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LAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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ORIGINAL DOCUMENTS IN SAFE

Case No. 10035 Date of filing: 12-Sep86

** AWARD - Type of Award Final
- Date of Award 12-Sep86
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____

- Date _____
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** SEPARATE OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

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- Date _____
_____ pages in English _____ pages in Farsi

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دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 10035
CHAMBER TWO
AWARD NO. 252-10035-2

DUPLICATE ORIGINAL
«نسخه برابر اصل»

IRAN UNITED STATES CLAIMS TRIBUNAL
دیوان داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 12 SEP 1986 تاریخ
۱۳۶۵/۶/۲۱
No. 10035 شماره

CAROLINA BRASS, INCORPORATED,
a claim of less than
U.S.$ 250,000 presented by
the UNITED STATES OF AMERICA,
Claimant,

and

ARYA NATIONAL SHIPPING LINES, S.A.,
THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

AWARD

Appearances:

For the Claimant:
Mr. J.R. Crook,
Agent of the United States of America.
Mr. M.F. Raboin,
Mr. S. Witten,
Assistants to the Agent.

For the Respondent:
Mr. M.K. Eshragh,
Agent of the Islamic Republic of Iran.
Mr. A. Mohammadi,
Mr. A. Shirazi,
Legal Advisers to the Agent.
Mr. S. Rabie,
Assistant to the Agent.

I. THE CLAIMS

1. On 19 January 1982, the Government of the United States of America filed a Statement of Claim on behalf and for the benefit of CAROLINA BRASS, INCORPORATED ("Carolina Brass") against THE ISLAMIC REPUBLIC OF IRAN ("Iran"), naming in particular, ARYA NATIONAL SHIPPING LINES, S.A., now called Islamic Republic of Iran Shipping Lines ("Iran Shipping Lines"), setting forth five claims for the payment of U.S.$35,130.85,[1] as compensation for damages and shortages on deliveries of goods by Iran Shipping Lines carried by sea from Bombay, India to U.S. ports between September 1978 and September 1979.

2. The first claim seeks compensation in the amount of U.S.$2,815.80 for the alleged short delivery of six cases from a shipment of brass handicrafts discharged at Wilmington, North Carolina on 10 October 1979 and covered by two bills of lading. The second claim seeks compensation in the amount of U.S.$612.42 for the alleged short delivery of one case from a shipment of brass handicrafts discharged at Charleston, South Carolina on 19 September 1979 and covered by one bill of lading. The third claim seeks compensation in the amount of U.S.$22,500 for the alleged damages to a shipment of brass handicrafts discharged at Charleston on 10 October 1978 and covered by one bill of lading. This claim also included an amount of U.S.$594 for the short delivery of two cases. After negotiations on this amount, it was subsequently paid to Carolina Brass by Iran Shipping Lines'

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[1] This amount was decreased to U.S.$34,536.85 due to the fact that Iran Shipping Lines had made payment of U.S.$594.00 in connection with one of the claims.

Agent. The fourth claim seeks compensation in the amount of U.S.$6,139.78 for the alleged short delivery of twenty-five cases from a shipment of brass handicrafts discharged at Charleston on 8 May 1979 and covered by three bills of lading. The fifth claim seeks compensation in the amount of U.S.$2,468.85 for the alleged short delivery of approximately twenty cases from a shipment of brass handicrafts discharged at Charleston on 13 February 1979 and covered by one bill of lading. The total amount of compensation sought by the Claimant is U.S.$34,536.85, plus interest. The Claimant also seeks costs in connection with the arbitration.

3. The Claims are based on contracts for the carriage of goods by sea from Bombay, India to U.S. ports concluded between Indian Artwares Corporation, an entity incorporated in India ("the shipper"), and Iran Shipping Lines ("the carrier"), for delivery to Carolina Brass ("the consignee"). The terms of these contracts are contained in standard negotiable bills of lading issued by Iran Shipping Lines (hereinafter collectively referred to as "the Bills of Lading").

4. The Claimant asserts that the Bills of Lading issued to Indian Artwares Corporation by Iran Shipping Lines and received subsequently by the Claimant, together with other documents upon payment being made pursuant to Letters of Credit, indicate that the cases of brassware included in the five shipments were shipped in "apparent good order and condition"[2], and therefore constitute "clean" Bills of

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[2] "[T]he words 'in apparent good order and condition' denote that 'apparently, and so far as meets the eye, and externally [the goods] were placed in good order on board (Footnote Continued)

Lading.[3] However, the Claimant also asserts that various cases never arrived at the United States ports or arrived in damaged condition.

5. The Claimant relies principally on unloading tallies marked by its employees upon receipt of the goods to prove the alleged short delivery and damage to the goods.

