

ORIGINAL DOCUMENTS IN SAFE

53

Case No. 10273Date of filing: 30.NOV88** AWARD

- Type of Award Correction To English version
- Date of Award 30.NOV88
2 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____ pages in English _____ pages in Farsi** CONCURRING OPINION of _____

- Date _____
 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____

- Date _____
 pages in English _____ pages in Farsi

** DISSENTING OPINION of _____

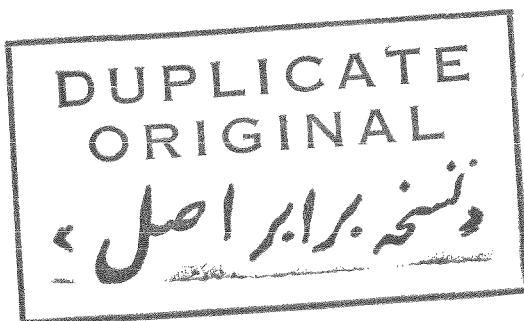
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- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحده



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**

دادگاه دادرسی دعوی
اولین اپلایات متعده

FILED - *[Signature]*

Date 30 NOV 1983

نامه / ۹ / ۹ / ۱۳۶۷

CORRECTION TO THE ENGLISH VERSION OF THE AWARD

The following corrections are hereby made to the English version of the Award in this Case filed on 31 October 1988.

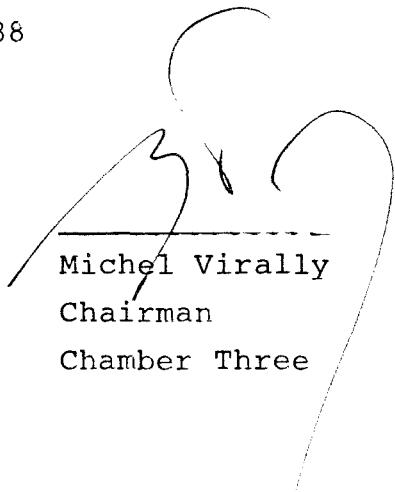
1. At page 2, replace "For the Claimants:" with "For the Claimant:"
 2. At page 6, paragraph 15, line 3, replace "]and thus[" with "[and thus]."
 3. At page 8, paragraph 20, line 1, replace "27-83-3" with "27-84-3."
 4. At page 12, paragraph 31, line 15, replace "31 October 1977" with "31 October 1987."

5. At page 13, paragraph 34, line 5, replace "ITL-6-FT" with "ITL 1-6-FT."
6. At page 14, paragraph 37, line 9, replace "]the Claimant[" with "[the Claimant]."
7. At page 15, paragraph 39, line 4, replace "at 20." with "at 62."

Copies of the corrected pages are attached.

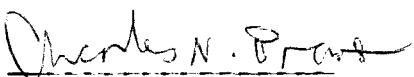
Dated, The Hague

30 November 1988



Michel Virally
Chairman
Chamber Three

In the name of God



Charles N. Brower



Parviz Ansari Moin

Appearances

For the Claimant:

Mr. Timothy E. Ramish,
Agent of the Government of
the United States of
America,
Mr. Michael F. Raboin,
Deputy Agent of the
Government of the United
States of America.

For the Respondent:

Mr. Mohammad K. Eshragh,
Agent of the Government of
the Islamic Republic of
Iran,
Mr. Nowzar Dabiran,
Legal Advisor to the Agent
of the Government of the
Islamic Republic of Iran,
Mr. Sohrab Rabiee,
Legal Advisor to the Agent
of the Government of the
Islamic Republic of Iran.

payment from ISIRAN." A certificate of authentication, issued by the Vice Consul of the United States in Tehran, was attached to the SKBM letters certifying that Hassan Asgari Pour indeed had signed these letters.

14. The Claimant departed Iran on 19 February 1979. He never received any funds allegedly owed to him, however. He thus asserts a claim before the Tribunal in the amount of U.S.\$5,987.11 reflecting those monies that SKBM admitted owing him in its letter of 24 January 1979. In short, the Claimant alleges that the failure of Iran to make good on these payments constituted a breach of his contract of employment. Alternatively, the Claimant argues that Iran is liable for those sums admittedly owed under the terms of the 24 January 1979 letter.

