

DESPATCH

EAST AFR. PROT.
No. 41718

C O
41718
14 NOV 08

Memorandum No.
502
1908
9 Oct.
and previous Paper.
you
38221

(Subject.)

Nairobi Electric Light Concession.

To two memoranda by Council of P. W. H. copy part of £1500 which was deposited as a guarantee. Not clear to whom this repay should be made.

(Minutes.)

Mr. Risley
Mr. Read

There are two questions here
right (1) ~~Should~~ Should the
£1500 deposited by the M.C.
Herzfeld in accordance with cl 9
of the Agreement in 36302/06
be repaid by the Govt with
interest

The conditions on which it would
become payable were
(a) Order 8. that the installation
shd be completed by 31st Dec
(b) Clause 9. that the Engineers
of the Com. certify that

Ans'd 6.9. & Dec 4 1908
copy 445 for 4. of Jan 1909

43571

The installation has worked satisfactorily
for 6 months from 8 April '08

It is not stated in these memoranda
that the installation was completed
by 8 April, but I presume that
it was, & at any rate the
Comr. of Works thinks that the
Govt ^{will} give the certificate re-
quired by H. G. on 4 Oct. last
& 6 months from 8 April, but has
troubled because the works were
not completed for the sum of £16,000
But they were completed & the cost
is that the repayment of the
£1500 is made ~~in addition to~~
the cost of the works being £16000
~~is that the question is whether~~

The second question is to whom should
the £1500 be paid. Here again I think
H. G. is reasonable. The cost
of lighting in 1902/06 was that
the cost of lighting by the
& lighting Co. is about £10,000
& saving out the concession,
and he doubt they did so.
In that case there can have
been no question that it is to the Co.

that the £1500 had been paid, if it had not, and the
question whether Mr. Hertzog has or has not
been lawfully deprived of his position as
General Manager is not material.

Reading of this to C. to say we
gather from this desk that the C. has
applied for ^{to} them for the repayment
ask whether they have actually required
the repayment from Mr. Hertzog, & say if
so the C. officers take legally entitled
to the £1500 if the Gov. can give the receipt
re-requirement of it, & which he is
apparently willing to do, and ask for any
docs.

M. 14/11

Mr. Head
Mr. Cox

I agree generally, why does not the Post Govt. consult
its legal advisers on a matter of this kind?
Y.S.R. 15/11

We might give the legal part
a hint to the effect, when
we reply to the desks.

H. Y.R.
15/11

Mr. Antelmas
Staffordshire being that the C. are the
persons to whom the £1500 should be paid
But we ought to see the docs which the C.

regarding Hutzgel rights of an individual
to state that we follow to be the
to be given to Hutzgel & his
consent obtained.

ask C A to inquire as to the
first instance JTB

19/11

Alk Nov 21
at all

41713

Governor's Office.

Nairobi,

14 Nov 08

EAST AFRICA PROTECTORATE.

October 9th 1908.

No. 502
(Incl. 2)

My Lord,

With reference to previous correspondence on the subject of the Nairobi Electric Light Concession,

Mr. Watts
Oct. 5th

I have the honour to transmit herewith two Memoranda by the Commissioner of Public Works relative to the payment of a sum of £1,500 which was deposited as a guarantee.

Mr. Watts
Sept 14th

2. It does not seem clear from the correspondence in my possession to whom this repayment should be made.

I have the honour to be,
With the highest respect,

My Lord,

Your Lordship's most obedient,
humble servant,

H.M. PRINCIPAL SECRETARY OF STATE

J. Jackson
(In the absence of H.M. the Governor)

FOR THE COLONIES,

DOWNING STREET,

LONDON, S.W.

INCLOSURE No. 1

In Despatch No. 523 of Oct 28 1906

41718
14 NOV 06

MEMORANDA.

Please see the letter from Mr. Udall, Chief Engineer and Manager, of the 1st October. He does not know why the Contractor - Mr. Hirtzel - left the Company.

Mr. Hirtzel's verbal explanation to me is that he was a Managing Director up to the time that the £16,000 was spent. After that when more money was required he was deprived of this position, reduced to a servant of the Company, and finally resigned this latter appointment on 20th May 1906. Beyond this he had to part with some shares, or mortgage them, in order to provide a large portion of the money required to complete the work beyond the £16,000. The above penalties were due to faulty drafting of his Agreement with the Company by his Lawyers. The Capital of the Company was subscribed privately and never offered to the public. The £1,500 belong to the elder Mr. Bayldon.

