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دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

57

CASE NO. 10645
CHAMBER ONE
AWARD NO. 423-10645-1

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده
FILED - ثبت شد
Date 12 JUN 1989
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STEPHEN G. SHIFFLETTE,
a claim of less than U.S.$250,000
presented by the UNITED STATES
OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances

For the Claimant :
Ms. Lisa A. Grosh, Attorney-Adviser, United States Department of State,
Mr. Michael F. Raboin, Deputy Agent of the United States.

For the Respondent :
Mr. Ali Heyrani-Nobari, Deputy Agent of the Islamic Republic of Iran,
Mr. Mohammad Hassan Bordbar, Legal Adviser to the Agent,
Mr. Mohammad Asbaghi, Legal Assistant to Legal Adviser.

A. PROCEEDINGS

1. On 19 January 1982, the United States filed a Statement of Claim presenting a Claim of less than $250,000 of Stephen Granville Shifflette (the "Claimant") against the Islamic Republic of Iran (the "Respondent"). The Claimant seeks payment of wages allegedly due to him under an employment contract with Shiraz University (formerly Pahlavi University) and damages for loss of personal property and prepaid rent. Initially, he claimed a total amount of $6,700.

2. A Supplemental Statement of Claim was filed on 4 April 1985, in which the amount sought was reduced to $3,500.

3. On 10 July 1986, the Respondent filed a Statement of Defence.

4. Following a Reply filed by the United States on 25 March 1987 and a further Brief filed by the Respondent on 12 February 1988, a Hearing in this Case was held on 30 November 1988.

B. FACTS AND CONTENTIONS

5. In August 1978, the Claimant accepted an appointment by Shiraz University, signing a contract to teach a Summer Intensive English course to first-year students during the period from 8 August - 19/21 September 1978. He completed this appointment and was paid as agreed.

6. The Claimant contends that the Dean of the College of Arts and Sciences of Shiraz University, Mr. Hadidi, then invited him to teach English during the fall semester beginning in October 1978. The Claimant maintains that an

agreement was reached pursuant to which he was to teach twelve hours and hold four office hours each week, at a rate of 850 Rials per hour, amounting to approximately $750 per month for each of the four months of the fall semester. Dean Hadidi allegedly promised him that this oral agreement would be confirmed in writing by the Ministry of Education. The Claimant contends that although he had entered Iran on a tourist visa due to expire on 3 November 1978, he was assured that the University enjoyed a special status with the immigration authorities and that the issuance of the requisite residence and work permits would not be a problem.

7. Relying on these representations, the Claimant allegedly started teaching in the beginning of October 1978 although a written contract had not yet been issued and, in fact, never was issued. He asserts that his textbooks and teaching plans were coordinated with the rest of the University's English program and that he was assigned an office.

8. Shortly after classes began, however, civil unrest allegedly intensified and at about the end of the second week of October 1978, revolutionary unrest, strikes and anti-government demonstrations rose to such a level that Shiraz University was closed. The Claimant could not continue teaching but allegedly remained in Shiraz for about two weeks in the expectation that the University would reopen soon, after a "cooling-off" period.

9. The Claimant contends that at the end of that two week period, Dr. Yarmohammadi, his immediate supervisor at the University, advised him to leave the country. Moreover, he had not received any wages for the fall semester. He asserts that he was unable to collect wages due to him for the first two weeks of teaching in October 1978 because the University's payroll office was on strike. As he was rapidly running out of money, he left Shiraz for Tehran and ultimately left Iran on 2 November 1978.

10. Prior to his departure, the Claimant issued a written authorization to Dr. Yarmohammadi to collect the wages due to him, stating, inter alia that "[i]t is further understood that these wages represent forty (40) hours work at eight hundred fifty (850) Rials per hour."

11. The Claimant contends that, due to the rush in which he had to leave the country, he was unable to arrange for the shipment of his personal and household effects, particularly books and cooking utensils, to the United States and that he also had to forfeit $400 in prepaid rent.

