

WESTERN AUSTRALIA.

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R E P O R T

of the

R O Y A L C O M M I S S I O N

Appointed to inquire into the

DISMISSAL FROM THE RAILWAY SERVICE

of

HUGH McLEOD

and his re-instatement.

P e r t h.

ROYAL COMMISSION.

Western Australia) By His Excellency the Right Honourable  
To Wit. ) Sir William Grey Ellison-Macartney, Privy  
Councillor, Knight Commander of the Most  
William Ellison- Distinguished Order of St. Michael and  
Macartney, St. George, Governor in and over the State  
Governor, of Western Australia and its Dependencies,  
(L.S.) in the Commonwealth of Australia.

To Algernon Stratford Canning, Esquire, of Perth,  
Resident Magistrate.

WHEREAS it is desirable that a Royal Commission should be appointed to inquire into the dismissal from the Government Railway Service of Hugh McLeod and his re-instatement: Now therefore I, the said Governor, acting with the advice and consent of the Executive Council, do hereby appoint you, the said Algernon Stratford Canning, a Commissioner to inquire into and report upon the dismissal from the Railway Service of Hugh McLeod and his re-instatement, with power to fully inquire into the case, to recommend what compensation (if any) should be made, and what other action (if any) should be taken, in the interests of justice: And I hereby declare this to be a Royal Commission within the meaning of "The Royal Commissioners' Powers Act, 1902," to the intent that you shall have and may exercise all the powers of a Royal Commission and the Chairman thereof under the said Act and its amendments; and I do hereby require you to report to me, with all due diligence, your proceedings under this Commission.

Given at Perth, this 12th day of June, in the year  
of our Lord One thousand nine hundred and  
eighteen.

By His Excellency's Command,

H. P. COLEBATCH,

Colonial Secretary.

GOD SAVE THE KING !!!

COMMISSIONER:

ALGERNON STRATFORD CANNING, ESQ., R.M.

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SECRETARY,

F. F. HORGAN.

PERTH, AUGUST, 1918.

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R E P O R T.

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TO, HIS EXCELLENCY THE RIGHT HONOURABLE SIR WILLIAM GREY ELLISON-MACARTNEY, PRIVY COUNCILLOR, KNIGHT COMMANDER OF THE MOST DISTINGUISHED ORDER OF ST. MICHAEL AND ST. GEORGE, GOVERNOR IN AND OVER THE STATE OF WESTERN AUSTRALIA AND ITS DEPENDENCIES, IN THE COMMONWEALTH OF AUSTRALIA.

MAY IT PLEASE YOUR EXCELLENCY.

Hugh McLeod at all times material to the Royal Commission to which Your Excellency saw fit to appoint me, was an employee of the West Australian Government Railways and occupied the position of Station Master at Torbay Junction on the Great Southern Line.

On the 14th March, 1914, Mr. H. C. Davies who then held in the same service the position of District Superintendent, was proceeding from Narrogin to Albany by the train. On arriving at Tambellup he noticed a man named Garry emerge from the train, proceed to the booking office where he purchased a ticket and return.

Garry's proceeding excited suspicion in Mr. Davies' mind to the extent that he instructed the ticket collector to go through the train and examine the passengers' tickets, particularly the one held by Garry.

The Ticket Collector did so and on returning reported to Mr. Davies that Garry had a good ticket available for the section on which he was then travelling. He also reported that there were two other passengers (subsequently identified as Clarke & Casey) who presented tickets which had a suspicious appearance.



These two tickets were produced and referred to in the proceedings before me as Nos. 394 and 399.

No. 394 had originally been issued from "Albany to Youngs" but the return half had been altered to read from "Cottesloe to Albany."

No. 399 was also issued from Albany and was a "return" to Torbay. This had been erased and the return half made to read "Fremantle to Albany."

Both these tickets were issued from Albany and under ordinary circumstances the return halves would have been collected by the proper official on the train.

The likelihood of their coming into McLeod's hands was so remote as to be negligible.

The men Casey and Clarke who were detected travelling on these tickets were prosecuted and fined in Albany.

A complaint was made against the man Garry but was, very properly, withdrawn, the Railway Department not being in a position to discharge the onus of proving the offence alleged.

I have carefully examined these two tickets and if their appearance now in any way resembles their appearance on the 14th November 1914, it is to my mind, a remarkable circumstance that Casey and Clarke should have got as far as they did on the tickets. I would certainly have expected a very casual glance to have caused an examiner to question their genuineness, it being apparent the tickets have been tampered with.

Perhaps it would be convenient here to mention that Casey, Clarke and Garry were at that time men of the undesirable class who went round to the various country race meetings and agricultural shows conducting illegal games etc.

