

EAST AFR. PROT.

C.O.
36700Recd
Nov 20 NOV 12

3 6 7 0 0



756

Date.

1912

October

Previous Paper.

4786

KENIA FOREST CONCESSION

Recommends that applicants be asked to tender the amount of rent which they would be willing to pay. Sends revised memorandum of terms. Suggests C.O. should communicate with applicants. Considers it doubtful if they will entertain on terms offered. Prot will suffer no disadvantage if forests remain untouched for some years to come.

Refr. for the whole concession
1888

This should be printed as soon as possible - the whole question brought before the Council as C.O. at an early date, as it is desirable that Lord Cromwell should be notified of the terms before he leaves for the S.A.P. (see $\frac{C}{34786}$).

at once.

W. J. R.

25/11

A. J. O.

*to T.H. Jackson
George Lloyd
And. 7 - copy above sent - 3 parts A, C, B, 1, 56 1/2*

Subsequent Paper

12-13

The next steps appear to be to
communicate the terms (amended as to Cl.
13 as proposed by the O.C.) to the applicant
with a view to the effect that the
highest or any tender will not necessarily
be accepted. 558

On receipt, ~~it will be referred~~ to all those
then it is necessary regarding the proposed
agreement or it can no doubt be envisaged
that only the technical portions of the
contract & supp^y agreement shall be
communicated to them.

I cannot see how the concession can pay
on the present terms. 90 miles of
railway to be constructed by the concessionaire,
costing at least £300,000 - a rate on
the railway of ? per ton per mile and
the annual output exceeds 15,000 tons p.a.
(Mr. Hutchins recommended a rate of $\frac{1}{2}$ per
ton per mile) - a haul of 440 miles
more to get the timber to the sea, with
S. Africa as the best chance for a market
& its import duty of 12% (as D.S.A. - not
included in the S. Africa Customs Union) - in the
case of the local market, competition will
be a big scale. The applicant will probably
reply

Ed. Bottanley

do to change 12 of the memorandum
100 cents = 1 Rupee = 10 pence. 559

For ordinary purposes 6 cents was taken
to equal a penny - as a penny postage
stamp is 24 in 4 cents Post
clearly 6 cents was something
less than a penny - so to save
the Galt from loss I have
substituted 6.25 cents for a penny.

Mr. Read

all

19/11

Mr. Parkinson & I discussed the 6c rate
means a reduction of 4% on the rate proposed by
the Govt & I do not think the objection to a
fractional rate is sufficiently great to justify
you large a reduction, ^{off hand} supposing we can do business
over the forest at all & it is hardly a case of loss

As to the Committee members on (lines 4-11)
I have added a sentence ^{to the draft} to state that the point may
be made clear from the context.

Ed. 20/12

Mr. G. Fisher

I see no objection to the fractional
rate. Fractional rates seem to be the
rule in the Rylands R² - see Rates in p. 7
of the R² Handbook recently.

H. J. H.

20/11

CONCESSIONS COMMITTEE.

Minutes of the Sixth (Special) Meeting
of 1912 held in the Conference Room on Thursday the
6th December at 11.30 a.m.

PRESENT.

Lord Emmott (Chairman)
Mr. Read
Mr. Strachey
Mr. Ellis
Mr. Darnley
Mr. Stubbs
Mr. R.T. Allen (Clerk)

Preliminary:- The Minutes of the
Fifth (Special) Meeting of 1912 were confirmed.

Subject 1. East Africa Protectorate. Kenya.
Forest. On being asked by Mr. Strachey whether the
East African Department favour this concession, Mr.
Read explained that it is desired to clear up the
position as the matter has been hanging fire for
some years, and the applicants complain that they
have

