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IRAN-UNITED STATES CLAIMS TRIBUNAL

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 34
CHAMBER ONE
AWARD NO. 206-34-1

FIRST TRAVEL CORPORATION
(doing business as TRANSPORTATION CONSULTANTS INTERNATIONAL),
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
IRAN NATIONAL AIRLINES CORPORATION ("IRAN AIR"),
Respondents.

AWARD

Appearances :

For the Claimant : Mr. C. S. Heard,
Mr. R. Klein,
Attorneys,
Mr. D. A. Hough,
Mr. J. A. Ueberroth,
Claimant's Representatives.

For the Respondent :

Mr. M. K. Eshragh,
Agent of the Islamic Republic of Iran,
Dr. S. K. Khalilian,

Adviser to the Agent,
Mr. M. Azadeh,
Assistant to the Agent,
Mr. M. R. Askari,
Attorney, Iran Air,
Mr. C. Mansourian,
Adviser, Iran Air.

Also present : Mr. D. Price,
Deputy Agent of the United States of America,
Mr. J. Alvarez,
Adviser to the Agent.

I. FACTS AND CONTENTIONS OF THE PARTIES

On 16 November 1981 Transportation Consultants International ("TCI") filed a Statement of Claim with the Tribunal seeking an award of $2,132,854 together with interest and costs, representing commissions allegedly due under a marketing agreement between TCI and Iran Air dated 1 May 1976. TCI was at that time a corporation engaged in the provision of consultancy services to the travel industry.

The Government of the Islamic Republic of Iran did not file a Statement of Defence, but contended that the claim, being based on contract, was not attributable to it, despite the contention of TCI that the Government, as sole owner of Iran Air, must be held jointly and severally liable with Iran Air. The question was joined to the merits of the Case in the Tribunal's Order filed on 2 December 1982.

A Statement of Defence was, however, filed by Iran Air, which contested the United States nationality of TCI and its standing to sue, as well as disputing the claim on the merits. Further written pleadings and evidence were duly filed by the Parties.

A Pre-hearing Conference was held by the Tribunal on 19 October 1982, and an oral hearing on 2 July 1985. At the hearing, the Tribunal heard argument and oral testimony from both Parties.

The object of the agreement between the Parties which is the subject of the present claim, "the Agreement", is described in Article I as being "to further and ensure, to the maximum extent possible, a substantial and significant development of and increase in IRAN AIR business and revenue earned from the "Contract Areas" ... at the lowest possible cost to revenue ratio." It is common ground between the Parties that the Agreement was substantially different in its conception from the standard type of IATA General Sales Agency Agreement. In this case the relationship between the Parties was one of consultancy rather than agency. In order to achieve the stated objective, TCI was to provide a range of "services, facilities, functions and personnel" enumerated as items (a) to (j) in Article II, and including the establishment of passenger promotion sales offices; the provision of an adequate number of competent and qualified personnel for the promotion and solicitation of new business and revenue including the services of a specified minimum number of full-time professional salesmen; the preparation of yearly marketing plans and their implementation once approved by Iran Air; the development and promotion of package tours; and various other promotional services. The Agreement entered into force on 15 May 1976 and was to remain in effect for five years unless earlier terminated by Iran Air in accordance with the terms of Article XVII. It was signed in English only.

Article V of the Agreement provides for remuneration and its interpretation is essential to the present dispute. It states:

> "1. Amount of Remuneration
>
> As full compensation for the services, functions, facilities, competence and ability of TCI provided to IRAN AIR hereunder, IRAN AIR shall pay TCI as follows:

(a) monthly fee of U.S. $3,600.00 (Three Thousand Six Hundred Dollars);

(b) an additional amount, if any, calculated as 3% (Three Percent) of the revenue actually earned in the areas covered hereunder which is in excess of the agreed base. For purposes of computation of the additional amount payable hereunder, the agreed base shall be U.S. $3,200,000.00 (Three Million Two Hundred Thousand Dollars)."

Annex 'A' to the Agreement lists the "Contract Areas" which were to be covered by the Agreement.