Shortly after the detection of Casey and Clarke's forged tickets, Racecourse Detective McDonald, now deceased, attended at the office of the then Chief Traffic Manager, Mr. N. Douglas (who is also deceased) and handed to his Chief Clerk, Mr. O'Connor, a paper ticket No. 467 purporting to be the return half of a



ticket from West Leederville to Torbay Junction. The ticket bore the date 19/12/13.

Now for the first time since what was referred to as "the McLeod case" started, was the full history divulged of the ticket No. 467. When McDonald handed in the ticket he gave much valuable information to the department and merely stipulated that his name should not be disclosed. Before the Appeal Board and on all other occasions was the pledge given to McDonald respected.

On the question arising before me it was only after careful and anxious consideration I decided to exercise the power vested in me as a Royal Commission and order the disclosure of McDonald's name.

Two reasons influenced my decision:-

- (a) The McLeod case had been the subject of so much controversy and also of discussion in Parliament on several occasions - although it had been dealt with by a statutory tribunal, which considered it had not the power to compel the attendance of witnesses and the disclosure of information - that I assumed one of the chief reasons for appointing a Royal Commission was to enable an exhaustive investigation to be made and the matter put to rest for all time, and
- (b) My experience in the interests of justice are best served by the fullest disclosure of all relevant facts in the knowledge or possession of either party to a proceeding so that the constituted tribunal may be the appraiser of the value or importance of the information.

On this happening neither party can be heard to say that the decision might have been different or varied if the suppressed fact or facts had been disclosed. Finality is what I sought to attain.

I consider this evidence most material and of such importance that I feel I must set it out in full. The testimony was given by Mr. Henry O'Connor, District Superintendent Perth and appears in the notes of evidence



beginning at Question 863 et seq :-

Question and Answer are as follows :-

863. By the Commr: What were you in 1914?-- Chief Clerk to the Chief Traffic Manager.
864. Have you seen ticket No. 467 ?-- I cannot remember this particular number. I sent a wire on the same date as that on which I got the ticket and the wire mentions No. 467. This would be the same ticket.
865. When did you first see the ticket ?-- There is a note on the file to the effect that it was on the 26th March, 1914.
866. Where did you see it ?-- In my office, next to that of the Chief Traffic Manager.
867. How did it first come under your notice and who brought it to you ?-- Race Course Detective McDonald handed it to me.
868. By Dr. Stow: You sent a wire on the date on which you received the ticket ?-- On the same day.
869. To whom ?-- To the Station Master at Torbay, McLeod.
870. What does the wire say ?-- It says,  
From Chief Traffic Manager to S.M. Torbay Junction. Blank paper 467 second return, reply instantly, date issued and station to, waiting.
871. Did you get a reply ?-- Yes, on the same day as follows :-  
S. M. Torbay to Chief Traffic Manager, Your wire blank paper No 467 second return issued to Cranbrook on the 26th January last.
872. Did you make a note to the effect that you had received the ticket ?-- There is a note on the file which says :-  
Clerk who is a cripple in the office has a family and works in conjunction with a barrier porter. They sold this ticket for one pound. M.D. 26/3/14.
873. Did McDonald tell you how he came into possession of the ticket ?-- He said it was given to him by some of the heads.
874. Where ?-- He did not say where. These heads are all about the town.
875. Who did he mean ?-- Those who live on the race-courses and around about the stables.
876. Did he say from whom the ticket had come?-- No, he said the ticket was given to him by these heads. He said the reason he brought it to us was that as a member of the community, he thought it was his duty to bring it under the notice of the Railway Department so that this leakage in the revenue, which he had been given to understand was extensive, might be stopped, and so that the Railway Department could institute inquiries and have the thing nipped.



877. Did he say how it was being done ?-- No. He said the tickets were being manipulated. He said a Clerk who was a cripple was concerned in the matter and that a barrier porter was also concerned in it.
878. Did he say that either the clerk or the barrier porter had made alterations in it ?-- No.
879. Did he say where the alterations had been made ?-- No.
880. Or whether it had been made by any one inside the Railways or outside ?-- He gave me to understand it was being done by railway men.
881. He did not say where these railway men were ?-- No.
882. He merely said it was being done by railway men without saying by whom ?-- As far as I can recollect he said by railway men. I do not know whether he said railway men or a railway man. Railway men would concern me.
883. I think you gave him a promise of secrecy as to his name ?-- When he came into the office he wanted to see the Chief Traffic Manager but Mr. Douglas was engaged at the time. I had met Mr. McDonald before on business. After waiting some time and finding that Mr Douglas was still engaged, he said he had some information to impart. Prior to imparting it he wanted a promise that his name would not appear, as it might affect his position if it was divulged. He thought that we could take the steps required without his name being given.
884. He is now dead ?-- Yes.
885. By the Commr: What objection had he to disclosing his name ?-- He said his position would be jeopardised if his name was disclosed.
886. By Dr. Stow: Had you any suspicion in regard to McLeod at the time ?-- No. If I had entertained any suspicion in regard to McLeod I would have wired to him.
887. He was the first person with whom you communicated ?-- Yes.
888. By Mr Walker: Do you remember when the ticket was brought to you ?-- It was on the 26th March, 1914.
889. Did you get a letter from Mr. Davies on the 29th of that month?-- I cannot say from memory but it should be on the file.
890. This detective is purely a racecourse detective?-- Yes, he was employed by the W.A.T.C.
891. Did he tell you from whom he got the ticket ?-- He said he got it "from the heads."
892. He did not use any name at all or signify anybody ?-- No.



