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Case No. 10212

Date of filing: 2 MAY 86

\*\* AWARD - Type of Award FINAL  
 - Date of Award 2 May 86  
6 pages in English 7 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
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\*\* SEPARATE OPINION of \_\_\_\_\_  
 - Date \_\_\_\_\_  
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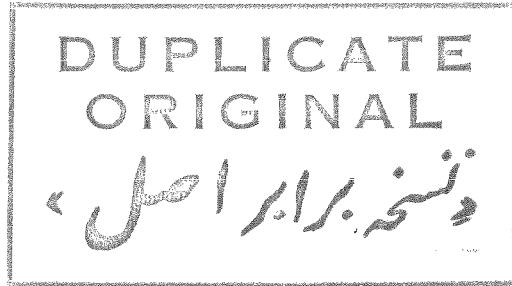
\*\* DISSENTING OPINION of \_\_\_\_\_  
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## IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ



CASE NO. 10212

CHAMBER TWO

AWARD NO. 231-10212-2

NOAH A. BAYGELL,  
 a claim of less than U.S.\$ 250,000 presented  
 by the UNITED STATES OF AMERICA,  
 Claimant,  
 and

THE ISLAMIC REPUBLIC OF IRAN,  
 IRAN NATIONAL AIRLINES CORPORATION,  
 Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	2 MAY 1986 تاریخ
	۱۳۶۵ / ۲ / ۱۲
No.	۱۰۲۱۲ شماره

AWARD

I. The Claim

1. On 19 January 1982, the United States of America filed a Statement of Claim which presented the Claim of less than \$ 250,000 of NOAH A. BAYGELL ("the Claimant") against the ISLAMIC REPUBLIC OF IRAN ("the Respondent"). The Claim, which was originally in the amount of \$ 160, was reduced to \$ 110 in the course of the pleadings. The Claim, in essence, is a Claim for the unpaid amount allegedly owed to the Claimant by IRAN NATIONAL AIRLINES CORPORATION ("Iran Air") as a result of the non-use of the return portion of an air ticket for travel between New York and London which had been purchased by the Claimant.

2. The Claimant paid \$ 323 and purchased through Inter-Collegiate Holidays, Inc. ("ICH"), a travel agency located in New York, a return air ticket from Iran Air for travel between New York and London. He flew from New York to London on 8 July 1979 utilizing a portion of this ticket. From London he travelled to Sudan and Ethiopia on an assignment. He returned to London in November 1979 intending to travel to the United States utilizing the return portion of his ticket, although the ticket stated that it was not valid after August 1979. Upon arrival in London, he discovered that Iran Air had suspended its flights to and from the United States. On 19 November 1979, he presented his ticket to Iran Air and was issued a Miscellaneous Charges Order ("MCO") for \$ 100. The MCO represented a refund of the unutilized portion of the ticket, which was valued at \$ 160, less a \$ 50 "Fine" authorized by the fare regulations applicable to such tickets, and less a \$ 10 commission allegedly paid to the travel agent.

3. The Claimant asserts that according to the applicable Airline Passenger Tariff Rules (the "Tariff Rules"), the Respondent was not allowed to deduct the commission and he was therefore entitled to a refund of \$ 110 instead of \$ 100. The Claimant asserts that as no other airline was

prepared to accept the MCO as part payment towards the issuance of a fresh ticket, he returned to the United States on a ticket purchased with his own funds. He states that on his return to the United States he attempted to obtain a refund of the value of the MCO from ICH but was refused, allegedly because ICH had been unable to receive payment from Iran Air.

4. The Respondent asserts that its contractual obligation to the Claimant for the refund was terminated by the issuance of the MCO for \$ 100 and that the deduction of \$ 10 was proper as it represented a commission retained by ICH, the Agent that issued the ticket. The Respondent disputes the Claimant's allegation that no other airline was prepared to accept the MCO and has produced documents which it contends "demonstrate that similar MCO forms issued on 16, 24 and 27 November . . . have been duly accepted by British Airways who for settlement thereof have sent [a] Statement of Account to the Respondent".

5. The Tribunal suggested that no Hearing was warranted in this Case, and the Parties have agreed. Accordingly, the Tribunal decides the Case on the basis of the written record.

