IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

DUPLICATE ORIGINAL
«نسخه برابر اصل»

CASE NO. 10335
CHAMBER THREE
AWARD NO.233-10335-3

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 8 MAY 1986 تاریخ
۱۳۶۵ /۲/ ۱۸
No. 10335 شماره

THEODORE LAUTH, a claim of less than US $ 250,000, presented by the UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

AWARD

Appearances:

For the Claimant:
Mr. J. Crook
Agent of the United States of America
Mr. D.M. Price
Deputy Agent of the United States of America
Mr. M.F. Raboin
Ms. L.P. Polk
Assistants to the Agent

For the Respondent:
Mr. M.K. Eshragh
Agent of the Islamic Republic of Iran
Mr. N. Mokhtari
Mr. A. Mohammadi
Legal Advisors to the Agent
Mr. A. Gholami
Assistant to the Agent
Mr. A. Tarasoli
Financial Advisor to the Agent

I. INTRODUCTION

1. On 19 January 1982 the United States of America filed a Statement of Claim which presented a claim of less than US $250,000, of Theodore Lauth ("the Claimant"), against the Islamic Republic of Iran, or, more specifically, Iran Aircraft Industries ("the Respondent" or "IACI"). The Claimant seeks damages of US$ 13,777.29 for various payments allegedly arising from his employment contract with IACI for an eighteen month period commencing 10 November 1977. A Hearing in this Case was held on 4 December 1985.

II. JURISDICTION

A. The Parties

2. The Claimant asserts that he is a United States national by birth. He has submitted evidence to that effect, including his birth certificate as well as copies of relevant portions of his passport. The Tribunal is satisfied that the Claimant is a national of the United States and a proper Claimant under Article VII (1) of the Claims Settlement Declaration.

3. The Tribunal also accepts the Claimant's contention that he has owned continuously the Claim as required by Article VII (2) of the Claims Settlement Declaration.

4. It is not contested that IACI is a subsidiary of the Military Industrial Organization of Iran, which is an agency of the Ministry of National Defense. Therefore IACI is an "agency, instrumentality, or entity controlled by the Government of Iran", within the meaning of Article VII (3) of the Claims Settlement Declaration.

B. Forum Selection Clause

5. The Respondent contends that the employment contract contains a forum selection clause which satisfies Article II

(1) of the Claims Settlement Declaration. It argues that the Claim is one "arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts" and as such is excluded from the Tribunal's jurisdiction. The Respondent relies on Paragraph XXI of the employment contract, which provides as follows:

> XXI. Governing Laws and Disputes
> This Agreement shall be deemed to be an Iranian Agreement and shall accordingly be governed by and construed according to the Iranian laws. Disputes arising from this Agreement shall be resolved in accordance with I.A.C.I. policies or when applicable shall be settled in accordance with the national laws of Iran.

The Respondent argues that this provision confers exclusive jurisdiction on Iranian courts over any disputes which arise under the employment contract. It further contends that Paragraph XXI requires all disputes under the employment contract to be settled under IACI regulations, which, the Respondent states, provide that settlement of contractual disputes falls exclusively within the jurisdiction of the courts of Iran.

6. The Claimant argues in reply that Paragraph XXI does not confer jurisdiction on any forum, much less exclusive jurisdiction on an Iranian court. Neither does the provision expressly incorporate any IACI regulations; rather it refers to IACI policies. In addition, the Claimant notes that the Respondent neither submits nor quotes these regulations.

7. The Tribunal holds that Paragraph XXI does not constitute a specific reference to a competent Iranian court. It thus does not fall within the exclusion provisions of Article II (1) of the Claims Settlement Declaration. See Zokor International Inc. and The Islamic Republic of Iran, Award No. ITL 7-254-FT (5 November 1982), reprinted in 1 Iran-U.S. C.T.R. 271.

III. THE MERITS

A. The Contract

8. In 1976 the Claimant signed an employment contract with IACI for an initial period of eighteen months. His position was described as a "senior quality planning analyst", employed at IACI Plant One, Mehrabad Airport. His job was to oversee "the paperwork leading to the repairs and overhaul of military aircraft". Upon expiry of the Claimant's initial contract, IACI renewed the Claimant's contract for a further eighteen months, effective from 10 November 1977. The terms of the renewed contract were generally similar to those of the 1976 contract.

