

Railway Construction—Contract No. 15.

Difference regarding loose rock.

Engineers contended that stones under fourteen cubic feet were to be reckoned as earth.

Contractor always claimed that loose rock was under-estimated.

Further contentions.

It was agreed with Marcus Smith that such excavations should be allowed as loose rock.

500. Was that from the beginning or did it commence later?—The differences between us were as to quantities in classification of material and not in measurement.

501. What was the difference in your opinions?—The most serious difference was that in regard to loose rock.

502. What was your contention?—Our contention was that the specification meant that we were to be paid for loose rock as loose rock, and the contention of the engineers was that we were to be paid for all stones under a certain size as earth.

503. What was the size they claimed?—They claimed that the specification meant that we were not to be paid for any stone under fourteen cubic feet in size.

504. All under that would be called earth?—Yes.

505. And your claim was what?—That when those boulders occurred in masses by themselves without any mixture of earth, they were covered by the specification, which says that we should be paid for all loose rock whether *in situ* or otherwise, that can be moved with facility by hand, pick or bar without fixing any size for stones. They contended that where those cuttings occurred they should measure every stone under fourteen feet, and pay us for it as earth.

506. Did the difference in classification result in a large reduction of your claim for work?—We always claimed that they under estimated us in loose rock, and about a year ago, I think, the engineers deducted a large quantity of loose rock from the amounts which they had previously returned, making the differences still greater.

507. Did you also differ about the rock which was outside of the cuttings, as described by the specifications?—Yes.

508. As to that rock which came off in the excavation, was there any difference between you and the engineer in charge?—Yes; the specification provides that the contractor shall be paid for the removal of all slides which occur in rock cuttings according to the class of material to which it may appear to the engineer to belong. On section 15 the rock was very much broken and the seams are often perpendicular or over hanging into the cutting, so that when a portion of rock in the prism is removed that behind it overhangs and slides into the cutting. We claim that we should be paid for the excavation of that rock.

509. As loose rock or solid?—It was agreed that we should claim only loose rock for it. At first we claimed solid rock for it; afterwards when Mr. Smith was on the line he said that we should receive only at the rate of loose rock for it, and we agreed to it.

510. Before that, had there been any understanding between you and the engineer in charge as to what you should be paid for this material?—No; up to that time it was always a matter of contention.

511. Then the agreement between you and Marcus Smith was that this material should always be estimated as loose rock?—Yes; we had before that claimed that we were entitled to be paid for solid rock if it was a cutting in solid rock.

512. Before that time how did the engineer in charge claim that that ought to be estimated to you?—They did not estimate it at all for us.