

If I viewed the evidence of the Minister on this point as of sufficient importance, then it would be my duty to require his attendance before the Commission, making, of course, such arrangements as would least interfere with his important public duties. But my considered opinion is that such evidence is not of sufficient importance to warrant this course, as the propriety or regularity of the Board's conduct is not to be determined by an *ex post facto* opinion which may have been expressed by the Minister.

The General Manager gave as his reasons that he was looking at the matter from the best interests of the Board. He was not considering Archibalds. He formed the opinion that in the circumstances the Government would have been loath to force Archibald to his contract, and in view of the last paragraph of the solicitor's letter came to the conclusion that any attempt to hold Archibald to his contract would have meant litigation, probably extensive litigation, and that the net result would have been considerable delay in the disposal of the Dodges and Jeeps.

Obviously if the General Manager was affected by this final paragraph he was not justified in making any recommendation or taking any steps without legal advice, and failure to do so would be a serious breach of duty. The Deputy Chairman, Mr. Young, had no qualms about the legal position. He said this veiled threat of legal proceedings would have no effect on any member of the Board. Obviously this was a mere *brutum fulmen*, the sort of blank charge a lawyer fires when destitute of ammunition. At no time was any serious question raised as to the validity of Archibalds' contract. Mr. Young says the Board released Archibalds on the other grounds stated in the solicitor's letter. The Board's action must be faulted on several grounds. In the first place the Board was in the position of a trustee of public moneys, and quite clearly had no right to forgo a legal claim to moneys which could only be done by the Minister or Cabinet. It must be pointed out that it was not a question of compromising a doubtful legal claim, to which different considerations would apply, but a matter of a simple liability on a definite contract. The duty of the Board was to make a recommendation to the Minister, but before doing so its clear duty was to fully investigate the position and the grounds of the application.

The first ground put forward is that of cursory inspection of the vehicles of one to one and a half hours.

As to this it should be pointed out that Archibalds had the same opportunity of inspection as other tenderers. Also that this is in conflict with the first reason given by Archibalds to the General Manager that he had been misled by his advisers.

Then the financial position was also a matter for investigation. Archibalds was a limited-liability company whose financial stability had been vouched for by their banker. Then, clearly, the question of whether they had overbid, and, if so, to what extent, was an important factor. Absolutely no inquiry was made by the Board; it has already been pointed out that there had been no valuation by the Board which was completely in the dark except for such light as might be said to be shed by the tenders.

Now the evidence shows that the amount of the successful second tender of Mr. Vincent for the Dodges was £26,010 and his gross return on realization £50,000, giving a profit of £18,990.

The position of the second tender for the Jeeps, £20,150. Mr. Carter has sold 297 for a gross sum of £30,345 15s. and expenses £2,800. Of the balance of 238 he states 84 are total wrecks, and of the remaining 152 he does not expect to realize the same figures, having already sold the best.

Warner, a valuer for the Board, and whose position will be referred to later, said that he told Archibald in October, 1945, that if he bought the stuff—*i.e.*, all the material in the park, including the G.M.C.s—for £100,000 he would have a good buy. When Archibalds' tender was accepted, Warner arranged with Archibald in Christchurch to assist in disposal, and proceeded to Wellington and told Levick what he was going to do and expected to be away for three weeks, and that Levick raised no objection. Archibald got a license from the Fuel Controller for 70 gallons of petrol for Warner to sell in the northern districts. Warner proceeded on his rounds, and in five days had