

EAST AFR. PROT.

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8155
Rfc
19 MAR 10

Governor
Girouard 98

1910
25th Feby

MR. J. H. CROSS,

CLAIM FOR COMPENSATION

Last previous Paper.

6
7778

Transmits copy of petition with remarks. Sees no reason for altering his decision and submits the matter for consideration.

Mr. Read.

A copy of this petition came direct, in
C.
7778
after reading the petition carefully, without the covering despatch, I was very unfavourably impressed by it. It struck me as a palpable "try on". I then read this covering despatch, & it confirms me strongly in the opinion.

See Gov. 5162 as to the allegation that a philanthropic work has been ruined by Mr. Cross's accident.

Reply that, after carefully

ORDER OF THE GOVERNOR
THAT THE FILE BE KEPT

Next subsequent Paper.

5162

Ans'd 167, 2 yll

(Letter 8th
in 7778)

considering the petition, the B. of B. concurs
in the reply which the Govt. has already
sent to Mr. Cross's appeal for compensa-
tion, & request that Mr. Cross may be so
informed.

J.P.B.

March 22.

Mr. Fisher's proceed,

H. J. H.

22/III

Pr. 22.

Yes, it is a curious case &
his petition is remarkable
compilation.

J.P.B.

22.3

J.

27.3

Received as proposed

29. III

5

considering the petition, the B. of B. course
in the reply which the Govt. has already
sent to Mr. Cross's appeal for compensa-
tion, & request that Mr. Cross may be so
informed.

+ Letter of 8th
in 7778

of A.B.

March 22

Mr. Fisher

So proceed,

H. J. H.

22/III

Pr. 22

Yes, it is a curious case &
the petition a remarkable
compilation -

J.H.

23.3

J.

27.3

Proceed as proposed

£ 29. III

5-8

373
GOVERNMENT HOUSE
NAIROBI.
BRITISH EAST AFRICA

19 MAR 10

February 25th 1910.

EAST AFRICA PROTECTORATE.

No. 88.

(Incl. 1.)

My Lord,

I have the honour to transmit herewith a petition from a Mr. J. H. Gross a Madras Indian asking for to Rs. 000 compensation for a broken arm sustained in April 1907 as a result of alleged neglect of ordinary precautions by the Public Works Department.

2. This petition was submitted to me in December last a period of rather more than 2½ years having elapsed since the accident occurred, and after due consideration, in view of the fact that it was quite impossible at that distance of time to determine that any negligence had been shown by the Public Works Department, and that I had no reason to suppose that precautions had not

been

THE RIGHT HONOURABLE,

THE EARL OF CREWE, K.G.,

Secretary of State for the Colonies,

DOWNING STREET, LONDON, S.W.

been taken, I caused Mr. Cross to be informed that I could admit no liability on behalf of the Government.

5. There are several points in the petition which require comment and I will take the paragraphs seriatim:-

(1) As far as is known Mr. Cross did sustain a fracture of the left arm.

(2) I am at a loss to surmise why Mr. Cross allowed so much time to elapse if he considered he had a claim against the Government. His first letter on the subject was dated one year eleven months after the accident.

(3) I have no reason to suppose there was negligence on the part of the Public Works Department and as I have already explained it is impossible to determine if there was any at this distance of time.

(4) If the street was as crowded as Mr. Cross asserts he would appear to have been travelling unduly fast; it was daylight (noon) and the road is quite open and even if the ditch or cutting was not protected it would have been visible at a distance of some yards.

(5) I am addressing Your Lordship in a separate despatch on the subject of the "Cross Industrial Home".

(8) This was done one year and eleven months after the accident.

(9) There was no necessity for Mr. Cross to make a special application to the Commissioner of Public Works it is open to anyone to tender.