9. The contract provided for a monthly base salary of US $1,417, plus an overseas allowance of US $354, a commodities and services allowance of US $206, and a housing and utilities allowance of US $413. Pursuant to the terms of the contract, the Claimant elected that 50% of his base salary be remitted to his bank account in the United States. The remaining 50% and all allowances were paid locally in rials. Various other payments or benefits were also provided for in the event of termination of the contract, whether at the instigation of one of the parties or on completion of the contract period.

B. Termination of the Contract

10. The Claimant alleges that on or about 31 December 1978 IACI stopped making any payments under the contract. Further, he contends that from 1 January 1979 he was barred from his work site by "armed militia", who refused to permit the entry of expatriate employees and continued to do so up until 18 February 1979.

11. On 18 February 1979 the Claimant wrote a letter to IACI's Director of Industrial Relations which stated, inter alia:

> Due to the present difficultys [sic] in Iran and the evacuation of expatriates from Iran, I am compeled [sic] to submit my resignation effective this date.

12. On 20 February 1979 the Claimant states he was instructed by IACI to report to his worksite where he was given a termination clearance to secure his passport which would allow him to leave the country. Also on that date, the Claimant hand-delivered another letter to the Director, which stated, inter alia:

> This is to inform you that I am compelled to terminate the employment agreement between myself and Iran Aircraft Industries for the following reasons;
>
> 1, failure of I.A.C.I. to pay my salary, bonus and living allowance for the past eight (8) weeks.
> 2, the present unstable situation in Iran.
> 3, I.A.C.I.'s lack of security of expatriates.
> 4, I.A.C.I.'s incouragement [sic] that all expatriates leave at this time.
>
> The above reasons are through No Fault of my doing, and therefor [sic] I submit that this termination is subject to paragraph XIII, sub-paragraph B and C of the employment agreement between my-self and I.A.C.I.
>
> Therefor [sic] I submit that all payments, salarys [sic], bonus's [sic], living allowances, and full air-fare for my-self and my depenent [sic] wife including her exit-visa fee be paid to me by I.A.C.I.
>
> I request that all monies due me be forwarded to my bank in America.

13. The Claimant argues that IACI had by the earlier date, i.e., 18 February 1979, breached the contract by not making any of the required payments and that this breach was sufficient for the Claimant to regard the contract as terminated by IACI.

14. The Claimant acknowledges that under Paragraphs III(B) and XIII(B) and (C) of the contract, IACI was entitled to terminate the contract at any time, but, except in the case of a termination for cause or a termination resulting from a "natural catastrophe or international incident", beyond

either Party's "control", subject to a requirement of giving thirty days notice or thirty days pay in lieu of notice.

15. The Claimant submits that in these circumstances it was IACI that terminated the contract, that it did so without giving thirty days notice, and, that such a termination was through "no fault" of the Claimant. The Claimant states therefore he is entitled to thirty days pay, to payment of the previously unpaid salary and allowances, and to certain other payments that arise on termination under such circumstances.

16. The Respondent rejects the Claimant's contention that it terminated the contract. It argues that the contract was terminated by the Claimant's voluntary resignation, which is evidenced by the letter of 18 February 1979. Further, the Respondent contends that the matters cited by the Claimant in his letter of 20 February 1979 were an afterthought, and in any event were insufficient for the Claimant to regard the contract as terminated.

17. The Respondent admits a delay in effecting the normal bank transfers of 50% of the Claimant's salary to his United States bank account, but states that this was because of a strike by bank personnel at Bank Markazi, the Central Bank of Iran, and was a cause beyond its control. Further, it states that it made genuine and consistent efforts to make the payments and to keep the personnel informed of the current position.

18. The Tribunal accepts that there was a delay in making payments to the Claimant, but finds this was because the Respondent, despite its best intentions, was not able to effect payment in the normal way, at least in so far as the remittances to the United States are concerned. There was a complete collapse of the normal conditions which would have enabled the Claimant to attend work and the Respondent to pay him as contemplated for his labor. In any event, the Tribunal does not find it necessary to decide whether or not

the Respondent breached the contract. It is sufficient for present purposes to hold that the contract was terminated as at 20 February 1979 through no fault of the Claimant.