501

have not yet been informed of the terms on which the Government would be prepared to grant a concession in the Forest. The present proposals are put forward with a view to enabling the necessary particulars to be communicated to the various applicants, but Mr. Read said he was disposed to think that the terms proposed would not be accepted by them. The ^{total} ~~total~~ distance from Nairobi to Mount Kenya ^{is said to} be about 20 miles. The first 30 miles of the necessary railway from Nairobi is under construction by the Government and known as the Thaka Tramway. The extension from the Thaka to Fort Hall and probably for some distance beyond would be regarded as part of the trunk system of the Protectorate. It would therefore be desirable for the Government to construct this extension, if possible, but funds are not available; and it is difficult to see how a private syndicate can accept the liability for the construction of the section from the Thaka to ~~the~~ Fort Hall (^{about} ~~30~~ ³⁰ miles), and the extension to the Forest (and make the enterprise pay, having regard also to the nature of the timber and the distance to the Coast. It is however desirable not to keep the applicants waiting indefinitely: and, even if the negotiations lead to no result, it will be a gain to get a clean slate especially in view of Mr. Morton Frewen's shadowy claim to preferential consideration.

The Committee then discussed ~~serutin~~ the recommendations in the Governor's despatch (36700) and the outline of the terms upon which the grant of a concession in the Forest may be offered.

Despatch

Despatch Paragraph 1. The question of advertising the concession was considered in connection with the Governor's proposal that "intimation should be made to those who have applied for concessions as to the terms on which Government will be prepared to issue licences", but, in view of the statement in paragraph 4 of the Secretary of State's despatch No. 688 of the 13th of October 1911 (31767) that "on the receipt of the information for which I ask, I propose to communicate to the applicants the essential terms on which a concession would be granted", the Committee regarded the matter as having been settled, and therefore was not prepared to dissent from the Governor's proposals.

Paragraph 2. Royalty. This point is discussed under clause 2 of the outline of terms (see below).

Paragraph 4. Timber Measurement. This matter being technical may be left to the local Government.

Paragraph 6. At Lord Emmott's request Mr. Read explained that Mr. Sandiford is the Locomotive Superintendent of the Uganda Railway, and pending the arrival of the new General Manager, has been acting in the latter capacity; Mr. Eastwood is the Accountant of the Railway.

Paragraph 7. This paragraph deals with question of procedure and the Committee concurred in the Governor's opinion that any invitation to tender should be supplemented by the usual reservation to the effect that the highest or any tender will not necessarily be accepted. Mr. Read explained that this reservation is especially desirable in view of Mr. Brown's claim to preference.

Outline of Terms Proposed.

Clause 1. Area of Concession and Period of Licence. Mr. Read said that the area of 100,000 acres, about one fourth of the whole area of the Forest, is that contemplated throughout the whole of the negotiations: and, in reply to a question by Mr. Ellis whether the term of 40 years is sufficient to allow of the regeneration of the Forest, he explained that it is virgin forest; that only marked trees will be felled; that the result will be to thin out the trees, leaving more room for those remaining and thereby effecting an improvement in the Forest. The questions of the period of the concession, of revising the conditions during the 40 years proposed, and of the terms on which the licence might be renewed at the end of that time, were also discussed: but, in view of the lack of information on which to form an opinion as to the adequacy or otherwise of the royalty suggested (see below) the Committee did not feel competent to advise on these points.

Clause 2. Royalty. A royalty of 10 cents per cubic foot is proposed: but, in the absence of information with regard to the commercial aspect of the proposition e.g. the cost of getting the timber and its market value, the Committee felt unable to judge whether the proposed rate is fair either to the Government or to the concessionaire. Various alternative methods of charging royalty were then discussed. Mr. Darnley suggested that it might be based

based on the dividends distributed. Mr. Stubbs pointed out that under such an arrangement there was considerable scope for sharp practice e.g. in the way of amassing reserve funds instead of declaring proper dividends. Mr. Stubbs then suggested that, in the case of a proposition with such uncertain commercial prospects, the best way of dealing with the question of royalty is for the Government to be allotted a proportion of the shares. Mr. Read demurred to this suggestion on the ground it would not be possible to obtain the consent of the Treasury to such an arrangement.