(10)	CROSS TENDERS	ACCEPTED TENDERS
	Rs. 9,818	2,122
	5,437.50	462.50

Mr. Cross seems to have been under the impression that the Public Works Department proposed to compensate him by accepting exorbitant tenders. Nothing of the sort was ever contemplated, nor has Mr. Cross any grounds for saying that it was. It was on the receipt of a letter from the Commissioner of Public Works refusing to accept his proposals that he at once appealed to me.

(11) There was no intention of giving Mr. Cross a preference. In addition the price of his tenders was prohibitive.

(12) There is no explanation as to the delay. It was Mr. Cross' left hand; he could presumably write even if he was in bed, and in any case he could have instructed

a lawyer. I am at a loss to understand why he waited one year and eleven months before taking any action.

(15) The Executive Engineer Public Works Department at Nairobi when the accident took place was not Mr. Fletcher but Mr. Espeut, who at present holds that position. He heard at the time that Mr. Cross had broken his arm by falling out of a rickshaw but the first intimation that he had that the latter considered his accident due to carelessness on the part of the Public Works Department was in March 1909.

(16) Mr. Cross has no grounds for making this statement.

(18) No such inference may be drawn. Mr. Cross tendered in common with other contractors and was refused.

4. I am unable to see any grounds for altering the decision I have previously arrived at and now have the honour to submit the matter for Your Lordship's consideration.

I have the honour to be,
Your Lordship's humble,
obedient servant,


GOVERNOR.

ENCLOSURE No.....
In Despatch No. 98 of Feb. 25 10

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3155
19 MAR 10

Gross Industrial Home.

NAIROBI,
British East Africa,
28th, January 1910.

To
His Excellency His Majesty's
Principal Secretary of State for the Colonies,
L O N D O N.

May it please Your Excellency.

I have the honour to forward herewith a Memorial from myself together with enclosures for favour of Your Excellency's kind and compassionate consideration.

2. A copy of the above has also been forwarded to His Excellency the Governor of the British East Africa Protectorate.

I have the honour to be,
Your Excellency's
Most obedient and humble servant

(Signed) J.H. Cross.

Principal & Secretary,
Gross Industrial Home.

(1)
373
SYNOPSIS.

- 1) Introductory - ground of Petition - serious bodily injury - claim - nonsuccess with Government of British East Africa.
- 2) Explanatory - offering details and plan.
- 3) Accident to Memorialist through neglect and failure of Public Works Department in not adopting usual necessary precautions for public safety
- 4) Descriptive of route - obstacles encountered - experienced bearers surprised and detached - vehicle upset - Memorialist thrown headlong on to road due to noncompliance of the P.W.D. to place necessary barrier to protect the public while cutting for drainage system was in progress - serious compound fracture of forearm.
- 5) Narrowly escaped being killed.
- 6) Severe shock to aged Memorialist - constitution broken up - work of Rescue (The Cross Industrial Home solely maintained by him) ruined.
- 7) Consequences very serious - injuries sustained permanent for remaining of life.
- 8) Overtures for mutual understanding with Commissioner of Public Works.
- 9) Palliative measures directed by same Official.
- 10) Suggested procedure adopted by Memorialist, but prospects failed.
- 11) Memorialist's attempts thereanent miscarried, he being without necessary equipment or appurtenances for executing certain work which another possessed and underbid him.
- 12) Particulars showing reasons for lapse of time in submitting claim to Government.
- 13) Claim submitted, which Government misjudged and repudiated.
- 14) Quotations from His Excellency the Governor's reply based on assumption of new P.W.D. Officials who were not in office at time of accident.
- 15) Comment on such unreliable testimony of new P.W.D. Officials who were not in service here at time of accident, and previous request for reference to proper Officer having knowledge of facts of the case.
- 16) Visit of Mr. Fletcher's Clerk to inquire about Memorialist's condition.
- 17) Trusting this important matter for just and fair decision by His Excellency The Principal Secretary of State for the Colonies, and pointing out serious inaccurate allegations.
- 18) Maintains practical admission of claim by P.W.D. Officials by inference and nonrejection by fact of offering Memorialist work after his representations.
- 19) Explains erroneous opinion of His Excellency the Governor regarding delay in submitting claim officially and giving reasons for such supposed delay.
- 20) Submits Medical Certificate showing the extent of the very serious injuries sustained by Memorialist.
- 21) Appeals to His Excellency The Principal Secretary of State for the Colonies to coincide in Memorialist's views on main question at issue.
- 22) Prayer for the granting of relief sought as may in equity be deemed reasonable.

