

Great Slave Lake Railway

Mr. SKOBERG: I move that the committee call as witnesses those contractors available that were engaged in the construction of Great Slave Lake Railway and were subject to the invoking of clause 16 of their contracts by Canadian National Railways.

Considerable discussion ensued related to the wording of the motion, the need to appear, etc. In this regard Mr. Allmand noted:

We should not entertain these grievances under this particular motion because these contractors, whoever they may be, whether individuals or corporations, might have made a claim through the courts, which is the usual way when one is not satisfied under a contract. The usual procedure is to make a claim in court. I do not know at this particular time whether any claims have been made in court; whether there are judgments on these particular claims or whether there have been settlements made out of court. Maybe they did not make claims before the court; maybe for some reasons they were prevented.

Mr. Horner spoke to Mr. Allmand's recommendation to turn down the recommendation, as follows:

Secondly, I would like to suggest that the whole difficulty arises out of something that was not the contractors' fault. It was not the railway's fault either. It was practically an act of God: the weather conditions were the biggest trouble. Surely, contractors or the Canadian National Railways should not be held responsible. We should hear the problems that the weather conditions brought about, without forcing these people who, as I understand their case, are nearly bankrupt anyway. I sincerely want each member of this committee to look at this problem. If they tendered low and lost their shirt, then you and I can justifiably say, well, the next time they will tender wisely. But in this case it was not a case of tendering low; it was an act of God—building a railroad in severe conditions through what we might call a hinterland, an area which is not settled, an area which nobody really knew the conditions, and then, on top of all that, adverse weather conditions during the construction of the railway.

He went on to state:

Mr. Chairman, it is only fair and just that we at least hear their case. If we decide that it was not because of weather, but through faulty construction or faulty management of their contracts, then I do not think we should be held responsible for bailing them out, nor should the government, no matter which government. If we find that it was because of adverse management direction under clause 16 of the contract, or because of adverse weather conditions, perhaps we could give them a sympathetic hearing at least, and maybe a sympathetic answer. With regard to Mr. Allmand's third point, Mr. Chairman, that this whole question may go before the courts, I urge this committee to give serious consideration to that problem. If these contractors are in as severe a position as they say, they are facing bankruptcy. They cannot afford to go to court.

Some hon. members of the committee went on to speak about this, and Mr. Nesbitt said:

—it is quite evident that the House leader, Mr. MacDonald, has been apprised of the matter and has made certain commitments in the House. There seems little doubt that this matter would be heard and witnesses called to hear both sides of the story. It is my understanding that the minister might have some reservations in setting an unfortunate precedent where every person who had a 25-cent claim against the railway or the government might want a hearing, or that it would open the flood-gate in the future, but I do not think that could happen and I think this committee could, perhaps, make that quite clear. This would not set a precedent as there are very unusual circumstances in this case. There are many millions of dollars involved. It has been apparent that the cause of the thing was not necessarily the fault of the railway at all, but was caused by unforeseen acts of God, as I believe the term is, although I do not know why the Almighty should be blamed for some of these unfortunate things. However, that is in fact what they are, and there certainly have been commitments made that the committee would hear the whole matter.

To sum up briefly—

[Mr. Guay (St. Boniface).]

An hon. Member: That would be nice.

Mr. Guay (St. Boniface): I could continue, because I think some hon. members would want to hear all these facts. I thought they were of interest. I should like to reiterate the authority given to the commission by the House of Commons on December 11, 1969, as follows:

That the Minister of Transport establish a one-man enquiry to consider the merits of the claims submitted to this committee by the Great Slave Lake Railway contractors. The person nominated to conduct the enquiry should be acceptable to both the contractors and the Canadian National Railways and should report to the minister in confidence so as not to prejudice any future court hearing.

I should like to conclude by quoting from a letter from the CNR, signed by Clare J. Irwin, to the Hon. G. E. Tritschler, Chief Justice, Court of Queen's Bench for Manitoba, Law Courts Building, Broadway Avenue and Kennedy Street, Winnipeg 1, Manitoba, dated October 22, 1971. It reads in part:

The evidence of both Ben Ginter Construction Co. Ltd. and CN supports CN's contention that the powers of the CN engineer under clauses 16 and 18 of the section 6 and 7 grading contracts were exercised reasonably and with discretion under difficult circumstances.

By Benjamin Ginter's own testimony, the weather was not a problem with respect to this grading work and there is no evidence that the condition of the terrain gave rise to unusual difficulties in this regard.

In any event, the evidence is that a formal claim was made to CN on behalf of Ben Ginter Construction Co. Ltd. following completion of these contracts. This claim was settled after protracted negotiations between counsel for the contractor and for CN in the amount of \$342,000, a sum greatly in excess of the \$207,000 recommended by Dr. R. M. Hardy following his consideration of the claim. That amount must be considered as having fully compensated this contractor for claims of any nature which it brought against CN following completion of the work.

The evidence adduced at the hearing was that the CN engineer in exercising his powers under clause 16 of this contract acted reasonably. Despite this fact, when a formal claim was made by this contractor and Dr. R. M. Hardy was asked to advise with respect to that claim, a settlement was effected to the mutual satisfaction of both parties by CN paying to the contractor the sum of \$64,000. This amount was equal to the full amount paid to hourly-rated contractors for work done under clause 16 on clearing sections 6 to 9 and initially charged to Krywa Bros. Const. Ltd.

It is important to note Dr. Hardy's evidence that, in addition, this contract was earlier paid approximately \$40,000 for work done by the hourly-rated contractor at no cost to Krywa Bros. Const. Ltd. Even if it could be concluded that CN's engineer exercised his powers under clause 16 unreasonably, it is submitted that this total additional payment of approximately \$100,000 adequately compensated Krywa Bros. Const. Ltd. for any costs resulting from such action.

The weather gave rise to no unusual difficulties in the clearing work done by this contractor and the condition of the terrain cannot be the proper basis for a claim by a contractor engaged solely in clearing land.

The letter goes on to explain, in respect of all other contractors, that they were all dealt with in the same manner. I could continue reading this letter; it might be of interest to some hon. members of the House. Possibly I could quote one more paragraph which indicates that Lucas Construction Ltd. had been treated in the same way. The letter reads: