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

REPORT

[To accompany H. R. 17108]

The Committee on Claims, to whom was referred the bill (H. R. 17108), giving jurisdiction to the Court of Claims to hear and determine the claim of the Butler Lumber Co. (Inc.), having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 2202, Sixty-ninth Congress, second session, which is appended hereto and made a part of this report.

[House Report No. 2202, Sixty-ninth Congress, second session]

The Committee on the Judiciary, to whom was referred the bill H. R. 17108, after consideration, reports the same favorably and recommends that the bill do pass.

This bill simply confers upon the Court of Claims jurisdiction to hear and determine the claim of the Butler Lumber Co. (Inc.), for damages resulting to the said company by the action of the United States Shipping Board, through its agents and employees, in erecting a fueling station on Craney Island, in Norfolk Harbor, Va.

The contract for the erection of this fueling station was entered into on May 21, 1921, by the United States Shipping Board, representing the United States of America, with W. S. Rendle.

W. S. Rendle contracted with Albert C. Place to furnish piling for this work.

Albert C. Place, on May 26, 1921, contracted with the Butler Lumber Co. to furnish 13,000 piles to the bulkhead at Craney Island, but subject to the inspection of the inspectors of the United States Shipping Board and to be furnished in accordance with said inspector's instructions. The said company proceeded to assemble for inspection these pilings, and did cut and prepare and assemble all of said pilings so agreed to be furnished, at and upon the banks of the James River or waters connected therewith, for inspection by the agents of said Shipping Board, and, as rapidly as the same were inspected and accepted by the agents of said Shipping Board, and upon direction of said Shipping Board or its representatives, conveyed said pilings down the river and delivered the same at the place directed by the said Shipping Board and its agents, and the said pilings were received and used in the construction of said work.
That the said company in the performance of its contract with the said subcontractor was at all times under the direction of the United States Shipping Board or its agents and was at various times assured by the superintendent of the said work and the agents of the said board that the Government, through its agents, would take all pilings cut up to the time the Government notified the claimant to stop cutting. But, notwithstanding such assurance, the said superintendent did, on or about August 29, 1921, issue instructions that no more piling of said claimant was to be inspected until further orders, and, although often requested so to do, the said board or its agents from that time on failed and refused to inspect the piling which had been cut. From time to time the claimant was hindered and delayed by the board and its agents from fulfilling its contract with the said subcontractor in that, although the Shipping Board and the United States Government had through its agents knowledge of and consented to the contract from the said Rendle to the said Place and from the said Place to your claimant and had agreed to inspect the said piling as fast as your claimant had the same ready for inspection, yet your claimant had great difficulty in securing said inspection and was constantly delayed in delivering piling at the bulkhead at Craney Island because of the failure of the Shipping Board to inspect the same at the water's edge.

On October 31, 1921, your claimant notified the United States Shipping Board that, although they had been furnishing piling under the contract as before set out, there was due and unpaid to them considerable balance for the material used. Under date of November 4, 1921, the United States Shipping Board Emergency Fleet Corporation acknowledged receipt of this notification, and on November 7, 1921, the Emergency Fleet Corporation wrote the following letter to your claimant:

"Acknowledgment is made of your letter of November 5, with copy of letter to which previous reference was made.

"This matter is being referred to Mr. L. M. De Meritt, construction engineer, Craney Island Fuel Oil Station with request he give same prompt handling, inasmuch as this matter does not come under the jurisdiction of the district director.

"Very truly yours,

"W. E. GRIFFITH,
District Director."

(The Butler Lumber Co. has in its possession a carbon copy of the original letter to which the above is an answer.)

Immediately subsequent to this correspondence your claimant had a conference with Mr. L. M. De Meritt, construction engineer at Craney Island, and was assured by him that your claimant would be fully protected, not only for the payment of material already delivered but for that which had been prepared for delivery under this contract.

