

1923

KENYA

437
43957

REC
REL 4 SEP 23

FROM
Fitzgerald J

DATE
31st Aug, 1923.

FOR CIRCULATION :-
Mr. ~~Parkman~~
Mr.
Mr.
Asst. U.S. of S.
Perm^t U.S. of S.
Part^r U.S. of S.
Secretary of State.

SUBJECT

Clearing of bank records
S. Abner & Co. to
do at present with
public at the base

See to be done

Previous Paper

4m. 17
37807

MINUTES

In regard to the Fitzgerald's claim,
in the history of Berhatch

Para 4

The Company base their claim
on correspondence in 1907, on the
fact that they say were dealt
direct between Robbins & Co. 1906/7, does
not effect the position obtaining
after 1907. think that all we
need do is to add, after the
words in the draft "at any time"
the further words "since the date
of the correspondence on which they
now base their claim", or some

(Many claim
it was a loss
"intrinsic to"
1906/07)

Handwritten notes on left margin:
x To E. and S. Apr. 1923
x Copy to Gov. from comm 24 Sept 23
copy x above to G.P.O. & Tel 26 500/377 24

Subsequent Paper
m. 6
9372
-24

such phrase.

Para 5 It seems quite
clear from the ^{minutes} ~~minutes~~ on
4931/07 that the cause of
the CO protest in the letter of
15.2.07 ~~was~~ ^{was} not that
senders of telegrams in this
country were being misled.
It was the public in the E.A.P.
who suffered a vexatious
charge"

The letter of 15.2.07 did
not charge the Company with
a breach of agreement, but
merely pointed out what had
in fact been happening,
with a view to ensuring that
the thing was put on a
broader footing for the future.

This para. of the draft despatch
is, I think, Mr. Buxton's reading
of the events which led
to the protest of in para 2 of
the letter of 15.2.07, and no
doubt he will not

whether it should be amended.
For what it purports to be, i.e.
the C.O. explanation of ~~the~~ para
2 of the letter of 15.2.07, it would
seem that it would be correct
to send it to the Governor as it
stands, except for Mr. Fitzgerald's
penultimate amendment at the
end, which might be a difficulty.
I am sorry that I had "reception"
to the draft.

Para 6 Mr. F. does not
attack the main point, which
is that if the profits from
Northern are given up, the
revenue this foregoes will have
to be found from other sources,
presumably by increasing
the terminal rates ^{generally} ~~on the~~
~~stations~~. ~~The proposed decrease~~
~~of the proposed decrease~~
~~of the proposed decrease~~
It appears that the
terminal charge on telegrams from

Para 4. from other parts
of Kelly's. Legend is largely
the same, and perhaps Mr.

Fitzgerald's point would be met
by omitting the specific
references to inland stations
from this para.

Para 5. We have only
asked the Governor to consider
the suggestion of making the
renewal of the Coy's claims
a condition of the renewal
of the landing licence. Mr

Fitzgerald suggests that we
should refuse to renew the licence
which is constituted by the
concordance of 1906/07, but
if that concordance does, as
the Coy. contend, constitute a
licence, then it is a licence
which has no provision for
termination, and there can
be no question of renewing it
or not renewing it, until both
parties agree to regard it as

John
say this
PAB

4949/21

29560/22

having lapsed. There seems no
reason why this para. should
not remain. I do not agree that
the Coy's letter of 13.9.21 amounts
^{an application}
merely to the renewal of permission
to deal with the public, in view
of the terms of their letter of 12.6.23
in which they definitely claim
the right to deal directly, but the
words of the earlier letter ought
be used in support of a contention
by the C.O. that the licence which
is claimed under the 1906/07
concordance ^{was then} ~~was then~~ recognised
by the Coy. as having lapsed.

Mr Fitzgerald sails for
Kenya via S. Africa about the
middle of next month.

I amend paras 4, 5 & 6
as suggested above, ^{re-~~stated~~}
that and send off the despatch
) send a copy of the despatch,
enclosed, to Mr Fitzgerald, explaining

add a para saying that before
our reply (we will no doubt
at the opportunity of further
consultation with Mr Fitzgerald
(to return))

as to the amendments also as
suggested above on regards para 8,
and say that Th. F. will no
doubt have an opportunity
of explaining his views on
his arrival in the Colony.

? upon the Coy. ref^d letter

of 20 July or 35507/23 that their
(2.6.23 and)
letter of 16.7.23 have been

2950/13
35507/23

referred to the Governor for comment
& report. : regret necessity
for this which involves further
delay & prevents communication
again (when we get 5923
have got reply.)