6. The Claimant contends that it filed claims for the value of goods never delivered and for the cost of repair of goods which arrived damaged with Iran Shipping Lines' agent, Norton, Lilly & Co., Inc., and further contends that to date it has not been paid for its losses.

7. Norton, Lilly & Co., Inc. expressly denied liability on the damage claim stating that there was no documentary evidence to prove that the cargo was wet at the time of discharge, paid in full one claim for loss, and apparently only acknowledged receipt of the other loss claims.

8. The Respondent denies the claims and contends, inter alia, that the Claimant has failed to adduce sufficient evidence to prove the short delivery and damage to the goods as "common practice in trade requires that impartial international and official persons who assist the discharge of goods and in delivery thereof to the owner, should issue

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(Footnote Continued)
this ship' but the statement does not extend to qualities of the goods 'which were not apparent to reasonable inspection having regard to the circumstances of loading'." C. Schmitthoff, Schmitthoff's Export Trade (7th ed. 1980) at p. 360, quoting Sir R. Phillimore in The Peter der Grosse (1875) 1 P.D. 414, 420 and Branson, J. Re National Petroleum Co., The Athelviscount (1934), 39 Com. Cas. 227, 236.

[3] "[A] clean shipping document is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging." International Chamber of Commerce, Uniform Customs and Practice for Documentary Credits (1974), Art. 18.

certificates of short delivery or damage to goods". Furthermore, the Respondent alleges that the Claimant "has not claimed for damages with any Court during the last two or three years. Therefore ... its claim is time-barred."

9. A Hearing was held on 20 June 1986.

II. REASONS FOR THE AWARD

A. Jurisdiction

1. Nationality of Carolina Brass

10. The Claimant has satisfied the Tribunal that it is a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. Carolina Brass was incorporated under the laws of North Carolina on 13 October 1976. It is a privately-held U.S. corporation as demonstrated by the Certificate of Good Standing issued by the Secretary of State of North Carolina, a corporate affidavit, and copies of the U.S. birth certificates of its three shareholders.

2. Jurisdiction over Iran Shipping Lines

11. It is undisputed that Iran Shipping Lines is included within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration.

3. Jurisdiction over the Claims

12. Pursuant to Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over claims "arising out of debts, contracts ... expropriations

or other measures affecting property rights". Claims arising out of written contracts of carriage, as evidenced by the Bills of Lading, are within the scope of this grant of jurisdiction. The Parties do not dispute that the claim was outstanding on 19 January 1981 or that it was owned continuously by the Claimant from the date that it arose until 19 January 1981.

13. Iran Shipping Lines contests jurisdiction, alleging that the Bills of Lading provide that the carrier has the option to choose the exclusive forum for disputes and chooses Iran, thereby excluding this dispute from the jurisdiction of this Tribunal. The Claimant disputes this argument by pointing out that Paragraph 2 of the Bills of Lading enumerates three possible fora for the resolution of disputes (Tehran, Hamburg, or London) and that, while the Parties may agree to confer exclusive jurisdiction on any of these three fora, they are not restricted to these three.

14. Iran Shipping Lines also argues that the applicable law is Iranian Law and therefore this Case should be referred to the domestic Courts of Iran.

15. The Tribunal finds that neither the terms of the Bills of Lading nor the selection of a particular law operate to oust the jurisdiction of the Tribunal in this Case. The Claims Settlement Declaration excludes from the Tribunal's jurisdiction claims arising under a binding contract specifically providing that any disputes shall be within the sole jurisdiction of the competent Iranian courts. Paragraph 2 of the Bills of Lading enumerates three possible "exclusive" jurisdictions, allows for other "non-exclusive" fora, and even entitles the carrier to bring suit in the defendant's jurisdiction, in this case potentially the United States and India. The Tribunal concludes that this provision does not unambiguously restrict jurisdiction to the Courts of Iran

and therefore cannot be considered a forum selection clause which operates to oust the Tribunal of jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration.

16. The Tribunal is therefore satisfied that it has jurisdiction over the claims.

B. Time Limitation

17. Iran Shipping Lines alleges that the Claims are time-barred for failure to have been presented with any court during the two years following the dates on which the respective claims arose.

18. Paragraph 21 of the Bills of Lading provides that:

> Any claims against either the Shipowners, the Carrier, the Agent, the Master, any member of the crew or any other servants, regardless of their legal nature, shall be time barred, unless suit is brought within one year after discharge of the goods or the date when the goods should have been discharged, or in the case of claims not relating to the goods after arrival of the ship at the port of destination under the Bill of Lading (emphasis added).

Article 3(6) of the Hague Rules[4], which both Parties assert should be the governing law in this Case, provides that:

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[4] In 1921, the International Law Association met in the Hague and adopted what became known as the Hague Rules. These Rules were endorsed by the 1922 Diplomatic Conference

(Footnote Continued)

> the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered (emphasis added).