C. The Status of Payments Received by the Claimant

19. Before considering the Claim for damages in detail, it is necessary for the Tribunal to make a finding on the evidence presented to it, as to what payments the Claimant has received and what obligations those payments satisfy.

20. The Claimant claims that he has not received payment for: the 50% of his base salary normally paid in rials for the month of Dey (corresponding to 22 December 1978 to 20 January 1979); his total base salary for the months of Bahman and Esfand (corresponding to 21 January 1979 to 20 March 1979); and all allowances for those three months. In addition, the Claimant seeks other payments arising from the termination of the contract.

21. The Respondent contends that the Claimant was paid "all monthly salaries and allowances provided for in the contract up to 20 February 1979". The Respondent has submitted an internal memorandum from IACI's Personnel and Administrative Services, dated 7 March 1979, which directs that payment be made to the Claimant for: salary and allowances; unused sick leave and vacation entitlements; a return relocation allowance; return airfare to the United States; airport departure tax; and, airfreight allowances. The Respondent points to a payment of US $2,301.32 it made to the Claimant's bank account in the United States in February 1981, which, it states, represents payments of the amounts described in the internal memorandum and is for all salary, allowances and termination payments owing to the Claimant up to 20 February 1979.

22. In addition, the Respondent asserts that in January 1979 it made a payment of 75,173 rials, as part of the Claimant's salary and allowances for the month of Dey

(corresponding to 22 December 1978 to 20 January 1979), to the Claimant's bank account with Bank Sepah in Iran. The Respondent has submitted a payroll list which indicates that a payment was scheduled to be made to the Claimant. It has also submitted an instructing letter to Bank Sepah dated 20 January 1979, directing that payment be made to IACI employees named in that payroll list, the implication being that the payroll list containing the Claimant's name was included with that letter.

23. The Claimant acknowledges that he received payment of US $2,301.32 from the Respondent by electronic transfer to his bank account in the United States in February 1981. He states that he regarded this payment as settlement of an earlier outstanding amount owed to him by IACI, namely the 50% of his base salary, normally paid in dollars, for the months of Aban, Azar and Dey (representing the period 23 October 1978 to 20 January 1979). He claims that IACI had failed to make those payments on the due dates; consequently, when the US $2,301.32 was transferred to his bank account in the United States in February 1981, he assumed that it was in satisfaction of these earlier, allegedly outstanding amounts, which do not constitute part of his claim before the Tribunal.

24. The Tribunal notes that there is no evidence that the Claimant received any notification or communication from IACI informing him as to what the February 1981 electronic transfer represented. Furthermore, the amount transferred is approximately equivalent to three times 50% of the base salary for three months, i.e., the amount that the Claimant believed was outstanding. Although the electronic transfer appears to have been intended by the Respondent to be in satisfaction of outstanding salary, allowances and final payments as set out in its internal memorandum of 7 March 1979, the Tribunal is satisfied that the Claimant was justified, in the circumstances, in applying this amount in satisfaction of the earlier debt.

25. As to the payment allegedly made to the Claimant's bank account with Bank Sepah, the Tribunal notes that although the Respondent has submitted evidence that within IACI there was a direction that the Claimant be paid 75,173 rials, there is not sufficient evidence to satisfy the Tribunal that Bank Sepah carried out those instructions.

26. Accordingly the Tribunal concludes that the Respondent fulfilled its obligation to make payments under the contract fully up until and including the month of Azar (i.e., until 21 December 1978), and further that for the following month of Dey the Claimant has received the equivalent of the dollar portion of the salary. All subsequent entitlements under the contract are outstanding. There is, however, further dispute between the Parties as to the amount of those entitlements.