The Agreement remained in force between the Parties until it was terminated by Iran Air. On 30 January 1979, Mr. Bahman Nassiri, Iran Air's Regional Director, Americas, wrote in the following terms to Mr. Donald Hough, at that time President of TCI:

"Dear Mr. Hough:

In accordance with Articles XIV and XVII of the Agreement between Iran National Airlines Corporation ('Iran Air') and Transportation Consultants International dated May 1, 1976, and in view of the problems created by the present political situation in Iran, Iran Air hereby terminates the Agreement of May 1, 1976, effective February 1, 1979.

We appreciate the efforts that Transportation Consultants International has made in the past on behalf of Iran Air.

Sincerely,

[signed]

Bahman Nassiri
Regional Director-Americas"

Payments of the monthly fee under Article V 1.(a) were made regularly throughout the period of the Agreement. On the other hand, override commission assessable under Article V 1.(b) could only be calculated on the basis of revenue information to which only Iran Air had access. On 16 November 1979, TCI wrote to Iran Air's New York office setting out figures it had obtained from an Iran Air employee for Iran Air's revenue in the Contract

Areas from 15 May 1976 to 31 December 1978, and claiming $2,132,854, the amount of the present claim, in override commission for this period. This appears to have been the first written claim for override commission pursuant to Article V 1.(b) of the Agreement, although TCI says it made periodic oral requests for Iran Air's revenue figures.

Monthly or annual agreed base

TCI's claim of 16 November 1979 was calculated on the assumption that the "agreed base" of $3.2 million was an annual figure. It is this interpretation which TCI has maintained throughout the present proceedings.

Iran Air contends, on the contrary, that the amount of $3.2 million was intended as a monthly base and was to be deducted from the relevant monthly revenue to give the amount on which the 3% commission would be payable.

Both Parties produced argument and evidence, both written and oral, in support of their respective contentions. TCI, for its part, claims that it was the understanding and intention of the Parties during the negotiations leading to the signing of the contract, that the "base" was an annual figure. The provision of an "agreed base" was, TCI claims, inserted by Iran Air as an amendment to TCI's originally proposed draft; it was explained to TCI by Mr. Mike Shamilzadeh, Iran Air's North American Manager for Marketing and Sales at that time, as being intended to take account of the annual level of discounted tickets already being sold by Iran Air to Iranian students and government officials for which it was not considered appropriate that TCI should receive commission. TCI claims that they would never have agreed to such a monthly base for economic reasons, since Iran Air's revenues would have to increase by 600% per year, a figure beyond Iran Air's load capacity to generate, before TCI became entitled to any commission whatever. TCI further relies on the general practice of the airline industry

which, it argues, favors annual or quarterly computations of override commission in recognition of the difficulties and delays normally encountered in assembling all the necessary revenue information from the carrier.

Iran Air contends that the 'agreed base' of $3.2 million was understood to be a monthly base. It argues that its annual passenger revenue was already, prior to the agreement with TCI, running at twice the base level, and that Iran Air would not have guaranteed TCI an automatic and immediate income before they had even begun to perform their obligations. Iran Air further contends that normal airline industry practice is to calculate and pay override commission on a monthly basis; that the provision for a monthly retainer in paragraph 1.(a) of the same Article V of the agreement with TCI argues for the interpretation that the override commission, too, was to be computed on a monthly basis; and that the very fact that TCI never made any claims for such commission prior to November 1979 suggests that TCI knew that the target was monthly and had simply never been reached.

"Revenue actually earned"

The second issue between the Parties as to the interpretation of the Agreement relates to the meaning to be given to the words "revenue actually earned" which appear in Article V 1.(b), and which define the basis on which commission is payable under that Article.

TCI contends that the revenues to be taken into account should be the gross passenger revenues as shown in Iran Air's own records, without deductions. TCI relies in support of this proposition on the natural meaning of the contract terms; the fact that discounts had already been taken into consideration by the insertion of an "agreed base"; and the practice of the airline industry where it is usual to specify any such specific deductions.