12. The Claimant argues that the Respondent breached the employment contract by failing to pay wages due and by terminating the contract prematurely. He takes the position that the Respondent is obligated to pay not only $400 in wages for his two weeks of teaching in the beginning of October 1978, but also $2,600 in lost wages for the remainder of the fall semester. At a minimum, the Claimant seeks lost wages to the end of December 1978, arguing that he could not have mitigated his damages by finding another job before the new semester began at universities in the United States in January 1979. Moreover, the Claimant argues that the Respondent is liable for household effects worth $100 and forfeited prepaid rent in the amount of $400 as consequential damages resulting from the Respondent's breach of contract.

13. In the alternative, the Claimant seeks payment of $400 for approximately two weeks of teaching in October 1978 under the theory of quantum meruit.

14. The Claimant also seeks interest on the awarded amount from 30 October 1978 and $50 as costs of arbitration.

15. The Respondent disputes the Tribunal's jurisdiction over the Claim and further denies the Claim on the merits. First, the Respondent denies that an enforceable

contract on which the Tribunal could base its jurisdiction existed between the Parties. Second, it argues that under Iranian law the existence of an agreement cannot be proved by testimony and that Shiraz University regulations do not recognize oral agreements. The Respondent refers to the practice followed by the University for the summer intensive course. Third, the Respondent argues that the Claimant did not have the capacity to enter into an employment contract because he had no residence or work permit for Iran. Fourth, the Respondent denies that the Claimant actually taught for two weeks in October 1978 and argues that he was unable to collect any payment in the University's payroll office because he did not produce a required certificate confirming the hours he had taught. Fifth, the Respondent further maintains that Mr. Shiflette had to leave on the date he actually left because he had entered the country as a tourist and his visa expired the day he left. Finally, the Respondent invokes force majeure conditions prevailing in Iran at the time as an excuse for discontinuing any employment relationship.

16. The Respondent requests that the Claim be dismissed and that it be awarded $5,000 as costs of arbitration.

C. REASONS FOR AWARD

I. Jurisdiction

17. There is no dispute that the Claimant is a United States national and that the Islamic Republic of Iran is a proper Respondent under the Claims Settlement Declaration. There is further no question that the Claim was outstanding on 19 January 1981. The Respondent's only jurisdictional objection is based upon the argument that no contract existed between the Parties and that, accordingly, the Claim

does not "arise out of debts, contracts . . ., expropriations or other measures affecting property rights" as required by Article II, paragraph 1, of the Claims Settlement Declaration. For purposes of determining whether it has subject matter jurisdiction, however, the Tribunal examines whether the legal grounds on which the Claimant seeks to recover fall within one of the jurisdictional categories set forth in Article II of the Claims Settlement Declaration. Here, the Claimant alleges that the Claim arises out of an existing contract. The Tribunal is therefore satisfied that it has jurisdiction over the present Claim.

II. Merits

18. The primary issue in this Case is whether an enforceable employment contract for the fall semester 1978 existed between the Parties. The Claimant offered satisfactory evidence showing that he actually taught for about two weeks in October 1978. In this regard, the Claimant's Affidavit is consistent with documentary evidence, particularly the letter that the Claimant wrote to his supervisor authorizing collection of his paycheck. The Claimant's Affidavit is further supported by the written Statement of William E. Smith, one of the Claimant's former teaching colleagues at Shiraz University. The Tribunal is further persuaded that the Claimant started teaching with the knowledge and consent of Dean Hadidi, and that Shiraz University, in fact, accepted the Claimant's services. The Tribunal has previously held that the existence of an oral contract can be proven through evidence demonstrating part performance, and that, under the circumstances, the other party was estopped from invoking invalidity of the agreement on merely formal grounds. See DIC of Delaware, Inc., et al. and Tehran Redevelopment Corporation, et al., Award No. 176-255-3, p. 23 (26 Apr. 1985), reprinted in 8 Iran-U.S. C.T.R. 144, 161; R.N. Pomeroy, et al. and Government of

the Islamic Republic of Iran, Award No. 50-40-3, p. 17 (8 Jun. 1983), reprinted in 2 Iran-U.S. C.T.R. 391, 397. Applying these principles in the present Case, the Tribunal finds that the Parties reached an agreement on the basis of which the Claimant was entitled to payment for his work.

