IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL

«نسخه برابر اصل»

CASE NO. B10 81

CHAMBER TWO

AWARD NO. 337-B10-2

IRAN UNITED STATES CLAIMS TRIBUNAL — دادگاه داوری دعاوی ایران ـ ایالات متحده

FILED - ثبت شد

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۱۳۶۶/۹/۹

No. B10 شماره

IRAN NATIONAL AIRLINES COMPANY,
Claimant,

and

THE GOVERNMENT OF THE UNITED STATES OF AMERICA,
Respondent.

AWARD

Appearances:

For Claimant:

Mr. Mohammad K. Eshragh, Agent of the Islamic Republic of Iran,
Dr. Akbar Shirazi, Legal Advisor to the Agent,
Mr. Abdol-Majid Aghighi, Assistant to the Agent,
Mr. Mohammad Reza Askari,
Mr. Ghaffar Kaveh,
Mr. Garabid Mansourian,
Mr. Jelal Al Hossini, Representatives of Airlines of the Islamic Republic of Iran.

For Respondent:

Ms. Lucy F. Reed, Attorney Advisor, U.S. Department of State,
Mr. Michael Raboin, Deputy Agent of the United States of America.

I. THE CLAIMS

1. The Claimant IRAN NATIONAL AIRLINES COMPANY ("Iran Air") filed a Statement of Claim on 15 January 1982 against THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("the Respondent"). Iran Air seeks recovery of U.S.$1,392.82 and interest thereon in connection with six Iran Air invoices which allegedly remain unpaid. Of the six invoices, four were issued by Iran Air in respect of U.S. Government Bills of Lading ("GBL")[1] for services allegedly rendered to various U.S. Government agencies for the carriage of goods by air. The other two invoices were issued in respect of U.S. Government Travel Requests ("GTR")[2] for Iran Air passenger tickets allegedly sold to U.S. Government officials for purpose of air travel. The different services were invoiced by the Claimant at various times between June 1967 and October 1979.

2. A Hearing in this Case was held on 10 November 1986, in conjunction with Cases Nos. B8, B9, B12, and B51.

II. JURISDICTION

3. In accordance with the reasoning set forth in Cases Nos. B9 and B12, Award No. 335-B9-2 and Award No. 336-B12-2, the Tribunal holds that it has jurisdiction over this Claim under Article II, paragraph 2, of the Claims Settlement Declaration.

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[1]The U.S. Government Bill of Lading ("GBL") is the official U.S. Government shipping document. It is described more fully in Case No. B9, Award No. 335-B9-2.

[2]The U.S. Government Travel Request ("GTR") is the official authorization and procurement form for Government-sponsored travel. It is described more fully in Case No. B12, Award No. 336-B12-2.

III. REASONS FOR THE AWARD

1. Time Limitation and Applicable Law

4. The Tribunal notes that the Parties dispute the question of the law applicable to these transactions. The Respondent contends that GBL and GTR transactions are governed by U.S. law. The Claimant denies that U.S. law is applicable to these transactions, contending that Iranian law governs Iran Air passenger tickets and airwaybills. It argues generally that its submission of the relevant U.S. forms for air cargo and air travel together with its invoices should not be construed as an admission by the Claimant to the application of U.S. laws and regulations in the event of disputes.

5. For the reasons set forth in Case No. B9 in relation to carriage of goods by air, Award No. 335-B9-2, and in Case No. B12 in relation to passenger transportation services, Award No. 336-B12-2, the Tribunal finds that it is able to resolve all issues by reference to the practice of the Parties and to the terms of the contractual documents themselves, without entering into a discussion of the applicable law.

6. A principal contention of the Respondent is that five of the six invoices at issue in this Case, dated prior to 1976, are barred by the relevant U.S. Statute of Limitations or by application of the principle of extinctive prescription under international law.

7. The Claimant's responses to these defenses are that the U.S. Statute of Limitations and the principle of extinctive prescription are not applicable and that it regularly notified the Respondent of past due invoices thereby interrupting the run of time which might otherwise have provided a basis for the Respondent's defense of extinctive

prescription. The Claimant submitted to the Tribunal copies of its letters to the Respondent regarding the invoices involved in this Case.

