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Report : Mr. Pasco

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IN THE SENATE OF THE UNITED STATES.

MARCH 8, 1888.—Ordered to be printed.

Mr. PASCO, from the Committee on Claims, submitted the following

REPORT:

[To accompany bill S. 720.]

The Committee on Claims, to whom was referred the bill (S. 720) for the relief of H. W. Shipley, have considered the same and report thereon as follows:

The claim of Henry W. Shipley, upon which this bill is founded, originated in a written contract between him and the United States, represented by one Charles D. Warner, an Indian agent, "to erect, and furnish the necessary machinery therewith, two buildings known as a saw and flour mill * * * at the Nez Percé Agency, Idaho," July 26, 1880.

There were delays in completing the work caused in part, as he claims, by the unfriendly conduct and obstructive course of the Indian agent towards him. There were also alterations in the construction of the mills while the work was in progress rendering additional labor and material necessary, which was furnished in excess of the requirements of the contract, and a failure, as Mr. Shipley alleges, upon the part of the agent to do his part of the work in accordance with the contract, particularly in the proper supervision of the Indian labor which the Government was bound to furnish and direct without expense to the contractor. He also alleges that Mr. Warner assured him that there was plenty of timber that could be obtained without great expense or trouble suitable for the work, but that in fact he had to send a long distance and at large cost to get such material as was actually necessary.

Mr. Shipley, after the completion of the work, made an early demand for increased compensation, and the Commissioner of Indian Affairs referred the demand to Charles E. Monteith, an Indian inspector. On the 19th day of August, 1883, he reported that there was merit in Mr. Shipley's application, but his contract was loosely drawn and uncertain in its meaning, and if construed strictly no additional claim could be made upon it. He recommended, however, an extra allowance of \$4,037.50 as justly due, considering all the facts of the case. The following extracts are taken from his report:

The claim of Mr. Shipley, as transmitted me, is based upon certain alterations made in the construction of the mills in question while the same were in course of erection.

In comparing the mills as they now stand with the original plans, specifications, and contract, one can readily see the justice of Mr. Shipley's claim in many particu-

lars, unless the following extract from the specifications is intended to cover a multitude of omissions:

"It is to be understood that anything necessary to the full and complete execution of the work according to the general intent and meaning of these plans and specifications is to be done and all materials furnished so as to complete the work in a good and workmanlike manner."

I am not prepared to say to what extent this extract can be used. A saw-mill is not complete without an edger-table, and yet none is called for in the plans and specifications, and to put one in the mill would incur an expense of about \$250.

Again, article 5 of the contract stipulates that the contractor shall receive no additional compensation on account of any alterations whatever. I suppose it is for me to report whether the alterations and improvements as set forth in Mr. Shipley's claim were actually made or not, and that it is no part of my duty to moralize on the subject. However, I will proceed with my report by saying that I am of the impression it is not the intention or desire of the Government to secure, through any sharp practice or ambiguous terms or specifications, the erection and completion of any structure at a heavy loss to the contractor.

It must be presumed, then, that the digging of the ditch was to be supervised either by the agent or some competent person. In his affidavit Mr. Shipley states that, after he had finished surveying the ditch and placed the level-stakes, he immediately commenced the erection of the flume, which work he completed in accordance with his level-stakes before the ditch was finished. He also states that, on account of the Indian labor not being properly supervised, the Indians did not dig according to the level-stakes, but dug the last 200 feet so deep that when they reached the end of the flume they were 2 feet lower than the flume, or, in other words, the bottom of the ditch was 2 feet lower than the bottom of the flume.

He further states that the agent (Mr. Warner) absolutely refused to correct the error made by the Indians, but compelled him to lower the flume 2 feet so as to connect with the ditch; which action, in my opinion, was contrary to the terms of the contract, namely, that no expense should be attached to the contractor on account of the construction of the ditch, other than the survey and leveling of the same. Accepting Mr. Shipley's affidavit as setting forth facts, I find that Agent Warner's refusal to correct the error made by the Indians, and his arbitrary course in forcing the contractor to lower the flume, caused said contractor a heavy expense, and the result of said refusal reaches over and includes items 1, 2, 3, 5, and 6, as per Mr. Shipley's itemized claim.

These items amount to \$1,358.27. The report goes on to enumerate other items embraced in the contractor's claim amounting to \$1,154.27, which comprise work done and materials furnished in addition to what was called for in the specifications which were made a part of the contract.

The report further says:

If it is the desire of the Department to ascertain whether or not Mr. Shipley is an actual loser in fulfilling the terms of the contract, I am not satisfied with the above result as to amount; hence concluded to pursue a different course in the examination of said claim, and ascertain what the contractor's actual disbursements amounted to in the erection and completion of said mills, and have him substantiate the same by receipted bills, and affidavits where receipted bills were not available. As a result of said examination, I present herewith paper marked Ex. H, which places the claim at \$6,524.88, or \$1,223.67 less than Mr. Shipley's claim as transmitted by Department, with services of contractor and his two sons added.

I think sufficient evidence is herewith transmitted to enable the Department to judge for itself whether Contractor Shipley is entitled to additional compensation or not.

While I do not pretend to claim that legally he is entitled to additional compensation, still I do not hesitate to recommend additional compensation to the sum of \$4,037.50, being the amount of Mr. Shipley's "supplemental claim," covering services rendered by himself and two sons, which amount falls far short of the contractor's actual loss in my opinion.

After this Mr. Price, then Commissioner of Indian Affairs, reviewed the items of Mr. Shipley's claim in a letter to the Secretary of the Interior, dated February 12, 1885. He thought that "while the contractor in equity may be entitled to some additional compensation, the amounts claimed under several of the items above mentioned should not be allowed."

No further action appears to have been taken by the Interior Department in the matter, according to the record before the committee, and at the first session of the Forty-ninth Congress a bill was introduced (S. 1342) for the relief of Mr. Shipley, in the sum of \$7,700. This bill was referred to the Committee on Claims, and a report (No. 1416) was made reviewing the facts and circumstances presented, and recommending an allowance to the claimant of \$2,487.37, which amount, it was found, had been actually expended by him in excess of what he had received, and the United States or its wards had received the benefit of this expenditure; the residue of the claim was rejected.

The amount proposed for the relief of Mr. Shipley in the bill now before the Senate is the same as that recommended in the report referred to. It is the smallest amount found to be equitably due him upon any examination of the case. The testimony in the record, to which reference has already been made, shows that he has expended his money to this extent beyond what was intended in his contract, and it was done under the direction of the Indian agent who represented the United States in the transaction.

The amount of his actual expenditures, as contained in the papers furnished by the Interior Department, is \$13,366.38; he received, according to the contract, \$10,879; causing a loss of \$2,487.38. This leaves him nothing for the labor of himself and sons, for which he asked an additional sum of \$4,037.50.

It seems right and just under the circumstances that he should be paid this additional sum thus expended.

The Government, through its agent, did not comply with its contract and required from the contractor more than he had engaged to perform. The additional amount fairly due him on this account, according to Inspector Monteith's report, is far greater than the amount mentioned in the bill which, as is shown, is based upon his actual money loss.

We therefore recommend that the bill do pass.