

EAST AFR. PROT

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REC'D
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Governor
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20th March

Last previous Paper

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MARADI SCHEME
LOSS OWING TO MILITARY OPERATIONS

The Report by Acting General Manager Attorney General considers Clause 38 of Agreement is a complete defence to any claim for compensation. Recommends Coy be so informed. Question of extension of time for completion of line is still under consideration.

~~Lt. P. R. ...~~
Li. G. Fiddes.

To Mr. ...
12 May 15
13 May 15

Write to the Co: in continuation of our l: of the 5th of Jan: & say that a reply has now been recd. from the Co: that the provisions contained in Cl: 38 of the contract of the 13th April are a complete defence to any claim for compensation such as that put forward for the use of the line. It is added that it appears from the Co: reply that it is not correct

Next subsequent Paper

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... of the ... (...)
... of
... ..
... ..
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... ..

H. J. E.

4/27/15

I agree to suppose they will
demand an Arbitration under § 58
of the Contract

J.S.A. 6/5/15

D.S. 7.5.15

~~Attest~~

~~Ch. 7.5.15~~

Revised

20th March 1915.

C. O
19197
APR 15

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Sir,

I have the honour to acknowledge the receipt of your Confidential despatch of the 5th of January on the subject of the loss sustained by the Magadi Soda Company owing to the military operations in the Protectorate, and in accordance with your instructions to furnish you with a report on the matter by the Acting General Manager of the Uganda Railway.

15.3.15

2. The entire correspondence has been sent to the Attorney General, who states that in his opinion the provisions contained in Clause 38 of the Agreement with the Magadi Soda Company are a complete defence to any claim for compensation, such as that put forward by Messrs Samuel & Company, for the use of the line. I am in full accord with this opinion, and I recommend that the Company should be so informed.

3. The question of the extension of the period within which the line should be completed, referred to in paragraphs 9-14 of Mr Eastwood's letter

THE RIGHT HONOURABLE
LEWIS HARCOURT, P.C., M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET, LONDON, S.W.

letter, is still under consideration.

I have the honour to be,

Sir,

Your humble obedient servant,

H. Conway Bejard.

GOVERNOR.

S. G. S.

46

INCLOSURE
In Dec. No. 35 of 20-3-1915

C. O.
19197
26 APR 15

NO 74/87/128

March 15th 1915

CONFIDENTIAL.

THE MAGADI SODA COMPANY'S CLAIM.

Your Confidential Memo of January 20th 1915.

SIR,

I have the honour to acknowledge the receipt of your No. S. 2812/43 dated the 6th March, and its attendant enclosures, on this subject.

2. I do not see how the various extracts of letters given in the Magadi Soda Company's letter of the 25th December 1914 in any way prove that the Railway had or has been taken over by the Military Authorities. They are all from one point of view, and undoubtedly all written with the purpose of placing the Magadi Railway Company's opinions on record in case of the possibility of an action arising like the one now under consideration. The greater part of them only confirm the statement made in paragraph 2 of His Excellency's despatch No. 181 dated the 17th October 1914, in which it clearly expresses the fact that the Rolling stock and men of the Contractors had to be withdrawn from their different stations along the line, not only for the safety of the Protectorate, but also

HON'BLE
CHIEF SECRETARY
TO THE GOVERNMENT.
NAIROBI.

for the safety and preservation of the aforesaid plant and staff.

3. It is not in any way denied that there was a certain amount of Military traffic from Magadi Junction to Kajjado Station, Mile 26, which was duly paid for, but there was no reason why such traffic should have unduly interfered with the construction of the Railway when the conditions prevailing in the country rendered it safe for construction work to be resumed. I beg to venture the opinion that any such delay would in all probability be caused by the Railway Contractors, Messrs. Pauling & Co., not having sufficient locomotive power to meet their own requirements and also those of the Magadi Soda Company during construction. I have been informed on more than one occasion that the transport of material for the construction of the Soda Company's works at Lake Magadi was a matter that seriously interfered with the construction of the Railway, and in order to assist them in this connection I lent Messrs. Pauling & Co., in November 1914 locomotive power so that the construction of the Lake Magadi works might not be delayed beyond what delay had then already taken place.

4. I offered in September last to either run material for the Soda Company over the Magadi Railway, provided Messrs. Pauling & Co., would consent, or to hire them plant for the same purpose, but my offer fell through, as Messrs. Pauling & Co's representative considered that any such help as I might be able to give could only be considered as being opposed to their interests. My offer was made on the condition that no liability in connection with any help I might give could or would be attached to the Uganda Railway or the

Government, and consequently in view of the above mentioned expression of opinion, and as before stated, my offer could not be allowed to stand.

5. Under Clause 38 of the Magadi Contract the Government have the right at any time to take temporary possession of the Railway and all appliances in connection with it.

The Clause reads :

"38. The Government shall have the right at any time or times for urgent State purposes of the need for which the Government shall be the sole judge to take temporary possession of the whole or any part of the Railway and the Contractors' port or either of them or any of the Rolling stock telegraphs telephones buildings and other things of every description and to use the same for their own purposes without any consent on the part of the Contractors.

And the Government shall also at any time or times be entitled to have any of their Military Marine and Police Forces and their arms horses guns ammunition baggage and stores and also all mails mail bags and post office requisites and things conveyed over the Railway or to the Contractors' port in priority to any other traffic and in cases of urgency the Government so require with all the resources of the Railway."