The discussion then centred on a proposal by Mr. Ellis that, as in the case of the Gold Coast and Transvaal gold mines, the royalty should take the form of a tax of say 10% tax on profits. Lord Emmott pointed out that in the present instance the matter would be complicated by the necessity for providing for interest, and possibly sinking fund, in respect of the capital sunk in the railway. But Mr. Ellis thought this difficulty might be surmounted by allowing the equivalent of a reasonable rate of interest say 4% or 5% on the cost of the railway to be deducted from the profits before assessment and by charging a higher percentage of tax, say 15%, on the balance. Lord Emmott said that he agreed in principle but that he considered the 'tax on profit' system more applicable to a 'proved' industry than to a proposition with such uncertain prospects as the one under discussion: if no profits were earned the Protectorate would obtain nothing from the concession, and he could not view the possibility of such

105

a result with equanimity. Mr. Ellis considered that even so the arrangement could be defended on the principle of "no profit, no tax", and he pointed out that in any case the Protectorate would get the railway, the rent and the improvement of the Forest.

Mr. Read then said that the arrangement proposed by the local Government follows that adopted in the case of the Lake Magadi Soda Concession. And, after further discussion, a majority of the members of the Committee agreed to accept the Governor's recommendation in regard to the royalty, while recording their view that, in the absence of evidence as to the cost of felling the timber and its market value, it is not possible for the Committee to express any opinion of value on the figure proposed.

Mr. Ellis dissented and desired to place on record the following opinion, in which Mr. Stubbs concurred:- "In view of the fact that there is no information as to the cost of getting the timber or as to its selling value I consider it is impossible to fix a suitable royalty: and I think that a tax on profits plus a dead rent to merge in the royalties will be fairer to the Government and to the concessionaire".

Clause 3. Rent. The Committee raised no objection to the Governor's proposals.

Clauses 4 to 11. Forestry Conditions. In reply to Mr. Stacey, Mr. Read said that the enforcement of these conditions would not render the concessionaire immune

immune from the operation of the Forest Laws of the Protectorate.

Clause 12. Railway Rates. In reply to Lord Emmott, Mr. Read said that the rate of 1d. per mile per ton was an over all rate and included terminals; and the Committee agreed to accept the views of the Government as to the actual rates, but recommended that ~~the~~ rates mentioned should be expressed in the same coinage and for preference in cents, the currency of the Protectorate being based on the rupee.

Clause 14. Survey. The survey of the line is to be commenced within three months after the date of contract, and the Committee considered the period to be reasonable.

Clause 16. In reply to Mr. Ellis, Mr. Read said that the settlement of such questions as the curves, gradients etc. of the railway would be provided for in the agreement as in the case of the Magadi concession.

Clause 17. Mr. Read said that although the terms of the contract and supplementary agreement with the Magadi Soda Company had not been published, there would be no objection to communicating them to the present applicants, if and when tenders are invited.

Expropriation. The Magadi agreement provides for the payment on expropriation of the actual capital cost of the railway plus the cost of substantial alterations additions and improvements. As a railway must be kept up and is supposed to retain its original value, that arrangement does not appear unfair and the Committee recommended that it should be adopted in the present case

(After



368

GOVERNMENT HOUSE,
NAIROBI,
BRITISH EAST AFRICA.

EAST AFRICA PROTECTORATE

October 25th 1912.

(No. 756)



Sir,

27504

With reference to your despatch No. 572 of September 7th 1912, regarding the proposed Forest Concessions on Mount Kenya, I have the honour to report that I have conferred on the subject with the Honourable Acting General Manager of the Uganda Railway, and the Conservator of Forests, who are in agreement with my view that intimation should be made to those who have applied for concessions as to the terms on which Government will be prepared to issue licences, and that they be asked to tender the amount of rent which they may respectively be willing to pay for the right of working the area subject to the conditions prescribed.

2. As the result of our conference I have remodelled and somewhat expanded the terms incorporated in my Memorandum of August 9th last, a copy of which forms the enclosure to your despatch under reply.

3. It is recommended that the royalty be fixed at ten cents per cubic foot. I am informed that this rate is the highest that can be asked

if

THE RIGHT HONOURABLE

LEWIS HARCOURT, P.C., M.P.,

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET, LONDON, S.W.

X No. 27504

if any reasonable margin of profit is to be left to the Licensee.