15. Iran denies the Claimant's allegations. It contends that he "left Iran at his own option and free-will . . . [and thus] he cannot have any claim for damages in this respect."

III. JURISDICTION

A. The Claimant's Nationality

16. The Respondent argues that the Claimant has not produced adequate evidence of his United States nationality. It further points out that the Claimant's birth certificate shows his parents to have been Japanese thus inferentially calling into question his own nationality.

17. As proof of his United States nationality the Claimant has submitted a copy of his United States passport and his certificate of birth, showing that he was born in the Territory of Hawaii.

Award No. 27-84-3 at 8-9 (4 March 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 105. Through affidavit testimony of former employees of ISIRAN and SKBM the Claimant alleged that ISIRAN controlled the daily workings of SKBM, including establishing the qualifications for all SKBM employees, requiring SKBM to submit to it the qualifications of any personnel SKBM intended to hire and retaining the right to terminate any SKBM employees.

21. At the Hearing, however, the representative of the Claimant informed the Tribunal that the 31 October 1987 letter from the Corporate Registration Bureau, submitted by Iran to establish its non-involvement with SKBM and filed with the Tribunal on 16 November 1987, only three weeks prior to the Hearing, had revealed previously unknown information and had caused the Claimant to change his theory of control. The Claimant pointed out that this letter revealed that a final realignment of SKBM occurred at the 16 June 1977 shareholders meeting. According to the Claimant, the result of that realignment was that all of the shares of SKBM were held by the three individuals referred to in the letter as the newly appointed directors to the company in the following amounts: Amir Hossein Amir Faiz 52%, Mohsen Asgari Nazari 34% and Hassan Asgari Pour 14%.

22. The Claimant further alleged that in February 1979 the Iranian employees of SKBM had brought an action against SKBM for unpaid wages in a local labor court and were granted an order of the court seizing SKBM's assets. The labor court allegedly appointed the Revolutionary Guards to oversee the seizure of the assets and to dispose of them. According to the Claimant, in April 1979 the Revolutionary Guards sold SKBM's building at auction for U.S.\$200,000, paying the plaintiffs in the labor suit U.S.\$80,000 for back wages, retaining U.S.\$15,000 for expenses and giving the remainder to the Bonyad Mostazafan.

submission was initially requested from the Respondent, which informed the Tribunal that such Order could not be located. On this basis the Claimant has supplied the Order and thus it should not be rejected as new evidence not previously requested by the Tribunal. Consequently, the Tribunal finds that it should be admitted.

31. In light of these findings the Tribunal must now reach the substance of the issue of the control of SKBM. The question of control under Article VII, paragraph 3 of the CSD is one of fact. DIC of Delaware and Tehran Redevelopment Corp., Award No. 176-255-3 (26 April 1985), reprinted in 8 Iran-U.S. C.T.R. 144. Here the evidence submitted by the Claimant shows that the assets of Mr. Amir Hossein Amir Faiz, a shareholder of SKBM, were expropriated by Iran in the Spring of 1979. Mr. Amir Faiz' name clearly is listed as number 181 in the official Order. The Minutes of the 16 June 1977 shareholders meeting submitted by the Respondent further show the breakdown of stock ownership at that time to have been the following: Mr. Amir Faiz - 46 shares (57.5%), Mr. Asgari Nazari - 27 shares (33.75%) and Mr. Asgari Pour - 7 shares (8.75%). The 31 October 1987 letter of the Corporate Registration Bureau, also submitted by the Respondent, confirms that this represented the last realignment in the company. Consequently, the documentary evidence in the record establishes that Iran expropriated Mr. Amir Faiz' shares in SKBM and that at the time of the expropriation he owned the majority of the shares in the Company. It is well established in prior awards of the Tribunal that control exists where Iran has assumed a majority ownership interest in the entity at issue. See Henry F. Teichmann and Hamadan Glass Company, Award No. 264-264-1 (12 November 1986), reprinted in 13 Iran-U.S. C.T.R. 124; Blount Brothers Corp. and Ministry of Housing and Urban Development, Award No. 74-62-3 (2 September 1983), reprinted in 3 Iran-U.S. C.T.R. 225.

32. Based on the foregoing, the Tribunal concludes that, as a result of the expropriation of Mr. Amir Faiz' shares, SKBM was a controlled entity of Iran within the provisions of Article VII paragraph 3 of the CSD as of 12 April 1979, the date of the official Order taking Mr. Amir Faiz' assets, and thereafter.

