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MADRAS RECORD OFFICE

Government of Madras

Public Works DEPARTMENT

G.O. No.	102	Press
B.P. No.	Rly	Mis.
264-265		
Dated	15-1-1874	195

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
15th January 1874.*

No. 204. Read the following letter from Colonel H. DRUMMOND, R.E.,
Officiating Deputy Secretary to the Government of India, Public Works
Department, (Guaranteed Railways,) to Colonel G. W. WALKER, R.E.,
Secretary to the Government of Madras, Public Works Department,
(Railway,) dated Fort William, 2nd December 1873, No. 2,013 G R:—

I AM directed to forward copies of correspondence noted in the margin, regard-
ing a proposal made by the East Indian
Railway Company to bring Contractors
and their employes under the category
of the Railway Company's servants, and
consequently public servants under Act
XXXI. of 1867. The Government of
India will be glad to be favoured with the opinions of the Government of Madras
on the subject.

2. It will be observed that the object of the East Indian Railway Company
in this matter is to put a stop to the bribery of the subordinate staff at many stations
which it is believed is practised through the servants of the Contractors employed
in loading and unloading goods. The Government of India doubt the propriety
or expediency of including all Contractors and their servants in the category of
railway servants under the act, and wish to determine whether the difficulty in
question might not perhaps be met better if the handling of goods were done by
the Company's own servants, who, in addition to low fixed wages, might be paid a
premium on work done.

PUBLIC WORKS DEPARTMENT PROCEEDINGS, SEPTEMBER 1873.
*East Indian Railway—Position of Railway Contractors and their employes under the
Railway Act in respect of receiving illegal gratifications.*

Procs. (Railway) March 1871, Nos. 113-38, Part A.
„ („) April „ No. 163, „ A.

From Lieutenant-Colonel F. S. TAYLOR, R.E., Consulting Engineer to the Government of India
for Guaranteed Railways, Calcutta, to the Secretary to the Government of India, Public
Works Department, dated 11th July 1873, No. 1,650.

I HAVE the honour to forward, for the favourable consideration of the Government of India,
the accompanying copy of a communication, No. 511 G., dated 28th June, from the Chairman of
the Agency, East Indian Railway, regarding the position of Railway Contractors and their employes
under the Railway Act in respect of receiving illegal gratifications, and suggesting that some
measure may be passed by which they could be included in the category of railway servants and
so be regarded as public servants within the meaning of the Penal Code in respect of such offences.

The Agency point out that, on the passing of the Railway Act Amendment Act (XXV. of
1871), the wording of the 29th Section of the original Act (XVIII. of 1854) was so altered that
the provisions of the Railway Servants' Act (XXXI. of 1871) could no longer be made applicable
to Contractors and their servants.

The handling of goods at all the principal stations on the East Indian Railway is now done
by Contractors, whose servants have consequently free access to the railway premises, and coming
as these men do, between the owners of goods and the station employes, the Agency are under
the belief that bribery is with their aid carried on to a considerable extent at many of the stations
to the prejudice of traffic.

It is with the view of checking this evil, if possible, that the Agency apply for legislative
aid, and I am of opinion that if the provisions of the Railway Servants' Act were again made
applicable to Contractors and their servants, it would strengthen the hands of the Agency in their
efforts to protect the public from imposition.

*Proceedings of the Madras Government, Public Works Department,
15th January 1874.*

From C. STEVENSON, Esq., Chairman, Board of Agency, East Indian Railway, to the Consulting Engineer to the Government of India for Guaranteed Railways, Calcutta, dated 28th June 1873, No. 511 G.

THE Agency have the honour to enclose, for the consideration of the Government in the Legislative Department, the accompanying copies of correspondence with the Company's Solicitors with regard to the position of Contractors and their employes under the Railway Act in respect of receiving illegal gratifications.

Under the wording of Act XVIII. of 1854 as it stood before the amendment, it appears clear to the Agency that such persons were "public servants" under Act XXXI. of 1871 (the Railway Servants' Act) and as such were amenable to the Penal Code in respect of such offence.

