

DWIGHT J. McCANN.

APRIL 15, 1874.—Committed to a Committee of the Whole House and ordered to be printed.

Mr. R. R. BUTLER, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 2039.]

*The Committee on Indian Affairs, to whom was referred bill H. R. 2039, and the petition of Dwight J. McCann, submit, through Mr. R. R. Butler, the following report:*

The petitioner seeks to recover the damages resulting from the detention of his trains at Cheyenne, Wyo., after their arrival at said place, for the purpose of transporting Indian goods for the United States, and your committee, from the evidence submitted, find the following facts:

1st. That, in June, 1871, the Commissioner of Indian Affairs entered into a contract with petitioner to receive at Cheyenne, Wyo., the goods for the Indians of the Whetstone agency, and to transport them in good and well-covered wagons to the Whetstone agency without unnecessary delay. (See articles of agreement, marked Exhibit A.)

2d. That, for such transportation, the United States agreed to pay \$1.75 per hundred pounds for each hundred miles traveled, and required petitioner to execute a bond to the United States in the sum of \$100,000, conditioned for the faithful performance of the said contract by petitioner, which bond was duly executed by petitioner, and accepted by the Government.

3d. Petitioner, by virtue of said contract, put himself in condition to comply with the same, and was notified by a telegram to be ready by the 1st of July to transport to the Whetstone agency one million pounds; also was notified by a telegram to be ready by 1st of July to transport five hundred thousand pounds to the Red Cloud agency, (see dispatches marked B and C;) which transportation was furnished as required. Although the goods were at that time at Cheyenne, ready to be transported, and were loaded in petitioner's wagons, the Indian Department, on account of threatened hostilities of Spotted Tail's bands, directed the forwarding of the goods be delayed at Fort Laramie. This delay was continued until the 18th of August, 1871, when the Indian goods intended for the Whetstone agency were, by the Indian Department, directed to be forwarded to the Red Cloud agency, which was done by petitioner.

4th. The receiving and shipping agent of the United States at Cheyenne states the account, and fixes the time that petitioner's trains were detained, and assesses the damages that petitioner was entitled to for such detention, and said agent issued regular vouchers for the same, duly certified, which amounted to \$19,000, which vouchers are marked No. 1 and No. 2.

5th. Petitioner also claims to be the owner of, by purchase for a valuable consideration, a similar voucher issued by the said agent to one John Coad who was also a contractor at the same time to transport Indian goods to the Red Cloud agency, the voucher thus issued and certified to by the said agent amounting to the sum of \$10,200, which voucher is marked No. 3.

6th. The Indian agent at Fort Laramie, J. W. Wham, certifies to the detention of petitioner's trains at that place, and issued a voucher showing the cause and stating the time the trains were detained, amounting to \$11,368, which voucher is marked No. 4. All of said vouchers amount in the aggregate to \$40,568, which amount your committee believes is justly due petitioner and should be paid. The Commissioner of Indian Affairs, in his response to a request from this committee, (see his letter marked Exhibit A,) states "as the detention was not caused by reason of any fault of McCann but by the direction of this Department and of the officers of the Government, I am of the opinion that he is equitably entitled to compensation for the damages sustained by such detention." Your committee concur in the conclusion so concisely stated by the Commissioner of Indian Affairs, and recommend the passage of the accompanying bill in lieu of the original for the relief of the petitioner. The only difficulty in coming to a conclusion was as to the compensation that petitioner was entitled to per day for each team detained. The committee called before them the Commissioner of Indian Affairs who testified that the amount charged and for which vouchers were issued was reasonable and not exorbitant; that the Department had subsequently contracted with the petitioner for the transportation of Indian goods and supplies, and had agreed to pay petitioner a like sum for like detention.

JNO. T. AVERILL.  
R. R. BUTLER.  
D. P. LOWE.  
B. W. HARRIS.  
JNO. D. LAWSON.  
J. McNULTA.  
JOHN P. C. SHANKS.  
J. H. RAINEY.  
H. L. RICHMOND.

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EXHIBIT B.

CHEYENNE, June 20, 1871.

