

1925

KENYA

S.O.  
36755  
11 AUG 25

17

DATE

17th July 1925.

G'S DEP NORTHCOE.  
CONF 114

CIRCULATION :—

UASIN GISHU RLY. OPERATION OF PENALTY CLAUSES.

Fwds further memo by Resident Engineer  
upon Construction.

st. U.S. of S.

ern U.S. of S.

ark U.S. of S.

Secretary of State.

Previous Paper

MINUTES

CA 369-1

by CA memo on 31806  
GCS 13825

Subsequent Paper

ca. 41040

635

KENYA.  
No. 114.  
CONFIDENTIAL.



S.O.  
6755  
11 AUG 20

GOVERNMENT HOUSE,  
NAIROBI,  
KENYA.

17th July, 1925.

Sir,

With reference to Mr. Denham's despatch

*D.A.C.  
21806  
75*

No. 762 of the 18th June and in continuation of

Sir Robert Coryndon's Confidential despatch

*lyn 739  
24  
15*

No. 279 of the 1st December, 1924, relative to the

imposition of the penalty clauses in the Uasin

Gisnu Branch Railway Construction Contract, I

have the honour to enclose a further memorandum

by the Resident Engineer upon the Construction,

in continuation of that enclosed in the latter

despatch.

I have the honour to be,

Sir,

Your most obedient, humble servant,

*J. A. Shortt*

GOVERNOR'S DEPUTY.

THE RIGHT HONOURABLE

LIEUTENANT COLONEL L.C.M.S. AMERY, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

LONDON. S. W.

Memorandum  
Dated 15-6-1925.

15th. June, 1925.

**FURTHER MEMORANDUM ON CONTRACTORS' CLAIM  
FOR AN EXTENSION OF THE CONTRACT TIME.**

Under their letter of 5th. July, 1921, Messrs. Griffiths & Co. submitted their estimate of the cost of constructing the Railway, and in the penultimate paragraph they state:-

"Our estimate of the time required to complete the whole of the works is three years from date of order to commence and we enclose a diagram showing approximately the rate of expenditure over that period of time."

On the 5th. September, 1924, Messrs. Griffiths & Co. addressed the Crown Agents seeking an extension of the Contract time on the grounds of :-

1. abnormal rainfall.
2. Additional works carried out.

On the 19th. November, 1924, I submitted a memorandum pointing out in considerable detail that the delay in completing the railway was not due to abnormal rainfall and additional work as the rainfall had not been abnormal and actually in the total less work was required from the Contractors than set forth in the Contract documents and showing that the failure of the Contractors to complete the Railway in the Contract time was due to :-

1. Lack of organisation.
2. Lack of a sufficient and competent staff.
3. Failure to obtain and deliver materials with punctuality anticipating the date at which they were required.

In the discussion contained in the memorandum many reasons are given for the Contractors' failure to complete the Railway in the Contract time, the reasons are

greatly dissimilar ranging from disorganisation and incompetence in their staff, failure to commence works and push them so as to complete them with despatch, to failure to obtain materials when required and to keep the works supplied even when commenced.

The difficulty of evaluating the total time lost by the Contractors from delays resulting from each of these causes lies in the difficulty of reducing them to a common denominator.

As however the effects of good organisation, bad organisation, skill, competence, incompetence, slackness, absence of materials, energy, additional work required, reduction in work and every other factor, the sum of which regulates and determines the rate of progress made by the Contractors is reflected in the rate of expenditure, it follows that a study of the expenditure will disclose whether or not the failure of the Contractors is due as contended to abnormal rainfall and additional work or to lack of organisation, lack of a sufficient and competent staff and failure to obtain and deliver materials as required.

As stated above, in submitting their estimate of the cost of the Railway, the Contractors stated that they estimated the time required for the construction of the Railway at three years and they submitted a diagram showing approximately the rate of expenditure and estimated progress over a period of three years. This diagram therefore, represents the rate at which the Contractors propose to carry out their work so as to complete the Railway in 36 months.

On the Diagram "A" attached the Contractors' Estimated Progress and approximate rate of expenditure is reproduced and the actual rate of expenditure is also shown.

