pay allowed under the old militia act of 1795; whereas the memorialist alleges that they were entitled to pay and clothing under the act of May 23, 1836, and should have been paid, each man, \$29 37½, in addition to the sum he received.

The memorialist further alleges, that there were ten fatigue men, who worked nine days in succession, at the rate allowed by law, over 15 cents each per day, amounting to \$1 35 for each man, which the quartermaster refused to pay, because they had not worked ten days successively, agreeably to the army regulations, but which the memorialist alleges they could not have done, in consequence of their being ordered to Asheville, the place of discharge, on the tenth day.

The memorialist further alleges, that there were two men who volunteered and marched in the aforesaid company, and remained at the point of rendezvous until the 24th day of May, at which time they were rejected by the mustering officer, and consequently were compelled to return home, 185 miles, the men marching both ways at their own expense, for which service the sum of \$12 each is claimed for them.

In his second memorial, the memorialist claims pay for the use of a four

horse team and wagon, ten days, at the rate of \$3 50 per day; which team he alleges was to be discharged on their arrival at the place of rendezvous, but which was continued in service ten days from the time of their arrival, by order of the quartermaster.

In regard to the claim for additional pay, the committee have no doubt but that the services were rendered, and it appears from the memorial itself that they were paid, under the act of 1795. They claim pay under the act of May 23, 1836, under which it is alleged they were called into service, and for the term of six months. The only question presented for the committee to decide is, whether the company was called out under the old militia law or the act of 1836? This question seems to be decisively settled by the letter of General Scott, then in command, to Governor Dudley, of North Carolina, dated April 11, 1838, making the requisition. General Scott says, in his letter to Governor Dudley, "I have the honor to ask your excellency to detach, by volunteering and draughting, to be mustered into the service of the United States, for *three months*, unless sooner discharged, one regiment of infantry on foot, of ten companies, from the North Carolina militia." The act of May 23, 1836, authorized to accept the services of volunteers for "*six or twelve months*." The requisition, therefore, could not have been made under the last-named act, but must have been made under the old militia law; and in this conclusion the committee are confirmed by the letter of Colonel Towson, Paymaster General, to the honorable J. R. Poinsett, accompanying the memorial, and which follows:

PAYMASTER GENERAL'S OFFICE,  
City of Washington, February 24, 1840.

SIR: In answer to the communication of the chairman of the Committee of Claims, in the House of Representatives, in the case of Captain William W. Peden's (late J. J. Bryan's) company of North Carolina militia, I have the honor to submit the following statement:

This company was called out by General Scott, for three months, under the old militia law, and not under the act of May 23, 1836, as will be seen by my report to you of the 10th of November, 1838, of which the enclosed is a copy. It served 55 days—from the 14th of May to the 7th of July, 1838; travelled 185 miles from home to the place of rendezvous, and 115 from the place of discharge home—making a distance of 300 miles; which, at 20 miles a day, is equal to 15 days' pay. This, with the 55 above mentioned, amounts to 2 months and 9 days, for which the company has been paid, each private's entire compensation being as follows:

Pay proper	-	-	-	-	-	-	\$13 74
Clothing	-	-	-	-	-	-	5 86
Subsistence	-	-	-	-	-	-	7 62
							<hr/>
							27 22

Thus it appears they have been paid for travelling from home to the place of rendezvous, from the 14th of May, 1838, the time they were mustered into service, to the 7th of July, 1838, the time they were mustered out, and for travelling home from the place of discharge; being the pay, &c., authorized by the act of March the 19th, 1836.

The information asked for, in relation to the wagon, cannot be given by the Pay department; the Quartermaster's department can perhaps give it. The papers are herewith returned.

I am, very respectfully, sir, your most obedient,

N. TOWSON, *Paymaster General.*

Hon. JOEL R. POINSETT, *Secretary of War.*

P. S. If this company volunteered for 6 *months'* service under the act of May 23, 1836, the only difference in the rate of compensation would have been in the allowance for clothing, viz :

A private, for 6 months	-	-	-	-	-	-	\$35 23½
Paid, as before stated	-	-	-	-	-	-	5 86
Difference	-	-	-	-	-	-	<u>29 37½</u>

The committee, therefore, have come to the conclusion that the company under the command of the memorialist were not called out under the act of May 23, 1836, and were not entitled to any allowance for clothing, but that they were called out under the act of 1795, and have been paid all they were entitled to under that act.

No testimony is presented by the memorialist in relation to the services of the ten fatigue men; and the committee, therefore, do not undertake to decide whether they were or were not entitled to the pay claimed for them.

In relation to the two men who volunteered and marched to the point of rendezvous, but who were not mustered into service, on account of insufficiency of health, the committee find, from the testimony of J. J. Bryan, then in command of said company, that the fact in regard to them is as stated by the memorialist. They volunteered, were inspected and passed by Doctor James Colloway, surgeon of the regiment to which they were attached, marched to the place of rendezvous, and were rejected for insufficiency of health by the United States officer who mustered the company into service. The committee think that those men, whose names are Cornelius Wilson and James Carter, should receive the same pay, *pro rata*, from the day of their enlistment to the day of their return home, as was allowed to the other privates of said company.

In relation to the claim of the memorialist for the use of the team, the committee find the facts fully stated in the following letter from Lieutenant Montgomery to General Jesup :

NEWPORT, (KY.) *March 11, 1840.*

GENERAL: Your letter of the 6th instant, in reference to a claim of Captain Peden, late of the North Carolina volunteers, has just been handed me. The statement of Captain Peden is incorrect. His team could not have been employed by me, or by my authority, or he would have received payment for its services; and there was no other officer at Franklin, whilst the troops were in rendezvous at that place, except myself and my agents, authorized to employ teams.

I recollect that some similar claims were preferred when the North Carolina troops were received into service, under the following circumstances :

The captains of North Carolina volunteer companies, as directed by a circular from General Scott, who was about to assume command in the

Cherokee country, employed teams to haul the baggage of their respective companies from their several places of company rendezvous to the general rendezvous at Franklin. When these troops arrived at Franklin, there was no officer there to muster them into service, and it was not until ten days after their arrival that authority was obtained from Colonel Lindsay, then in command, to whom intelligence of their arrival had been sent by express, that they were received into service. The owners of the teams employed, as above stated, claimed payment for these ten days, but the authority of the captains to employ on the part of the Government expired on the arrival of the troops at Franklin; and they were not employed by my authority until after the troops were received into service, when their services were required to transport the baggage of the respective companies to their stations. Some of the claimants urged that they had been employed, from time to time, during this period, in hauling subsistence from Franklin and elsewhere to the encampment, which was within a mile of the village; but the troops received commutation of rations from the time they assembled in company rendezvous until they were mustered into service; and the commutation was sufficient to cover the incidental expenses of transportation, &c. Captain Peden's claim is probably of the same nature; and if so, for the reasons above stated, I do not consider him entitled to payment from the Government.

I have the honor to be, very respectfully, your obedient servant,

A. MONTGOMERY,

*Lieutenant 7th Infantry, U. S. A.*

Major Gen. THOMAS S. JESUP,

*Quartermaster General U. S. A., Washington, D. C.*

The committee are satisfied that the claim for the use of the team is not well founded and ought not to be allowed.

They therefore reject the several items of claim set up in the memorial of the claimant, except the claim for pay to the two men who volunteered into the service, but were rejected for insufficiency of health; and for their relief they report a bill.