Iran Air contends that "revenue actually earned" means, instead, gross revenue subject to certain recognised deductions. It lists these as: discount sales to Iranian students and government employees; "interline" sales made by other airlines or agents; sales by Iran Air of other carriers' seats; amounts refunded to passengers; sales made on the instructions of the Iranian government; a government contribution to allow students to travel at discounted rates; and taxes collected and paid to the United States government.

The scope of the entitlement to commission

A third area of dispute as to interpretation concerns the existence of implicit limitations on the sources of revenue from which TCI was entitled to derive its commission. Iran Air alleges that the intention of the Parties when negotiating the Agreement was that commission would be payable only on revenues generated by TCI's efforts in areas not already served by an Iran Air regional office; and that revenue from the four existing Iran Air regional offices was to be excluded from the calculations.

TCI contends that there were no such limitations, and that commission was payable on revenues earned throughout the entire "Contract Area" as defined in Annex A to the Agreement, irrespective of whose efforts were responsible for generating the business. TCI supports its argument by reference to the contract words themselves, and to the fact that, since TCI, unlike a normal IATA sales agent, did not itself hold Iran Air ticket stock and its efforts were not concentrated on direct ticket sales, the proportion of business generated as a result of TCI's efforts would be impossible to determine.

Performance of the Agreement

Aside from issues concerning the correct interpretation of the

contract, Iran Air has further argued that TCI is not entitled to the commission sought on the grounds that its performance of its contractual obligations was defective. Iran Air denies that TCI performed any of the specific tasks required of it under Article II of the Agreement; it alleges, further, that any increase in the airline's business during the life of the contract was due to Iran Air's own marketing efforts; and that the termination of the agreement was in reality motivated by dissatisfaction with TCI's performance.

TCI asserts that it performed all its obligations to Iran Air's satisfaction except in cases (such as the production of a yearly marketing plan) where performance was specifically waived by Iran Air. TCI argues that Iran Air's revenues increased by 500% during the contract period; that the monthly "retainer" under Article V 1.(a) was paid throughout; that no complaints were received until the Statement of Defence was filed in these proceedings; and that, far from recording any dissatisfaction in the letter of termination, Iran Air expressed appreciation for TCI's services.

The figures relied upon by TCI as the basis of their commission calculations were obtained informally from Mr. Shamilzadeh in 1979 after he had ceased to be employed by Iran Air. It is accepted that entitlement to commission could be derived only from figures compiled and provided by Iran Air itself, as it alone had access to the passenger revenue information. During the course of the proceedings, however, Iran Air submitted a revised and adjusted set of revenue figures for the period during which the contract was in force. These show a gross revenue for the same period [1] of $78,480,936, as against the figure originally relied on by TCI of $79,628,478.

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[1] TCI claims commission only for the period ending 31 December 1978. Although the Agreement continued in force for a further month, revenue figures were not available beyond the end of 1978 at the time of filing the claim.

II. REASONS FOR AWARD

1. Jurisdiction

a) The Claimant's nationality and standing

At the date when the claim is said to have arisen, February 1979, TCI was, according to evidence submitted to the Tribunal, a wholly-owned subsidiary corporation of First Travel Corporation ("FTC"), a California corporation. The Tribunal is satisfied on the evidence submitted that natural persons who are United States citizens owned more than 50% of the capital stock of FTC from the time the claim arose continuously until the date of the Algiers Declarations, 19 January 1981, despite various changes in the corporate structure and ownership of FTC itself during that period.

Evidence filed with the Tribunal indicates that in the course of a corporate reorganization which took effect on 31 December 1980, TCI transferred all its assets and liabilities to FTC, which corporation thereafter operated it as a division. Though the name and various other assets of TCI were subsequently sold, in July 1982, to Alford Leisure Enterprises, Inc., it is clear that the present claim of TCI was specifically excluded from that sale. Accordingly, the actual legal entity presently seised of the claim - that is, FTC - must be named as the Claimant, to distinguish it from the subsisting corporation currently bearing the name of TCI, which is now owned by Alford Leisure Enterprises, Inc. Such clarification is consistent with the Tribunal's ruling in its Decision of 8 December 1982 in In Re Refusal to File Claim of AMF Overseas Corporation, Decision No. DEC 17-Ref 20-FT, (reprinted in I Iran-U.S. C.T.R., p. 392).