893. Did he say he had been informed as to how this was being done?-- No, he said the tickets were being manipulated and that the revenue was suffering accordingly.
894. He said it was some on in the railway employ, a cripple?-- Yes.
895. Is he in the employ of the Department now?-- There are many cripples in the Department. He did not mention any particular cripple who was doing this.
896. Do you remember Mr. Davies alluding to a cripple in one of the letters which came through the Department?-- I do not remember. The file was so voluminous.
897. Can you recollect now as to whether you did know at the time?-- No.
898. Was there any reference on the file to cripples?-- I do not recollect it.
899. Did the detective distinctly mention a cripple in the employ of the railways?-- Yes.
900. He also told you that there were other railway men?-- He said either railway men or a railway man.
901. He mentioned a porter?-- He said railway men. He did not say who they were.
902. Did you take that to mean railway men immediately close by or at Torbay Junction?-- We did not know at the time. This is why I wired to find out where the ticket was issued to. The papers were sent down to the District Superintendent for further investigation.
903. Do you know if any effort was made to get hold of the heads who handed the detective this ticket?-- I do not think so, at all events in Perth. The papers were sent down to Mr. Davies for investigation.
904. Was Garry's name mentioned?-- Not by McDonald.
905. By anyone else?-- I think it was mentioned in the prosecution at Albany. I think there was a man named Garry concerned in the matter.
906. You have no recollection of an effort being made to get hold of these heads?-- There were so many of them that I suppose it would be a job to get hold of them.
907. The detective would have known?-- Yes.
908. And you had him within reach?-- He distinctly said he would not give us any more information. There were certain men whom he called "heads" who gave him information. If he divulged their names he would get no more information. He said it was the same practice that was adopted by the Criminal Investigation Department.



909. Spies and Informers ?-- I do not know what you would call them.
910. It was alleged that the ticket was sold by some one for £1 ?-- Yes.
911. You do not know of the Department doing anything to find out the names of the parties concerned ?-- No. I think the case was put into the hands of Detective Ebbeson who made some inquiries into it.
912. This is all you know about the matter ?-- Yes.
913. What is a barrier porter ?-- A man who collects tickets when you go out at the exits from railway stations.
914. That is in Perth ?-- Yes.
915. Are there many barrier porters in Perth ?-- This morning there would be about eight on duty, less in the middle of the day, about eight during the evening, and less again at night.
916. There would not be 20 barrier porters?-- No, they are withdrawn from other positions and put there temporarily.
917. Was any effort made by the Department to get hold of the barrier porter thus being given away ?-- Not that I know of.

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Consideration of this testimony in conjunction with all the other circumstances, incidents and facts, satisfies me it is of much value and enables me to unreservedly exonerate Hugh McLeod from any part or complicity in tampering with ticket 467 or any of the other tickets.

Strangely enough the Railway Department made no attempt to verify McDonald's information or follow the clues he supplied.

The forged ticket was taken possession of and owing to the remarkable similarity of the writing to McLeod's who had issued the original of which the forged or altered portion was the return half, the guilt was sought to be attached to him solely.

Perhaps it is only fair to the other officials of the Railway Department to say it was Mr. Davies who, influenced by the writing, was responsible for fixing McLeod with the blame; and it would appear to have been Mr. Davies'



view, he being the District Superintendent, which the Department unqualifiedly adopted.

Nothing whatever appears to have been done to ascertain whether one of the barrier porters and "a clerk who was a crâpple" were acting in concert in the matter of altering the tickets.

Mr. Davies when he saw how exactly the forged writing corresponded with McLeod's, to the exclusion of all else, became obsessed with the idea McLeod was the forger, with the result he was suspended; dismissed and subsequently re-instated by the Railway Appeal Board.