C. Statute of Limitations

33. The Respondent contends that the Tribunal lacks jurisdiction to hear the claim on the ground that Clause XVIII of the Claimant's employment contract (1) requires any claim arising therefrom to be filed in Iran, thereby excluding this claim from the Tribunal's jurisdiction, and (2) imposes a time bar on the assertion of a claim under the contract. Clause XVIII of the contract reads as follows:

It is agreed that no claims in regard to this contract will be made against the person or individual representing SKBM, but that any and all claims regarding the contract will be against SKBM solely. All claims filed against SKBM must be filed in Iran as SKBM has no affiliate doing business in its behalf, nor does SKBM conduct business in any country other than Iran. Any claims by the Employee against SKBM arising out of 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.

(Emphasis in original)

Accordingly, Iran argues that the Claimant's failure to assert and to file a claim in Iran within 60 days from the termination of his contract constitutes a bar to the Tribunal considering the claim at this juncture.

34. Initially, the Tribunal notes that the phrase "must be filed in Iran" does not divest it of jurisdiction over the Case. See, e.g., Ultra Systems, supra, at 9, reprinted in 2 Iran-U.S. C.T.R. at 105; Gibbs & Hill, Inc. and Iran Generation and Transmission Company, Award No. ITL 1-6-FT at 3-4 (5 November 1982), reprinted in 1 Iran-U.S. C.T.R. 236, 239-40.

The Tribunal has never held that such general language limits the Claimant to resolution of its claim through the Iranian courts or other Iranian legal structures.

35. Given the Tribunal's findings that the proper legal basis of the claim is the 24 January 1979 letter (see para. 38, infra), the Tribunal need not consider further the effect, if any, of the time limitation contained in Clause XVIII of the employment contract.

IV. THE MERITS

36. The Claimant contends that the failure of SKBM to pay him the sums agreed upon in his contract constituted a breach of that contract warranting an award of damages in the amount evidenced by the 24 January 1979 letter. Alternatively, the Claimant asserts that this letter itself constitutes an agreement which the Respondent failed to observe. The Respondent does not directly contest the debt, arguing rather that the Claimant left Iran of his own free will.

37. The Tribunal finds that whether or not the Claimant left Iran voluntarily is irrelevant to the claim as stated. The Claimant has established that he had a contract of employment with SKBM and that the contract was terminated prematurely by SKBM due to "the inability of the Company to meet its financial obligations at this time." In a letter signed by the Vice-President of SKBM on the date of termination SKBM undertook to "pay all benefits and return relocation allowances accruing to [the Claimant] on contract completion." In a separate calculation sheet attached to the letter SKBM calculated the amount owed to the Claimant as the amount that Claimant now asserts is due. Finally, in a second letter to the Claimant from SKBM, signed by the Vice-President of the Company on the date of termination,

SKBM again undertook to pay the Claimant the sum of U.S.\$5,987.11 upon ISIRAN forwarding such sums to SKBM and further stated that the obligation to pay was not dependent upon receiving such payment from ISIRAN. There is nothing in the file to indicate that the Claimant raised any objections to the terms of payment proposed in these letters.

38. This documentary evidence establishes that the Claimant's contract of employment existed, that it was terminated by SKBM on 24 January 1979 and that SKBM admitted that it owed him the sum now claimed. By Shinto's failure to object to the terms of the 24 January 1979 letter an agreement was reached on those terms. The failure of SKBM to fulfill its commitment pursuant thereto thus constituted a breach of this agreement. The Claimant is thus entitled to the amount requested.

V. INTEREST AND COSTS

39. Pursuant to Tribunal practice the Tribunal also awards the Claimant simple interest at the rate of 8.5% per annum from 24 January 1979, the date of the termination of his employment. Theodore Lauth, supra, at 62. Each Party shall bear its own costs of arbitration.

VI. AWARD

40. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

a. The Respondent, THE ISLAMIC REPUBLIC OF IRAN, shall pay to the Claimant, HIDETOMO SHINTO, the sum of U.S.\$5,987.11 plus simple interest due at the rate of 8.5% per annum (365-day basis) from 24 January 1979 up to and including the date on