
CLAIM INVOLVING DISPUTED QUESTIONS OF FACT.

Where a claim depends upon disputed questions of fact between the officers of the Government and the claimant, the accounting officers will not, in general, undertake to determine what the facts are, but will accept the conclusions of the Government officers, leaving the claimant to enforce his rights in court.

(Decision by Assistant Comptroller Mitchell, December 8, 1898.)

The Interstate Coal and Coke Company appeals from the action of the Auditor for the Navy Department in disallowing its claim of \$241.51 for demurrage in the case of the schooner *John S. Ames*, which, it is alleged, was detained at the navy-yard, Portsmouth, N. H., for 2 days and 18½ hours beyond the period allowed for her discharge, through the fault of the Government, to which the vessel was consigned. The Auditor

disallowed the claim because, as he states, it appeared from the papers on file in the case that the delay in unloading was caused by a disagreement between the contractors for discharging the vessel, Messrs. C. E. Walker & Co., and the master of the vessel.

By contract of May 14, 1898, the claimant company agreed to sell a certain quantity of coal to the Government, to be delivered alongside the wharf at Portsmouth, N. H., of which 1,453 tons were shipped in the schooner in question. By the terms of the contract of purchase the Government was to guarantee not less than 150 tons discharge per day, and to pay demurrage at the rate of 8 cents per ton daily on the vessel's coal capacity. The bill of lading, however, provided a rate of demurrage of 6 cents per ton per day on the vessel's coal capacity, and the present claim is computed at that rate upon the amount of the shipment, 1,453 tons.

It appears by indorsement on the bill of lading that the vessel reported June 8, 1898, at 3 o'clock p. m., and finished discharging June 28, 1898, at 6 o'clock, p. m., a delay, as is claimed, beyond the period allowed for discharging, of 2 days and 18½ hours, for which demurrage is claimed at the rate above stated. * * *

Commander E. P. Strong, United States Navy equipment officer, stationed at navy-yard, Portsmouth, N. H., to which this shipment was consigned, reports upon this claim, under date of September 10, 1898, as follows:

"The contractors for discharging the vessel, Messrs. C. E. Walker & Co., complained that the master of the vessel placed obstructions in the way of their work during the latter part. It is my opinion that the vessel would have been discharged without demurrage had not this disagreement taken place between the contractors and the master of the vessel."

The Bureau of Equipment, under date of September 17, 1898, reports that—

"In view of the reports in this case the Bureau is of the opinion that the master of the schooner was responsible for the delay in discharging, and therefore does not recommend payment."

The master of the vessel, in letter of September 30, 1898, denied that he was in any way responsible for the delay in unloading the vessel, and claims that during the time the vessel was discharging he was at his home in West Dennis, Mass.,

a distance of 175 miles from Portsmouth, and could not have had any disagreement with the persons who were discharging the vessel on behalf of the Government. He, however, alludes to an obstruction near the wharf, which he states caused him to refuse to haul his vessel astern for the purpose of discharging until he had been supplied with certain facilities for keeping the vessel off the obstruction.

Upon the whole, it appears that this claim turns upon the question whether the contractors or the master of the vessel were to blame for the delay in discharging. This office is not equipped with sufficient facilities for determining disputed questions of fact arising between claimants and officers of the Government, and, while the decisions of such officers are not conclusive, the accounting officers will not, in general, undertake to determine what the facts are in such cases, but will accept the certificates of the officers of the Government, leaving the claimants to assert their rights in court.

The action of the Auditor in disallowing the claim is affirmed.

Since the above opinion was prepared, a copy of the letter of the master of the vessel, dated September 30, 1898, giving his version of the causes which led to the delay in discharging, was, at his request, submitted to the naval authorities, requesting a reconsideration, with a view to modifying their conclusion that such delay was caused by the fault of the master, but the Bureau of Equipment, under date of December 2, 1898, adheres to its former decision and declines to recommend payment.