

CALVIN H. BURKHEAD

FEBRUARY 15, 1927.—Committed to the Committee of the Whole House and ordered to be printed

Mr. FROTHINGHAM, from the Committee on Military Affairs, submitted the following

REPORT

[To accompany H. R. 16080]

The Committee on Military Affairs, to which was referred the bill H. R. 16080, for the relief of Calvin H. Burkhead, having considered the same report thereon with the recommendation that it do pass.

During the period from July 1, 1922, to September 5, 1924, inclusive, Capt. Calvin H. Burkhead, Signal Corps, United States Army, was on duty in Alaska under the provisions of paragraph 6, Special Orders No. 121, Ninth Corps Area, Presidio of San Francisco, Calif., dated May 24, 1922, and orders subsequently issued. During this period he was away from his permanent designated post of duty for 317 days, and under the original orders as issued was enabled to collect only \$428.40 for mileage, at the rate of 5 cents per mile for travel performed. His actual expenses for the 317 days of absence from his permanent post of duty amounted to \$2,400. On September 28, 1922, he received a telegram from the officer in charge, Washington-Alaska Military Cable & Telegraph System at Seattle, stating he was on a per diem basis instead of mileage. Again in paragraph 47, Special Orders No. 172, War Department, dated July 25, 1923, it was indicated to Captain Burkhead that he would be reimbursed on a per diem basis. Every effort to collect on a per diem basis has been disallowed by the Finance Department, they contending that the orders were illegal and should not have been issued. Therefore, the amount expended by Captain Burkhead from his personal funds for actual expenses while on this duty, under orders, is \$1,971.60 more than he has been able to recover from the Finance Department.

The War Department, appreciating the fact that it is an injustice upon the personnel of the Army to spend their own money while obeying orders of the Military Establishment, submitted to the

Committee on Military Affairs a draft of a bill which would, in the future, allow the Chief of Finance to pay the actual expenses of officers who would be in the same predicament as Calvin H. Burkhead is now in. This draft was introduced into Congress, passed both Houses, and is now a public law. However, the bill was not retroactive and Captain Burkhead continues to be out \$1,971.60. Your committee feels that Captain Burkhead should be reimbursed for the actual money he paid out of his own pocket and most earnestly recommends the passage of the bill.

The letter from the Secretary of War is made a part of this report, as follows:

FEBRUARY 5, 1927.

HON. JOHN M. MORIN,  
*Chairman Committee on Military Affairs,  
House of Representatives.*

DEAR MR. MORIN: With further reference to your letter of January 10, 1927, requesting a report on H. R. 16080, a bill for the relief of Capt. Calvin H. Burkhead, I am pleased to submit the following:

Captain Burkhead submitted his case to the War Department, but in view of existing laws no allowance except mileage could be paid and he was advised to present his claim to the Comptroller General for consideration. This action was taken but settlement was denied by the Comptroller General for the reason that payment for the travel in excess of mileage was not authorized.

A copy of the claim setting forth the travel and circumstances under which the travel was performed is inclosed for your information.

The fact that the mileage allowance was insufficient for Alaskan travel was recognized by Congress and the act of May 11, 1908 (35 Stat. 114), provided that thereafter actual expenses only, not to exceed \$4.50 per day and cost of transportation when not furnished by the Quartermaster Department, should be paid officers for travel under orders performed in Alaska.

Further evidence of congressional recognition of the insufficiency of the mileage allowance is contained in the Army appropriation act for the fiscal year ending 1909 (35 Stat. 107), which appropriated \$2,500 for the reimbursement of officers on duty with the Washington-Alaska Military Cable & Telegraph System for traveling expenses incurred by them in excess of the mileage allowed them by law.

Section 12 of the act of June 10, 1922 (42 Stat. 631), rescinded the act of May 11, 1908, and placed Alaskan travel on mileage status. Through oversight the special conditions obtaining in Alaska were not considered in the course of preparation of this act.

Upon request of the War Department, Congress amended section 12 of the act of June 10, 1922, to provide for the payment of actual expenses not exceeding \$7 a day for travel under orders performed in Alaska. This amendment was not made retroactive, the desirability of such action not having been considered either by the War Department or by Congress, and therefore does not cover the case under consideration.

I believe this claim is meritorious in principle, as it is not the intention of the Government to place an officer in a position that will entail such a financial loss, however, in view of the fact that Congress failed to make the act of June 1 1926, retroactive and any relief afforded Captain Burkhead in this matter would be an act of grace, there being no basis therefor in law, I feel that I am not in a position to make definite recommendations in the matter.

If any additional information from the War Department is desired I shall be pleased to furnish it.

If the Committee on Military Affairs wishes to have hearings upon the proposed legislation, the following-named officer is designated to appear before your committee: Maj. K. S. Perkins, General Staff.

Sincerely yours,

DWIGHT F. DAVIS, *Secretary of War.*