Thus, under the terms of both the Bills of Lading and the Hague Rules, Carolina Brass' claims for loss or damage of goods against Iran Shipping Lines should have been filed in any Court within one year after discharge or delivery of the goods in each shipment.

19. Carolina Brass argues that the requirement of filing suit against Iran Shipping Lines during the period 1979 to 1980 should not be applied due to the fact that such suit, if filed in the United States at the time, would subsequently have been suspended and eventually transferred to this very Tribunal and thus no injustice would be worked by accepting jurisdiction over this Case. However, the Tribunal considers that one purpose of such time limitations is to allow carriers to discard their records in cases where no suit is brought within the specified period. The one year time limitation contained in the Hague Rules is intended to encourage uniformity (as some nations had two, five, and seven year limitations), and to prevent carriers from inserting in their bills of lading a shorter period such as two months or thirty days. See W. Tetley, Marine Cargo Claims (2nd ed. 1978), p. 331.

(Footnote Continued)
on Maritime Law in Brussels and served as the basis for discussions in 1923 leading to the adoption in 1924 of the "International Convention for the Unification of Certain Rules Relating to Bills of Lading" by the Conference on Maritime Law in Brussels. In 1968 and 1979, Protocols to the Bills of Lading Convention were adopted (the Brussels Protocol or Visby Amendment and the 1979 Protocol), amending certain features of the Convention.

20. The Tribunal notes that the Islamic Republic of Iran, the United States, and India, being the countries connected with the formation and execution of the Bills of Lading, have all adopted the Hague Rules in their domestic legislation[5], thus embodying the one year limitation of time in their national laws. The Tribunal also notes that the Hague Rules are widely accepted as the standard regime for bills of lading in international maritime trade. The Netherlands also, whose law the Claimant argues is applicable due to the seat of this Tribunal in The Hague, has adopted the Hague Rules[6] and embodied the one year time limitation in its domestic legislation.

21. The Tribunal need not decide whether the law of the Islamic Republic of Iran, the United States, India, or the Netherlands should apply to this particular Case in order to establish that the time limitation contained in Article 3(6) of the Hague Rules and in Paragraph 21 of the Bills of Lading is applicable in this Case, since the law in each of these countries is similar, and all are in conformity with the widespread practice reflected in the Hague Rules.[7]

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[5]The Islamic Republic of Iran became a party to the Bills of Lading Convention on 26 April 1966; the United States on 29 June 1937. India, although not a party to the Bills of Lading Convention, adopted the Hague Rules by enactment of the Indian Carriage of Goods by Sea Act, 1925.

[6]The Netherlands denounced the original Bills of Lading Convention on 26 April 1983 after becoming a party to the Visby Amendment version on 26 April 1982.

[7]See Art. 54(6) of the Maritime Law of the Islamic Republic of Iran; United States Carriage of Goods by Sea Act, 46 U.S.C. § 1303(6); Art. 3(6) of the Schedule to the Indian Carriage of Goods by Sea Act; and Art. 468, paragraph 7, of the Wetboek van Koophandel (Dutch Commercial Code).

22. However, the Tribunal is aware of decisions of certain municipal courts in which the statutory time limitation on the bringing of "suit" was not applied due to an arbitration agreement between the parties. See, e.g., Son Shipping Co., Inc. v. De Fosse & Tanghe, 199 F.2d 687, 689 (2d Cir. 1952). In such cases, it is for the arbitrators, not the courts, to decide whether a claim is time-barred under the circumstances of the case. See Office of Supply, Government of the Republic of Korea v. New York Navigation Company, Inc., 469 F.2d 377, 380 (2d Cir. 1972). The arbitration agreement, whether contained in the bill of lading, a relevant charter-party, or in a special agreement, may be, for example, considered a contractual reference to a method of dispute settlement not subject to the statutory limitation on the bringing of "suit" within one year, a waiver of the statutory limitation, or a new agreement not subject to the statutory limitation. However, the Bills of Lading in this Case do not contain an arbitration clause and cases are not submitted to this Tribunal by means of such agreements, but by virtue of the Claims Settlement Declaration, an international agreement between two governments.

23. Taking into account the wording of Paragraph 21 of the Bills of Lading and Article 3(6) of the Hague Rules, upon which the Parties relied, the Tribunal finds that Carolina Brass, by failing to bring suit on its Claims within one year, has lost the right to do so. Moreover, it would be prejudicial to the Respondent Iran Shipping Lines to allow these Claims to be presented before this Tribunal when they could no longer have been presented elsewhere. In these circumstances, the Tribunal determines that the Claims are effectively time-barred and should therefore be dismissed.