The Company has been very anxious to put a stop to the bribery which is believed to be secretly going on to a great extent among the subordinate staff at many stations to the prejudice of the Company's traffic, and if a measure could be passed to include Contractors and their employes in the category of Company's servants, and consequently "public servants," the Company would have a much greater power of checking these practices of the Contractors' people at the goods-yards from being constantly in contact with the owners of goods as well as with the railway staff, having greater facilities for such purposes than perhaps any other class employed by the Company.

From C. STEVENSON, Esq., Chairman, Board of Agency, East Indian Railway, to Messrs. CHAUNTRELL, KNOWLES and ROBERTS, Solicitors, dated 16th June 1873, No. 4,099.

I AM desired to request your opinion as to the present position under the Railway Act of Contractors and their servants employed on the line or on the Company's premises to perform the business of the Company.

In Section 29 of Act 18 of 1854, it was ruled that—

• "Every person employed by, or on behalf of, such Railway Company to do any act upon the railway, shall be deemed to be a servant of the Company."

• • • And on the 26th April 1867 (see your letter No. 3,052 of that date) Mr. Advocate-General Cowie gave his opinion that under this wording Contractors and their servants employed to do acts upon the railway or on behalf of the Company were servants of the Company.

In this opinion they became, under the operation of Act XXXI. of 1867 (the Railway Servants' Act), "public servants" within the meaning of Sections 161, 162, 163, 164 and 165 of the Indian Penal Code, but in the passing of Act XXV. of 1871 (Railway Act Amendment Act) the wording of Clause 29 was changed, and it does not appear to the Agency that the Act as it now stands is sufficient to bring these persons under the operation of Act XXXI. of 1871 as "servants of the Company."

From Messrs. CHAUNTRELL, KNOWLES and ROBERTS, Solicitors, to the Agency, East Indian Railway Company, dated 17th June 1873, No. 3,490.

No. 4,099 of yesterday's date.

By the operation of substituted Section 29, made part of Act 18 of 1854 by Act XXV. of 1871, we are of opinion that persons employed on the railway by Contractors or others, and not directly by the Company, are no longer affected by the provisions of Section 2 of Act XXXI. of 1867.

That section only applies to "officers and servants" of a Railway Company. Now, the common relationship of master and servant does not exist between the Company and persons employed on the railway by Contractors, and the statutory provision that "persons employed on behalf of the Company to do any act on the railway shall be deemed servants of the Company," is done away with under Act XXV. of 1871.

We may remark that the new Section 29 seems to render all "persons employed on the line, whether servants of the Company or not, liable to criminal punishment in certain events.

*Proceedings of the Madras Government, Public Works Department,
15th January 1874.*

From the Government of India, Public Works Department, to the Consulting Engineer to the Government of India for Guaranteed Railways, Calcutta, dated 15th September 1873, No. 1,613 G. R.

I AM directed to acknowledge the receipt of your letter, No. 1,650, dated the 11th July 1873, with enclosures, regarding the position of Railway Contractors and their employes under the Railway Act in respect of receiving illegal gratifications, and suggesting that some measure should be passed by which they could be brought under the provisions of the Railway Servants' Act, 1867.

2. It is observed that the Contractors and Contractors' servants alluded to are mainly, if not wholly, those employed at stations on such duties as the handling of goods. There are other Contractors employed on railways whom it would not be desirable to treat as railway servants, and the Government of India fear that there may be some difficulty in all cases in distinguishing between the legitimate profits of Contractors and what would become illegal gratifications if the proposed legislative action were taken.

3. I am, however, directed to request that the Agency may be asked to explain precisely the class of Contractors whom they would wish to bring under the same law as their own servants, and to state how, after consulting their Solicitors, they consider that these Contractors may be defined in a Legislative Enactment.

Endorsement of the Consulting Engineer to the Government of India, dated 6th November 1873, No. 2,732.