Cross Industrial Home.

NAIROBI,
British East Africa.

28th, January 1910.

To

His Excellency His Majesty's Principal
Secretary of State for the Colonies,

L O N D O N.

May it please Your Excellency.

The Memorial of J.H.Cross u. c. s.
most humbly sheweth :-

- (1) That your Memorialist met with a most serious accident at Nairobi, British East Africa, which but for his previous robust constitution and good health might have ended fatally; and has submitted his petition for compensation to this Government but without success.
- (2) That your Memorialist by reason of the accident having taken place at such great distance, and in order that Your Excellency should know the real facts of the case, now feels it incumbent on him to explain matters in detail and to submit a plan of the scene of the accident showing the roads hereinafter referred to, as also the route taken by your Memorialist to reach his place of residence in Market Street.
- (3) That in April 1907 owing to the neglect and want of the ordinary precautions necessary on the part of the Public Works Department, Nairobi, British East Africa, in not notifying the public by notice by placard and placing a barrier to warn the public of a deep cutting made in the

public road for the drainage system at the junction of Victoria Street, Market Street, and Government Road, as required by law and custom in order to prevent accidents to life and limb, your Memorialist was as usual returning from Church at noon in his Rickshaw, which was being hauled by two experienced adults who were solely employed for rickshaw-work and who up to the time of the accident had been over two years in the service of your Memorialist.

- (4) That the day of the accident being a Sunday, large numbers of Africans as usual were free, and there being a gang of raw Kikuyu labourers passing in the direction from Victoria Street to Market Street, and to avoid a collision with any of them, his rickshaw men keeping steadily to the left side of the road hailed out in Swahili "Simile", i.e., to get out of the way; some heeded but the majority of them did not; and in order to get clear of them, and on to Market Street to your Memorialist's residence it was necessary, as will be seen from the dotted lines in the plan, that your Memorialist's rickshaw men should take a curve in the direction of the construction of the road for this purpose, and in doing so your Memorialist and his rickshaw men were quite ignorant of the cutting existing within the roadway owing to the neglect of the Public Works Department in not placing the necessary and required barrier, and before your Memorialist or his men could realize the position they confronted the cutting when however it was too late the foremost man having tripped and fallen and the rebound of the Rickshaw caused him to release his grip of the Rickshaw resulting in its upsetting and thus throwing your Memorialist out of it and heavily

on to his left side causing him to sustain a very serious compound fracture of the left forearm both bones of which were completely severed leaving the hand hanging on just only by the skin.

- (5) That had your Memorialist not placed out his hand as any one naturally would do, in the attempt to protect himself he might have been thrown on his head and killed.
- (6) That the severity and serious consequences of the shock thus occasioned to your Memorialist's constitution may well be imagined when it comes to be understood what this injury means to your Memorialist who is over sixty years of age with his health thus affected, and his work of Rescue (The Cross Industrial Home, a benevolent and philanthropic Institution for the reception and training of juvenile waifs and strays, the Homeless, and the Outcast, of whom 597 have to date been reclaimed and provided for) ruined.
- (7) That by reason of your Memorialist's advanced age the bones have not yet knit properly together nor is there any likelihood of their ever now doing so as the tendons having contracted proper joints are thus rendered impossible leaving the arm comparatively useless and it is for this cause he is unable to trust it to carry any appreciable weight for fear of its giving way again.
- (8) That your Memorialist at first approached the Honourable the Commissioner of Public Works, offering to waive his claim for compensation if he could in lieu thereof give him some work in the shape of petty contracts, not so much for himself as for the Cross Industrial Home.
- (9) That in pursuance thereof, the Honourable the Commissioner of Public Works after the lapse of six months informed your Memorialist that such contracts were in the hands of the

Executive Engineer, directing your Memorialist to see him for such work.

