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Case No. 10273

Date of filing: 31 oct 1988

** AWARD - Type of Award _____
 - Date of Award _____
 _____ pages in English _____ pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of Judge Bouvier
 - Date 31 oct 1988
3 pages in English 1 pages in Farsi

** SEPARATE OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

 - Date _____
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CASE NO. 10273
 CHAMBER THREE
 AWARD NO. 399-10273-3

HIDETOMO SHINTO,
 a claim of less than US\$250,000 presented
 by THE UNITED STATES OF AMERICA,
 Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN
 Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعوی ایران - ایالات متحده
FILED - ثبت شده	
Date	31 OCT 1988
	تاریخ ۱۳۶۷ / ۸ / ۹

CONCURRING OPINION OF JUDGE BROWER

1. I concur fully with the Award's findings on jurisdiction and the merits of this Case. I write separately only to set forth in more detail why I believe the contractual limitation period, asserted by the Respondent to bar the claim, to be inapplicable given the facts of this Case. I further believe that a higher rate of interest should have been granted and that an award of costs to this fully successful Claimant is appropriate.

2. Clause XVIII of the Claimant's employment contract in pertinent part provided that:

Any compensation or benefit due under this Agreement shall be made within sixty (60) days from the termination hereof. No claim shall be considered for payment after sixty days from the date of termination.

The Respondent argues that the Claimant's failure to assert a claim within sixty days of the termination of his contract constitutes a bar to the Tribunal considering the claim.

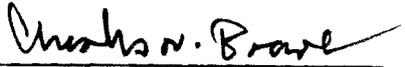
3. In my view, even if the Tribunal were to determine that, under ordinary circumstances, such a "statute of limitations" would bar this claim, in the context of this Case the clause was waived, or at least made inapplicable, by the actions of SKBM. On the same day that the Claimant was informed that his employment contract had been terminated, SKBM, over the signature of its Vice-President, confirmed to the Claimant that SKBM owed him U.S.\$5,987.11 and that such funds would be mailed to him upon payment of the amount to SKBM by ISIRAN. The obligation to pay, however, expressly was made "in no way dependent upon receiving payment from ISIRAN."

4. The letter clearly affected the rights of the Parties. Given that SKBM on the date of termination expressly warranted that it would make good on the payment of the amounts owed to the Claimant, SKBM should be considered to have waived the provision requiring the Claimant to file a claim within 60 days of that termination. Alternatively, SKBM should be considered to have believed the provisions of Clause XVIII were satisfied. The Award implicitly reaches such a conclusion, finding, as it does, that it need not consider the issue of the time limitation because the proper legal basis for the claim is the 24 January 1979 letter.

5. As set forth in the notation to my signature to the Award in Theodore Lauth and Islamic Republic of Iran, Award No. 233-10355-3 (8 May 1986), reprinted in 11 Iran-U.S. C.T.R. 150, I believe that interest at the rate of ten percent should be awarded in a Case such as this and that

costs in the amount requested (U.S.\$119.74) also should be granted, since it is evident that at least this amount must have been expended in bringing this claim.

Dated, The Hague
31 October 1988


Charles N. Brower