Of course as proposed:
let us incorporate in the
D.P. disp. the amendments
agreed on in discussion
showing these in red
mk.

accp
6.9.23
alms

as to the amendments & also as
suggested above on regards para 8,
and say that Mr F. will no
doubt have an opportunity
of explaining his views on
his arrival in the Colony.

? upon the Coy. ref^d letter

of 20 July or 35507/23 that their
letter of 12.6.23 and 16.7.23 have been

29560/13
35507/23

referred to the govern for con-
sultation. : regret necessity
for this etc. involves further
delay & necessitate communication
again when we shall 5.9.23
(have Gov's reply.)

of con- as prepared :
letter incorporate in the
M. disp. the amendments
agreed on in discussion
showing these in red
mk.

all P
6.9.23
alone

Confidential.Rathass,
France,

Ireland, REC

43857

REL 4 SEP 23

31st. August 1923.

The Under Secretary of State,
Colonial Office,
LONDON, S.W.1.

Sir,

I have the honour to acknowledge the receipt of your letter No. 35807/23 of the 17th inst., regarding the claim of the Eastern & South African Telegraph Company for a licence to deal direct with the public at Mombasa Island. I regret the delay in replying which is due to the fact that the letter reached only two days ago, its re-direction to me having been delayed for some days.

On the draft Dispatch, as it stands, I have the following observations to offer:

Para. 4.

It is not quite correct that the Company did not at any time deal direct with the public generally on the Island. The history of direct relations is briefly this. At the time the Company opened its Kilindini Station (about 1888) there was apparently no local telegraph law in force and seemingly the Company added,

2.

without any question, the service of accepting and delivering telegrams to its concession which merely granted landing rights. But as the business centre of the island shifted from Kilindini to Mombasa the collection and delivery of cablegrams became gradually transferred to the Post Office, until ultimately, for some years prior to the War, direct relations were in actual practice maintained only with the firm of Messrs Smith MacKenzie. The point here I think is this: For a long time prior to the 1906-07 correspondence, which the Company now stresses so much, it had, to save itself expense, not exercised its right, assuming it had one, to deliver direct to the public. Instead it transferred substantially all the traffic to the Post-Office which, to recoup itself, was obliged to collect a charge from the addressees. Nor was the right exercised even after the 1906-07 correspondence although from that time onwards the Company was properly obliged to pass a credit to the Post Office on all messages transferred to it for delivery. The credit then fixed amounted to .64d per word (4 cents of a rupee). Now that the credit has been raised, for revenue purposes, to an average of about 2.1d per word the Company desires to revive a privilege which, in its own interests

entirely, it allowed to lapse.

Para. 5.

8
4931
107
8.0

May I suggest some modification of this paragraph. I rather consider that the real intention of paragraph 2 of G.O. letter dated the 15th February 1907 was to point out that the senders of telegrams from England were being misled in so far that the published charge in England did not, save in a few cases, include delivery, and that the practice which had grown up of levying a supplementary charge on the addressee to cover the cost of delivery by the Government was objectionable.

In regard to the Company's claim this paragraph 2 should, I think, be read in conjunction with paragraph 6 (1) of the same letter. The substance of the two paragraphs appears to be to the effect that the then prevailing practice under which the Company delivered certain messages in the Kilindini area, beyond which its system did not extend, was not to be disturbed; but in regard to Mombasa messages - i.e. all other messages for the island - a credit was to be passed to Government in respect of delivery.

I do not think it can be said that there was a breach on the part of the Company of any previous local agreement under which it was either to effect

3.

entirely, it allowed to lapse.

Para. 5.

May I suggest some modification of this paragraph. I rather consider that the real intention of paragraph 2 of G.O. letter dated the 15th February 1907 was to point out that the senders of telegrams from England were being misled in so far that the published charge in England did not, save in a few cases, include delivery, and that the practice which had grown up of levying a supplementary charge on the addressees to cover the cost of delivery by the Government was objectionable.

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I do not think it can be said that there was a breach on the part of the Company of any previous local agreement under which it was either to effect

4.

delivery itself, or pass a credit to the Post Office on any transferred messages. When the Company first started transferring messages to the Post Office for delivery the latter should have claimed a credit from the Company instead of imposing a supplementary charge on the addressees.

Para. 6.

