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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

دونسخه برابر اصل

CASE NO. 10633
CHAMBER TWO
AWARD NO. 355-10633-2

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران - ایالات متحده
FILED - ثبت شد
Date 16 MAR 1988 تاریخ
۱۳۶۶ /۱۲/ ۲۶
No. 10633 شماره

READING & BATES DRILLING COMPANY,
a claim of less than U.S.$250,000
presented by THE UNITED STATES OF AMERICA,
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
THE NATIONAL IRANIAN OIL COMPANY,
Respondents,

AWARD

Appearances:

For Claimant:
Ms. Mary Beth West,
Attorney-Adviser,
U.S. Department of State
Mrs. J.F. Barrett,
Attorney-Adviser,
U.S. Department of State

For Respondent:
Mr. Mohammad K. Eshragh,
Agent of the Government of
the Islamic Republic of Iran
Mr. Seifollah Mohammadi,
Legal Adviser to the Agent
Mr. Ali A. Mahrokhzad,
Representative of National
Iranian Oil Company
Mr. Hossein Piran,
Representative of National
Iranian Oil Company,

Also present:
Mr. Timothy Ramish,
Agent of the
United States of America
Mr. Michael Raboin,
Deputy Agent of the United
States of America

I. INTRODUCTION

1. On 19 January 1982, the UNITED STATES OF AMERICA filed a Statement of Claim on behalf of READING & BATES DRILLING COMPANY ("the Claimant") presenting a claim of less than U.S.$250,000 against the ISLAMIC REPUBLIC OF IRAN ("Iran") and, more specifically, the Oil Service Company of Iran ("OSCO"), and its successor,[1] THE NATIONAL IRANIAN OIL COMPANY ("NIOC"). The Claimant seeks recovery of a total of U.S.$131,595.68[2] for three separate claims based on:

(a) the alleged breach of an air transportation agreement ("Air Transportation Agreement") between the Claimant and OSCO, for a sum of U.S.$53,755.00 plus interest at the contractually stipulated rate of one and one half percent per month. NIOC denies that the contract was breached and asserts that OSCO had paid for all properly authorized air transportation services rendered by the Claimant under the contract. A counterclaim amounting to Rials 1,719,259 for unpaid social security premia was filed by NIOC.

(b) the alleged breach of an oral agreement ("Malta School Agreement") between the Claimant and OSCO to provide schooling in Malta for children of OSCO expatriate personnel, for a sum of U.S.$33,116.68 plus interest at one and one half per cent per month. NIOC denies that OSCO had an agreement with the Claimant, and asserts that the parents bore the responsibility of paying fees for their dependents attending the school.

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[1] See, Oil Field of Texas Inc. and Government of the Islamic Republic of Iran, et. al. Interlocutory Award No. ITL 10-43-FT (9 December 1982). Also printed in 1 Iran U.S. C.T.R. p.347.

[2] The Claim as originally stated in the Statement of Claim was for a total of U.S.$249,431.85 plus interest.

(c) the alleged expropriation by Iran of personal property of certain employees of the Claimant which was left behind in a warehouse used by Irano-Reading & Bates, an affiliate of the Claimant. The claim is for U.S.$44,724.00, the amount reimbursed by the Claimant to some of its employees who were evacuated from Iran. The Claimant asserts that it is subrogated to the rights of the employees concerned. NIOC denies that the Claimant has the appropriate standing to bring the claim before the Tribunal and asserts further that even if the Tribunal has jurisdiction, the Claimant has not proved that such expropriation occurred or that it is attributable to the Government of Iran.

2. A Hearing in this Case was held on 20 November 1987.

II. JURISDICTION

3. The Claimant, a publicly held Delaware Corporation, has provided evidence, including a good standing certificate, certified copies of relevant pages from Forms 10-K filed with the Securities and Exchange Commission, and proxy statements issued during the relevant period, establishing to the Tribunal's satisfaction that the Claimant is a national of the United States as defined in Article VII, paragraph 1, of the Claims Settlement Declaration. The claims have been owned continuously by nationals of the United States for the requisite period, and were outstanding at the date of the Claims Settlement Declaration.

