

E. AFRICA

G. O.
41241

41241

REC DEC

988
Officers

Colonial Office

Officers
Termination of appl.

Date.
1912

- Sec

minutes ref. liability of requiring officers
to refund cost of passage & certain amount
of salary.

last previous Paper.

4/20/12
30/3/10
Dyball

July 1910

To Gov E. A. F. 882, 20 Dec 12

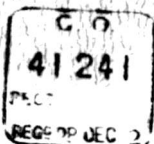
Disposal of Papers

30/3/12

MA
23/4/12

~~Mr. Fiddes.~~

Sir G. Fiddes.



See also 37310 Nyasaland

This despatch touches a point which we have already discussed with the East Africa Protectorate (See 18530/12 and 33173/12 in the bundle below with 37310^{gr} Nyasaland^{for} E.A.P. E.A.P.).

You will see that on 18530 E.A.P. the Officer Administering the Government proposed inserting in all return leave agreements a clause binding the officer to return a proportion of the cost of his passage and his return leave pay (if any), (if he should resign at any time during a Tour of Service. We replied (see paragraph 3 of draft) that with regard to officers on the permanent staff we were not prepared to insist on their being required to refund the cost of passage out, as we considered such a step would be a serious innovation and would give rise to complaints.

On 33173 the Officer Administering the Government replied and entirely accepted our view. In paragraph 3 he quoted the Attorney General's opinion that to exact monetary compensation from an officer desiring to resign would, even if justified by law, be contrary to the established practice of allowing Crown servants to resign their appointments unless for service reasons it is desirable that they should continue in office. That any departure from this practice would give just cause for complaint. That although the refusal of the Crown to accept an officer's resignation cannot be questioned in a Court

of

of law it would appear that, if a resignation is accepted subject to the payment of compensation, the Court would question the reasonableness of such a condition.

This view we have not contested, and, as indicated in my minute on 33173 I myself do not feel prepared to contest it.

We have to consider therefore how far the present proposal can be differentiated from that which the Officer Administering the Government and the Attorney General have already condemned.

As far as the passage out is concerned, this is I presume covered by the passage agreement, as the resignation was within the first three years.

As to the two and a half months salary in lieu of notice this stands on a different footing. We pointed out in 1830 that the Governor has an absolute right to refuse to accept a resignation, and would have an action for damages if an officer left the service without permission. This view the Attorney General seems to accept, (See paragraph 3 of despatch on 33173) and points out that the measure of damages would be not the expenses incurred by the Government in respect of the resigning officer but those incurred in respect of any officer appointed to perform the duties of the resigning officer.

The question therefore is - are we to allow of the Governor's exacting three months salary in lieu of these damages. It is true that the proposed exaction would have no closer connection with the measure of damages that would be applied in a Court of Law than the other exaction which the Attorney General described as illegal on 33173, but I do not see why the Governor should not, if he can, compromise his claim for damages by the acceptance of a sum equal to three months pay.

The

*Yes
H. S. A.*

*33173
261. 3. 183
177- 11-15
715-21-15*

The number of these resignations is evidently on the increase and we ought not I suppose to object to any measures taken to combat the inconvenience unless it is absolutely necessary to do so.

As however it seems very doubtful whether the Government would be able to recover anything like this sum on an action for damages, the claim cannot be looked upon as a claim of right or founded on any exact principle, and *conflicts with the established practice to which the Gov. assents.* It is merely a compromise and I think in approving the Governor's action we should

? refer to the previous correspondence (1830 and 33173) and say that we presume that the Governor has satisfied himself that there is no objection in principle to calling upon officers for payments, the claim to which would appear, according to the views expressed in that correspondence, to have no foundation in legal principle.

*11/12
So proceed?
H. S. A.
13/11*

** V. S. Harcourt
These minutes to be reviewed by the
the Governor, to be made to the
reference on 33173 when the
18/11/12*

WEST AFRICA PROTECTORATE

D:882.

Downing Street,
20th December, 1912.

Sir,

I have the honour to acknowledge the receipt of your despatch No. 750 of the 24th of October, reporting the resignation of Mr. J. E. Lawson Talbot, Assistant District Commissioner, and to inform you that I approve of your action in calling upon him to repay to the Government a sum equal to the cost of his passage from England together with two and a half months' salary.

2. In connexion however, with the latter demand I think it desirable to draw your attention to the correspondence noted in the margin, and in particular to the view of the Attorney General quoted in paragraph 3 of my letter to you No. 377 of the 27th of September. I presume that you have satisfied yourself that there is no objection in principle to calling upon officers for arrears, the claim to which would appear, according to the views expressed in that correspondence to have a foundation in law.

I have etc.,

(sd) L. HANCOCK.

GOVERNOR

H. CONWAY BELFIELD, ESQ., C.P.G.,

&c., &c., &c.

A.G. 343 15 May

O.A.G. 462
10th JulyA.G. No. 577
27th SeptemberO.A.G. No. 713
1st October