19. However, the Claimant is only entitled to compensation for his two weeks of actual teaching. He may not recover lost wages for the remainder of the fall semester. In view of the undisputed factual background, the Tribunal is satisfied that the conditions that led to the closing of Shiraz University in October 1978 constituted force majeure.[1] Accordingly, the Respondent was excused from its obligation to employ the Claimant as long as force majeure conditions persisted. Force majeure conditions continued to exist at least through the end of October 1978 when the Claimant left Iran at the advice of Dr. Yarmohammadi. The Tribunal considers that the Claimant's contract, which covered only the relatively short period of the fall semester, was then terminated by force majeure conditions "render[ing] performance . . . impossible in a definitive way or for a prolonged period of time." See Anaconda-Iran, Inc. and Government of the Islamic Republic of Iran, Interlocutory Award No. ITL 65-167-3, p. 18 (10 December 1986), reprinted in 13 Iran-U.S. C.T.R. 199, 211. Likewise, any delay in paying wages due for the first two weeks of teaching was excused because the strikes at the University payroll office also constituted force majeure. Therefore, the Respondent is not liable for lost wages under the remainder of the contract or for any consequential damages arising from the premature termination of the contract.

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[1] In contrast to Kathryn Faye Hilt and Islamic Republic of Iran, Award No. 354-10427-2, para. 19 (15 Mar. 1988), the Respondent expressly invoked force majeure in this Case.

20. The Tribunal is reasonably satisfied that the Claimant worked about 40 hours during the first two weeks of October 1978, and that 850 Rials was the hourly rate Shiraz University agreed to pay for the Claimant's services. Taking into account the official exchange rate on the date when payment became due, see William L. Pereira Associates, Iran and Islamic Republic of Iran, Award No. 116-1-3, p. 23 (19 Mar. 1984), reprinted in 5 Iran-U.S. C.T.R 198, 214; International Technical Products Corp., et al. and Government of the Islamic Republic of Iran, Award No. 196-302-3, p. 31 (28 Oct. 1985), reprinted in 9 Iran-U.S. C.T.R. 206, 227-281, the Claimant is entitled, at a minimum, to the $400 he claims in this respect.

21. As indicated in the Statement of William E. Smith, the University's payroll office was reopened, and wages paid, shortly after the Claimant had left Iran. This demonstrates that force majeure did not prevent fulfillment of the University's obligation to pay wages due, at least, some time in November 1978. The Tribunal therefore awards interest from 1 December 1978. The interest rate as indicated in the Dispositif is determined in accordance with this Chamber's practice as outlined in Sylvania Technical Systems, Inc. and Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 30-34 (27 June 1985), reprinted in 8 Iran-U.S. C.T.R. 298, 320-22.

22. Each Party shall bear its own costs of arbitration.

D. AWARD

23. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

1. The Respondent THE ISLAMIC REPUBLIC OF IRAN is obligated to pay the Claimant STEPHEN G. SHIFFLETTE the sum of Four Hundred United States Dollars (U.S.$400.00) plus simple interest thereon at a rate of 10.25% per annum (365-day basis) from 1 December 1978 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account.

2. The remaining Claims are dismissed.

3. The above 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 June 1989

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Assadollah Noori

Howard M. Holtzmann

In view of the arguments set forth in paragraph 45 of my Dissenting Opinion in Agrostruct International, Inc. and Iran State Cereals Organization, The Islamic Republic of Iran (Award No. 358-195-1), I am categor-

ically opposed to any award of interest in favor of United States claimants in Cases before this Tribunal and, as I stated therein, to regarding the Award in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran ("Sylvania," Award No. 180-64-1) as an invocable precedent, considering the weak premises on which that Award's findings are based. What is more, I consider it totally inappropriate and illogical to rely on Sylvania, in the instant Case in light of that Award's underlying premises, in particular, because the Sylvania majority's finding was based on the argument that if the successful Parties had received the amount of their award in a timely manner, they could have invested that amount "in a form of commercial investment in common use in [their] own country," such as a "six-month certificate of deposit," and thereby benefitted from the interest accruing thereon. In this particular Case, it is totally out of the question to apply the above-mentioned argument to suppose that Mr. Shifflette would have invested the four hundred dollars ($400) in question, or that even if he had so desired, he could have found a bank in the United States willing to invest that paltry sum for him.