b) The Government of the Islamic Republic of Iran as Respondent

The Claimant has named the Government of the Islamic Republic of Iran as a Respondent, contending that, as sole owner of a state corporation, it bears derivative liability for the alleged failure to pay amounts due under the Agreement. The Government has argued, in its Statement of Defence, that the claim is purely contractual and, as such, not attributable to it. Neither Party has extensively briefed this question. Since the Award in this case will be fully satisfied by payment out of the Security Account, the Tribunal sees no need to decide whether Iran Air is solely responsible or whether the Government also shares in the liability.

2. The Merits

a) The "agreed base"

The single most contentious issue to arise out of the present case is whether the "agreed base" of $3.2 million, which appears in Article V 1.(b) of the Agreement, was intended to be an annual or a monthly figure. The respective contentions of TCI and Iran Air on this point have been set out above.

The second sentence of Article V 1.(b) - "For purposes of computation of the additional amount payable hereunder, the agreed base shall be U.S. $3,200,000.00 (Three Million Two Hundred Thousand Dollars)" - is, on its face, capable of bearing, at least, either of the two meanings advanced by the Parties. There is an ambiguity inherent in the contractual language itself. Faced with this ambiguity, the Tribunal can have recourse to a number of surrounding circumstances which are acknowledged as aids to interpretation where the plain terms of the contract are inconclusive.

Trade usage is one such source, and it was discussed extensively by both Parties, each of whom sought to draw varying conclusions from the different examples they presented. It does not, in any event, appear to the Tribunal that the practice of the airline industry as to override commissions was so settled and unvarying as to yield much guidance. This is particularly the case since both TCI and Iran Air were at pains to point out that their own agreement was something very different in concept from the normal General Sales Agency; it was, rather, a sales promotion agreement.

The conduct of the Parties and their subsequent practice in the implementation of a contract is often another important source of evidence. In the present case, Iran Air has argued that, because TCI never made any demand for override commission throughout the life of the contract until November 1979, the inference to be drawn from such conduct is that TCI recognized that no commission was due. But this fails to take account of one essential fact: that TCI could not know what, if any, commission was due until Iran Air supplied its revenue figures to enable the calculations to be made. There was no other source from which this information could be derived. TCI claimed to have made oral requests for the figures, and was ready to acknowledge the inbuilt delays which Iran Air would experience in the course of the data-gathering process. However, once TCI was in possession of the figures, it made a prompt request for payment of commission.

The Tribunal is left, then, with the task of examining what each Party intended and believed the terms to mean at the time the Agreement was signed, in order to identify whether a common intention existed, or at the very least to give the words the effect which corresponds most reasonably to the purpose and context of the contract. Recourse can be had to oral, as well as written evidence, in cases such as this where the written contract is itself ambiguous.

Evidence on this point was submitted by TCI in the form of an Affidavit from Mr. Richard Sargent, who in 1976 was Chairman of the Board of TCI and who negotiated and executed the Agreement. Mr. Sargent also testified in person at the hearing. Iran Air submitted an Affidavit and a subsequent letter from Mr. Guiv Vaziri, who, as Iran Air's General Manager, North America until September 1976, was responsible for the conclusion of the Agreement, participated in the final discussions leading to its signature, and executed it. Mr. Vaziri, too, testified in person at the hearing. Iran Air also submitted evidence in the form of an Affidavit and oral testimony from Mr. Hooshang Tajadod, who approved the contract for signature in his capacity as Deputy Managing Director of Iran Air at the time, although he played no part in the preceding negotiations with TCI.