8. The Tribunal has held previously that municipal statutes of limitation are not necessarily binding on claims before international tribunals. However, such periods may be taken into account when determining the effects of an unreasonable delay in pursuing a claim before such a tribunal. Alan Craig and Ministry of Energy of Iran et al., Award No. 71-346-3 (2 September 1983) pp. 15-16; Harnischfeger Corporation and Ministry of Roads and Transportation et al., Award No. 144-180-3 (13 July 1984) p. 46.

9. Time limitations specified by contract, however, are enforceable. The Islamic Republic of Iran and The United States of America, Award No. ITL 60-B1-FT (4 April 1986) p. 14; Carolina Brass, Incorporated and Arya National Shipping Lines, S.A. et al., Award No. 252-10035-2 (12 September 1986) pp. 8-10.

10. As the claims in this Case are grounded on contractual arrangements, the Tribunal must first determine whether contractual provisions operate to bar any of these claims. For the reasons set forth in Case No. B9, supra, and in Case No. B12, supra, the Tribunal decides that no time limitation is contained in the contracts between the Parties.

11. With respect to the Respondent's alternative argument, the Tribunal recognizes that extinctive prescription is an established principle of public international law which has been applied by international tribunals. I. Brownlie, Principles of Public International Law, 505-06 (3d ed. 1979). Given the commercial nature of the transactions at issue, however, the Tribunal does not consider it appropriate to apply the principle of extinctive

prescription as a matter of public international law. Therefore, the Tribunal decides this issue by reference to whether there has been any unreasonable delay by the Claimant in notifying the Respondent of its claims such that it would be unfair to require the Respondent to answer to such stale claims. In this connection, the Tribunal recognizes that one purpose of time limitations in commercial practice is to allow parties to discard their records after they are no longer necessary, such as when no dispute has arisen and the specified period has expired. See Carolina Brass, supra, para. 8.

12. The Tribunal notes that the Parties were aware of a decision of the U.S. Court of Claims that claims such as these could be brought by Iran Air in the United States at any time up to six years after the services were rendered. See Iran National Airlines Corp. v. The United States, 360 F.2d 640 (1966). Thus, under the circumstances of this Case, a delay of up to six years in bringing a claim is not unreasonable, given that no contractual provision specified a shorter period and records would have to be maintained at least that long. However, it would not be reasonable to expect that the Claimant had any realistic opportunity to bring suit against the Respondent in the U.S. Court of Claims after 17 April 1980, the date of Executive Order 12211, which the President of the United States declared would have the effect of closing down the offices in the United States of Iran Air. Consequently, the Tribunal will only consider the question of unreasonable delay in this Case in connection with invoices presented prior to 17 April 1974.[3]

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[3]The Tribunal notes that the services at issue were performed prior to the date of each invoice. However, the Respondent informed the Tribunal at the Hearing that it did not object, for the sake of convenience, to use of the invoice date as the relevant date.

13. In assessing the question of unreasonable delay, the Tribunal considers that it would not be fair to expect the Respondent to have retained its records until the time when these claims were filed in 1982 when many years had already passed in silence before any detailed notice was sent by the Claimant. Nor does the Tribunal consider that it would be fair in the circumstances to bar claims on which, although concerning services rendered prior to 17 April 1974, the Claimant has demonstrated that it diligently notified the Respondent of the precise amounts it continued to seek on specific invoices, such that the Respondent could reasonably be expected to have retained any records still available to it or to have been able to respond contemporaneously to the substance of the inquiries of the Claimant.

14. Only three invoices in this Case were presented prior to 17 April 1974, and all of them date from the period 1967 to 1969. According to the evidence submitted by the Claimant, it first addressed a notice to the relevant U.S. agency regarding its claims for non-payment on these invoices on 1 April 1975, some five to eight years after the invoices were issued. This notice was followed by other letters later that year and in 1976. Taking into account the above considerations, the Tribunal holds that the claims based on Invoices Nos. 27726, 58494, and 58497 are barred due to unreasonable delay in their presentation.[4]

2. Adequacy of the Evidence

15. The Respondent also argues as a general defense that most of the invoices were not supported by original GBLs or GTRs and thus were not presented in proper form for payment.