From C. STEPHENSON, Esq., Chairman, Board of Agency, East Indian Railway, to Lieutenant-Colonel F. S. TAYLOR, R.E., Consulting Engineer to the Government of India for Guaranteed Railways, Calcutta, 22nd October 1873, No. 878 G.

THE Agency have the honour to acknowledge receipt of your docket, No. 2,492, of the 9th instant, with regard to the position under the Railway Act of the servants of Contractors employed by the Company.

2. In making their application they had chiefly in view the servants of the Contractors for handling goods at stations, but they would remark that if the original wording of Section 29 of Act XVIII. of 1854, viz., that "every person employed by or on behalf of such Railway Company to do any act upon the railway shall be deemed a servant of the Company" be adopted, it will only include in addition the servants of the Contractors for maintaining the line to whom it applied before Act XXV. of 1871 was passed and they are of opinion that it will be an advantage it should do so, and beg leave to suggest that the wording in question be accordingly restored.

COPY forwarded to the Secretary to the Government of India in the Public Works Department in reference to his No. 1,613 G.R., dated 15th September, for information.
(Signed) F. S. TAYLOR, Lieut.-Colonel, R.E.,
Consgr. Engr. to the Govt. of India.

No. 205. ORDER THEREON, 15th January 1874, No. 102.

RAILWAY, No. 29.

COMMUNICATED to the Consulting Engineer for report after ascertaining the views of the Railway Agents on the subject.

(True Extract.)

Colonel, R.E.,

Secretary to Government.

To the Consulting Engineer for Railways.

Exd. E. C. Shunker.

Spare Copies

E. I. Ry.—Position of Ry. Contrs. & their employees under Ry. Act. &c. [Pros. No. 192]

EAST INDIAN RAILWAY—POSITION OF RAILWAY CONTRACTORS AND THEIR EMPLOYEES UNDER THE RAILWAY ACT IN RESPECT OF RECEIVING ILLEGAL GRATIFICATIONS.

Pros. (Ry.) March 1871, Nos. 113—33, Part A.

" (") April " No. 163, " A.

No. 1650, dated 11th July, 1873.

[No. 190] From—LIEUT.-COL. F. S. TAYLOR, R. E., *Consq. Engr. to the Govt. of India for Guarntd. Rys., Calcutta,*

To—Secretary to the Government of India, P. W. Dept.

I have the honor to forward for the favorable consideration of the Government of India, the accompanying copy of a communication No. 511 G, dated 28th June, from the Chairman of the Agency, East Indian Railway, regarding the position of Railway Contractors and their employees under the Railway Act in respect of receiving illegal gratifications, and suggesting that some measure may be passed by which they could be included in the category of Railway servants and so be regarded as public servants within the meaning of the Penal Code in respect of such offences.

The Agency point out that, on the passing of the Railway Act Amendment Act (XXV of 1871), the wording of the 29th Section of the original Act (XVIII of 1854) was so altered, that the provisions of the Railway Servants' Act (XXXI of 1871) could no longer be made applicable to Contractors and their servants.

The handling of goods at all the principal stations on the East Indian Railway is now done by Contractors, whose servants have consequently free access to the Railway premises, and coming, as these men do, between the owners of goods and the station employees, the Agency are under the belief that bribery is with their aid carried on to a considerable extent at many of the stations to the prejudice of traffic.

It is with the view of checking this evil, if possible, that the Agency apply for legislative aid, and I am of opinion that if the provisions of the Railway Servants' Act were again made applicable to Contractors and their servants, it would strengthen the hands of the Agency in their efforts to protect the public from imposition.

No. 511 G, dated 28th June, 1873.

[No. 191] From—C. STEVENSON, Esq., *Chairman, Board of Agency, E. I. Ry.,*

To—Consq. Engr. to the Govt. of India for Guarntd. Rys., Calcutta.

The Agency have the honor to enclose for the consideration of the Government in the Legislative Department, the accompanying copies of correspondence with the Company's Solicitors with regard to the position of Contractors and their employees under the Railway Act in respect of receiving illegal gratifications.