I fear I may not have made myself clear on this point. Up country rates as such are fixed without any relation to the yield from the Mombasa terminals. In regard to a large proportion of the traffic there is the same inward terminal rate and the same outward terminal rate for the whole country including Mombasa and Uganda, and on such traffic the public charges are also the same for the whole country. For instance, the public charge for telegrams to and from the United Kingdom and Europe generally is the same for all parts of the Colony and Protectorate and Uganda. The point is that the Mombasa terminals are the most profitable part of the local service as the only expense incurred in connection with the Mombasa Cable traffic is practically only that associated with collection and delivery, while on up country messages not only must the work of collection and delivery be done for the same terminal,

5.

but transmission over hundreds of miles to or from the coast must also be provided for. The profits now accruing from the Mombasa terminals does undoubtedly help towards maintaining certain remote up-country telegraph stations which are run at a loss.

then in the whole town

In any case it is true that the net revenue which would be lost if the Company's claim is admitted would have to be made good in some other manner by an already heavily taxed general public. As it is our inland telegraph rates and terminal charges on foreign telegrams are higher than in any other part of the empire,

Para. 8.

I must confess I rather deprecate associating a renewal of the Company's landing licence with this case which I should prefer to see dealt with and decided upon its merits. If it is held that the 1906-07 correspondence constitutes in effect licence to deal direct with the public it would seem more reasonable and more defensible not to renew that licence seeing that no expense was incurred by the Company in connection with it, or vested interest created, rather than introduce into the question of renewal of the landing licence some new and

6.

rather foreign conditions.

The Company's letter of the 13th September 1921 to the Colonial Office (^{Kenya} No. 1478), with which the present negotiations may be said to have started, is in effect an application for a renewal of permission or licence to deal direct with the public. It would appear that the Company then recognised that any previous permission or licence it may have held had legitimately ceased to have effect.

The draft dispatch is returned herewith.

I have the honour to be, Sir,

Your obedient Servant,

Philips

m. J

45949

21

*Paul Seal
also in terms of
29550/23
in to some claim to rights*

For Conson

43957/23 Kenya.

DRAFT

To
JA

21 SEP
10 22

Dawning Street,

214 Schomburgk August, 1923.

CONFIDENTIAL

in Conson
the O.A.G.

To
Amul
12/80
24

Sir,

With reference to my

Confidential despatch of the 31st of May,

I have the honour to transmit to you,

for your consideration, the accompanying

copies of further correspondence with

the Eastern and South African Telegraph

Company, Limited; regarding the claim of

the Company to deal direct with the

public on Mombasa Island. For convenience

of reference, a copy of the correspondence

referred to in the Company's letter of

the 16th of July is also enclosed.

2. In view of the definite claim now put forward by the Company, in the letter of the 12th of June, it is necessary to consider carefully the attitude to be adopted by the Government in meeting that claim.

Recd 7.9.23
in Conson 7.9.23
Strasche 2079

W. G. Swindle

at 15 dt on July 21.9.23

in Head 21

From E.T.C. 12th June

To -do- 4th July

21
24
372/24
30/9

MAR 1924

From E.T.C. 16th July

(copies in bundle)

To E.T.C. 24th Sept.

21 minutes

*Copy of 16th July
copy of 9.10.23*

30/6



Station. These arrangements were confirmed in Colonial Office letter No. 4931/07 of the 15th of February, 1907.

4. I understand that the Company ^{since the date of the incorporation of the} ~~they have their claim~~ have not at any time dealt direct with the public in Mombasa Island, save only in the case of one firm, Messrs Smith Mackenzie and Company, with whom they so dealt, by special arrangement, for some years before the War. If this is the case, it may be possible to contend that as, with this exception, no attempt has been made to exercise the right which the Company claim, such right, if it can be held to have existed, must now be regarded as having lapsed. I should be glad to learn what is the opinion of your Legal Advisers on this point.

5. It will be observed that the Company base their claim partly upon paragraph 2 of Colonial Office letter of the

not making any payment for the work involved to the Government, which had thus been compelled to levy an additional terminal charge of six annas a message upon the public. The result of this protest was that the arrangements set forth in the Company's letter of the 20th of December, 1906, to Mr. Gosling, and Mr. Gosling's letter to the Company of the 28th of January, 1907, were confirmed by the Company in their letter of the 18th of February, 1907, and it would appear that from that time ~~the Company have paid the Government for the work of delivery and reception of telegrams in Mombasa Island.~~

5. I understand from discussions which have taken place with Mr. Fitzgerald that the terminal rates on traffic ~~originating from inland stations in the Colony and~~ routed over the Company's

Legal Advisers will no doubt give careful consideration to the question whether the claim now submitted could be resisted if taken to the Courts, and should they take the view that it could be resisted, the grounds on which this opinion is based should be fully stated.