On November 30, 1921, the matter was again brought to the attention of the Shipping Board by a letter to Mr. Albert Lasker, the then chairman of the said board, and on December 2, 1921, the following letter was received in reply thereto:

"I have for acknowledgment your letter of November 30 relative to alleged account you claim due in the sum of about $12,600 for piling.

"To the end that proper consideration may be given the matter, I am to-day passing same on to Mr. Elmer Schlesinger, our general counsel, who will let you hear from him further in the premises.

"Very truly yours,

"RALPH V. SOLLITT."

(The Butler Lumber Co. has in its possession a carbon copy of the original letter to which the above is an answer.)

Considerable correspondence was had between your claimant and the Shipping Board and the Emergency Fleet Corporation until June of 1922. Information was at that time sought as to when settlement, if any, had been made by the Shipping Board under this contract. Both the Shipping Board and the Emergency Fleet Corporation took the position that your claimants were not entitled to any information with reference to this matter. Under date of July 17, 1922, the Emergency Fleet Corporation attempted to investigate what materials, if any, were furnished by the Butler Lumber Co. to the Craney Island work, and took the responsibility of saying that there was nothing due to the Butler Lumber Co.
On July 18, 1922, having failed to get proper information from the Shipping Board or the Emergency Fleet Corporation, the United States district attorney for the eastern district of Virginia was requested to give us the information as to when this contract was completed and if settled for. Under date of August 3, 1922, the following letter addressed to Walter L. Devany, Esq., who at that time was associate counsel for the Butler Lumber Co., was received, which was the first authoritative information that this contract had been settled:

"Replying to your favor of recent date relative to the status of the contract for the erection of a fuel station at Craney Island, advise that the work on this station was completed on or about February 25, 1922. A complete settlement was made with the general contractor on February 28, 1922. The total contract price was $272,064.26.

"Yours very truly,

"Paul W. Kear, United States Attorney."

On July 27, 1922, an affidavit, as required by Thirty-second Statutes at Large (p. 311), was filed with the United States Shipping Board, setting out that there was an amount due to your claimants. After the information from the district attorney, a copy of the bond required by the aforesaid statute was demanded. Your claimants were then informed that there was no such bond; that there was no contract between the United States Shipping Board and W. S. Rendle, but that the contract was between the Emergency Fleet Corporation (a private corporation) and W. S. Rendle, and, as there was no privity of contract between the Butler Lumber Co. and the Emergency Fleet Corporation, that your claimants were not entitled to any information in regard thereto. A great many subsequent interviews were had with officers and employees of both the Shipping Board and the Emergency Fleet Corporation and it was finally disclosed that the information as to the original contract and bond was erroneous. A claim to the United States Shipping Board was then prepared under advice of the general counsel for the Shipping Board and the same was referred to the claims committee of the Shipping Board. A hearing was had thereon. Members of that committee at this hearing took the position that as this was not a matter which could be determined by the Court of Claims that they had no authority to allow the payment of such a claim, and on April 22, 1925, the following decision was rendered by them:

"The standing committee on claims, upon consideration of your claim for $61,070.96, for piling alleged to have been used in the construction of a fuel station at Craney Island, Norfolk Harbor, Va., in 1921, recommended to the Shipping Board that your claim be disallowed, upon the ground that there was no privity of contract between you and the United States Shipping Board. At a meeting held on April 7, 1925, the Shipping Board approved the recommendation of its committee on claims and disallowed your claim.

"Very truly yours,

"Chauncy G. Parker, General Counsel."

Briefly, it will be seen that the prime contractor was settled with by the United States Shipping Board, although at that time the United States Shipping Board had knowledge of the claim of your claimant for material used in the performance of the contract settled for, and had in its hands, due to the prime contractor, sufficient funds to protect your claimant. It will also be seen that by the withholding of proper information and by the giving of misinformation, that the Butler Lumber Co. was deprived of its right to proceed in the Federal courts under Federal statutes in cases of this kind.