Under the wording of Act XVIII of 1854 as it stood before the amendment, it appears clear to the Agency that such persons were "public servants" under Act XXXI of 1871 (the Railway Servants' Act) and as such were amenable to the Penal Code in respect of such offence.

The Company has been very anxious to put a stop to the bribery which is believed to be secretly going on to a great extent among the subordinate staff at many stations, to the prejudice of the Company's traffic, and if a measure could be passed to include Contractors and their employees in the category of Company's servants, and consequently "public servants," the Company would have a much greater power of checking these practices of the Contractors, people in the goods-yards from being constantly in contact with the owners of goods as well as with the Railway staff, having greater facilities for such purposes than perhaps any other class employed by the Company.

No. 4099, dated 16th June, 1873.

[No. 192] From—C. STEVENSON, Esq., *Chairman, Board of Agency, E. I. Ry.,*

To—MESSRS. CHAUNTRELL, KNOWLES AND ROBERTS, *Solicitors.*

I am desired to request your opinion as to the present position under the Railway Act of Contractors and their servants employed on the Line or on the Company's premises to perform the business of the Company.

G. R. Rys—

PUBLIC WORKS DEPARTMENT PROCEEDINGS, SEPTEMBER, 1873.

Pros. No. 193] E. I. Ry.—Position of Ry Contrs. & their employees under Ry. Act., &c.

In Section 29 of Act 18 of 1854, it was ruled that—

"Every person employed by, or on behalf of such Railway Company to do any act upon the Railway, shall be deemed to be a servant of the Company."

And on the 26th April 1867 (see your letter No. 3052 of that date) Mr. Advocate General Cowie gave his opinion that under this wording Contractors and their servants employed to do acts upon the Railway or on behalf of the Company were servants of the Company.

In this opinion they became under the operation of Act XXXI of 1867 (the Railway Servants' Act) "public servants" within the meaning of Sections 161, 162, 163, 164 and 165 of the Indian Penal Code, but in the passing of Act XXV of 1871 (Railway Act Amendment Act) the wording of Clause 29 was changed, and it does not appear to the Agency that the Act as it now stands is sufficient to bring these persons under the operation of Act XXXI of 1871 as "servants of the Company."

No. 3490, dated 17th June, 1873.

[No. 193] From—MESSRS. CHAUNTRELL, KNOWLES AND ROBERTS, Solicitors,
To—The Agency, East Indian Railway Co.

No. 4099 of yesterday's date.

By the operation of substituted Section 29, made part of Act 18 of 1854 by Act XXV of 1871, we are of opinion that persons employed on the Railway by Contractors or others, and not directly by the Company, are no longer affected by the provisions of Section 2 of Act XXXI of 1867.

That section only applies to "Officers and servants" of a Railway Company. Now, the common relationship of master and servant does not exist between the Company and persons employed on the Railway by Contractors, and the Statutory provision that "persons employed on behalf of the Company to do any act on the Railway shall be deemed servants of the Company", is done away with under Act XXV of 1871.

We may remark that the new Section 29 seems to render all "persons employed on the Line," whether servants of the Company or not, liable to criminal punishment in certain events.

No. 1613 G—R, dated 15th September, 1873.

[No. 194] From—The Government of India, P. W. Dept.,
To—Consgr. Engr. to the Govt. of India for Guarntd. Rys., Calcutta.

I am directed to acknowledge the receipt of your letter No. 1650, dated the 11th July 1873, with enclosures, regarding the position of Railway Contractors and their employees under the Railway Act in respect of receiving illegal gratifications, and suggesting that some measure should be passed by which they could be brought under the provisions of the Railway Servants' Act, 1867.

2. It is observed that the Contractors and Contractors' servants alluded to are mainly, if not wholly, those employed at stations on such duties as the handling of goods. There are other Contractors employed on Railways whom it would not be desirable to treat as Railway servants, and the Government of India fear that there may be some difficulty in all cases in distinguishing between the legitimate profits of Contractors and what would become illegal gratifications if the proposed legislative action were taken.

