

(9) In releasing Archibalds from their contract.

In this connection several sub-heads were tabulated :—

- (a) Was the sum of £63,252 so far in excess of the value of Lots 2 and 3 that it would be inequitable for the Board to enforce payment of it by Archibalds Ltd. ?
- (b) If so, did the Board act with due care in not negotiating with Archibalds with a view to advising the Minister that a reduced sum be accepted ?
- (c) Did the Board and General Manager act with due care in considering the request of Archibalds for release from its contract ?
- (d) Did the General Manager act with due care in not suggesting to the Board that legal advice should be taken before deciding to answer the request of Archibalds for the release from their contract ?
- (e) Did the Board act with due care in not taking such legal advice ?
- (f) Did the Board act with due care in making and acting upon its decision to release Archibalds subject to the conditions regarding the deposit without first fully reporting the matter to the Minister and obtaining his formal direction ?

These questions cannot be conveniently dealt with categorically, but I will deal with the issues raised in one comprehensive review. Carrying on the history of the Board's actions from the date of the notification of the acceptance of the tenders as set out in paragraph 5 above, the General Manager arranged for the successful tenderers, Mr. Gillies and Mr. Archibald, to meet him to discuss arrangements for the joint use of the park. Archibald asked to see the General Manager before this meeting, and when they met Archibald said he was being financed by the Bank of New Zealand, and the General Manager was at liberty to communicate with the local manager, Mr. Ashby, for any information required. The General Manager did so, and was told the bank was financing Archibalds and gave a good report and said that any undertaking Mr. Archibald entered into the General Manager could rely on his carrying out. That the finance was in order and that the General Manager would be perfectly safe in giving Mr. Archibald possession of his vehicles in anticipation of the financial arrangements being completed.

There was then the meeting with Gillies and Archibald and arrangements made for the joint use of the park.

This meeting was on the 20th March, and Archibalds started in on their contract and disposed of two trucks (the proceeds of these were subsequently, after Archibalds' release, accounted for to the Board). Then, some date before the 26th March, Archibald called at the General Manager's office and said that he could not go on with his contract, that he had been misled by his advisers. The General Manager said he was sorry, but the Board would hold him to his contract. Next, a day or two later, but again before the 26th March, Archibald called again along with his solicitor, when the General Manager repeated what he had told Archibald himself, and said that if he had any special representations to make there was a Board meeting on the 26th March. A letter was received from Archibalds' solicitors on the 26th March, which stated :—

RE TENDER NO. 318—ARCHIBALDS GARAGE, LIMITED

We have been instructed to write you by Archibalds Garage Ltd. who were the successful tenderers in respect of Lots 2 and 3 in the above Tender No. 318, the accepted price being upwards of £63,000.

Mr. Alexander Archibald informs us that before the tender was submitted he made what turns out to have been a very cursory inspection of the vehicles at the Holding Park lasting not more than 1 hour to 1½ hours. Last week, after the acceptance of the tender, a more comprehensive inspection was made by our clients, and they then realized that they had made a serious mistake in submitting their tender, and that it was based upon an entirely inadequate knowledge of the condition of the vehicles which they had gained as the result of their first inspection. Our clients do not wish us to gloss over the fact that this inspection was most inadequate on their part, but they are now faced with the position where it would be disastrous for them if they are held to their tender. They have accordingly instructed us to inquire whether the Board would be prepared to release them from their tender.