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ES CLAIMS TRIBUNAL

دیوان دادرسی دعاوی ایران - ایالات متحدہ

ORIGINAL DOCUMENTS IN SAFE

Case No. 10335

Date of filing: 20 MAY 86

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ 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 Mr. Masari

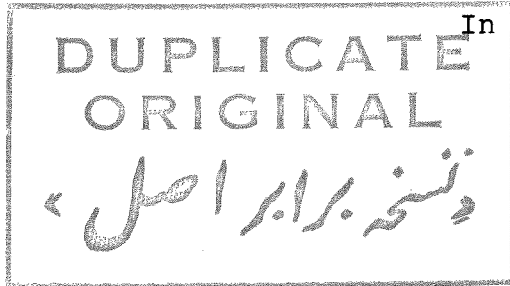
- Date 20 MAY 86  
4 pages in English 4 pages in Farsi

\*\* DISSENTING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* OTHER; Nature of document: \_\_\_\_\_

- Date \_\_\_\_\_  
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In the Name of God

CASE NO. 10335

CHAMBER THREE

AWARD NO. 233-10335-3

THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA, on behalf and for  
the benefit of Theodore Lauth,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	20 MAY 1986 تاریخ ۱۳۶۵ / ۲ / ۳۰
No.	10335 شماره

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SEPARATE OPINION OF JUDGE PARVIZ ANSARI

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I respectfully set forth my views in connection with the fundamental points in the Award wherein I concur or dissent, as follows:

1. Just as I stated at the end of Award on Agreed Terms No. 229-10173-3, the Tribunal should not alter the captions indicating the Parties to the case; rather, it is obliged to adhere to those captions appearing on the submissions filed by the Parties. In the instant case, the caption describing the Claimant as set forth in his Statement of Claim, consists of "The Government of the United States of America, on behalf and for the benefit of Theodore Lauth."

2. In his letter dated 18 February 1979, Mr. Theodore Lauth tendered his resignation in writing to Iran Aircraft Industries, and he subsequently left Iran. It is clear that from that date on, his employment status was that of a resigned employee. Moreover, the Respondent proceeded in complete good faith to pay all the costs and salary and allowances accruing to a resigning employee (pay order dated 7 March 1979).

His letter dated 20 February 1979, which was submitted to the Respondent after the date of his resignation, could not have altered his status (as a resigned employee). Rather, it would in fact have been astonishing, had the Respondent accepted the subsequent letter and acted on the basis thereof.

3. The document submitted by the respondent (the pay order dated 20 January 1979 and the list attached thereto, to Bank Sepah, for payment of employees' salaries, inter alia the sum of rials 75,173 to Mr. Lauth) has not been denied or held in doubt. The Tribunal has not been presented with any evidence, or even any allegation of refusal on the part of Bank Sepah to carry out the said order. Therefore, in my opinion there exists no legal basis which might excuse the Tribunal from accepting this document. In actual fact, the Tribunal's conclusion, that "... there is not sufficient evidence to satisfy the Tribunal that Bank Sepah carried out those instructions" (paragraph 35 of the Award), constitutes an inversion of a legal presumption.

4. The Tribunal has accepted the Claimant's assertion that Mr. Lauth had announced his marriage, which took place on 22 November 1978, and it has awarded in favor of the Claimant for payment of the salary and allowances to which a married employee was entitled. In view of the facts that:

(a) According to the terms of the Contract, any amendment to the employment contract must be agreed to between both Parties;

(b) Mr. Lauth first notified the Respondent of his marriage on 20 April 1979, i.e. two days after his date of resignation;

Therefore, the Tribunal's decision constitutes the imposition of a new situation upon the Respondent, without its agreeing thereto or even being aware thereof. In fact, Mr. Lauth cannot impose his new status, one which has financial ramifications as well, upon the Employer without its agreement and consent.

5. Pursuant to the contract, the employee was entitled to receive 30 days' pay, representing costs of termination of contract, even if the Respondent were to terminate the contract summarily. The Tribunal's action in assessing and adding sick leave and vacation leave in proportion to the one-month period, is unconventional and inconsistent with the express terms of the contract. Under the contract, termination costs are fixed at the equivalent of thirty days' pay, and no more.

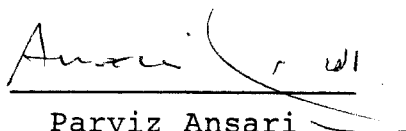
6. In connection with interest, in light of the foregoing it is clear that the Respondent was not authorized to pay the amounts demanded in the Claimant's Statement of Claim, even if it were willing to do so. In my opinion (even supposing in arguendo that one were to accept all of the assumptions made by the majority in its Award), in view of the fact that no fault has been attributed to the Respondent in not making payment, that the Tribunal has also arrived at the conclusion that the Respondent was not at fault, and that the delay in making payment was also due to events beyond the control of the Respondent and the Respondent paid the Claimant whatever monies were

possible to pay according to the regulations at the earliest possible opportunity, it thus seems to be inequitable to award against the Respondent for payment of interest; because it is not logical to enter a judgment against someone for payment of damages by reason of late discharge of an obligation on which, first of all, demand was not made in the proper manner and fulfillment of which, in the second place, was beyond the ability of the obligor.

7. The Tribunal has correctly refused to award in favor of any payments for "hazard pay" allowances or costs of arbitration:

(a) As for the "hazard pay" allowance, it is not affirmed by the terms of the contract; nor is there any evidence of the existence of any such allowance.

(b) As for costs of arbitration, the Tribunal has correctly refrained from awarding such costs, particularly in connection with claims of less than US \$250,000. See: H.A.Spalding Incorporated v. The Ministry of Roads and Transport of the Islamic Republic of Iran, Award No. 212-437-3, Concurring Opinion of Judge Parviz Ansari.

  
Parviz Ansari