It will be seen from this Clause that there is no provision of any nature whatever for payment or compensation for the interruption of normal conditions in the event of the Government acting upon the powers afforded them, neither is there any provision or arrangement for either compensation or payment in this connection in any other clause of the Contract. It must therefore be accepted that any payment of compensation was neither intended or expected.

6. It is difficult in view of the facts stated in the preceding paragraph to see how the Magadi Soda Company can put forward their present claim with any hope or idea of it being favourably considered.

7. It is not correct as stated in Mr. T.A.

Ross' letter of the 24th October 1914 that -
"Pauling's coal has been Requisitioned
and is being used in Military work and
will be repaid by the Uganda Railway."

The coal was used by Messrs. Pauling & Co. in running trains, they allowed the arrangements for the continuance of their coal supply to lapse, and in order to help them out of their difficulties the Uganda Railway SOLD Messrs. Pauling & Co. coal when their stock was exhausted. There has not been any replacement. We are supplying them with coal at the present time.

8. It is surely most extraordinary for the Magadi Soda Co. to expect the Government to pay them interest upon their Capital outlay because a great international war prevents them carrying on their business operations in an ordinary everyday manner. I presume that no industry or commercial undertaking in the United Kingdom that may be disorganised, or even perhaps ruined, owing to the war will be reinstated or receive compensation at the expense of the Imperial Government.

Clause 57 of the Contract indemnifies the Contractors against any penalties to which they might be subject owing to the non-completion on their part of the fulfilment of the conditions of the Contract if such non-completion is due to certain stated causes, one of which is war. If a state of war exempts the Magadi Soda Company from the imposition and payment of penalties it must also prevent the exemption of compensation on their part.

9. In the last paragraph of their letter of the 20th December the Magadi Soda Company write :

"We maintain our claim for compensation due to the delay to our works and consequent loss."

I have the honour to state that the Magadi Soda Co. have not fulfilled the terms of the contract, and that under the conditions laid down and which still hold at the present time the Railway ought to have been completed by the 15th October 1913 or 2½ months before war was declared and consequently 2½ months before the cause of the present claim came into being.

10. CLAUSE 17 of the CONTRACT provides :

"And the Railway and the Contractors port shall be completed and equipped in all respects in accordance with this contract and opened for traffic and use within two years from the commencement of the construction of the Railway."

11. CLAUSE 23 provides :

"The General Manager may from time to time on the request in writing of the Contractors extend the time for the construction of the Railway or any part thereof for such period as he may think fit."

12. The Company's Engineer in his letter No. A. 151 dated the 11th April 1913 gave the date of the commencement of the construction of the Railway as the 15th October 1911, and in conformity with Clause 17 the construction of the Railway should, as before stated, have been completed on or before the 15th October 1913. No application in accordance with Clause 23 having been put forward I wrote on the 2nd instant to the Resident Engineer drawing his attention to these two clauses and enquired if he had at any time taken any action in connection with them.

On the 5th instant he replied as follows :

" I have the honour to acknowledge the receipt of your letter No. B. 4/02/1913 of the 2nd instant and regret the official recording of the latter

to which you refer was overlooked, no question having been raised by the Uganda Railway heretofore.

I now beg to make formal application for an extension of two years, from expiration of Contract time, within which we have to complete the Line.

13. I have not, as yet, replied to this letter.

14. In addition to any of the objections I have already given I would most respectfully suggest that it is difficult if not impossible to even consider the payment of compensation for causing delay when the works in question have not fulfilled the conditions which governed the period of their completion.

I have the honour to be,

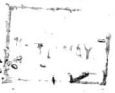
sir,

Your obedient servant,

Sd/ B. EASTWOOD
Actg General Manager
Uganda Railway.

Gen - 19197/1915

East



[Handwritten signature]

12 May 1915

24566
Ans ~~19197~~

Gentlemen,

with reference

DRAFT.

The Managers,

The Nagadi Soda Coy Ltd.

MINUTE.

[19152204/14]

Mr. Harper 10/5/15.

Mr. Bottomley 10.5.15/p

Mr.

Mr.

Sir G. Fiddes.

Sir H. Just.

Sir J. Anderson.

Lord Emmott. Islington.

Mr. Harcourt.

to the letter from this Office of the 5th of January relating to the interruption claim of the Nagadi Soda Coy for compensation in respect of the interruption of their work owing to the military operations in the East. I am pleased to inform you that he has now received

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despatch from the Govt. on
the subject & that he
is advised that the
provisions contained
in clause 38 of the
Contract of the 13th
April 1911 are a
complete defence to
~~successor~~ any claim
such as that put forward
for the use of the line

2. I am to add that it
appears from the Govt's despatch
that it is not correct as
stated in Mr. A. Ross' letter
of the 9th of Oct. 1914 that
"Dunn Pauling's ~~coal~~ coal
had been requisitioned & so

being used ~~in~~ Military
work & will be ~~replaced~~
by the Uganda Rly.
at Harwood in 1915 that
the coal was used by
Dunn Pauling Co. in
running trains, that they
allowed the arrangements
for the continuance of
their coal supply to lapse
& that in order to help them
out of their difficulties
coal was sold to them
by the Uganda Rly. when
their stock was exhausted.
There has not been
any replacement of coal
and coal
was being supplied
to Dunn Pauling by the
Uganda Rly. at the
time of the Govt's despatch.

(Signed) H. J. READ.
for the Under Secretary of State