D. J. McCANN,  
*Contractor Transportation, Nebraska City:*

You are required to furnish transportation for one million (1,000,000) pounds annuity goods and supplies for Whetstone Indian agency by July 1:

GEO. W. COREY,  
*United States Receiving and Shipping Agent.*

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EXHIBIT C.

CHEYENNE, June 20, 1871.

SIR: You are hereby notified that transportation for five hundred thousand (500,000) pounds of annuity goods and supplies for Red Cloud Indian agency will be required by July 1, 1871.

GEO. W. COREY,  
*United States Receiving and Shipping Agent.*

JOHN F. COAD,  
*Contractor Transportation, Cheyenne, Wyo.*

No. 1.

CHEYENNE, August 16, 1871.

UNITED STATES To D. J. McCANN DR.  
For delay of teams awaiting freight to be carried to the Whetstone Sioux agency.  
August 15, 1871—30 teams delayed from August 1 to 15, inclusive, at \$10 per  
day ..... \$4,500

I hereby certify that the above statement in regard to delay of teams for want of freight is correct.

GEO. W. COREY,  
Receiving and Shipping Agent.

CHEYENNE, August 16, 1871.

[Indorsed.]

Pay to the order of the Nebraska City National Bank.

D. J. McCANN.

Pay to Hon. H. R. Clum, Acting Commissioner, or order, for collection, for account of the Nebraska City National Bank.

W. W. BELL, Vice-President.

No. 2.

CHEYENNE, July 31, 1871.

UNITED STATES To D. J. McCANN, DR.  
For delay of teams at Cheyenne awaiting freight to Whetstone Sioux agency.  
July 26, 1871—50 teams, for 26 days, from July 1, 1871, at \$10 ..... \$13,000  
July 31, 1871—30 teams, for 5 days, from July 1, 1871, at \$10 ..... 1,500  
Total ..... 14,500

I hereby certify that the above statement in regard to delay of teams for want of freight is correct.

GEO. W. COREY,  
Receiving and Shipping Agent.

CHEYENNE, August 5, 1871.

[Indorsed.]

Pay to the order of the Nebraska City National Bank.

D. J. McCANN.

Pay Hon. H. R. Clum, Commissioner of Indian Affairs, or order, for collection, for account of the Nebraska City National Bank.

W. W. BELL, Vice-President.

No. 3.

CHEYENNE July 31, 1871.

UNITED STATES To JOHN F. COAD, DR.  
For delay of teams at Cheyenne, awaiting freight to Red Cloud Sioux agency.  
July 20, 1871—Forty teams from July 1, 20 days, at \$10 ..... \$8,000  
July 31, 1871—Twenty teams from July 20, 11 days, at \$10 ..... 2,200  
10,200

I hereby certify that the above statement in regard to delay of teams for want of freight is correct.

GEO. W. COREY,  
Receiving and Shipping Agent.

CHEYENNE, August 5, 1871.

[Indorsed.]

Pay to order of D. J. McCann.

CHEYENNE, August 21, 1871.

JOHN F. COAD.

\*Pay to the order of the Nebraska City National Bank.

D. J. McCANN.

Pay Hon. H. R. Clum, Acting Commissioner, or order, for collection, for account of the Nebraska City National Bank.

W. W. BELL, Vice-President.

No. 4.

THE UNITED STATES

To D. J. McCANN,

DR.

August 25, 1871.—For damages sustained by delays in the transportation of Indian supplies for Whetstone agency, twenty-three wagons, delayed twenty days, at the rate of \$14.50 each per day..... \$6,670 00  
 For damages sustained by delays in the transportation of Indian supplies for Whetstone agency, eighteen wagons, delayed eighteen days, at the rate of \$14.50 each per day ..... 4,698 00

I certify that the above account is correct and just, as shown by accompanying statement.

J. W. WHAM,

*United States Special Indian Agent.*

Received at ———, 187—, of ———, ——— dollars, in full of the above account.

D. J. McCANN.

[Duplicates.]

[Indorsed.]

Pay to the order of Nebraska City National Bank.

D. J. McCANN.

Pay Commissioner of Indian Affairs, or order, for collection, for account of the Nebraska City National Bank.