## II. Reasons for Award

### A. Jurisdiction

6. The Tribunal is satisfied that the Claimant is a national of the United States of America. It is not disputed that Iran Air was included within the definition of "Iran" set forth in Article VII, paragraph 3, of the Claims Settlement Declaration at the date the Claims Settlement Declaration entered into force. See Queens Office Tower Associates and Iran National Airlines Corporation, Award No. 37-172-1 (15 April 1983), reprinted in 2 Iran-U.S. C.T.R. 247. The Tribunal has decided to add

Iran Air as a named Respondent and has changed the caption of the Case accordingly. It is also not in dispute that the Claim arises out of or relates to one or more "debts, contracts . . . , expropriations or other measures affecting property rights" within the meaning of Article II, paragraph 1, of the Claims Settlement Declaration and was continuously owned by the Claimant.

7. The Respondent asserts that the Claim was not outstanding on 19 January 1981, as required by Article II, paragraph 1, of the Declaration. The Tribunal notes, however, that while the Respondent has disputed the statement of the Claimant regarding the refusal of other airlines in London to accept MCOs issued by Iran Air, it has not denied or offered any evidence relating to the alleged refusal by ICH to refund the value of the MCO. Nor has it disputed that ICH was its Agent in relation to the issuance of the ticket. The Claimant has asserted that upon his return to New York he attempted to obtain a refund from ICH. In these circumstances, the Tribunal need not resolve the dispute as to the attempts made in London to utilize the MCO through other airlines, as, in any event, the Claim was outstanding from the date in late November 1979 when ICH refused to refund the value of the MCO.

B. Merits

8. It is not in dispute that the Claimant should have received at least \$ 100 as a refund for the unused portion of his airline ticket. The Claimant, however, contends that the Tariff Rules, relied upon by the Respondent, do not authorize a deduction of a commission (amounting to \$ 10 in this Case) in addition to a \$ 50 fine. The Claimant therefore contends that the MCO should have been issued for a sum of \$ 110 instead of \$ 100. The Tribunal notes that these Tariff Rules are silent in relation to commissions which may be charged by issuing agencies. Furthermore, the provisions of the Tariff Rules relevant to refunds in

circumstances similar to this Case stipulate that a portion of the value of the ticket shall be non-refundable, and that such portion shall not be less than \$ 50. In these circumstances, the Tribunal holds that the Claimant has not proved that he was entitled to more than \$ 100, the amount determined by the Respondent to be payable to him and the amount accepted by him when he accepted the MCO.

9. The Tribunal therefore finds that Iran Air has owed the Claimant a sum of \$ 100 since 19 November 1979, the date it issued the MCO.

C. Interest

10. In order to compensate the Claimant for the delayed payment of the sum due to him, the Tribunal considers it reasonable to award simple interest at the rate of 12 percent from 19 November 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment.

D. Costs

11. The Tribunal determines that each party shall bear its own costs of arbitrating this Claim.

III. Award

12. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent IRAN NATIONAL AIRLINES is obligated to pay the Claimant NOAH A. BAYGELL the sum of One Hundred United States Dollars (U.S.\$ 100) plus simple interest thereon at the rate of 12 percent per annum (365-day basis)

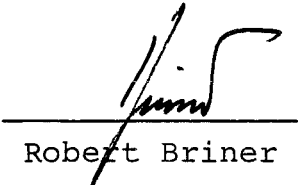
from 19 November 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account. This obligation shall be satisfied by payment out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

(b) Each Party shall bear its own costs of arbitrating this Claim.

(c) This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague

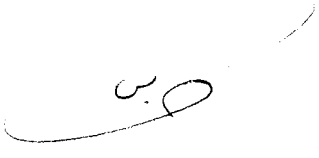
2 May 1986



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Robert Briner  
Chairman  
Chamber Two

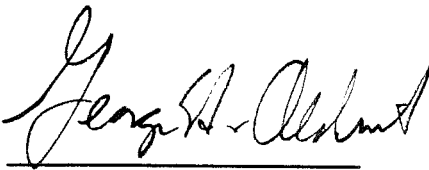
In the name of God



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Hamid Bahrami-Ahmadi

*Dissenting*



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George H. Aldrich