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Eugene B. Allen

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EUGENE B. ALLEN.

FEBRUARY 24, 1882.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. SPAULDING, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 2338.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 2338) for the relief of Eugene B. Allen, respectfully report:

On the 24th day of June, 1878, the said Allen entered into a contract with the Commissioner of Indian Affairs to furnish and deliver 6,000,000 pounds of beef cattle on the hoof, at Red Cloud Agency, at 2.33 cents per pound, and 6,500,000 pounds at Spotted Tail Agency, Dakota Territory, at 2.39 cents per pound; delivery to be made at such times as the Commissioner should designate, and subject to inspection by Army officers or otherwise as said Commissioner should deem necessary.

By the second article of the contract, the Commissioner reserved the right to require a greater or less quantity, not exceeding twenty-five per cent. in either case. On the 29th day of August, 1878, the Commissioner elected, and so advised Allen in writing, to increase the amount the full twenty-five per cent., thus making the number of pounds to be delivered at Red Cloud 7,500,000, and at Spotted Tail 8,125,000 pounds.

Article 7½ of the contract provides that the Commissioner will receive, at such time as may thereafter be determined, a sufficient number of cattle for a four months' supply at said agencies for freezing or herding, and if for herding there shall be a deduction in price of ten cents per 100 pounds. On the 26th day of November, 1878, the Commissioner in writing directed Allen to deliver on or about December 15 following, for herding, cattle enough at Red Cloud to make not exceeding 2,300,000 pounds of beef, and at Spotted Tail to make not exceeding 2,500,000 pounds of beef, for a four months' supply. Prior to the 13th day of December Allen delivered the required number of cattle at Red Cloud, for which he has been paid, and on that day his agents arrived at Spotted Tail with 3,100 head of cattle, enough to make the required 2,500,000 pounds of beef, and tendered them to the Indian agent, who refused to receive them, alleging as a reason for his refusal that there was no Army officer there to inspect them. Tender was repeated and acceptance refused each day till the 16th, when Allen himself arrived at the agency and made tender on the two days following, and was met with refusal for like reason as his agents. On the latter day, in consequence of a furious snow-storm and the intense cold, the mercury ranging from 20° to 42° below zero, the cattle broke from their keepers and scattered over the country for shelter, food, and water. Had the agent received the cattle on their arrival at the agency they could have been weighed

and delivered within three days. A delivery of the cattle was commenced on the 21st of December, and by January 3 following 2,392 head had been regathered and delivered; 109 head were subsequently found by Allen and turned over; the remainder, 599 head, were never recovered. When the cattle arrived at the agency they were in good condition, fully up to the contract, and of the average weight of the cattle just delivered at Red Cloud—812 pounds. The shrinkage on the cattle in consequence of the intense cold and their inability to obtain food and water was found to be an average of 86 pounds per head. Allen kept the contract on his part, and the cattle belonged to the United States, not to him, after his tender as aforesaid.

The Commissioner recommends payment to Allen as follows on this branch of his claim :

Shrinkage on 2,392 head of cattle, 86 pounds per head, making a total shrinkage of 205,712 pounds, at 2.29 cents	\$4,710 80
599 head of cattle lost, at an average weight of 812 pounds, making a total of 486,388 pounds, at 2.29 cents.....	11,138 28
Total	15,849 08

It is claimed by Mr. Allen and it is believed correctly, that having furnished the four months' supply as called for by the Commissioner he was relieved from further call under his contract till April 15. Before early in March the Commissioner called upon him to make at once further delivery at each agency. Allen replied that he was under no contract obligation to do so until the expiration of the four months and that if he furnished the cattle he should not be held by the contract price. In reply to this the Commissioner directed the Indian agent to receive the cattle. Before delivery Allen filed with the agent a protest and notice that he should demand payment for all cattle furnished within the said four months at the rate of \$4 per 100 pounds.

The number so delivered was as follows :

At Red Cloud	682 head, weighing	Pounds 540,315
Spotted Tail.	738 head, weighing.....	573,718
Total....	1,420 head, weighing.....	1,114,033

For this number he received payment, under protest, at the contract price. Cattle at this season of the year are not easily found, and owners do not care to sell. It resulted that Allen procured the cattle with difficulty at various points in the States of Nebraska and Colorado, and the adjoining Territories, and paid for them, off the range, more than the contract price.

Your committee are of the opinion that the contract did not hold him to a further delivery till April 15, and that for his March delivery he is entitled to the market value of the cattle at the respective agencies. This is found from the evidence to be \$3.25 per hundred pounds, an excess of 92 cents per hundred over the Red Cloud contract, and of 86 cents over the Spotted Tail contract. In this view Allen is entitled to recover on this branch of his claim as follows :

For 540,315 pounds delivered at Red Cloud, at 92 cents per hundred in excess of amount already paid him.....	\$4,970 90
For 573,718 pounds delivered at Spotted Tail, at 86 cents per hundred in excess of amount already paid him.....	4,933 96
	9,904 86
Add amount found due him on December delivery.....	15,849 08
Total.....	25,753 94

He makes a further claim of \$3,197.62 for 40 horses frozen to death in hunting the scattered cattle in December and January, and for hire of men and supplies for men and horses in hunting cattle from December to June. This claim your committee decline to recognize. It is not proved that this expense was authorized by any officer of the government, or that at the time it was made Allen expected reimbursement.

It is recommended that the words "thirty-seven thousand three hundred and six dollars and eighty cents," be stricken out of the bill, and the words "twenty-five thousand seven hundred and fifty-three dollars and ninety-four cents" be inserted therefor, and that as so amended it do pass.

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