

APPENDIX No. 3

In order to see the conditions which surround the work of the engineers, it is desirable to refer to certain sections of the contract and of the statute. In the general form of contract by the Railway Board, which was adopted and used uniformly in all the contracts for the work, with the exception of a slight change (indicated in the evidence) in the insertion of clause 36a of the specification, the word 'engineer' is defined in section 2 of the contract as including the 'Chief Engineer' and the engineers below him, and among other provisions contains the following sentence:—

All instructions and directions or certificates given, or decisions made, by any one acting under the authority of the Chief Engineer shall be subject to his approval and may be cancelled, altered, modified and changed as he may see fit.

And also this sentence:—

In all cases where the contractor or the commissioners are dissatisfied with the decision of the engineer or inspector in immediate charge of the work, an appeal to the Chief Engineer may be made.

This definition is the guide to a system which is apparent through all the clauses of the contract, under which the engineering staff was made parts of one whole, as was explained in the evidence, the primary rank are the resident engineers, who remain on the work during the time it is in progress and have under their charge a division of about ten miles each. Over them are division engineers, or engineers of divisions, who are responsible for the work and are in touch with and advise with the resident engineers and have under them about forty or fifty miles of railway, called divisions.

The whole line of railway is divided into six districts, lettered from A to F; and of these, two are particularly referred to in the evidence. That portion of District 'B' lying north-west of the city of Quebec and extending for about 180 miles, and District 'F' beginning at the city of Winnipeg and extending easterly to a point a few miles east of Superior Junction. Each of these districts had a district engineer and assistant district engineer to supervise the work of the division engineers.

In the preparation of estimates, which involve the measurement of the work and its classification, the foundation of the return was the work of the resident engineer upon the ground, subject to revision by the division engineer, further revision by the district engineer, and finally subject to approval by the Chief Engineer of the railway before payment was made thereon. In no case to which the evidence has been directed has a final estimate been given to a contractor for the work, and the revision of the progress estimates is subject to the provisions of section 34 of the contract providing for cash payments equal to about ninety per cent being made to the contractor monthly, the remaining ten per cent to be retained until the final completion of the whole work to the satisfaction of the Chief Engineer for the time being, having control over the work; also to section 39, which provides that:—

The progress measurements and progress certificates shall not in any respect be taken as binding upon the Commissioners, or as final measurements, or as final amounts; they are to be subject to the revision of the engineer in making up his final certificate, and they shall not in any respect be taken as an acceptance of the work or release of the contractor from responsibility in respect thereof.

Section 15 of the contract should also be noted. It provides that:—

The engineer shall be the sole judge of work and material in respect of both quantity and quality, and his decision on all questions in dispute with regard to work or material shall be final.

It is apparent that mere inexperience on the part of the resident engineers would not result in the improper payments of moneys to contractors, under the clauses of this contract, unless their work was adopted and approved by the engineers above them, including the Chief Engineer, responsible for the proper enforcement of the provisions of the contract.