- (10) That your Memorialist duly interviewed the Executive Engineer, and it was after the lapse of about three weeks or so that two Tender Forms were sent to him which were duly filled in and submitted but the contracts were not given to your Memorialist on the grounds that the rates tendered for by him were too high, so that all prospect of compensation failed.
- (11) That in this connection it should be here mentioned that it was manifestly impossible for your Memorialist to tender against that submitted by the Indian Contractor who possessing his own equipment (i.e. carts, oxen, and other conveniences for the distribution of the necessary earthwork, etc.) was obviously in a better position to undertake the contracts at considerably lower rates than your Memorialist, and in consequence of which the Indian Contractor obtained the work.
- (12) That there has been no undue delay in representing matters to the local authorities, as erroneously supposed, because your Memorialist was unable to approach His Excellency the Governor sooner for the reason that he was confined to his bed and house for over a year, and that it took the Honourable the Commissioner of Public Works seven months, and the Executive Engineer about a month, to reply to his several letters and reminders, and a further delay was occasioned owing to His Excellency's absence from the Capital on his official visit to Uganda, and a yet further delay for obtaining the best and unbiassed legal assistance from a Bombay Barrister-at-Law, as having now no alternative

he felt bound to do, with the view to strengthen your Memorialist's case.

(13) That your Memorialist after this approached His Excellency the Governor with his case, humbly soliciting the very moderate compensation of £.2,000/- for the very serious injuries he has received, *which he regards to submit has*

(14) *been misjudged* That His Excellency the Governor in his reply to your Memorialist's Petition states :-

" That the officers of the Public Works Department
" so far from admitting, as you suggest in your
" petition, that they or any of them were responsible,
" by reason of any act or default on their part, for
" your accident, deny that they were in any way
" neglectful of their obligations, moral or legal,
" to the public in connection with the work at or near
" the place where the accident occurred; and again

" The fact that the allegation of negligence was
" not made by you until some two and a half years
" after the incident, has rendered it difficult to
" ascertain whether directions given by the officers
" of the Department concerned for the prevention of
" accidents in the neighbourhood of the work in making
" or repairing the road were properly carried out by
" the native employees of the Department. His
" Excellency, however, has no reason to doubt that all
" proper directions and precautions to that end were
" given and taken by the officers in charge of the work,
" and under the circumstances cannot admit that the
" Government is under any moral obligation to pay
" compensation for the injuries and loss sustained by
" you. "

(15) That your Memorialist in view to the foregoing two paragraphs of His Excellency's letter very humbly ventures to submit that none of the present officers of the Public Works Department were here in service at the time of the accident save Mr. Fletcher, the then Executive Engineer, to whom your Memorialist begged a reference should be made and to whom your Memorialist had written a note about a month or so after the accident apprizing him of the very serious injuries your Memorialist had come by through the negligence

on the part of the Public Works Department in not protecting the open drain, but evidently such reference could not have been made.

(16) That about three or four days after addressing Mr. Fletcher a **Goanese** who was quite unknown to your Memorialist, presumably a Clerk from Mr. Fletcher's office, came to see him to inquire how he was, thus proving that his note was duly received.

(17) That your Memorialist therefore leaves it to Your Excellency to determine if and in what manner could the present officers of the Public Works Department from personal knowledge, make such an allegation obviously with the view to protect the Department and to mislead His Excellency the Governor, who is known to hold such just views, averring that all precautions were taken to prevent accidents when they were never here in service at the time of the accident, and therefore had no knowledge of the true facts of the case.

(18) That your Memorialist further begs leave to state that he very humbly ventures to maintain that by inference a clear admission was made by the Public Works Authorities offering him contract work in order to recompense him for the very serious injuries he had received, which they might have easily refused if they were not liable.