Our File is very incomplete and supplies none of the above information unless the Deed of Trust commencing with "to all to whom &c. (see enclosure to Colonial Office despatch No. 634 of October 8th 1906) is supposed to throw light on the £1,500. We are thus placed in a difficult position because the Engineers - Messrs. Barr-stall and Monkhouse - did not contract the works for £16,000 according to their guarantee (see enclosure to the above despatch) and Clauses 8 & 9 of the concession

(2)

concession were based on the Installation costing this sum. I, however, see no harm in informing the Crown Agents - in answer to their telegram of September 12th 1908 - that His Excellency has no objection to issue by Engineers of Certificate dated October 7th 1908 under Clause 9 of the Concession. The Company has worked hard and well under great difficulties in a very new country and the Installation is now working well. The Company has, therefore, done quite as much as one could expect up to date, and applications for Light and Power from the public are coming in - slowly it is true - but they are coming.

Sd/- G. K. WATTS.

Commissioner of Public Works.

5 : 10 : 08.

In Despatch No. 272 of 22/9/1908.

MEMORANDUM.

The last part of the clause 9 of the Agreement dated 25/7/06 reads as follows:-

"The said sum of £1,500 and all interest accruing thereon shall be paid to the Contractor within seven days from the date of the Certificate of the said Engineers, or of the Commissioner (now His Excellency the Governor) certifying that the installation has worked in a satisfactory manner for the period of six months from the date of completion in accordance with the last preceding Clause hereof and in default of such Certificate the said sum of £1,500 shall be absolutely forfeited to Government."

Clause 8 fixes the latest date of completion of the work at 7th April 1908, therefore the latest date of giving the Certificate is 7th October.

The final documents dealing with this case are:-

1. The Concession dated 24/7/06.
2. The Engineer's Guarantee to carry out the work for £16,000.
3. The Deed of Trust.

All these documents were sent to His Excellency with the Secretary of States Despatch No. 254 of 2/10/07.

Now according to Clause 9 of the Concession the Contractor - that is Mr. Hirtzel - had to deposit £16,000 with the Crown Agents for use on the Electric Light and Power Works and £1,500 as the guarantee. Mr. Hirtzel not having the money available formed a Company with Directors, of whom Mr. Hirtzel was to be Managing Director to join the Board after allotment. This Company was duly approved of by the Crown Agents, and a deed of Trust between these two parties

2.

parties was signed which allowed the Baylons father and son to subscribe the £16,000, guaranteeing that it be used on the works.

Now had the Electric Light Company carried out the works for £16,000 or less His Excellency could decide whether he would allow the Engineers' Certificate to be accepted or whether he would grant one himself under Clause 9. Unfortunately it is common knowledge that the works were not done for this sum, that Mr. Hirtzel was in consequence deprived of his Managing Directorship, and that the Electrical Engineers - Messrs. Burstall and Monkhouse - and himself suffered in pocket.

Now there is nothing in the file to show how Mr. Hirtzel lost his Managing Directorship, and we do not know if the Colonial Office has any knowledge of this fact or not. Assuming that the Colonial Office is in the dark as much as ourselves then according to the preamble of the Concession Mr. Hirtzel is the Contractor, and by Clause 2 he has to be paid the £1,500 after the six months' Certificate has been given, unless there is anything repugnant to this in the Deed of Trust. But Mr. Hirtzel for all we know, by the failure of the Company to carry out the works for £16,000, may have forfeited his right to the £1,500. Therefore if the Colonial Office, on receipt of the certificate, directs the Crown Agents to pay Mr. Hirtzel's Bankers or Solicitors, the wrong man may be paid.

This case is made more difficult to deal with in that I have failed to find a copy of the Prospectus as issued to the public, and also the Memorandum of Association.

Reading

MEMORANDUM

... the works for £16,000 or less His Excellency could decide whether he would allow the Engineers' Certificate to be accepted or whether he would grant one himself under Clause 9. Unfortunately it is common knowledge that the works were not done for this sum, that Mr. Hirtzel was in consequence deprived of his Managing Directorship, and that the Electrical Engineers - Messrs. Burstall and Monkhouse - and himself suffered in pocket.

3.

Reading Mr. Hirtzel's letter of 11/3/05, with paragraph 5 of the Crown Agents' letter of 9/11/05 (enclosed with Colonial Office Despatch 551 of 27/11/05) it appears that Capital of the Company is as follows:-

- 2. 6,000 Fully paid Promotion Shares free of Cash to Mr. Hirtzel.
- 3. 1,500 In Cash to Mr. Hirtzel for out of pocket expenses.
- 4. ~~15,000~~ To be spent on the works.