D. The Claim

27. In summary the Claimant's claim is as follows:

(1)	Salary and Allowances	
	(a) for the period 22 December 1978 to 20 January 1979:	
	(i) 50% of base salary (normally paid in rials)	$ 708.50
	(ii) overseas allowance	$ 354.00
	(iii) commodities and service allowance	$ 359.00
	(iv) housing and utilities allowance	$ 620.00
	(v) hazard pay	$ 213.00
		$ 2,254.50
	(b) for the period 20 January 1979 to 20 February 1979:	
	(i) base salary	$ 1,417.00
	(ii) overseas allowance	$ 354.00
	(iii) commodities and service allowance	$ 359.00
	(iv) housing and utilities allowance	$ 620.00

(v) hazard pay $ 213.00

$ 2,963.00

(c) for the period 21 February 1979 to 20 March 1979:

same as (b) above $ 2,963.00

(2) Termination Payments

(i) $ 1,367.50, for sick leave outstanding,
(ii) $ 410.25, as vacation pay outstanding,
(iii) $ 959.61, as a return relocation allowance,
(iv) $ 1,487.85, as a contract completion bonus,
(v) $ 282.68, as compensation for travel fees incurred,
(vi) $ 901.60, for airfares from Tehran to Frankfurt for the Claimant and his wife, and
(vii) $ 187.30, storage and delivery of the Claimant's personal belongings left in the United States.

28. It is necessary for the Tribunal to consider each element of the claim separately.

(1) Salary and Allowances

(i) Salary and Overseas Allowance

29. There is no dispute between the Parties as to the amounts specified in the contract for the base salary ($1,417) and overseas allowance ($354). However, the Claimant has claimed for salary and allowances not only for the period up to the termination of the contract but also for the month of Esfand (representing the period 20 February 1979 to 20 March 1979), as he contends that he is entitled to thirty days pay in lieu of thirty days notice. Paragraph XIII (C) of the contract, which relates to all cases of termination through no fault of the employee, provides that

IACI can elect to pay an employee thirty days pay in lieu of giving him thirty days notice. In addition, Paragraph XIII (D) provides that either Party may terminate the contract, without cause, upon giving thirty days written notice to the other and that in such a termination an employee, if so requested by IACI, should continue to render his services and would be paid up to the date of termination. The Respondent argues that Paragraph XIII does not apply to a situation where an employee personally resigns, and, as the Claimant terminated the contract by his resignation, he is not entitled to the thirty days pay in lieu of notice.

30. As to the requirement of giving thirty days notice, the Tribunal recognizes that in the circumstances it could have been difficult for either Party to give the prescribed notice. Neither is there any evidence that the Claimant was requested by IACI to work for a thirty day period subsequent to the termination. On the contrary, the evidence is that he was not requested to do so. The Tribunal notes that it would have been difficult to sustain such a request given the difficulties of access to the work site and the improbability of regular salary payments. The Tribunal holds that as the contract was terminated through no fault of the Claimant, and pursuant to Paragraph XIII (C), the Claimant is entitled to compensation for thirty days pay in lieu of thirty days notice. Therefore the Tribunal concludes the Claimant is entitled to his base salary and overseas allowance for the three periods outlined in paragraph 27 (1) above, i.e., $4,604.50, and awards this amount accordingly.

(ii) Change in Marital Status

31. The Claimant argues that his entitlements changed generally as of 22 November 1978. On that date the Claimant married while on vacation in the United States. He contends that adjustments should therefore be made to the commodities and service allowance, the housing and utilities allowance and various payments he claims that he is entitled to on

termination of the contract, i.e., air travel expenses and a return relocation allowance.

32. The Respondent argues that the Claimant is bound by his initial election to sign the contract as a single person. It argues that pursuant to Paragraph XX of the contract, any amendment to the contract must be agreed to between both parties, and be notified in writing. It contends that the Claimant did not formally notify IACI that he had married and is therefore barred from claiming any increases or allowances for his spouse.

33. The Tribunal does not find it necessary to decide whether the Claimant formally notified IACI of his marriage. The Tribunal notes that it is not contested that the Claimant could change his marital status under the contract. The Tribunal concludes that it is reasonable to infer that, had the contract continued, the Claimant's entitlements would have been adjusted to account for the change in his marital status, and that such adjustments would have taken effect retroactively from the date of his marriage.

(iii) Commodities and Services Allowance

34. The Claimant claims that the monthly commodities and services allowance increased from the contractually specified rate of $206 to $239 from 31 October 1978. In addition, the Claimant asserts that the monthly allowance for a married employee was $359.