Mr. Sargent testified that from the time the first contact was made in 1975 with a view to establishing a marketing relationship, he dealt exclusively with Mr. Shamilzadeh, who acted as the channel of communication between TCI and the responsible officials of Iran Air. On 16 July 1975 Mr. Sargent transmitted TCI's detailed proposal for the form of an agreement to Iran Air under cover of a letter to Mr. Shamilzadeh. The proposal for remuneration was in the following terms:

> "VIII. REMUNERATION
>
> For the services as specified including full service, sales and marketing offices and supplemental sales and marketing offices, TCI would receive a monthly retainer of $3,600.00.
>
> In addition, an incentive commission of three percent (3%) of gross passenger revenue dollars generated from TCI's area of responsibility would be paid on a quarterly basis. These areas of responsibility will be mutually and specifically agreed upon. We will be able to clearly show a dramatic increase in revenue from these specific areas to justify the incentive commission."

Mr. Sargent testified that, after further discussions, Iran Air produced a draft contract which closely followed TCI's remuneration proposal but with one important difference :

instead of providing for a commission of 3% of gross passenger revenue, it contained the formulation which was carried, unchanged, into Article V 1.(b) of the final Contract, and which introduced the concept of the 'agreed base' of $3.2 million. Mr. Sargent stated in his Affidavit that the reason for this had been explained to him in the following way:

> "During these continuing discussions, Mr. Shamilzadeh advised me that Iran Air wanted to include an annual base figure of $3,200,000 in the calculation of commissions. He proposed that TCI would be entitled to a 3% commission on revenues in excess of this annual base earned in the areas covered by the agreement. Mr. Shamilzadeh explained to me that the $3.2 million base represented revenues that Iran Air generated during 1975 from its sales of substantially discounted tickets to Iranian students and government officials. Iran Air did not feel that TCI should be entitled to a commission on such revenues."

Mr. Sargent stated at the hearing that TCI accepted this change as a matter of business judgment.

The revised draft was, it seems, presented at a meeting in April 1976 at Iran Air's office in New York. Mr. Sargent attended the meeting with another TCI representative. Apart from Mr. Shamilzadeh, Iran Air was represented by Mr. Guiv Vaziri, an official from Iran called Mr. Fateh, and a member of the legal department, Mr. Nikain. Mr. Sargent's recollection of the meeting is that one or other of "the Iran Air officials" - he does not specify which - orally confirmed the understanding he had already formed that the $3.2 million figure was an annual base to take account of discounted sales; and that no other deductions were to be made.

It appears that by the date of that meeting, the principal elements of the agreement had already been settled. Neither Mr. Sargent nor Mr. Vaziri referred to any detailed or substantive negotiations taking place at the April 1976 meeting.

Mr. Vaziri described to the Tribunal the history of Iran Air's operation in the United States. By 1975 there were four Iran

Air sales offices, in New York, Los Angeles, Houston and Chicago. To coincide with the inauguration of daily flights to Tehran, it was decided to enlist the help of marketing specialists, and discussions with TCI were initiated by Mr. Shamilzadeh. As to the content of the agreement itself, Mr. Vaziri's understanding of the underlying rationale of the $3.2 million base figure was, and is, very much at variance with Mr. Sargent's. Mr. Vaziri described at the hearing how the airline's Head Office in Tehran would establish a quota, or target figure, for each area to achieve in each year of activity. These quotas were derived from the previous year's sales figures, taking account of economic trends and projected capacity. Mr. Vaziri said that the North American quota fixed in 1975 for the following year was $35 million. He explained that he broke this figure down into a monthly target by dividing by 12 and adding 10% on the assumption that, with the help of additional staff, Iran Air's own sales figures could increase irrespective of the involvement of outside consultants. This gave a monthly target of $3.2 million which, he said, was for Iran Air itself to achieve. The base of $3.2 million, Mr. Vaziri explained, was intended as a monthly deduction to reflect precisely this figure. He denied that it had anything to do with the previous year's sales of discounted tickets, or that it was an annual figure at all.