B. You should also bear in mind the fact that the present licence issued to the Company is due to expire on the 31st December, 1934. I shall be glad to learn whether you consider that the renewal of this licence should be made a factor in negotiating with the Company, and what would be the effect of its non-renewal, if renewal were made conditional upon the Company renouncing any claim to deal direct with the public on Norfolk Island, and the Company refuse, as a condition, to proceed with the application for renewal.

9. Finally, I may observe that on certain points of detail, the position is not altogether clear, and I have therefore to request that when you reply to this despatch you will furnish a full report on the facts of the case, including especially information as to any instances which may be known of direct dealing by the Company with firms or individuals in Mombasa Island and the conditions on which such dealing has been permitted. The annual amount of revenue involved in the Mombasa traffic should also be stated.

~~I have etc.~~

10. Before reply is to this despatch you will no doubt await the opportunity of further consultation with Mr. Fitzgerald on his return. In the meantime the Coy. are being informed that it has been necessary to refer the matter to you ^{as in} ~~for further~~ the letter of wh. a copy is enclosed. ~~Observations~~

F. 43957/23 Kemia.

Handwritten initials

Confidential ~~✓~~

24 September 1923

Sir

DRAFT.

T. Fitzgerald, G.C.

MINUTE.

Mr. Seel 7.9.23

Mr. Parkin on 7.9.23

Mr. Brooke 2/9 (on T)

~~Mr. Davis~~ W.D. at only 21/9/23

~~Mr. G. Ormsby~~

Sir H. Read.

Sir J. Masterton Smith

Mr. Ormsby-Gore

Duke of Devonshire

for Cousin

I am etc to ack. the receipt of your letter of the 31st of August, in which you refer to ~~the draft~~ on the terms of the draft ~~to~~ denhatch to the Governor of Kemia on the subject of the claim of the Eastern and South African Delegates Committee to deal direct with the public at Narbana Island.

2. After cousin B your letter certain amendments have been made to paras. 4, 5, and 6 of the denhatch, and I am now to enclose, for

John: Apparent with enclosures 24 Sept.

(send him the copy of enclosure which he returned i.e. that on 43957/23)

30/9

Your information and retention,
a copy of the despatch as
sent to the Governor, ~~with~~ X

~~to~~ X

3. With regard to para
8 of the despatch, this para
notes that you deprecate
the association of the question
of the Company's standing
with the question of
their claim to deal direct
with the public at Amboina.
I am, however, I think, not
that the object of this para
is to draw the attention
of the Governor to this point,
~~and this para is of opinion~~
and there appears to be no
objection to the retention
of the para. in its present
form.

4. You will ~~be~~ agree

from para 10. of the despatch
that the suggestion has
been made to the Governor
that he should await
the opportunity of further
consultation with you, on
your return to the Colony,
before sending his reply.

It is hoped however
that there will be as
little delay as
possible in dealing
with the matter with
your assent in so

(Signed) H. J. READ

DRAFT.

2

MINUTE.

Mr.

Mr.

Mr.

Mr. Davis.

Sir G. Grindle.

Sir H. Read.

Sir J. Masterton Smith.

Mr. Ormsby-Gore.

Duke of Devonshire.

F.43987/23 Kenna

HC

H

24 September 1923

DRAFT.

Managing Director
Eastern and South
African Telegraph Coy. Ltd.

MINUTE.

- Mr. Peel 7.9.23
- Mr. Parkin on 7.9.23
- Mr. Beesley 10/9
- ~~Mr. G. Davis.~~
- Sir G. Girdle.
- Sir H. Read.
- Sir J. Masterton Smith.
- Mr. Ormsby-Gore.
- Duke of Devonshire.

with drawing
202

3588 Appl 20
2108
508/9372/24
copy
124
copy to S. B. B.
copy to S. B. B.

With reference to your
letter NOTA 266 of the 16th of
July, I am able to inform
you that after considⁿ of
your claim to deal direct
with the public in Nombara
Island it has been found
necessary to refer the matter
to the Governor of Kenna for
further considⁿ and report.

In this regard regret

the necessity for this
step, which will involve

3 Mc

in replying to
your letter,

Further delay in the
settlement of ~~the matter~~ ^{the matter} and
a further communication

1.1

will be sent to you as soon as
possible when the President's
reply is received.

he will arrange for a
further communication
to you as soon
as possible after
receipt of the President's
reply.

(Signed) H J READ