35. The Tribunal notes that one of the pay slips, submitted by the Claimant and dated 2 December 1978, shows that this allowance had been increased to $239. The Claimant's contention that the rate for a married employee is $359 is evidenced only by the Claimant's sworn testimony. In the absence of any evidence challenging this figure, the Tribunal concludes that it is a reasonable one, and awards the sum of $359 for each of the three months, for the commodities and services allowance, i.e., a total of $1,077.

(iv) Housing and Utilities Allowance

36. The Claimant claims that the rate of the housing and utilities allowance (stated in the contract as $413), was $620 for a married employee. Again, this contention is evidenced only by the Claimant's own testimony.

37. In the absence of any evidence challenging this figure, the Tribunal concludes that it is a reasonable one, and awards the sum of $620 for each of the three months for the housing and utilities allowance, i.e., a total of $1,860.

(v) Hazard Pay

38. The Claimant alleges that in October 1978, the management of IACI circulated to its employees a memorandum stating that due to civil unrest within Iran, the employees would be entitled to an additional monthly payment amounting to 15% of an individual employee's base salary. This additional payment, the Claimant contends, was informally known among IACI employees as "hazard pay".

39. The Respondent submits that the Claimant was not entitled to hazard pay and contends that the circular referred to by the Claimant was never issued. Further the Respondent argues that Paragraph IV (A) of the contract requires any modification of the contract to be in writing, and in the absence of any evidence of such a modification relating to "hazard pay", the Claimant cannot claim for it.

40. The Tribunal notes that the pay slips, submitted by the Claimant and dated 31 October 1978 and 2 December 1978, do not indicate any extra payment for "hazard pay". The Tribunal finds that the Claimant has not submitted sufficient evidence to satisfy this part of the claim and it fails for lack of proof.

(2) Termination Payments

(i) & (ii) Sick Leave and Unused Vacation

41. The Claimant contends that under Paragraph X (C) of the contract he is entitled to a payment representing 50% of sick leave earned but not taken. He states that his accumulated sick leave to 20 March 1979 was 20 days and that he is entitled to payment for 10 days. Further the Claimant argues that under Paragraph X (A) of the contract he is entitled to one paid vacation day per month. He states that his accumulated vacation leave to 20 March 1979 was three days and that he is entitled to payment for the three days.

42. The Respondent argues that the Claimant is prevented from seeking compensation for sick leave and unused vacation leave because he "resigned". It argues that payments are due only to those employees who resign on proper notice or whose employment is terminated without fault.

43. In line with the Tribunal's earlier ruling that the contract was terminated without the fault of the Claimant, the Tribunal concludes that pursuant to Paragraph X (C) of the contract, the Claimant is entitled to payment for 50% of his accrued sick leave. In addition, although Paragraph X (A) does not expressly authorize compensation for vacation time earned but not taken, the Tribunal notes that the Respondent has made provision for "[p]ayments for unused sick leave and vacation" in its internal memorandum of 7 March 1979.

44. As to the rate of compensation for the accrued days of sick leave and vacation time, the Claimant contends that the computation of a daily rate should include his base salary and all allowances. The Respondent argues that only the base salary and the overseas allowance should be included. The Tribunal notes that the commodities and services, and housing and utilities allowances, which the Claimant seeks to include, represent expenses which an employee would

continue to incur, whether absent on sick leave or on vacation. Therefore the Tribunal concludes that the appropriate basis for calculating the daily rate of compensation is the monthly base salary plus all allowances, i.e., ($2,750 x 12):260 = $126.92 per day.

45. The Tribunal notes that in a final "Statement of Earnings" certificate submitted by the Respondent, the number of days of sick leave accrued by the Claimant is stated as 19.5 days. In addition, the Claimant is entitled to payment for 1.25 days, representing the proportionate amount of sick leave which would have been earned for the thirty days notice period, making a total of 20.75 days. The Tribunal awards the Claimant (20.75 : 2) x ($126.92) = $1,316.79.