W. W. BELL,

*Vice-President.*

The delays for which indemnity is claimed were caused by the refusal of Indians to escort the supplies for Whetstone agency across the Sioux reservation. The goods were ordered forward by the agent at Whetstone, and were loaded and shipped by D. J. McCann, under contract for transporting supplies for Whetstone agency, and owing to the strong opposition manifested by the leading Indians to having trains cross the Platte River and proceed to the interior of the Indian country, it was deemed very unsafe for the contractor to proceed without a strong military escort. The military authorities were applied to for an escort, which was referred to the Interior Department, which directed that supplies for Whetstone agency should be held at Fort Laramie until further orders. There being no store-house at Laramie to be had for purpose of storing goods, they were necessarily left in wagons, which were held there for that purpose.

This delay was not the result of any fault of the contractor, and amounted to the number of days as set forth in the foregoing account.

J. W. WHAM,

*United States Indian Agent.*

A.

Personally appeared before me, a notary public in and for the District of Columbia, this 14th day of April, 1874, David McCrano, of Montana Territory, who, being duly sworn, deposes and says that he is acquainted with the business of freighting on the western frontier, and has been engaged in freighting for the United States for ——— years, and that he has been paid \$10 per day for the detention of his teams of five yoke of cattle each, and that \$14.50 per day for such teams when two extra hands are employed for the guarding of goods in the Indian country, is a fair and reasonable price, and no more than the services are worth.

DAVID MCCRANO.

Subscribed and sworn to before me this 14th day of April, 1874.

[SEAL.]

T. S. HOPKINS,

*Notary Public.*

B.

Personally appeared before me, a notary public in and for the District of Columbia, this 14th day of April, 1874, Wm. M. Pleas, of Leavenworth, Kansas, who, being duly sworn, deposes and says that he is well acquainted with the business of freighting on the frontier and the prices paid by the United States for detention of wagon-trains in

the Indian country, and that \$10 per day for wagons with five yoke of cattle each, and \$14.50 for the same teams, when valuable goods have to be guarded night and day by the employment of additional hands, are fair and reasonable prices, and no more than the services are worth.

W. M. PLEAS.

Sworn and subscribed before me this 14th day of April, A. D. 1874.

[SEAL.]

SAM'L C. MILLS,  
Notary Public.

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C.

Personally appeared before me, a notary public in and for the District of Columbia, this 14th day of April, 1874, P. A. Largey, of Montana Territory, who, being duly sworn, deposes and says that he has been engaged in the business of freighting for the United States for ——— years last past, and is acquainted with the prices paid for detention of trains consisting of wagons with five yoke of cattle each, and that the same is \$10 per day for each wagon with five yoke of cattle; that the sum of \$14.50 per wagon for detention of like trains, when the goods have to be guarded night and day by extra hands, is not exorbitant, but is a fair compensation, and no more.

P. A. LARGEY.

Subscribed and sworn before me this 14th day of April, 1874.

[SEAL.]

T. S. HOPKINS,  
Notary Public.

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E.

*To the Senate and House of Representatives of the United States of America :*

The petition of D. J. McCann, of Nebraska, respectfully sheweth that during the year 1871 your petitioner was contractor with the United States Government for the transportation of annuity goods and supplies for the Indians from Cheyenne, Wyoming Territory, to the Whetstone Indian agency, a distance of two hundred and twenty miles. The Government failed to deliver goods at the time specified in the contract at the place of starting, and fifty of your petitioner's teams were detained at Cheyenne from the 1st to the 26th day of July waiting for the delivery of goods. Thirty of petitioner's teams were detained five days each, that is, from the 26th to the 31st day of July, at the same place for the same reason, before starting. It may be proper to state here that "a team" consists of one man, one wagon, and five yoke of cattle, but when the sandy plains are reached it is necessary to add a yoke of cattle to each team. As soon as the goods were delivered to the petitioner at Cheyenne his trains were loaded and proceeded on the route until they reached the Sioux reservation near Fort Laramie, a distance of one hundred and ten miles, and about half way to the Whetstone agency, when they were stopped by the agent of the Sioux, who refused to allow said trains to cross the reservation till he could communicate with the Department at Washington. Your petitioner was at that time a member of the constitutional convention of Nebraska, then in session at Lincoln, and wrote and telegraphed to the Department of the Interior at Washington, offering to go out in person and convey the trains across the reservation, but was not permitted to do so. Your petitioner applied to the officer in command at Fort Laramie to be relieved of the goods on the trains, which were in great danger of being stolen by Indians and half-breeds on one side, and by soldiers and loafers around the fort on the other. This was not permitted, by reason of there being no place where the goods could be stored in safety at that post.