4. After hearing Mr. Battiscombe fully on the subject of timber measurement, I am satisfied that adoption of the system of measurement in the square would result in so much waste of merchantable timber that it must be abandoned in favour of the method described in the amended Memorandum which accompanies this despatch. There is nothing in this alternative system to which any applicant can reasonably take objection while payment in respect of all marketable wood is thereby fully assured.

5. I have thought it advisable to substitute for paragraph 5 of the original Memorandum the paragraphs Nos. 4 to 11 inclusive in the enclosure hereto. These Forestry conditions have been accepted by myself on the advice of the Conservator. They appear to me to be sound and practical, and if they meet with your approval I advise that they be incorporated in the Memorandum of terms to be promulgated in order that applicants may at the outset receive the fullest information regarding the conditions with which the successful tenderer will be required to comply.

6. Those paragraphs of my original Memorandum which relate to the construction of the Thika Tramway extension remain unaltered. Mr. Sandiford has examined them carefully and concurs in the opinion expressed by Mr. Eastwood at our meeting in London that they fulfil all requirements.

7. Should you be of the opinion that the Memorandum as now amended includes all the terms which it is desirable to impose, and contains no conditions to which exception can be taken, I have the honour to recommend that its contents be communicated by yourself to the gentlemen, who have made application for areas on Mt. Kenya, and that they be informed that it is open to them to tender at any time within six months the amount of rent which they are prepared to pay for a concession on the terms and subject to the conditions prescribed. It will be well that such communication be supplemented by the usual reservation to the effect that the highest or any tender will not necessarily be accepted.

8. Personally I entertain considerable doubt whether a concession on the terms offered will be sought by any of the applicants. In that case negotiations which have been somewhat unduly prolonged will be finally brought to a close and this Protectorate will suffer no disadvantage if the forests on Mt. Kenya remain untouched for some years to come.

I have the honour to be,

Sir,

Your humble, obedient servant,

H. Conway Bayard

GOVERNOR.

Encl. in No.

INCLOSURE

571

In Despatch No. 752 of 25.10.1912

MOUNT KENYA CONCESSIONS

C.O.
36700
Recd
Perf 20 NOV 12

Various applications having been received from time to time for forest concessions upon the slopes of Mount Kenya and no definite understanding having yet been reached as to the terms upon which such concession should be granted, it is suggested that conditions should be formulated generally in accordance with the outline summarised below and that applicants be then asked to make offer of the rent they will be willing to pay for a concession subject to the terms finally approved.

It is not considered that any applicant can maintain such priority of claim as would entitle him to the first right to exercise an option.

OUTLINE OF TERMS PROPOSED

1. The grant of a concession of 100,000 acres of forest land situated on the Southern slope of Mt. Kenya, to be held under a licence to cut and remove timber therefrom, and to occupy such land and construct such works as may be incidental thereto for the term of 40 years, with the option of renewal for a similar term if the Conservator of Forests reports that all forest conditions have been fully complied with, and all payments duly made.

2. Royalty to be paid at the rate of ten cents per cubic foot. Such royalty will be calculated according

according

(2)

according to measurements to be made by the Forest Department as later described.

All timber must be paid for at the time of marking.

3. Rent will be payable at such rate per annum as may be hereafter decided, and when the sum total of the royalties payable in respect of any one year is in excess of the amount due as rent in respect of the same period, the rent will be deducted from such royalties.

Rent will become due from the date on which work is commenced.

Such date will be fixed by arrangement between the Concessionaire and the Conservator of Forests.

4. The area of 100,000 acres will be divided into 40 coupes of 2,500 acres each, and the Concessionaire will be required to utilize all timber which may be marked by the Forest Department within one coupe before proceeding to work in any other coupe.

The Concessionaire shall give at least two months notice in writing to the Conservator before entering upon a new coupe.

The Concessionaire shall have the right of selecting which coupe shall be worked first.

5. All trees will be marked on the basis of a forty years rotation.

6. Only marked trees shall be felled, and in the event of any unmarked tree being felled the Concessionaire will be liable to pay for it at the rate of five times the royalty.

In the event of any unmarked tree being felled and removed the cubic contents will be estimated from the diameter of the stump.

