

F. G. PROUDFOOT

JANUARY 12, 1927.—Committed to the Committee of the Whole House and ordered to be printed

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

R E P O R T

[To accompany S. 1860]

The Committee on Claims, to whom was referred the bill (S. 1860) for the relief of F. G. Proudfoot, having considered the same, report thereon with a recommendation that it do pass.

Attached herewith is Senate Report No. 458, which is made a part of this report.

[Senate Report No. 458, Sixty-ninth Congress, first session]

The Committee on Claims, to whom was referred the bill (S. 1860) for the relief of F. G. Proudfoot, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendment:

In line 6, strike out the figures "\$11,656.41" and insert the figures "\$10,596.74."

The bill has the approval of the Secretary of the Navy.

The facts are fully set forth in the following correspondence from the Secretary of the Navy, which is appended hereto and made a part of this report.

NAVY DEPARTMENT,
Washington, March 18, 1926.

THE CHAIRMAN COMMITTEE ON CLAIMS,
United States Senate.

MY DEAR MR. CHAIRMAN: Replying further to the committee's letter of December 21, 1925, inclosing the bill (S. 1860) for the relief of F. G. Proudfoot, and requesting the views and recommendations of the Navy Department thereon, I have the honor to inform you as follows:

Mr. Proudfoot in 1920 was performing a construction contract at the naval air station at Pensacola, Fla., and during that time on several occasions loaned the use of a locomotive crane to the transportation officer for handling heavy weights that could not be handled conveniently by the Government apparatus attached to the station. On one of these occasions, while the crane was being operated by the claimant's engineer, the weight raised was found too great and dumped the crane into the water. The case was investigated by a board and extracts from its report are forwarded herewith, because while they do not directly bear upon the bill under consideration they give the history of the transaction leading to the claim.

The damaged crane was repaired at the expense of the Government at the station, and during this time Mr. Proudfoot was forced to hire a crane to enable him to perform the contract with the United States upon which he was engaged. It is

for the expense due to this hiring that he is now claiming the sum of \$11,656.41. At the time of the hiring of the substitute crane the air station at Pensacola made a report on the cost involved. A statement of the details of cost as afforded by such report is attached hereto. It shows expenses of \$10,596.74 and a profit of 10 per cent on that sum, making a total of \$11,656.41, as stated in the bill.

Inasmuch as there was no contract covering or relating to the use of the crane on the work from which the damage to it resulted, the department could not consider the claim. The claimant therefore submitted it to the Comptroller of the Treasury, and he held under date of February 11, 1921 (27 Comp. Dec. 709), that as the service rendered by the claimant with the crane was voluntary, and was entirely disconnected with the work under this contract, and as there was no agreement relating to responsibility of the Government for the crane or for reimbursement of any damages on account of injury to it, there was no legal liability resting on the Government for the damages, and that consequently the claim could not be paid.

In these circumstances the claimant's only remedy is by act of Congress, *ex gratia*, and for that reason the bill S. 1860, for his relief, was introduced.

The use of the claimant's crane in several previous instances was an accommodation to the Government, admitting of the performance of items of work at the naval air station economically and expeditiously, and but for the accident described above its use in this case would have been of appreciable value to the station.

The bill S. 1860, which will, if enacted, cost the Government \$10,596.74 after eliminating the profit item of \$1,059.69, which is not considered allowable, was referred to the Bureau of the Budget with information that the department contemplated making a favorable recommendation on the bill, and under date of February 26, 1926, the Navy Department was informed that this report would not be in conflict with the financial program of the President.

In view of the foregoing it is the department's judgment that this claim is meritorious and the granting of relief as proposed would be just and reasonable. The Navy Department recommends that the bill S. 1860 be enacted, the sum provided for being \$10,596.74, instead of \$11,656.41, as stated in the bill.

Sincerely yours,

CURTIS D. WILBUR,
Secretary of the Navy.

F. G. PROUDFOOT & Co., CONTRACTORS,
Pensacola, Fla., June 29, 1920.

Subject: Claim on account of wreck of locomotive crane. Contract 2754.

Lieut. V. R. DUNLAP,
Public Works Officer,
United States Naval Air Station, Pensacola, Fla.

