

PC. 969

Department of Railways and Canals,

Ottawa, Canada.

M.L.

April 1901.

20176

TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL:

99

MEMORANDUM:

The undersigned has the honour to represent that by an Order in Council under date the 2nd of August, 1899, authority was given for the appointment of Mr. F. W. Holt, C.E., as Commissioner to investigate, under oath, and report on a claim presented by Mr. Gershon S. Mayes arising out of a contract entered into with him on the 20th of April, 1886, for the construction, by the 30th of October, 1886, of a pile trestle bridge across an arm of Pictou Harbour on the Pictou Branch of the Intercolonial Railway, for the bulk sum of \$32,900; the piles to be North Carolina yellow pine, creosoted; the creosoting to be done to the satisfaction of the Engineer or Inspector, who had power to reject any creosote or creosoted timber, whether before or after treatment. The claim in question was based on alleged delay, on the part of the Railway Officials, in sending an inspector to examine the timber, and the increased cost to the Contractor thereby entailed.

That the said Commissioner has now, under date the 15th ultimo, furnished his report, with the evidence taken.

That the facts considered by the Commissioner to be established are as follows:-

1.

1. Mr. Mayes, immediately on obtaining the contract, entered into agreement with a ~~contracting~~ works near Charleston, South Carolina, for the supply of the piles and their treatment.

2. That inspection at the works was required by the Railway authorities, but that considerable delay occurred in their appointment of an inspector, the final inspection not taking place until the beginning of August.

3. That, as a consequence of this delay, Mr. Mayes' arrangements for vessels to carry the piles had to be abandoned, and difficulty was experienced in chartering other vessels, and the cost of transport was increased. The first load of piles did not arrive until the 27th of September; pile driving began on the 8th of October, and the balance of piles arrived on the 7th of November, the work was thus thrown into the season of bad weather, with gales and ice, and was greatly retarded, and its cost increased.

4. The Commissioner states that it seems to him that the claimant had fully appreciated the necessity of getting to work in August, and that, had he been free to act, by the prompt appointment of the promised inspector, he would have had all the material on the ground by the middle of August, and the work completed in the contract time.

Dealing with the several items of the claim itself, which aggregated \$10,983.55, with interest at 5% for 13 years and 6 months, the Commissioner reports that he finds the excess cost of the work to the claimant resulting from the delay is as follows:-

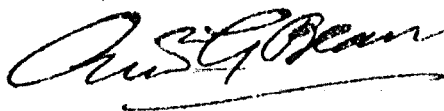
"Labour, rigging, hoops and tools....	\$2,769.44.
Contractors time and expenses.....	1,500.00
Pile drivers working 75 days @ \$7.50..	591.00.
do idle 29 do 1.50..	45.50.
do " 75 do 1.50..	117.50.
Hand pile driver winches, clamps, &c...	252.00,
Extra freight.....	3,198.00.
Extra cost of 32 long piles.....	483.55.
	<b>\$8,886.55.</b>

To this should be added interest to get the actual cost to the claimant.

The undersigned would observe that according to the strict provisions of the contract, Mr. Mayes has no claim to compensation "by reason of any delay to the progress of the work arising from the acts of any of Her Majesty's Agents", and is, therefore, not, legally, entitled to consideration of any damages he may have suffered, and on this technical ground a Petition of Right brought by him was disallowed by the Exchequer Court, and such disallowance was maintained by the Supreme Court, on appeal, in 1884.

The undersigned, however, is strongly of opinion that the case is one deserving of special consideration at the hands of Parliament as a matter of equitable adjustment, and he would, accordingly, recommend that an item be submitted in the Supplementary Estimates for 1901-02 to pay Mr. Mayes the sum of \$8,959.39, ~~with simple interest at 4~~ for ~~12 years and 6 months~~.

Respectfully submitted,



Minister of Railways and Canals.