Your petitioner had given bonds in the penalty of one hundred thousand dollars for the fulfillment of his contract, and being responsible for the goods, which were of great value—consisting of Indian blankets, cloth, clothing, coffee, sugar, tobacco, flour, and bacon—he was compelled to employ a double set of hands, and did employ them, and guarded the property twenty days at his own expense and in his own wagons.

The Department then directed that the goods be delivered at the Red Cloud agency, which was done—freight being paid for one hundred and thirty-two miles instead of two hundred and twenty. The loss on eighty-eight miles not carried was over \$12,000 on the amount which should have been carried according to the contract. The petitioner, however, makes no claim upon this item. He only claims for the actual losses sustained, and which were agreed upon by the officers of the Government, and for which they have issued vouchers.

The petitioner further sheweth that, in 1871, John F. Coad had a contract with the United States Government for the transportation of the same class of goods between Cheyenne and the Red Cloud agency; that said Coad had forty teams in waiting at Cheyenne from the 1st to the 20th day of July, and twenty teams from the 20th to the 31st day of July before goods were delivered to load them; that George W. Corey, the Government receiving and shipping agent at Cheyenne, on the 5th day of August, 1871, adjusted and certified the amount due for the expenses of such detention at \$10,200, which demand was afterward, and on the 21st of August, 1871, duly assigned to your petitioner for a valuable consideration.

Your petitioner, therefore, prays that an act may be passed to pay him the amount of money due to him, as above stated, viz, \$40,568; and your petitioner, as in duty bound, will ever pray, &c.

D. J. McCANN.

F.

Articles of agreement made and entered into this twenty-ninth day of June, A. D. eighteen hundred and seventy-one, by E. S. Parker, Commissioner of Indian Affairs, for and on behalf of the United States, of the first part, and D. J. McCann, of Nebraska City, Nebraska, of the second part, witnesseth:

The said party of the second part, for himself, his heirs, executors, and administrators, hereby covenants and agrees with the said party of the first part to receive at Cheyenne, Wyoming Territory, the goods for the Indians of the Whetstone agency, and to transport them in good and well-covered wagons to the Whetstone agency, without unnecessary delay.

The party of the first part agrees to pay, or cause to be paid, to the said party of the second part, his heirs, executors, or administrators, for all the transportation performed under this contract, at the rate of one dollar and seventy-five cents per hundred pounds per hundred miles, payment to be made on presentation at the office of Indian Affairs of the receipts of the agent to whom the goods are consigned, after they shall have been properly approved according to law.

It is agreed, however, that, before the United States shall be bound by this contract, a bond in the sum of one hundred thousand dollars shall be executed by the said party of the second part, with two or more good and sufficient sureties; said bond to be conditioned for the faithful performance of this contract in all its particulars by the said party of the second part.

It is hereby expressly understood that no member of Congress shall be admitted to any share or part of this contract, or any benefit to arise therefrom, which provision is hereby inserted in compliance with the third section of an act concerning public contracts, approved the 21st of April, 1808; and it is further understood that the provisions contained in the first section of said act are hereby made a part and parcel of this contract.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year first above written.

Signed in presence of—

J. E. BORD, as to D. J. McCann.

E. S. PARKER, [SEAL.]  
Commissioner of Indian Affairs.  
D. J. McCANN. [SEAL.]

G.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
Washington, D. C., August 11, 1871.