McLeod's attitude and demeanour as disclosed by the evidence and correspondence was in my opinion, always consistent with innocence and beyond the similarity in the writing there is nothing whatever to connect him with the forged ticket.

Two hand-writing Experts were called before me to express their opinion but their testimony was inconclusive and lacked certainty. It was satisfactorily demonstrated that McLeod's signature or writing could be traced or copied and the Experts be hopelessly at sea in endeavouring to distinguish the copies from the genuine writings, also that the erasure of the writing on carbon tickets was a somewhat simple matter.

I do not propose to go through the evidence piecemeal in relation to the coincidences in the case and the other tickets issued. All these were dealt with by the Appeal Board when McLeod was adjudged not guilty of the offence with which he was then charged and re-instated in his position.

I agree with the Appeal Board in their conclusion but if the decision was to be regarded as one of "not proven" only, I must most respectfully differ.

My reason is in addition to the evidence put in before the Appeal Board, I have the full history of



ticket 467 which enables me to decide McLeod's innocence.

I am quite sure that if a gentleman of the astuteness and worldly knowledge possessed by Mr. Roe, the Chairman of the Appeal Board had had before him what transpired with Detective McDonald, the veil of obscurity with which this case has been enshrouded would have been lifted and Mr. Roe been in the same position as I am to form an opinion.

To my mind the incomprehensible part of the whole case seems to have been the omission or oversight of the Department to have utilised the information given by the Race Course Detective McDonald instead of staking everything on the handwriting and focussing the guilt on McLeod.

McDonald was a man whose calling brought him in close touch with the undesirable class. It was his business to know as many of them as possible and endeavour to fathom what was going on in their world. One would naturally have expected that after the discovery of Clarke's and Casey's forged tickets, bearing in mind their calling which was well known to the Department (through Mr. Davies) that when informed "one of the heads" a term used by McDonald which would appear to mean a race course parasite or hanger on, who is more successful in the mis-application of his wits or ingenuity than others pursuing the same mode of living, had given him the ticket 467 the railway authorities would have at once connected the occurrences and noted their significance and if intelligent use had been made of the information supplied, it is very likely the real offenders in respect of the forgeries would have been discovered and a source of much potential loss of revenue closed up.

In view of the foregoing coupled with my view of the testimony I feel I must go further than the Railway Appeal Board and hold McLeod guiltless of the charge of altering or tampering with ticket 467 as well as any of the other tickets referred to.



I regret to have to note that by innuendo or suggestion it was sought in some way to connect Mr. Davies with the forgery or alteration of tickets.

In my opinion there is no foundation whatever for such a suggestion and I gladly record the fact that Mr. Walker who acted as Counsel for Mr. McLeod withdrew the same.

Mr. Davies certainly committed blunders due to errors of judgment but devoid of criminality.

I now come to the question of compensation which has been referred to me for recommendation.

An Account has been put in totalling £100. 3. 3. but after hearing Mr. McLeod's testimony in support I am of opinion it is very much inflated. In my experience what is known as "a Solicitor and Client" taxation of a most generous description, would not allow some of the items claimed or the amounts thereof.

An excessive period is claimed in respect of the Appeal before the Railway Appeal Board and there would almost appear to be in part duplication or triplication under this head.

In another item because he had a dispute with the Railway Officers' Association concerning some law costs and adjudged to be in the wrong when sued, he seeks to recover here by way of compensation the costs of his blunder.

I am also bearing in mind that Mr. McLeod has received the whole of his salary without any deduction for the period he was under suspension and dismissal.

In respectfully recommending to Your Excellency payment of the sum of £75, (Seventy five pounds) to Hugh McLeod I feel quite satisfied he will be liberally treated for all his reasonable and proper expenditure in connection with his case and every other possible claim he could have arising therefrom will be adequately satisfied.

In view of the remoteness in point of time of the occurrences and the death of absence from the State of many of the persons concerned I do not feel I can usefully suggest any action to be taken in the interests of justice.

I would like to record my appreciation of the services of the Secretary to the Commission, Mr. F. F. Horgan, which were invaluable, resulting in the saving of much time and expense.

DATED at Perth this                      day of August 1918.

I have the honour to be  
Your Excellency's most obedient servant,



L I S T    O F    W I T N E S S E S    E X A M I N E D .

Joseph Patrick Sullivan.  
Henry Charles Davies.  
Arthur Robert Webb.  
William Herbert Hope.  
John Henry Willmott.  
George Leishmann.  
Frederick George Villiers.  
Olive Tuke.  
Frances White.  
Cornelius Vincent Donovan.  
Henry O'Connor.  
Arthur Wansbrough.  
William Joseph Hussey.  
John Leamey.  
James Casey.  
Arthur Higham.  
Hugh McLeod.  
Arthur Ebbeson.