

Board ignores evidence in favour of alleged American precedent.

The appellants feel that the manner in which Mr. Commissioner McLean has dealt with this question is most unsatisfactory. He has been at great pains to combat arguments as to obsolescence never put forward by the appellants, has referred to much material not in evidence, and has apparently finally taken refuge in the terms of an agreement between the Postmaster-General of the United States and the American Telephone and Telegraph Company.

This is the third occasion in this judgment where the learned Commissioner has apparently considered himself bound by an American precedent. Respect for these precedents being admitted, the appellants would nevertheless urge that such a course renders useless considerable time and preparation spent for the enlightenment of the Board, while the utility of the precedents is somewhat doubtful in view of the differing conditions under which the same were established.

In fact the appellants feel that the judgment of the Board as delivered by Mr. Commissioner McLean is properly subject to considerable criticism. No attempt will be made to deal with the judgment in detail—a few examples will suffice.

Commissioner McLean's mistakes in calculations vitiate his conclusions.

(a) His analysis of the operations of October, November and December, 1918, and his conclusions thereon are quite erroneous and misleading.

The monthly figures furnished by the Company for depreciation and taxes for the year 1918 were as follows:—

	1919	
	Depreciation	Taxes
January.....	\$207,500.00	\$35,809.47
February.....	207,500.00	36,041.04
March.....	207,500.00	36,370.42
April.....	207,500.00	35,888.40
May.....	207,500.00	35,833.48
June.....	207,500.00	38,399.98
July.....	207,500.00	40,213.50
August.....	207,500.00	47,758.18
September.....	207,500.00	49,208.84
October.....	325,220.00	58,200.25
November.....	227,180.00	59,473.38
December.....	228,860.00	61,059.99
	<u>\$2,648,760.00</u>	<u>\$534,256.93</u>

No adequate explanation was tendered by the company of the "loading" of the last three months of the year especially the \$117,720.00 added to depreciation in October, but it was discovered and pointed out to the Board by Col. Gordon, auditor for the appellants, and a corrected statement filed which has been ignored in the judgment.

(b) Although the Board on the objection of the appellants refused to permit the Company to file statements for January and February 1919 unless the appellants should have an opportunity of scrutinizing the same with their auditors, nevertheless the Board apparently have permitted the company to file such statements after the hearing and have used the same as a basis for judgment, a procedure which the appellants cannot help regarding as improper in a judicial tribunal.

Board has based judgment upon evidence rejected at hearing.