But although Mr. Vaziri was of the view that TCI was aware of the derivation and nature of the "agreed base", a proposal which Iran Air had introduced, he admitted at the hearing that he himself did not discuss either the base itself, or the underlying quota, with Mr. Sargent. He did not consider it necessary for Mr. Sargent to know about the quota, as it related to Iran Air's own performance, and had nothing to do with TCI's. Mr. Tajadod, in his testimony at the hearing, confirmed Mr. Vaziri's understanding of Iran Air's internal expectations. But he, too, had not communicated them to TCI. Thus it is, in the Tribunal's analysis of what occurred, entirely possible - and it is an interpretation consistent with the evidence of Mr.

Sargent, Mr. Vaziri and Mr. Tajadod - that each Party understood the "agreed base" to mean something entirely different at the time the agreement was concluded between them. It is for the Tribunal to determine which of the competing interpretations is contractually binding.

Mr. Sargent stated at the hearing that, while an annual base of $3.2 million was acceptable as a matter of business judgment, a monthly figure of $3.2 million would not have been. It would have meant that Iran Air's revenue would have to increase to $38.4 million per year before TCI became entitled to any commission at all in excess of the monthly retainer. Mr. Sargent already had a clear understanding by the time of the April meeting, obviously derived from his discussions with Mr. Shamilzadeh of Iran Air, that the base was to be an annual one. This would have been an entirely reasonable view; and the evidence seems to confirm that nothing was said at the April meeting to cause him to doubt its correctness. This, then, was the basis on which TCI concluded the contract.

It was Iran Air's own employee who had led TCI to believe the base was an annual one. Mr. Vaziri was emphatic that he said nothing that would have altered TCI's belief, because he regarded the company's expected sales performance as an internal matter. In such circumstances, Iran Air must be held to be bound by the interpretation which it had induced in TCI, which remained uncontradicted, and which appears to have been an entirely reasonable understanding of the words themselves. Of the two alternative interpretations which have been advanced, the Tribunal is bound to favor the one which was communicated to, and accepted by, the other Party. See Corbin on Contracts, vol. 3, § 537, at pp. 51-51 (1960). In addition, Iran Air was the party who proposed and drafted Article V 1.(b) of the Agreement. Thus, finally, this result is reinforced by the subsidiary rule of interpretation known as contra proferentem, which comes into play if, after all the ordinary processes of

interpretation are exhausted, doubt still remains as to which meaning should be enforced. Corbin describes it as follows:

> "If ... it is clear that the parties tried to make a valid contract, and the remaining doubt as to the proper interpretation is merely as to which of two possible and reasonable meanings is to be adopted, the court will adopt that one which is the less favorable in its legal effect to the party who chose the words."

Id. § 559, at p. 262[2]

b) The scope of the entitlement to commission

Article V 1.(b) of the agreement provides that a commission of 3% should be calculated on "the revenue actually earned in the areas covered hereunder". It imposes no other limitation on the sources of revenue which were to be taken into account. The expression "the areas covered hereunder" must be taken as synonymous with the "Contract Areas" as defined in Article II(a) of the agreement and listed in Annex 'A'. Nowhere is there any evidence which suggests that TCI was not entitled to take all such revenues into account; the extent to which a limitation is implicit in the definition of "revenues actually earned" is discussed below.

c) Meaning of "revenue actually earned"

It is significant that, whereas the language of TCI's proposal with regard to remuneration spoke of "an incentive commission of three percent (3%) of gross passenger revenue dollars generated from TCI's area of responsibility", the words substituted by

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[2] The Tribunal notes in addition that Iran Air provided no documentary evidence of the $35 million quota for 1976 upon which it said the base amount was calculated. Its North American gross passenger revenue for 1975, the year before the quota, amounted to about $11 million; in 1976 such revenue totalled about $16 million.

Iran Air and adopted in the final Agreement are somewhat different: the commission under Article V 1.(b) is to be "calculated as 3% (Three Percent) of the revenue actually earned in the areas covered hereunder which is in excess of the agreed base." (emphasis added).

It seems to the Tribunal that some distinction must have been perceived between "gross revenue" and "revenue actually earned", and that the latter expression bears a more restricted meaning.

Thus in assessing the entitlement to commission, taking the available gross revenue figures as a starting point, each of the types of deduction proposed by Iran Air must be tested against the criterion of whether it was "revenue actually earned" in the area covered by the Contract. It is this course that the Tribunal intends to follow.