SIR: Referring to the matter of the transportation of goods and supplies purchased for the Whetstone agency, and to your several communications upon the subject, I have to advise you that, owing to information having been received at this office to the effect that if said goods and supplies should be transported through the country to said agency accompanied by a military escort, hostilities would commence at once, and to the fact that Spotted Tail and his Indians, with the exception of three or four hundred, have left said agency with the avowed intention and determination of not returning to it, as at present located, instructions, with the concurrence of the honorable Acting Secretary of the Interior, have been given to George W. Corey, esq., receiving and shipping agent at Cheyenne, to forward said goods and supplies to the Red Cloud agency, to be delivered to Agent Wham for issue at that place; also, to forward said supplies only as fast as the agent may call for them, as the means of storing the same at the Red Cloud agency are at present limited.

Very respectfully, your obedient servant,

H. R. CLUM,  
Acting Commissioner.

Hon. D. J. McCANN,  
Lincoln, Nebraska.



H.

DEPARTMENT OF THE INTERIOR,  
*Washington, D. C., August 11, 1871.*

SIR: From representations made to this Office, the Department is satisfied, in case the annuity goods and supplies purchased for Spotted Tail's band of Sioux are transported through the country to the Whetstone agency as at present located, that trouble and difficulty if not actual hostilities will ensue.

With the concurrence of the honorable acting Secretary of the Interior, I have therefore to direct that all goods and supplies received by you at Cheyenne for said agency be shipped to the Red Cloud agency, and turned over to Agent Wham for issue to Spotted Tail and his Indians at that place.

You will please see that the necessary instructions are given to that end to the contractor for transporting said goods and supplies, and also that the supplies for both Red Cloud's and Spotted Tail's Indians are forwarded only as called for by Agent Wham, as the means of storing the same at the Red Cloud agency are at present limited.

Very respectfully, your obedient servant,

H. R. CLUM,  
*Acting Commissioner.*

GEO. W. CORRY, Esq.,  
*Cheyenne, W. T.*

## EXHIBIT A.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, D. C., March 4, 1874.*

SIR: I have the honor to be in receipt, by reference from the Department, of a communication from Hon. R. R. Butler, dated the 2d instant, inclosing House bill, No. 2039, for the relief of Dwight J. McCann, for damages sustained by him in delaying his trains and changing the destination thereof by officers of the Government during the year 1871, and requesting to be informed why this Department cannot pay the claim, and to be furnished with such facts and suggestions as may be deemed proper.

Agreeably to the direction contained in Department reference, I would respectfully state that it appears from the records of this Office, that, in 1871, Mr. McCann was the contractor for transporting the goods and supplies purchased for the Indians belonging to the Whetstone agency.

These goods and supplies were shipped to Cheyenne, Wyoming Territory, where they were to be turned over to the contractor, to be delivered by him at the agency.

When he first train loaded with these goods, &c., arrived at Fort Laramie, owing to the unsettled condition of affairs at the Red Cloud and Whetstone agencies, the disaffection of some of the Indians, and their demand to have the goods, &c., unloaded at the fort, to be transported by themselves, the contractor asked for a military escort. Application was therefore made to the War Department for the necessary escort, which was ordered to be furnished.

Before starting from Fort Laramie, however, the agent for the Red Cloud agency and Major Crittenden, then in temporary command at that post, advised this Office that a military escort passing through the country to the Whetstone agency, would, in their opinion, produce trouble with the Indians and cause hostilities to commence at once. In view of this information the order for the escort was, at the request of this Office, suspended, and the goods, &c., were, by the direction of the Department, delivered at the Red Cloud agency, where they were issued, or turned over to the Indians entitled to receive them. The foregoing is a brief statement of the facts in the case.

As the detention of Mr. McCann's train was not caused by reason of any fault of his, but by the direction of this Department, and of the officers of the Government, I am of the opinion that he is equitably entitled to compensation for the damages sustained by him on account of such detention, &c.

The Department cannot pay Mr. McCann the amount to which he may be justly entitled on his claim as aforesaid, for the reason that there are no funds on hand applicable for that purpose.

The papers inclosed with your reference of the 3d instant are herewith returned.

Very respectfully, your obedient servant,

EDW'D P. SMITH,  
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.