SIR: Since the bureau has advised that the expenses arising from the wreck of my locomotive crane, both direct rental expenses and expenses caused to the contract, must be made the basis of a claim for unliquidated damages, I respectfully present herewith, on separate sheet, a revised statement of this claim, amounting to \$11,656.41.

On June 27, 1919, my locomotive crane, while loaned to the Government for placing a boat in the wet basin, was wrecked. I was not able until July 19, 1919, to secure another crane of sufficient capacity, and the 22 days' time lost on my contract caused me extra cost and expense, as shown on the statement attached, and as more fully explained in previous correspondence.

I have previously presented to your office the original records and detailed statements covering each of the items shown, and our discussion of this claim has brought about the elimination of items which you held were not correctly chargeable.

I therefore respectfully request your approval of the facts and the correctness of the items making up this claim so that I may, through the bureau, present it to the accounting officer at Washington.

Respectfully submitted.

F. G. PROUDFOOT.
By J. G. SCHAUB.

Claim on account of wreck of locomotive crane

Expenses renting another crane:	
Rental paid Chickasaw Shipbuilding Co., July 19 to Nov. 22, 1919, at \$25 per day.....	\$2,675.00
Freight charges on crane, Chickasaw, Ala., to Pensacola.....	349.90
Switching charges, Pensacola to navy yard.....	13.00
Expenses of A. C. Proudfoot and R. Adams to Mobile, inspecting, and making arrangements to secure crane.....	27.46
Bond premium for bond on rented crane.....	256.25
Expenses R. Adams bringing crane to Pensacola.....	24.89
Government crane rental charged on special deposit.....	64.00
Government crane operator charged on special deposit.....	90.40
Freight charges on crane, Pensacola to Chickasaw, Ala.....	349.90
Switching charges on empty gondola for boom to navy yard.....	6.70
Switching charges on crane, navy yard to Pensacola.....	13.00
Expenses preparing crane for return shipment.....	44.60
Expenses R. Adams returning crane to Chickasaw.....	57.00
Telephone, telephone, and office expenses securing crane.....	100.00
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Total expenses in renting crane.....	4,072.10
Overhead for 22 days' time loss on contract, at \$160 per day.....	3,520.00
Expenses on contract due to no crane being available from June 27, to July 19, 1919:	
Locomotive rental loss account delay to pile driving, 20 shifts, at \$2.50.....	\$50.00
Concrete pile car rental loss, 7 cars, 20 days, at 60 cents.....	84.00
Concrete pile driver rental loss, 20 days, at \$15.....	300.00
Demurrage accrued on cars—Material.....	83.43
Extra labor cost on account delay to work as per detailed statement submitted.....	1,474.30
Quay wall concrete mixer rental loss, 18 days, at \$3.50.....	63.00
Locomotive rental loss account delay to quay wall construction, 18 days, at \$2.50.....	45.00
Quay wall material, car rental loss, 5 cars, 18 days, at 60 cents.....	54.00
Quay wall crane rental loss, 18 shifts, at \$12.50.....	225.00
Carpenter foreman, 18 days, at \$6.50.....	117.00
Concrete foreman, 18 days, at \$6.50.....	117.00
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	2,612.73
Superintendance and overhead on contract expenses, 15 per cent.....	391.91
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Total expenses on contract.....	3,004.64
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	10,596.74
Profit, 10 per cent.....	1,059.67
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Total claim.....	11,656.41

UNITED STATES NAVAL AIR STATION,
Pensacola, Fla., June 30, 1920.

From: Commanding officer.

To: Bureau of Yards and Docks.

Subject: Contract 2754, pier and quay wall; claim for compensation for expenses resulting from wreck of locomotive crane.

Inclosure: (a) Letter of F. G. Proudfoot & Co., June 29, 1920, with attached statement of claim.

1. F. G. Proudfoot & Co. have submitted a revised claim in inclosure (a) to the amount of \$11,656.41, for expenses resulting from the wreck of their locomotive crane on June 27, 1919. The items of this claim are now in accordance with the records of this station, and it is recommended that the same be indorsed as just and correct in event that the bureau's opinion upon the same is requested by the accounting officers.

2. The claim involves the items of expense of (a) securing an additional crane during the period the contractor's crane was undergoing repairs in Government

shops, (b) the overhead expense to the contractor of the 22 days' delay to his contract, and (c) certain additional items of expense due to no crane of adequate capacity being available between the period from June 27 to July 19, 1919. The items as now presented are separate and distinct claims, and payment therefor has not been covered by any regular voucher or other extra already allowed.