As to the figures themselves, there are, as has already been noted, discrepancies between the data used by TCI as the basis of its claim, and the figures subsequently provided by Iran Air during the course of the present proceedings. Given that the variations are relatively small, that the figures have not been specifically disputed, and that TCI would, in any event, have had to rely on revenue figures provided by Iran Air in order to make its own commission calculations, the Tribunal accepts Iran Air's latest figures as the correct basis for the computation of TCI's entitlement to commission. The gross passenger revenue figure for the period from 15 May 1976 to 31 December 1978 is therefore taken to be $78,480,936.

The deductions claimed by Iran Air as not liable to commission are as follows:

i) Amounts refunded to passengers

During the period in question, moneys refunded to passengers for a variety of reasons amounted to $3,085,418.

This amount is not normally regarded by IATA as "revenue", and it is clearly not "revenue actually earned". It must therefore be deducted.

ii) "Interline" sales

Interline sales are sales made by one carrier on another carrier's route, pursuant to a multilateral IATA agreement. Iran Air claims that, during the period in question, sales made by other airlines of Iran Air's seats amounted to $5,739,190. The only question for the Tribunal is whether, or to what extent, this is revenue which was actually earned in the contract area. Since the question of who generated the revenue is immaterial, it is of little relevance to note that override commission is not normally payable on interline sales under the IATA system unless specifically provided for in the agreement between the two airlines concerned.

An examination of the figures submitted by TCI in the form of Iran Air's own monthly "Summary of North America Sales Activities" shows that interline sales figures are given for each of the four district sales offices - presumably according to which one was credited with the funds - and incorporated in the total. In the view of the Tribunal, they must therefore be treated as "revenue actually earned" within the contract area.

iii) Sales on other carriers

By contrast, and applying the same logical principle, sales made by Iran Air of other carriers' seats, the reverse of interline sales, cannot be taken as revenue actually earned by Iran Air. The sum of $7,260,784 should therefore be deducted from the gross amount. In the absence of any evidence as to what, if any, commission was retained by

Iran Air the Tribunal is of the view that this can be disregarded.

iv) Discount sales to students and government employees

Pursuant to special regulations issued by the Government of Iran, Iran Air was obliged to sell tickets to Iranian students and Government employees travelling between the United States and Iran at substantial discounts of up to 65% in order to attract this core of business to the national airline. The net revenue earned from such sales during the period in question is given by Iran Air as $25,694,885. This figure does, however, represent sales made in the North American contract area and the revenues, though discounted, were received there by Iran Air. There is thus no basis on which they can be deducted from the gross revenue.

v) Government contributions

Under the regulations of both the International Air Transport Association and the United States Civil Aeronautics Board, Iran Air could not offer a discount greater than 40%. In order to make up the difference between the 40% allowed by IATA and the 60% and 65% discounts offered to students, the Iranian Government itself paid an additional amount on these student sales. Iran Air's internal accounting practices attributed this revenue to its North American offices, and it was included by them as part of the amount of passenger sales in reports to the head office in Tehran. For the period of the contract, the amounts paid in this way by the Government for student tickets totalled $10,061,769. However, it appears from Iran Air's submissions that the payment which came from the Government was made in the form of a direct subsidy to Iran Air in Tehran, although its purpose was to offset discounts on sales which had been made in the

contract area. By its nature as a Government subsidy, it cannot be considered as "revenue actually earned" in the contract area, and the amount of $10,061,769 should accordingly be deducted.

vi) Government sales

In addition to tickets sold in North America under the discount scheme mentioned above, certain tickets were also sold directly to the Iranian Government to transport Government employees travelling on official business. These transactions were carried out pursuant to instructions given to Iran Air in Tehran, and do not appear to have had any connection with the activities of either TCI or Iran Air in the contract area itself. A further deduction should therefore be made of $3,930,269.

