

OLAF SWANSON.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS
TRANSMITTING A COPY OF THE FINDINGS OF THE COURT IN THE
CASE OF OLAF SWANSON AGAINST THE UNITED STATES.

APRIL 8, 1912.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, April 5, 1912.

HON. JAMES S. SHERMAN,
President of the Senate.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings of fact filed by the court in the aforesaid cause, which case was referred to this court by resolution of the United States Senate under the act of March 3, 1887, known as the Tucker Act.

I am, very respectfully, yours,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[Court of Claims of the United States. Congressional, No. 14193; Sub-No. 301. Olaf Swanson v. The United States.]

STATEMENT OF CASE.

This is a claim for compensation of Olaf Swanson while employed under the Treasury Department for time alleged to have been worked in excess of eight hours per day.

On March 2, 1909, the Senate of the United States, by resolution, referred to the court, under the act of March 3, 1887, known as the "Tucker Act," a bill in the following words:

"[S. 9500, Sixtieth Congress, second session.]

"A BILL For the relief of James McGeary and others.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to James McGeary, of Saint Paul, Minnesota, and the other persons whose names appear on the memorial of James McGeary and others, such amount as may by findings of fact by the Court of Claims under section fourteen of the act of Congress approved March third, eighteen hundred and eighty-seven, known as the Tucker Act, be found to be the value of work performed by them, respectively, in excess of eight hours in each calendar day while employed in care of public buildings of the United States at Saint Paul, Minnesota, and elsewhere."

The claimant appeared and filed his petition in this court on July 6, 1909, in which he makes substantially the following allegations:

That he is a citizen of the United States and resides at Ashland, Wis.

That your petitioner is one of the persons named in the memorial referred to in said bill, and has a claim against the United States for compensation for time worked by him in excess of eight hours per day while employed at the United States public building at Ashland, Wis., as fireman-watchman.

That the act of August 1, 1892, prescribes in mandatory terms for the benefit of all laborers and mechanics employed by the Government eight hours of labor in any one calendar day as the limit for a day's work.

That your petitioner has been required, notwithstanding this provision of law, to work 12 hours per day since the date of his employment, namely, June 1, 1903, to September 10, 1909.

That the greater part of the force of laborers and mechanics employed in the care of buildings under the Treasury Department is worked on an eight-hour schedule, and that the rates of pay for all employees are fixed by the department uniformly in accordance with the character and grade of the employment, without regard to the number of hours per day they will be required to work.

That the extra work rendered by your petitioner was necessary for the protection and care of the Government building and machinery, and was not work which the claimant could have been required to have performed had he refused.

That the amount of this claim for extra pay for this work is much less than the Government would have been required to expend to employ an additional laborer or mechanic to comply with the eight-hour law.

That the Treasury Department has paid some of the employees in the same branch of the service, performing exactly the same kind of work, additional compensation for the services rendered in excess of eight hours per day.

That by requiring your petitioner to work in excess of eight hours per day the General Government has taken from him the equivalent of property without compensation, and under circumstances which almost uniformly in other branches of the public service, either by regulation or order of the head of the department or by action of Congress, has been compensated by granting extra pay, either at the rate of regular pay or at an increased rate for such extra time.

That the amount which would be sufficient to compensate your petitioner for the extra work so performed by him at the rate of his regular compensation is the sum of \$2,001.99.

The case was brought to a hearing on October 19, 1909. Fred B. Rhodes, Esq., appeared for the claimant, and the Attorney General, by George M. Anderson, Esq., his assistant, and under his direction, appeared for the protection and defense of the interests of the United States.

The court, upon the evidence adduced, and after considering the arguments and briefs of counsel on both sides, makes the following

FINDINGS OF FACT.

1. The claimant, Olaf Swanson, is a citizen of the United States, residing at Ashland, State of Wisconsin, and from June 1, 1903, to September 10, 1909, he was employed as a fireman-watchman in the United States post-office building at Ashland, Wis. From June 1, 1903, to December 1, 1903, he received a salary of \$600 per annum, and from December 1, 1903, to September 10, 1909, his salary was \$660 per annum. During the time he was so employed he worked 12 hours each day, including Sundays and legal holidays, with the exception of 93 days' annual leave.

2. In fixing the compensation and the number of assistant custodians, engineers, janitors, firemen, watchmen, and laborers necessary for the care and maintenance of public buildings belonging to the United States, the Government officials charged with that duty took into consideration the locality in which they lived and the cost of living, the size of the building, the character and size of the plant the engineer would have to take charge of, and the mechanical equipment of the building, and fixed the yearly salary for such employees at what the work was worth without regard to the number of hours they might be required to labor.

3. The number of hours worked by claimant in excess of eight hours a day during the period from June 1, 1903, as set forth in finding 1, is 8,800, and his services for said hours, computed upon the basis of the salary he was receiving during said period, namely, \$600 and \$660 per annum, would amount to two thousand and one dollars and ninety-nine cents (\$2,001.99).

4. It does not appear that said claim was ever presented to any officer or department of the Government prior to its presentation to Congress and reference to this court as aforesaid.

BY THE COURT.

Filed December 20, 1909.

A true copy.

Test this 3d day of April, 1912.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.