Total £. 25,500

Whether this is true or not it is impossible to say.

It is also equally impossible to know if he, Mr. Hirtzel, floated his Company of:-

- 10,000 Preference Shares of £1 each.
- ~~20,000~~ Ordinary Shares of £1 each.
- 4. ~~20,000~~

or whether he disposed any of his rights to shareholders. Had we the Prospectus before us all these matters would be cleared up.

In conclusion I cannot advise His Excellency to wire to the Colonial Office at this stage saying that the Engineers' Certificate may be accepted at once. Before any wire can be despatched to my mind Mr. Hirtzel and the Manager of the Company out here should be asked who the £1,500 belongs to. On this being ascertained then I suggest the Colonial Office be wired to:

- *Electric Light supplied by Company was not working satisfactorily in March. Suggest
- *postponement of receipt of six months'
- *Certificate till 7th October.*

In

In the earlier stage the lighting was not satisfactory, but it is getting better every day, and as the Manager now in charge is an Electrical Engineer of proved ability we may be sure that he will do all he can to ensure the Electric Lighting being a success. Mr. Follen the late Manager was a Civil not an Electrical Engineer, but notwithstanding his want of knowledge in the latter capacity he did very well, and managed to get the light laid on months ago. The lighting was not as it should be at first, but considering the efforts made to perfect it, I do not advocate the Company or Contractor (whatever he may be now since the estimate for £10,000 was exceeded) being fined £1,500. I merely ask that the receipt of the Certificate by the Colonial Office may be delayed till 7/10/06.

Sd/- G.K. Watts
 Commissioner of Public Works.

Nairobi
 14th September 1905.

The Manager of the Company is requested to advise the
 Secretary of the Department of Public Works of the
 amount of the estimate of the cost of the works
 which he proposes to carry out during the year
 ending 31st March 1906.

Total	100,000	
Lighting	10,000	10
Water	20,000	20
Roads	30,000	30
Buildings	40,000	40
Telegraph	50,000	50
Miscellaneous	10,000	10

The above estimate is based on the assumption that the
 works will be carried out during the year ending 31st
 March 1906.

The total amount of the estimate is £100,000.
 The amount of the estimate for lighting is £10,000.
 The amount of the estimate for water is £20,000.
 The amount of the estimate for roads is £30,000.
 The amount of the estimate for buildings is £40,000.
 The amount of the estimate for telegraph is £50,000.
 The amount of the estimate for miscellaneous is £10,000.

It is requested that you will advise the Secretary of
 the Department of Public Works of the amount of the
 estimate of the cost of the works which he proposes to
 carry out during the year ending 31st March 1906.

The above estimate is based on the assumption that the
 works will be carried out during the year ending 31st
 March 1906.

The total amount of the estimate is £100,000.
 The amount of the estimate for lighting is £10,000.
 The amount of the estimate for water is £20,000.
 The amount of the estimate for roads is £30,000.
 The amount of the estimate for buildings is £40,000.
 The amount of the estimate for telegraph is £50,000.
 The amount of the estimate for miscellaneous is £10,000.

It is requested that you will advise the Secretary of
 the Department of Public Works of the amount of the
 estimate of the cost of the works which he proposes to
 carry out during the year ending 31st March 1906.

The above estimate is based on the assumption that the
 works will be carried out during the year ending 31st
 March 1906.

24

For
4/17/18
207

276

MJ

DRAFT

25 November '08

C. Upto

Gentlemen

MINUTE.

- Mr. ~~W.C. 23/11/08~~
- Mr. ~~...~~
- Mr. ~~...~~
- Mr. ~~...~~
- Mr. ~~...~~
- Sir C. Lucas.
- Sir F. Hopwood.
- Col. Seely.
- The Earl of Crowe.

I am directed
by the Comd. Genl. to
transmit to you for
your info. the accompa-
nying copy of a despatch
from the Acting Gov. of
the E.A.P. in which he requests
to whom the sum of
£1500, which was deposited
with you in accordance
with ch. 9 of the Appen-
dix of the 26th July
1906 for the supply
of electricity to Karachi,
shall be paid.
Before deciding this
question H.E. considers

Copy for (4. 4) on 4/17/18
26610

it necessary that he should
have an opportunity of
inspecting the deed
by which it is assumed
that the Harrods Electric
Lighting & Power Co.
acquired Mr. Herzl's
rights under the agreement
just cited, and I am
to request that you
will communicate with
the Co. inviting them
to produce the deed for
inspection.