46. As to the vacation leave for which the Claimant seeks compensation, the Tribunal notes that the Respondent acknowledges 1 7/8 days as owing. In addition, the Claimant is entitled to one day, representing the proportionate amount of vacation leave which would have been earned during the thirty days notice period, making a total of 2 7/8 days. The amount which the Tribunal awards the Claimant under this heading is 2 7/8 x $126.92 = $364.89.

(iii) Return Relocation Allowance

47. The Claimant claims 47,425 rials as a return relocation allowance. Pursuant to Schedule B of the contract an employee is entitled to the allowance provided "a minimum of eighteen months service has been completed". In addition, the Claimant claims an additional amount of 20,228 rials as an allowance for his spouse.

48. The Respondent contends that the Claimant is not entitled to a return relocation allowance because he did not complete his eighteen month contract.

49. The Tribunal notes that to be eligible for the return relocation allowance an employee must complete a minimum of eighteen months service. As the Claimant was within his second eighteen month assignment the Tribunal concludes he is eligible for this allowance. Further, the Respondent has listed this in its internal memorandum of 7 March 1979 as one of the Claimant's entitlements. As to the further amount of 20,228 rials claimed for the Claimant's spouse, the Tribunal notes that Schedule B makes provision for an allowance for a spouse. As the Claimant signed the contract as a single person no amount is inserted in his contract. In line with the Tribunal's previous finding concerning the effect of the change in the Claimant's marital status, the Tribunal concludes that the Claimant can claim an additional allowance for his spouse. In the absence of any evidence disputing the actual figure claimed, the Tribunal concludes that the extra amount claimed, i.e., 20,228 rials (which represents approximately 30% of the prescribed amount for an employee), is a reasonable one. The Claimant has converted this amount into US dollars at the rate of 70.5 rials to the dollar and claims $959.61. For the reasons set out in paragraphs 59-60 infra, the Tribunal awards the sum of $959.61, for the return relocation allowance.

(iv) Contract Completion Bonus

50. The Claimant claims $1,487.85 as a contract completion bonus. Schedule D of the contract states that a bonus representing 5% of an employee's base salary will be paid to the employee in rials upon satisfactory completion of an eighteen month contract. Under this provision the Claimant contends that he is entitled to a contract completion bonus of 5% of his base salary, for 11 months through to 22 October 1978, from which date, the Claimant contends, the bonus was increased to 10% of an employee's base salary.

51. The Respondent argues that the completion bonus is not payable because the Claimant did not complete the eighteen month assignment.

52. The Tribunal notes that Schedule D provides for a "pro-rated payment of completion bonus at the rate of 1/18th of the bonus for each thirty (30) days of the Agreement" where there is partial completion of the contract period and the contract is terminated through no fault of the employee. Consequently, in keeping with the Tribunal's earlier ruling that the contract was terminated without the fault of the Claimant, the Tribunal finds that the Claimant is entitled to the bonus at the prescribed rate, for a period of fifteen months through to 20 March 1979. The Tribunal finds that the Claimant has not provided sufficient evidence to satisfy the burden of proving that the completion bonus was increased to 10% from 22 October 1978. Therefore the Tribunal concludes that the Claimant is entitled to $1062.75 for the contract completion bonus. (As to the stipulation that the payment be made in rials, for the reasons set out in paragraphs 59-60 infra, the Tribunal is satisfied that this payment should be made in dollars.)

(v) & (vi) Travel Fees

53. The Claimant claims under Paragraph VIII (D) and (E) of the contract for $282.68, as compensation for travel expenses incurred to secure the exit visa of his wife, as well as airfares totalling $901.60 for himself and his wife from Tehran to Frankfurt.

54. The Respondent argues that compensation for travel expenses is not payable as the Claimant resigned before the completion of his eighteen month assignment. The Respondent contends further that as there had been no formal notification to IACI of the Claimant's change in marital status, he is not entitled to claim for his spouse.

55. The Tribunal notes that Paragraph XIII (C) of the contract provides that in all cases of termination through no fault of the employee, IACI would do everything possible to facilitate an employee's departure from Iran, and that all return travel arrangements would be made as if the original assignment had been successfully completed.

