

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحدہ

DUPLICATE
ORIGINAL
نسخہ برابر اصل

CASE NO. B36

CHAMBER TWO

DECISION NO. DEC 128-B36-2

THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	23 MAY 1997
	تاریخ ۱۳۷۶ / ۲ / ۲

DECISION

Introduction

1. On 3 December 1996, the Tribunal rendered Award No. 574-B36-2 (the "Award") in Case No. B36 between the United States of America ("United States") and the Islamic Republic of Iran ("Iran"). The Award, while dismissing a claim of the United States arising out of a 1945 sales agreement for lack of jurisdiction, held that, under a 1948 sales agreement (the "1948 Contract"), Iran was obligated to pay to the United States the sum of U.S.\$21,389,845.47, plus interest.

Request by Iran

2. On 28 January 1997, the Agent of Iran, on behalf of his Government, submitted a request (hereinafter the "Request") which contends that the Escrow Agent, Banque d'Algérie, erroneously paid to the United States interest in excess of that stipulated in paragraph 82(b)ii) of the Award,¹ viz., "simple interest on [the principal awarded] at the rate of 2 and 3/8 percent per annum (365-day basis) from 1 January 1960 up to and including the date on which the Escrow Agent instructs the Depository Bank [, the N.V. Settlement Bank of The Netherlands,] to effect payment out of the Security Account." Iran's argument, in essence, is that by including the term "365-day basis," the Tribunal intended to exclude the payment of interest for ten intercalary leap year days that occurred during the period over which interest was to be calculated. The Request asks that the Tribunal instruct the United States to refund to the Security Account the amount which, Iran submits, is in excess. Attached to the Request is a telefax from De Nederlandsche Bank to the Agent of Iran, dated 6 January

¹ The Tribunal notes that it is not the function of the Escrow Agent to effect payment. Its duty is to instruct the Depository Bank to make payments out of the Security Account for the execution of Tribunal awards in accordance with sub-paragraph 1(e)(i) of the Technical Agreement with N.V. Settlement Bank of The Netherlands of 17 August 1981, reprinted in 1 Iran-U.S. C.T.R. 38, 41.

1997, setting out in numerical form the calculation used to ascertain the amount of interest due under the Award.²

3. A letter dated 7 February 1997 was submitted by the Agent of the United States, on behalf of his Government, which contends that the Federal Reserve Bank of New York has verified that the interest paid to the United States was the correct amount provided for in the Award and that standard banking practice accepted worldwide calculates interest as specified in the Award for every day, i.e., that the term "365-day basis" means that the interest owing for each day is 1/365th of the awarded interest rate multiplied by the principal and not that interest should be excluded for any day. The letter asserts further that the N.V. Settlement Bank has confirmed to the Federal Reserve Bank of New York that all prior awards have been calculated in this manner. The United States asks the Tribunal to reject the present Request.

4. In reply, the Agent of Iran submitted a letter dated 6 March 1997 which contends that the Award explicitly stipulated that interest be calculated and paid on a "365-day basis" for each year and that Iran is not bound by the Escrow Agent's interpretation of Tribunal awards. It further contends that, without proof, the banking practice referred to by the United States cannot be considered the sole practice of banks throughout the world.

Previous Decision in Case No. B36

5. The Tribunal notes that the Request of 28 January 1997 has been presented by Iran as "[p]ursuant to [its] letter No. 33804 dated 3 January 1997 . . . objecting to the Tribunal's [A]ward

² De Nederlandsche Bank was selected by Iran and the United States as a mutually agreeable central bank to assume the management of the Depositary Bank. See Exchange of Notes Between The Kingdom of The Netherlands and The United States of America of 10 July 1981, reprinted in 1 Iran-U.S. C.T.R. 26.

No. 574-B/36-2" That reference establishes a link between the Request and an earlier request by Iran which in the meantime has been denied on the merits. United States of America and Islamic Republic of Iran, Decision No. DEC 126-B36-2, para. 19 (17 March 1997). Given the entirely new and different nature of the subsequent Request, however, that linkage is insufficient to make it timely under the Tribunal Rules of Procedure. Nonetheless, the Tribunal limits itself to finding that, as regards grounds for "objecting" to the Award, the present Request, like the earlier one, is without foundation.

Interpretation

6. For the same reason as set out in paragraph 5, supra, the Tribunal will not elaborate on another issue, viz., on what the Request states to be the meaning of the Award. Iran does not formally request an interpretation of the Award. At any rate, it was too late to do so because the deadline for an interpretation request expired before the Request was submitted. See Article 35 of the Rules. Nonetheless, in paragraph 1 of its letter of 6 March 1997, which rebuts the United States' reply to the Request, Iran refers to the terms of the Tribunal's Award with respect to the calculation of interest. In particular, Iran says that "the Tribunal has foreclosed any . . . interpretation" other than that presented by Iran. To avoid any misunderstanding, the Tribunal must observe that the contentions of Iran do not reflect the Tribunal's position.

7. The Tribunal recalls that in the Award in Case No. B36, as is its usual practice, the calculation of interest was left to the Escrow Agent to be made in accordance with paragraph 82(b)(ii) of the Award. By doing so, the Tribunal has not committed any error.

Refund of Interest

8. The Tribunal now turns to the question whether it has jurisdiction to instruct the United States to refund to the Security Account a certain amount of interest to be paid by the Depository Bank, under instruction from the Escrow Agent, if such a refund would be found due.

9. Having rendered its Award, which is final and binding, the Tribunal has limited competence to act further in this Case (see, in particular, Tribunal Rules of Procedure, Articles 35-37). In the present circumstances, the Tribunal has no jurisdiction to order a refund by the United States to the Security Account as requested by Iran.

10. For these reasons:

THE TRIBUNAL DECIDES AS FOLLOWS:

The request submitted on 28 January 1997 by the Agent of the Government of the Islamic Republic of Iran, on behalf of the Government of the Islamic Republic of Iran, is denied.

Dated, The Hague
21 May 1997

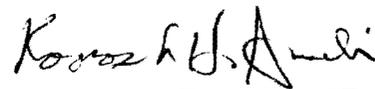


Krzysztof Skubiszewski
Chairman
Chamber Two

In The Name of God



George H. Aldrich



Koorosh H. Ameli
Concurring