3. Approval of this total is accordingly recommended.

H. H. CHRISTY.

[Second indorsement]

JANUARY 16, 1926.

From: Chief of the Bureau of Yards and Docks.

To: Judge Advocate General.

Subject: Bill (S. 1860) for the relief of F. G. Proudfoot. Letter, December 21, 1925, from chairman Senate Committee on Claims.

Reference: (a) Judge Advocate General's indorsement (first) No. 26283-2734:6 S, January 15, 1926.

Inclosures:

(A) Copy of S. 1860.

(B) Copy of letter, June 29, 1920, from F. G. Proudfoot to public works officer, naval air station, Pensacola, Fla., with inclosed statement of claim.

(C) Copy of letter, June 30, 1920, from commanding officer naval air station, Pensacola, to Bureau of Yards and Docks.

1. Senate bill No. 1860 authorizes payment to F. G. Proudfoot of the sum of \$11,656.41, to reimburse him for damages arising out of the wrecking on June 27, 1919, of a 20-ton locomotive crane while loaned to and in the service of the naval authorities at naval air station, Pensacola, Fla.

2. There are inclosed a copy of a letter from Mr. Proudfoot submitting an itemized statement of his claim in the sum of \$11,656.41 for reimbursement of expenses resulting from the wrecking of the crane and a copy of a report thereon by the commandant of the Pensacola naval air station. In his report the commandant states, among other things, that "the items of this claim are now in accordance with the records of this station, and it is recommended that the same be indorsed as just and correct * * *."

3. At the time the accident to the crane happened Mr. Proudfoot was performing a contract for water-front improvements at the naval air station costing in excess of \$650,000. The wrecking of his crane undoubtedly caused him considerable damage, and while it has been held that no legal liability attaches to the Government in connection therewith (27 Comp. Dec. 706), the bureau is of the opinion that the contractor has a meritorious equitable claim for relief.

4. The bureau has, however, no information as to the extent of the damage suffered by Mr. Proudfoot as the result of the accident except as it is afforded by the accompanying inclosures. The claim, it is noted, is made up of—

(a) Expenses in securing another crane during the period the wrecked crane was undergoing repair; 14 items amounting to—	\$4, 072. 10
(b) Overhead expense for 22 days' loss of time on the contract, at \$160 a day—	3, 520. 00
(c) Expenses on account of the contract owing to the nonavailability of a crane of adequate capacity during the 22-day period from June 27 to July 19, 1919; 12 items, amounting to—	3, 004. 64
	10, 596. 74
(d) 10 per cent profit on the foregoing—	1, 059. 67

Making a total of— 11, 656. 41

As indicated, the bureau is without information to enable it to check these figures.

5. The ground of the claim being reimbursement of losses, the item of profit (\$1,059.67) would appear to be of doubtful propriety.

GEO. A. MCKAY,
Acting Chief of Bureau.

[Third indorsement]

JULY 28, 1919.

From: Bureau of Yards and Docks.

To: Bureau of Navigation.

Subject: Board of investigation to inquire into the overturning of locomotive crane belonging to F. G. Proudfoot & Co., naval air station, Pensacola, Fla.

1. Forwarded. It is to be noted that the regulations are not being complied with at the naval air station, Pensacola, in that the public works officer is not charged with the responsibility of "upkeep and operation" of transportation apparatus and equipment. It is recommended that the necessary instructions be issued to insure such compliance with the regulations.

2. It is considered that the use of the crane belonging to Proudfoot & Co., by the naval air station, under the conditions that obtained could properly be classified as a donation. In making donations of this character the donor has the right to expect the exercise of proper care in the use of the apparatus. The facts as brought forth by the board indicate that this extreme care was not exercised by the Government during the time that the crane was being used on Government work. The damage was due to the absence of proper care.

3. By the act of July 11, 1919, \$15,000,000 was made available under "Naval emergency fund" for the purpose of restoring to "owners, donors, or lessors such boats, vessels, land, or other property as has been donated, commandeered, chartered, or leased prior to the passage of this act." It is thought that under the terms of this act the cost of repairing the crane can be made as a charge against this appropriation. If this proposed action is approved by the department, a request for funds in the amount of the repairs will be made.