Examination of these curves shows that at September, 1924, the date at which the Contractors sought an extension of the Contract time, they were not less than 15 months behind their own schedule time had they been required to carry out all works as originally provided for in the schedule and Contract. The Contractors however, were actually only 10 months then behind time as the works required to be done had been reduced to account for a saving of time of 5 months to the Contractors, the Contractors asked for an extension at that time of 7 months only and subsequently in December, 1924, were forced to seek a further extension of time.

Had the Contractors been required to execute works in excess of the amount included in the Contract, it is obvious that the curve of the actual rate of expenditure would be above the curve of the Contractors' estimated rate of expenditure which it is not; on the contrary, in September, 1924 the date of the Contractors' application for an extension of time, the actual expenditure was £.500000 below the estimated expenditure. It is difficult therefore to believe that the Contractors were ordered to carry out works additional to the works set forth in the Schedule of the Contract. On the contrary I submit that this investigation corroborates and establishes my contentions as to the real causes of the Contractors' failure to complete the Railway in

**Contract time.**

The Contractors state that the first cause of their failure to complete the Railway was that the rainfall in April and May 1923, was excessive. Inspection of the Diagram "A" shows that the rate of expenditure in the months of April, May, June and July 1923, was at the same rate as from November 1923, (i.e. throughout the dry season), and that had this rate of expenditure and consequently rate of progress been maintained the Railway would have been completed within the Contract period by reason of the reduction in the works required even although the Contractors were in April 1923, five and a half months behind their own Programme time. It is therefore disclosed that the Contractors' rate of progress was not adversely affected by the rainfall of April and May 1923, on the other hand it is disclosed that the causes which were clogging and hampering the Contractors in their endeavour to work to and maintain their Programme rate of progress and which had attended the work from its commencement became accentuated and more serious from and after December 1923.

This is further corroborated by the fact that it was not until September 1924, 16 months after the alleged excessive rains occurred that the Contractors advanced a claim for an extension of the Contract time for this reason, had the rains actually caused the delay now attributed to this cause by the Contractors, they would have made the claim for an extension of time in June 1923, and not September 1924.

638

A study of the curve showing the rate of progress and expenditure in the Colony (shown on Diagram "A") shows that if the rate of progress achieved up to October 1923 had been maintained the Railway would have been completed within the Contract period.

That the drop in the curve was not caused by the Contractors being ordered to do additional work is apparent by inspection of the curves showing the Contractors' estimated expenditure and actual expenditure. Obviously it was not wholly attributable to delay in Home Purchasing as by January 1924 ninety four per cent of the Home Purchases were completed. It did not result from a labour shortage for Major Gailey in his letter of 31st. October to Major Dutton states that up to May 1924 the Contractors were able to get all the labour they required, the alleged shortage was not serious up to August 1924. It could not be because of the rainfall in April and May 1923 for the drop does not commence until November 1923, six months later.

That being so I submit that the cause lay in the Contractors' lack of organisation, lack of sufficient and competent staff and failure to obtain and deliver materials punctually.

(Sd.) J. K. ROBERTSON

Resident Engineer  
HAINI QINSHU RAILWAY.

JKR/CH

36755/25 Kenya

637

AUG  
18

DOWNING STREET.

18 August, 1925.

~~629~~

DRAFT.

Gentlemen,

CROWN AGENTS  
FOR THE COLONIES

With reference to the

letter from this Department of the

MINUTE.

20th of July and connected corres-

Mr. Allen

15 J

pondence, I am etc. to transmit

Mr.

to you for communication to the

Mr.

Consulting Engineer, a copy of a

Sir T. Skelton

Sir C. Davis.

despatch from the C.A.G. of Kenya

Sir G. Ariddle.

forwarding a further memorandum by

Sir J. Musterton Smith.

Lord Arnold

the Resident Engineer on the claim

Mr. Thomas

of the contract re for an extension

21/20/114. 17 July

of



of the contract time for the  
construction of the Uasin Gishu  
railway.

I am, etc.

*(Sgd.) Harold T. Allen.*

for Under Secretary of State.