(19) That your Memorialist ventures to very humbly submit that the question of delay erroneously raised by His Excellency is not two and a half years, but only one year and eleven months without taking into account his letter addressed to Mr. Fletcher, the then Executive Engineer as will be seen from your Memorialist's first communication dated the 1st March 1909 to the Honourable the Commissioner of Public

Works and subsequent letters and reminders; and this delay of one year and eleven months has already been explained in his Petition to His Excellency the Governor vide paragraph 13, and which your Memorialist begs leave to also reproduce shortly here :-

" Confined to bed for over a year.

"

" In correspondence with the Honourable the Commissioner of Public Works seven months, and the Executive Engineer about a month.

"

" Waiting for the return of His Excellency the present Governor Sir Edouard Percy Granwill Girouard from his official visit to Uganda; and

"

" Seeking legal advice from a Bombay Barrister-at-Law. "

(20) That your Memorialist begs leave to submit his Medical Certificate showing the extent of the very serious injuries he has sustained due to the neglect of the Public Works Department.

(21) That your Memorialist therefore humbly prays that Your Excellency, having regard to the facts of his unfortunate case, will concede and decide, That the injuries that he came by were solely due to the neglect and want of proper precautions on the part of the Public Works Department in not placing the usual public notice on the street or a barrier to warn the public, as required by law and prevailing universal custom, whilst the cutting for the drainage system was open and in progress, and for want of such precautions your Memorialist has very seriously suffered and is still suffering through impaired health and ruined business, and That the Public Works Authorities have virtually admitted their liability by the fact of their offering him Tender Forms to fill up for certain contract work (by way of solatium).

(22) That your Memorialist, in view to the foregoing facts, very humbly ventures to crave Your Excellency's kind and compassionate sympathy with his unfortunate case, and in consideration of what this very serious injury means to him at his advanced age and for the remaining short span of his life with an injured arm practically lost to him, his health affected, and his business ruined; and be pleased to grant him the very moderate compensation prayed for or such reasonable sum as Your Excellency in Your Wisdom and Mercy may see fit in equity to grant; and for which act of gracious kindness your Memorialist will, as in duty bound, ever pray.

J. H. Cross

Copy of Certificate from Medical Expert.

Paritlands,

Nairobi, 13th January 1910.

I hereby certify that I have this day thoroughly overhauled and examined the left Forearm of Mr. J.H. Cross of the "Cross Industrial Home" and I find that at some recent period probably 20 to 24 months since he must have met with a very serious accident, fracturing both bones of the forearm and dangerously straining all the tendons.

The result being that even if he had the benefit of my services at the time I should never have been able to restore power to the arm with my treatment viz:- (Massage and Electric DC. and Water Treatment) which have been always so successful in restoring lost power in cases of this sort.

The reasons of the hopelessness of the case being 1st. the complex nature of the fracture and great strain on all surrounding tissues and 2nd. the advanced age of patient precluding all hope of my ever restoring any power to the now useless limb.

S/- W.A. Radcliffe

Hydropathist, Masseuse and Electric
Medical Expert.

Melbourn Bath, Australia.

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DRAFT.

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MINUTE. 29/3

- Mr. Noall 30/3
- Mr. Butler 30/3
- Mr. Fiddes.
- Mr. Just.
- Mr. Cox.
- Sir G. Lucas.
- Sir F. Hopwood.
- Col. Seely.
- Lord Crewe.

Sir,

I have the honour to
ack. the receipt of your
desk n^o 98 of the 25th of Feb.
& to inform you that, after
carefully considering the
petition of M^r ^{J.H.} Cross, ~~a~~ petition, I concur

in the reply which you
have already ^{made} sent to

W. W. Mason's letter
P. n^o 2233/09 of the
8th of Jan 10

his appeal for compensation
in respect of ^{the injury} a broken
~~arm~~ ^{by him} sustained in April
1907.

2. I have to request
that Mr. Cross may be
informed to this effect.