

United States Vs. North

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Appeal No. : 112 U.S. 510

Appellant : United States

Respondent : North

Judgement :

United States v. North - 112 U.S. 510 (1884)

U.S. Supreme Court United States v. North, 112 U.S. 510 (1884)

United States v. North

Submitted November 20, 1884

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APPEALS FROM THE COURT OF CLAIMS

SYLLABUS

Officers of the army and officers of the navy, engaged in the service of the United States in the war with Mexico and who served out the time of their engagement are, since the Act of February 19, 1879, 20 Stat. 316, entitled to the three months' extra pay allowed under the Act of July 19, 1843, 9 Stat. 248.

The extra pay which such officers are entitled to receive is to be computed at the rate which they were entitled to receive at the time when they were discharged or ordered away.

Officers in the regular army or navy engaged in the military service of the United States in the war with Mexico, "served out the term of their engagements," or were "honorably discharged" within the meaning of the act of 1848, when the war was over, or when they were ordered or mustered out of that service.

These suits were brought in the Court of Claims.

James H. North was an officer in the navy of the United States from May 29, 1829, to January 14, 1861, when he resigned. He served in the war with Mexico, as lieutenant, on

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board the frigate *Potomac*, from February 10, 1846, until July, 1847, when his vessel sailed for the United States.

William H. Emory was an officer in the regular army of the United States most of the time from July 1, 1831, to July 1, 1876, when he was placed on the retired list. He was appointed first lieutenant of topographical engineers July 7, 1838, and promoted to captain April 24, 1851. On or about the first of October, 1847, while he was lieutenant of engineers, he was appointed by the president as lieutenant colonel in the District of Columbia and Maryland volunteers for service during the war with Mexico. He took the oath of office in Washington about the 2d of October and joined his regiment in Mexico, under the orders of the War Department, and served with it "in the war with Mexico" until mustered out of service as lieutenant colonel, on the 24th of July, 1848. Upon his muster out as lieutenant colonel, he

resumed his former rank as lieutenant of engineers, and continued his service as such.

These suits were brought to recover the "three months' extra pay" allowed to those "who were engaged in the military service of the United States in the war with Mexico" by the following statutes:

1. Act of July 19, 1848, c. 104, § 5, 9 St. 248:

"SEC. 5. *And be it further enacted* that the officers, noncommissioned officers, musicians, and privates engaged in the military service of the United States in the war with Mexico, and who served out the time of their engagement, or may have been honorably discharged -- and first to widows, second to the children, third to the parents, and fourth to the brothers and sisters of such who have been killed in battle, or who died in service, or who, having been honorably discharged, have since died, or may hereafter die, without receiving the three months' pay herein provided for -- shall be entitled to receive three months' extra pay, *provided* that this provision of this fifth section shall only apply to those who have been in actual service during the war."

2. Act of February 19, 1879, c. 90, 20 St. 316:

" *Be it enacted, etc.*, that the Secretary of the Treasury be,

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and he is hereby, directed, out of any moneys in the Treasury not otherwise appropriated, to pay to the officers and soldiers 'engaged in the military service of the United States in the war with Mexico, and who served out their time of engagement, or were honorably discharged,' the three months' extra pay provided for by the Act of July nineteenth, eighteen hundred and fortyeight, and the limitations contained in said act, in all cases, upon the presentation of satisfactory evidence that said extra compensation has not been previously received, *provided* that the provisions of this act shall include also the officers, petty officers, seamen, and marines of the United States Navy, the Revenue Marine

Service, and the officers and soldiers of the United States Army employed in the prosecution of said war."

The Court of Claims gave judgment in favor of North for three months' sea service pay as lieutenant in the navy, and in favor of Emory for three months' pay as lieutenant colonel of volunteers, without the allowances of an officer in addition to his pay. From these judgments the United States appealed.

MR. CHIEF JUSTICE WAITE delivered the opinion of the Court. He recited the facts as above stated and continued:

The questions are:

1. Whether the officers of the navy and of the regular army who were employed in the prosecution of the war with Mexico are entitled to the three months' extra pay provided for by the act of 1848; and if so, then
2. What is the "pay" to which they are entitled?

We have no hesitation in answering the first of these questions in the affirmative. All the doubts there may have been upon that subject when the act of 1848 stood alone were, in our opinion, removed by the act of 1879. It is difficult to see

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why the proviso was added to that act if it were not to make it plain that Congress intended to include

"the officers, petty officers, seamen, and marines of the United States Navy, the Revenue Marine Service, and the officers and soldiers of the United States army employed in the prosecution of said war"

among those who were entitled to the "extra pay" provided for.

The answer to the second question is, to our minds, attended with no greater difficulty. Those of the regular army or navy who were "engaged in the military service of the United States in the war with Mexico" may be said to "have served

out the term of their engagement," or to have been "honorably discharged" within the meaning of those terms as used in the act of 1848, when the war was over, or when they were ordered or mustered out of that service. Being in the army and navy, their "engagement" was to serve wherever they were ordered for duty. Their engagement to serve in the war with Mexico ended when they were taken away from that service by proper authority.

The pay they were to receive was evidently that which they were receiving at the end of their engagement or when they were honorably discharged. The language is "shall be entitled to receive three months' extra pay," evidently meaning the same pay they would have received if they had remained in the same service three months longer. It follows that as North was serving at sea when he was ordered away, he was entitled to three months' sea pay, and as Emory was mustered out of his service in the war as lieutenant colonel of volunteers, his pay must be in accordance with that rank.

As the effect of the statutes on which the several claimants rely was fully and elaborately considered in the opinion of the Court of Claims and we affirm the judgments of that court, it is unnecessary to do more than state in this brief way the conclusions to which we have come.

The judgment in each case is

Affirmed.

BLATCHFORD, J., took no part in the decision of this cause.