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[4]The Tribunal notes that the Claimant also failed to adequately substantiate the basis of its claims on these invoices, as discussed in Part III.A.2, below.

16. In response, the Claimant argues that it was unable now to produce original GBLs or GTRs when it had already submitted them, together with the invoice, for payment. It argues further that even if the original GBLs or GTRs were not received by the Respondent, the latter had an opportunity to raise the issue of non-receipt when the Claimant wrote reminding the appropriate agency or agencies of outstanding amounts owed on the invoices. According to the Claimant, the lack of response constituted an implicit confirmation that the original GBLs or GTRs had been received in proper form by the Respondent.

17. The Tribunal does not agree with the Respondent's contention that, in order to prevail on its claims in this Case, the Claimant be required to produce the original GBLs or GTRs or to observe the procedures established for lost GBLs or GTRs. The payment regulations of the United States are not dispositive of the issue of the existence of a debt and the Tribunal is only called on in this Case to determine whether or not valid debts remain unpaid. In order for the Claimant to establish the validity of its claims, it must demonstrate in connection with each invoice that a contract for the carriage of goods or passengers by air was entered into with the Respondent and that the requested services were performed.

18. The Respondent further denies liability in connection with numerous invoices on the grounds that, in some instances, no substantiating documentation has been submitted at all, or that, in others, no copy of the GBL or GTR is provided to prove the existence of a contract with the United States. The Claimant argues in response that its books and records are sufficient to establish the existence of the debt. The Tribunal decides that, in order to prove the existence of a contractual debt, the Claimant's invoices must be supported with a copy of the relevant GBL or copies of the relevant GTR and airline ticket, or if those

documents are not available, some other document which indicates that the GBL or GTR referenced in the invoice was issued.

19. The Tribunal observes that the practice of the Parties was for Iran Air to include with its invoices the appropriate substantiating documentation. Indeed, each invoice recites that the relevant documentation is attached to it. In these proceedings, the Tribunal received no explanation for the absence of supporting documentation in connection with certain of the invoices. Consequently, the claims based on Invoices Nos. 117774 and 118057, which are unaccompanied by any documentation, are dismissed for lack of proof.

20. On the other hand, the supporting documentation (a copy of the GTR and copies of the passenger tickets) attached to Invoice No. 157876, dated 12 October 1979, is sufficient to establish the validity of the claim. As none of the other defenses raised by the Respondent are sustained with respect to this invoice, the Tribunal holds the Respondent liable for the total invoice amount of U.S.$676.78.[5]

3. Summary

21. The Tribunal notes that the services were rendered by the Claimant to the U.S. Peace Corps. Accordingly, the Peace Corps is liable to the Claimant for the amount of $676.78.

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[5]The Tribunal notes that the Claimant seeks 46,998 rials in connection with this invoice, which it converted into U.S. dollars at the rate of 70.60 rials/dollar, yielding an amount of $665.69. However, the airline tickets were expressed in Bahraini dinars, which were then converted into U.S. dollars in the invoice. The Respondent accepted this invoice amount of $676.78 in its pleadings.

IV. INTEREST

22. In order fully to compensate the Claimant for the delay in payment of the amount found owing, the Tribunal awards simple interest at the annual rate of 10 percent (365-day basis) from 11 November 1979, which is 30 days after the date on Invoice No. 157876, up to and including the date the Respondent effects payment to the Claimant.

V. COSTS

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

VI. AWARD

24. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent THE GOVERNMENT OF THE UNITED STATES OF AMERICA is obligated to pay the Claimant IRAN NATIONAL AIRLINES COMPANY the sum of Six Hundred Seventy-Six United States Dollars and Seventy-Eight Cents (U.S.$676.78), plus simple interest at the annual rate of 10 percent (365-day basis) from 11 November 1979 up to and including the date on which the Respondent effects payment to the Claimant.

(b) Each party shall bear its own costs of arbitration.

(c) All other claims arising out of this Case are dismissed.

Dated, The Hague
30 November 1987

Robert Briner
Chairman

In the name of God

George H. Aldrich

Hamid Bahrami-Ahmadi

Concurring in part,
Dissenting in part,
as to official claims
see my Dissenting Opinion
in Awards in Cases Nos. B2,
B13, B18 and B20.