3. I am, however, directed to request that the Agency may be asked to explain precisely the class of Contractors whom they would wish to bring under the same law as their own servants, and to state how, after consulting their Solicitors, they consider that these Contractors may be ~~br~~ in a Legislative Enactment.

G. Railways—

No. 878. G
To The Consgr. Engr. to the Govt. of India
for Guaranteed Railways
Calcutta, 22 October 1873

Sir,
The Agency have the honor to
acknowledge receipt of your Docket
No. 2492 of the 9th instant with regard to
the position under the Railway Act
of the servants of Contractors employed
by the Company.
In making their application
they had chiefly in view the servants
of the Contractors for handling goods
at stations but they would remark
that if the original wording of section
29 of Act XVIII of 1854 viz. that
"every person employed by or on
behalf of such Ry. & Co. to do any act
upon the Ry. shall be deemed
to a servant of the Company"
be adopted, it will only include in ad-
dition the servants of the Contractors
for maintaining the line to whom it
applied before Act XXV of 1871 was
passed and they are of opinion that
it will be an advantage if should
do

4099: 102-15-1-74
2 Nov 1873

do so and leave to suggest that the
wording in question be accordingly
restored.

Have recd
(By Cecil Stephenson

No 2732

Copy forwarded to the Secy to the
Govt of India in the P.W.D. in re-
ference to his No 1613 G. R. d/15th Sept
for information.

The 6th Nov
1873

(By F. S. Taylor Esq. R. E.
Consgr. Engr to the
Govt of India

1873

communications
be addressed to
secretary.

No. 2013 G. R.
GOVERNMENT OF INDIA.
PUBLIC WORKS DEPARTMENT.

Guaranteed Railways

The Secretary to the Govt of Madras
Public Works Dept. (Railway)

Fort William, 2nd December 1873

Sir,

I am directed to forward copies
of correspondence noted in the
margin, regarding a pro-
posal made by the East
Indian Railway Company
to bring Contractors and
their employees under the
category of the Railway Company's
servants and consequently public
servants under Act XXXI of 1867. The
Govt of India will be glad to be
favoured with the opinions of the
Govt of Madras on the subject.

2. It will be observed that
the object of the East Indian
Railway

From Consgr. Engr. Calcutta No 1650
d/11th July 1873 + enclosure
P.W.D. No 1613 G. R. d/15th Sept 1873
to - Diff.
From Consgr. Engr. Calcutta No 2732
d/6th Nov 1873 + enclosure.

71/-1-81-703

Railway Company in this matter is to put a stop to the bribery of the subordinate staff at many stations which it is believed is practised through the servants of the Contractors employed in loading and unloading goods. The Govt. of India doubt the propriety or expediency of including all contractors and their servants in the category of Railway Servants under the Act, and wish to determine whether the difficulty in question might not perhaps be met better if the handling of goods were done by the Company's own servants, who, in addition to low fixed wages, might be paid a premium on work done.

I have the honor to be

Sir

Your most obedt. servt.

W. M. M. Col. R. E.

Offg. Deputy Secretary

P. W. 1873 Reports
No 6700.

From.

The Govt of India.

Dated 2nd } December/73.
Recd 11th }
En: 2. ✓ No 2013 f. R.

Requesting
opinions on the
proposal to bring
Railway Contractors
and their employees
under the category
of Railway servants
and under Act
~~XXXX~~, of 1867.

With Order

Communicated to the Secy to Govt
for report after ascertaining the views
of the Railways Dept on the subject.

Yours
truly

C. G. J. G. J. / Secy to Govt

No 6700
Govt. of 1873 Madras.
PUBLIC WORKS.

To The Consulting Engineer
for Railways

Dated

Encl. 2

1874
G. O. 15th May 1874 No 102

Nos. 204 & 205

Railway. Letter from

The Govt. of India requesting
opinions on the proposal

to bring Railway Contractors
& their employees under

the category of Rail-
way servants & under

Act XXXI of 1867, Comd.
to the Engineer with instructions