7. All trees will be marked and measured standing. Taper, bark and unsoundness will be allowed for as far as possible.

8. All marked trees are to be felled, and any trees which may be certified by the Conservator of Forests to be unmerchantable shall be killed by ring-barking, or otherwise, and no royalty shall be payable in respect of them.

9. All dead trees containing merchantable timber are to be cut, but only half the royalty will be payable in respect of them.

10. All trees are to be cut so as to cause the least possible waste.

Stumps are not to be cut higher than 18 inches except in the case of Camphor trees, in which case the stump must not be higher than three feet.

11. All trees cut must be utilised to a diameter of nine inches. Tops must be lopped and all brush piled at a safe distance from live trees so as to eliminate risk of fire. Such disposal shall be made to the satisfaction of the Conservator of Forests.

12. The rate payable to the Uganda Railway Administration in respect of all timber transported over the Uganda Railway, the Thika Tramway, or the extension to the forest area will be one penny per mile for every ton of timber up to 15,000 tons per annum.

A reduction of one cent per mile will be made in respect of every ton of timber so transported over and above the quantity of 15,000 tons per annum

13. The Concessionaires will construct at their sole cost a line of railway from the railhead of

the Thika Tramway to such site within the area of the concession as may be selected and approved as the depot for the receipt and collection of timber.

14. The Survey of the line of railway is to be commenced within three months after the date of contract to construct the same, and is thereafter to be conducted with due diligence and expedition, along a line of route to be approved by the General Manager, Uganda Railway. All plans, sections, specifications and other documents or drawings necessary for the complete elucidation of the work to be undertaken are to be prepared by the Concessionaires and submitted to and approved by the General Manager before construction work is commenced.

15. The survey is to be completed and the final plans submitted for approval within twelve months after the date of contract.

16. The line is to be constructed of the same gauge and with the same description of rails, sleepers and ties as are in use on the Uganda Railway, and in connection therewith the Concessionaires will provide such stations, sidings, platforms, signals and other usual accessories as may be required by the General Manager.

17. Generally speaking, and so far as local circumstances may permit, those clauses of the contract and supplementary agreement made between the Crown Agents and the Magadi Soda Company Ltd. for the construction of a branch railway which may be applicable to the work of construction of the contemplated line will be incorporated in the contract.

7

contract to be executed by the Concessionaires.

18. Construction work is to be commenced within six months after the final plans have been approved by the General Manager, and the work is to be open at all reasonable times to inspection by him or by the officers deputed by him.

19. When the line is declared to be open for traffic it will be handed over by the Concessionaires to the Railway Administration, and thereafter the work of maintenance will be undertaken by and at the cost of the Administration.

20. Regulations and arrangements for traffic over the line will be promulgated by the Railway Administration, and the traffic will be worked by that authority, the fullest facilities for transport being given to the Concessionaires, subject to the requirements of other sections of the Railway.

the Madadi Soda Company,
Ltd., for the construction of
a branch railway which
may be applicable to the
work of construction of ⁵⁷⁷
the Kama railway, if
any provisional application
for a concession on the terms
shown in the memorandum
should be made to this
Dept.

These terms as also being communicated to the
persons who have previously applied
for a concession, and ~~these terms for your consideration,~~
~~release~~
~~under the reservation~~
that the highest or any

578

117, PICCADILLY, W.

Private

Dec

Jan 31st 1913

1/1/13
 H. J. A.
 + 6 x 5 cent = 1/10
 + 1 cent = 1/100
 = 1/10 + 1/100 = 11/100 = 1/9

Dear Mr Read

I have your letter of yesterday about the Kenia Forest, & will send you a formal reply in a few days after seeing my friends.

But kindly send me a note as to "cents". Para 2 says "Royalty---ten cents a cubic foot". And then Para 12 says the railway rate is six & a quarter cents per ton per mile.

The "cent" cannot be the one hundredth of the dollar--that is a halfpenny! We have been corresponding hitherto in view of a rate of ^{halfpenny} one cent per ton per mile, which Mr Hutchins thought should be a half cent per ton mile to make the Forest workable at the prices of four years since.

I think you have got in view some cent of another currency

The New Years greetings

sincerely yours

Morton Freeman