

July 5, 1961.

PRIVATE & CONFIDENTIAL

Dear Ted:

These are the comments that Sir Roy had to offer. I understand that he has had Gordon Simmons, the Hawker Siddeley solicitor, go over it and I would like to discuss this with you after you have had a chance to study it.

" Clause 1: No comment.

Clause 2: I think here the salary should be stated as \$100,000 per annum, paid in monthly instalments, or in any other agreed manner and be subject to alterations at any time agreed with the Chairman of the Company. Travelling expenses, of course, would be dealt with in the ordinary way.

Clause 3: I think this Clause needs considerable clarification because as it stands Mr. Emmert would be entitled to receive at 65 the full pension of \$30,000 per annum even though he was no longer in the service of the Company. I do not think that was intended. It should also be made clear that the option for a joint pension is exercisable by Mr. Emmert.

Clause 4: Here it would be better if it was made clear that the Group Insurance Benefits did not include normal Pension Benefits.

Clause 5: This Clause is rather ambiguous and there does not seem to be any point in stating that if Mr. Emmert left our employ or if his services were dispensed with for any reason whatsoever at the end of five years or at any other time, he would still have ninety days in which to exercise his option to take up the shares.

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? I would rather see the option end with the contract as there does not seem to be any point in giving the extra ninety days, and I think you will agree.

I think for his own protection it should state that the shares should be given to him by the Company under the terms suggested. Again, if the shares were split or the capital watered by means of a bonus issue or anything of that kind it might well be that the option would be made valueless, and we would want to avoid that for his sake.

Clause 6, 7 and 8: No comment.

Clause 9: This Clause appears to me to be out of place as in my view it is not appropriate to make the executive scheme a contractual part of the Agreement because it not only concerns the President, but all the other executives of the Company. I should have thought that it should be excluded from the Agreement and contained in some other document which would more clearly define the terms of the scheme. To leave this Clause in the Agreement might embarrass the draughtsman of the scheme when he comes to work out the details.

The terms of the Incentive Compensation Plan will really need to be clarified as it would appear to mean before charging minority interests. In which case, the question should be asked as to whether the minority interests' share of the capital and surplus be brought in?

There is also the question of Deferred Tax Credits and Provisions - if they were all included in the capital the basic profit level would be raised by some \$4 million to something over \$12 million before there was any bonus. Six per cent on the present capital stock and surplus at present amounts to just over \$8 million and they would be entitled to 10% on all profits (before Tax) over that.

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I think you will agree that although some of these words look fairly simple they have implications which could be very embarrassing to all concerned.

Clause 10: Again, this seems to be an inappropriate place to provide for alteration of the Company's By-laws and the proposed alterations would naturally have to be carefully considered by our lawyers and in this case they should be Canadian lawyers to ensure that they are not inconsistent with the other By-laws of the Company and are not inconsistent with themselves.

As an instance, No. 20 seems to us to be ambiguous and difficult to understand and might involve the Chairman of the Company having to exercise the duties of the President in the absence of the President and to the exclusion of the Vice-Presidents.

By-law No. 20 also seems to conflict with By-law No. 22, but these are points which should be thrashed out with our Canadian lawyers.

Clause No. 11: No comment.

✓ Clause No. 12: This does not state by whom the notice is to be given and if we assume that it can be given by either party, then Mr. Emmert would be in the position of giving notice to terminate the Agreement at the end of five years and be entitled to all the pension named under Clause 13, and I am sure that is not intended.

Clause No. 13: If the contract should be terminated in July 1966, that is at the end of the initial period, it would appear that Mr. Emmert would be entitled to his full pension not only from the age of 65 but from the date of termination. Again, I feel sure this is not intended.

I think the wording of the first paragraph of this Clause needs amendment and finally, under sub-paragraph (c) Mr. Emmert could be said to be entitled to the difference



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between the sum ascertained under sub-paragraph (b) and the whole amount of remuneration possible to him from the beginning of his service to the end of its term and it is not clear when this would be.

*agree*  
The payments to be made under this paragraph are to be paid in three equal annual instalments, the first on the termination of the contract. If the fiscal year ends only a short time before the termination, it would not be possible to determine the amount to be paid until the accounts of the Company have been audited and in this event, it would not be possible to pay the first instalment on the day of termination and there should, therefore, be some provision for a payment on account or a postponement of the initial payment until a day related to the day on which the accounts are ready.

This may seem pernickety, but I think it will illustrate how tricky these things can be.

*agree*  
There does not appear to be any restriction on taking up competitive employment and in regard to your covering letter it is not clear who is going to sign the Agreement - Racair Ltd., which holds 48% of the shares or Hawker Siddeley, which owns about 11%.

*this is important*  
I am not entirely happy about paragraph (b) because it does not state who is to decide whether any objections are reasonable and valid. This should somehow be within the Company's purview but it is not made clear."

Most of the above I am sure you will agree with and we can cover this both in separate letters and the agreement itself. Sir Roy feels there should be another clause added regarding the Incentive Plan, stating that in the event of war or threat causing rapid industrial expansion special steps should be taken, otherwise it would get out of hand.

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I am rather pleased that we have an opportunity of ironing these things out in advance because having just worked on Allan MacDonald's agreement, I feel that it is better to have everything clear cut before signing.

I will get in touch with you when I return to Toronto. In the meantime, you will have had an opportunity of working on some of these suggested changes and we can go over the results of your effort together at that time.

Sincerely,

Mr. T. J. Emmert,  
Vice-President,  
Massey-Ferguson Limited,  
Toronto, Ontario.

(Above letter dictated by Air Marshal Curtie from Montreal this morning, and signed by secretary.)