vii) Taxes

Iran Air was obliged to collect as part of the ticket price, and remit to the United States tax authorities, transportation excise taxes. For the contract period these amounted to $280,190. Since they cannot be considered as revenue actually earned, these taxes must be deducted from the gross revenue figure.

d) TCI's performance

As to Iran Air's allegation - never raised, or at least never communicated to TCI, prior to the inception of these proceedings - that TCI's performance was deficient, the Tribunal is bound to conclude that there is little or no evidence in the record to support it. Mr. Vaziri's successor has written that he was contemplating terminating the agreement for unsatisfactory performance; this was not reflected in the correspondence which passed between Iran Air and TCI. It would have been an easy matter for Iran Air to terminate the agreement

at its convenience; it had the right to do so. It did not use it. Further, the words of appreciation employed in the letter of termination which was eventually sent must be taken to override any evidence of a contrary intention. Finally, TCI has submitted substantial evidence of its performance.

e) Calculation of Commission

The application of the above deductions gives the following net figure from which the agreed base of $3.2 million must be subtracted, pro rata, over the whole contract period:

Gross revenue :		$78,480,936
Deduct :		
Refunds to passengers	$ 3,085,418	
Sales on other carriers	$ 7,260,784	
Government contributions	$10,061,769	
Government sales	$ 3,930,269	
Taxes	$ 280,190	
		$24,618,430
"Revenue actually earned" for the contract period	=	$53,862,506
Deduct base of $3.2 million per annum pro rata	=	$ 8,400,000
Gives commissionable revenue of		$45,462,506
Commission at 3% on $45,462,506	=	$ 1,363,875

The Tribunal therefore finds that TCI is entitled to commission for the period 15 May 1976 to 31 December 1978 of $1,363,875.

III. INTEREST

In its Award in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran (Award No. 180-64-1 of 27 June 1985), this Chamber expressed its intention to develop and apply a consistent approach to the awarding of interest in cases before it. In the absence of a contractually stipulated rate of interest, it is the Tribunal's policy to derive a rate of interest based approximately on the amount that the successful Claimant would have been in a position to have earned if it had had the funds available to invest in a form of commercial investment in common use in its own country. Six-month certificates of deposit in the United States are such a form of investment for which average interest rates are available from an authoritative official source.

In the Sylvania case itself, the Tribunal applied a rate of interest approximating the average rate of interest on six-month certificates of deposit for the relevant period in that case, which was about 1979 through 1984. The rate used was 12%. In the present case, the relevant period began somewhat later - it was in November 1979 that the letter claiming commission was sent - and ends later because this Award comes several months later than the Sylvania Award and must therfore reflect the change in interest rates that has occurred since then. The average rate of interest paid on six-month certificates of deposit from the beginning of 1980 through the date of this Award is approximately 11.5%, and it is that rate the Tribunal applies in this case[3].

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[3] The Tribunal uses the last published rate available to it and rounds the rate awarded to the nearest quarter of a percentage point.

IV. COSTS

Likewise, in the Award in the Sylvania case, this Chamber outlined the general considerations, as well as the factors relating to each individual case, to be taken into account in determining to what extent an award of costs for legal representation and assistance is "reasonable". In the present case, TCI has claimed a total of $205,000. Given that all of the claim was not awarded, and taking account of other relevant circumstances of the case, the Tribunal considers that a reasonable amount would be $10,000.

V. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

The Respondent IRAN NATIONAL AIRLINES CORPORATION is obligated to pay the Claimant FIRST TRAVEL CORPORATION (doing business as TRANSPORTATION CONSULTANTS INTERNATIONAL) the sum of U.S. $1,363,875, plus interest at the rate of 11.5 per cent per annum from 1 January 1980 to the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; plus costs of arbitration in the amount of U.S. $10,000.

This obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

This Award is hereby submitted to the President of the Tribunal

for notification to the Escrow Agent.

Dated, The Hague
3 December 1985

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God

Mohsen Mostafavi
Dissenting Opinion

Howard M. Holtzmann
Joining fully in the Award, except joining solely in order to form a majority as to the award of only $10,000 in costs; see my Separate Opinion in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1 (27 June 1985).