C. W. PARKS.

[Fourth indorsement]

AUGUST 1, 1919.

From: Bureau of Navigation.

To: Judge Advocate General (department).

Subject: Board of investigation to inquire into the overturning of locomotive crane belonging to F. G. Proudfoot & Co., naval air station, Pensacola, Fla.

1. Forwarded, recommending approval of proceedings, findings, and conclusions.

2. In view of all the circumstances the bureau recommends that a letter of admonition be addressed to Machinist (T.) F. Sabots, United States Navy, and that the commandant take the necessary disciplinary action in the case of Chief Boatswain's Mate Arthur Wuller, United States Navy.

3. The bureau considers practice of borrowing a private crane for Government use irregular and should cease.

R. H. LEIGH, *Acting*.

[Fifth indorsement]

DEPARTMENT OF THE NAVY,
Washington, D. C., August 8, 1919.

From: The Secretary of the Navy.

To: The solicitor.

Via: The Chief of the Bureau of Navigation.

Subject: Board of investigation to inquire into the overturning of locomotive crane belonging to F. G. Proudfoot & Co., naval air station, Pensacola, Fla.

1. Forwarded for your information.

2. In accordance with the recommendation of the Chief of the Bureau of Navigation, the proceedings, findings, and conclusions of the board of investigation in the foregoing case are approved.

3. It is directed that a letter of admonition be addressed to Machinist (T.) F. Sabots, United States Navy.

4. It is also directed that the commandant take the necessary disciplinary action in the case of Chief Boatswain's Mate Arthur Wuller, United States Navy.

5. The following-named officer and none other is deemed and held by the department to be involved in this case: Machinist (T.) F. Sabots, United States Navy.

6. Return record to the Judge Advocate General.

RALPH EARLE, *Acting*.

[Sixth indorsement]

AUGUST 15, 1919.

From: Bureau of Navigation.

To: Judge Advocate General (department).

Subject: Board of investigation to inquire into the overturning of locomotive crane belonging to F. G. Proudfoot & Co., naval air station, Pensacola, Fla.

1. Returned; department's action noted.
2. Letter has been prepared in compliance with paragraph 3 of fifth indorsement.
3. As Chief Boatswain's Mate Arthur Wuller, United States Navy, has been discharged from the Navy, no further action can be taken in reference to paragraph 4 of fifth indorsement.

R. H. LEIGH, *Acting*.

[Second indorsement]

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D. C., July 21, 1919.

From: The Judge Advocate General.

To: The Chief of the Bureau of Navigation.

Via: The Chief of the Bureau of Yards and Docks.

Subject: Board of investigation to inquire into the overturning of locomotive crane belonging to F. G. Proudfoot & Co. at United States naval air station, Pensacola, Fla.

1. Forwarded for consideration and recommendation.
2. The attention of the Chief of Bureau of Yards and Docks is invited to paragraph 2, attached to the record of the board of investigation in this case.

GEO. W. EPET
(By direction).

UNITED STATES NAVAL AIR STATION,
Pensacola, Fla., July 14, 1919.

1. The proceedings, findings, and opinion of the board in the foregoing case are approved and respectfully referred to the Secretary of the Navy.
2. The moral responsibility of the Government for damages in this case, expressed as an opinion of the board, undoubtedly exists and in the opinion of the convening authority the most expedient manner of settling the matter is to repair the crane by yard labor at this station. A duplicate copy of the board's report is forwarded herewith for reference to the Bureau of Yards and Docks should the department concur in this view, as that bureau is the one that should provide funds for effecting repairs.
3. Disciplinary action in the cases of Machinist (T) Frank Sabots and Chief Boatswain's Mate Arthur Wuller, No. 1346202, will not be taken until instructions from the department are received.

F. M. BENNETT,
Captain, United States Navy, Commandant.

UNITED STATES NAVAL AIR STATION,
Pensacola, Fla., Thursday, July 3, 1919.

The board met at the naval air station, Pensacola, Fla., Thursday, July 3, 1919, at 10 a. m.

Present: All members.

The proceedings of the third day were read and approved.

Certified copy of report of inspection of Pittsburgh testing laboratory was introduced by the senior member and is hereto attached, marked "Exhibit B."