Paragraph VIII (D) and (E) provides for the paid return transportation for an employee and his eligible dependents including full return air tickets. In addition, it is undisputed that the Respondent paid the airfares for the Claimant and his wife for the second leg of their journey home, i.e., from Frankfurt to the United States. Accordingly, the Tribunal awards $901.60 as compensation for the airfares and $282.68 as compensation for travel expenses.

(vii) Storage and Delivery of Goods

56. The Claimant seeks compensation of $187.30 for the cost of storage and delivery of his personal belongings left in the United States. Schedule D of the contract (paragraphs 2 and 3) provides that IACI will pay for the storage of the Claimant's household effects in the United States, and for the cost of delivery within the United States after termination of the contract.

57. The Respondent argues that Schedule D provides for costs of storage only where an employee completes his assignment.

58. The Tribunal holds that the Claimant is entitled to reimbursement for expenses incurred in the storage and delivery of his household goods. The Tribunal accepts the evidence submitted by the Claimant that the total expense incurred amounts to $187.30.

IV. CURRENCY OF PAYMENT

59. The Tribunal notes that in certain instances in this contract entitlements are stated as being payable in rials, e.g., the return relocation allowance, where the allowance is specified in the contract in rials, and the contract completion bonus, where the contract explicitly provides for

payment to be made in rials. In this Case the Tribunal concludes that the Respondent has by its actions and pleadings impliedly acknowledged that all contractual entitlements could be paid in dollars. The Tribunal notes that the Respondent arranged for an electronic transfer of all amounts it acknowledged as owing under the contract, to be paid in dollars to the Claimant's bank account in the United States.

60. The Tribunal need not determine the appropriate conversion rate for the contract completion bonus. Although the contract states this bonus is to be paid in rials, it is calculated with reference to the base salary which is expressed in dollars. As to the return relocation allowance, the Tribunal is satisfied that the conversion rate of 70.5 rials to the dollar applied by the Claimant in arriving at the claimed amount of US $959.61 is an appropriate one. This rate is consistent with the rate prevailing at the time of the contract termination. See International Financial Statistics, Supplement on Exchange Rates at 64 (International Monetary Fund 1985).

V. INTEREST AND COSTS

61. The Claimant seeks interest on the total amount claimed and requests an additional 1½% of the award amount as costs incurred in preparing the claim.

62. As to interest, by application of the principles enuciated in McCollough & Company, Inc. and The Ministry

of Post, Telegraph and Telephone et al., Award No. 225-89-3 at paragraphs 97-103 (22 April 1986), and taking into account that the Tribunal has made no finding that the Respondent was at fault in the termination of the contract, the Tribunal determines that interest shall be awarded on the amount of the Award at the rate of 8.5 % per annum, calculated from 21 March 1979.

63. As to costs, the Tribunal rejects this part of the Claim and determines that each Party shall bear its own costs of arbitrating this Claim.

VI. AWARD

64. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE ISLAMIC REPUBLIC OF IRAN, is obligated to pay the Claimant, THEODORE LAUTH, the sum of Twelve Thousand Six Hundred and Seventeen United States dollars and Twelve cents (US $12,617.12) plus simple interest at the rate of 8.5 % per annum (365 day basis) calculated from 21 March 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 by paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria on 19 January 1981.

(b) The remainder of the Claim is dismissed on the merits.

(c) Each party shall bear its own costs of arbitrating this Claim.

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

Dated, The Hague
8 May 1986

Michel Virally
Chairman
Chamber Three

In the Name of God

Charles N. Brower
Joining fully in the Award, although I would have preferred that the Tribunal grant (1) costs as requested, since it is evident that at least 1½% of the amount awarded (i.e., $189.26) must have been expended, see Ronald Stuart Koehler and Islamic Republic of Iran, Award No. 223-11713-1 at para. 39 (16 Apr. 1986); and (2) 10% interest, see McCollough & Company, Inc. and Ministry of Post, Telegraph and Telephone, Award No. 225-89-3 at paragraphs 100, 104 (22 Apr. 1986) and the Concurring and Dissenting Opinion of Judge Brower to id., at paragraphs 22-28, since it should be irrelevant to a determination of the rate of interest whether Respondent has been adjudicated to have acted unlawfully.

Parviz Ansari Moin
Concurring in Part
Dissenting in Part