The board, after maturely deliberating upon the declarations recorded above, finds as follows:

FACTS

1. It has been the custom for Lieut. J. E. Quirk (retired), United States Navy, transportation officer, to arrange with F. G. Proudfoot & Co. for the use of the locomotive crane belonging to F. G. Proudfoot & Co., for hoisting and lowering station boats, without referring the matter to any other office or officer.
2. The public works officer was aware of the fact that the locomotive crane belonging to F. G. Proudfoot & Co. was being used at times for hoisting and

lowering station boats, but there is no contract to cover this service, and no specific understanding was reached as to the responsibility in case of damage to crane while it was being used for this purpose.

3. On June 27, 1919, Machinist (T.) F. Sobota, United States Navy, acting for transportation officer, in the absence of Lieut. J. E. Quirk (retired), United States Navy, on leave, arranged with Mr. A. C. Proudfoot, of F. G. Proudfoot & Co., for the use of their locomotive crane on that date, for the purpose of lowering a 50-foot motor sailing launch into the wet basin.

4. Mr. A. C. Proudfoot ordered his crane engineer to run their locomotive crane to the wet basin for purpose of lowering the boat into the wet basin.

5. Seaman (Second Class) John T. Garner, United States Navy, from the transportation office and nominally in charge of that office, met the locomotive crane and assisted in the lowering of the boat.

6. After the boat was hoisted from flat car, in the attempting to swing the boom of the crane around to bring the boat over the wet basin, the crane was tipped over, coming to rest with its left side resting partly on the ground and partly on the quay wall of the wet basin, this accident occurring at between 6 p. m. and 6.30 p. m., June 27, 1919.

7. The crane suffered damage as follows: Severely strained as a whole; boom bent and torn loose from turn-table, boiler broken adrift from foundation; winch casting broken; engine cylinder damaged, and miscellaneous pipe and other fittings torn adrift.

8. The total estimated cost of repair to damage to crane is:

Labor.....	\$2, 660. 97
Material.....	385. 00
Total.....	3, 045. 97

Time, 30 days.

9. The 50-foot motor sailing launch landed upright in the water, but was struck by the boom and damaged as follows: Eight hull planks were broken, one frame broken, chaffing band and top rail broken, and other minor damages. The estimated cost for repairs to this boat is:

Labor.....	\$410. 88
Material.....	62. 26
Total.....	473. 14

Time, 25 days.

OPINION

The board is of the opinion that—

(a) The immediate cause of the overturning of the crane was gross lack of judgment on the part of the crane engineer, who used his "judgment" without attempting to assure himself as to the weight of the boat or the radius at which he was lifting.

(b) Machinist (T.) Frank Sobota, United States Navy, erred in not recognizing that the handling of a 50-foot motor sailing launch would tax the capacity of this locomotive crane and that extra precautions and competent supervision would be necessary to insure against accident.

(c) Chief Boatswain's Mate Arthur Wuller, United States Navy, was negligent in leaving the station after having been ordered to lower a boat into the wet basin, without providing for the security of that boat during the night, and in not assuring himself that this boat would not be handled during his absence.

(d) Morally, the Government is liable for damages to the locomotive crane belonging to F. G. Proudfoot & Co. In conclusion, the board feels that it is not competent to pass on any legal questions which may be involved in fixing the responsibility for damages sustained by the crane.

E. W. PACE, Jr.,
Lieutenant Commander (C. C.), United States Navy,
Senior Member.

E. G. HIGGINS,
Lieutenant, United States Navy, Member.

W. A. SHERMAN,
Lieutenant, United States Naval Reserve Force,
Member and Recorder.

I hereby certify that the following is a true and correct copy of the original as the same appears in the records of the Post Office at _____, State of _____, on this _____ day of _____, 19____.

 Postmaster

I hereby certify that the following is a true and correct copy of the original as the same appears in the records of the Post Office at _____, State of _____, on this _____ day of _____, 19____.

 Postmaster

I hereby certify that the following is a true and correct copy of the original as the same appears in the records of the Post Office at _____, State of _____, on this _____ day of _____, 19____.

 Postmaster

I hereby certify that the following is a true and correct copy of the original as the same appears in the records of the Post Office at _____, State of _____, on this _____ day of _____, 19____.

 Postmaster