4. There is no dispute that the Respondents are included within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

5. The Tribunal also finds that the claims satisfy the jurisdictional requirements under Article II paragraph 1 of the Claims Settlement Declaration as claims arising "out of

debts, contracts ... expropriations or other measures affecting property rights".

6. In relation to the claim regarding the alleged expropriation of personal property, the Tribunal determines that the Claimant has failed to prove that it has been subrogated to the rights of the employees concerned. No evidence was introduced as to any contractual or other obligation on the part of the Claimant to reimburse its employees, nor was there any explanation provided as to the applicability of the theory of subrogation under these circumstances. Nor has the Claimant alleged that any of these employees assigned their rights to the Claimant. The Tribunal, therefore, concludes that the Claimant does not have standing to assert this claim and, accordingly, dismisses it for lack of jurisdiction.[3]

7. With respect to NIOC's counterclaim for social security premia, the Tribunal has dismissed such counterclaims, because they do not arise out of the same contract, as required by Article II, paragraph 1, of the Claims Settlement Declaration. See, e.g., Howard, Needles Tammen & Bergendoff and Government of the Islamic Republic of Iran, et al., Award No. 244-68-2 (8 August 1986); Computer Sciences Corp. and Islamic Republic of Iran, et al., Award No. 221-65-1 (16 April 1986). For the same reason the counterclaim here is dismissed for lack of jurisdiction. In addition, the Tribunal also notes that the counterclaim was filed late and that Clause 7 of the Air Transportation Agreement states, inter alia, that the "... Second Party [OSCO] agrees to make all payments in United States Dollars, free of all taxes, collection, transfer and exchange charges and expenses ..."

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[3] The Tribunal notes as well that this claim could not have been sustained on the merits, on the grounds of lack of proof. Insufficient evidence was presented by the Claimant with respect to the actual placement and retention of the property in the warehouse.

III. THE CLAIM BASED ON THE AIR TRANSPORTATION AGREEMENT

A. The Facts

8. On 10 August 1977, the Claimant and OSCO signed an Air Transportation Agreement under the terms of which the Claimant agreed to make air passenger space available to OSCO personnel on aircraft chartered by the Claimant for flights between Abadan, Iran and the island of Malta. The Air Transportation Agreement provided that OSCO would pay the Claimant U.S.$349 per passenger each way for flight service.[4] Clause 7 of the Air Transportation Agreement outlined the agreed method of billing and the agreed method of payment. Payments were to be made by wire transfer within twenty days following the receipt of invoices. The Agreement also provided for interest to be paid at the rate of one and one half percent (1½%) per month on all overdue amounts.

9. From August 1977 through the year 1978, the Claimant regularly provided air transportation services for OSCO personnel and, in accordance with the billing and payment terms of the Agreement, periodically submitted invoices for the services rendered, based on travel authorizations approved by OSCO. OSCO in turn, during most of this period, examined the invoices and paid for these services through its agent Iranian Oil Services Limited ("IROS"), by telegraphic transfer from London.

10. In January 1979, flights between Abadan and Malta were discontinued because of the increasing political turmoil in Iran, but the Claimant continued to provide air transportation to OSCO personnel from Malta to Bahrain, where OSCO had

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[4] The Agreement was amended on 20 May 1978 and again on 11 October 1978. The last amendment had the effect of extending the Agreement until 19 November 1979.

established an office. Ultimately all services were discontinued. By early spring of 1979, NIOC had succeeded to OSCO's rights and obligations. See, Oil Field of Texas Inc., supra.

11. On 19 January 1979, OSCO, through its agent IROS, wire transferred the sum of U.S.$160,889 in favor of the Claimant to cover payments for certain invoices issued under the Air Transportation Agreement. A series of communications from April to September 1979 then ensued between the parties relating to the problem of payment, inter alia, of four invoices (Nos. 141-0297, 141-0298, 141-0301 and 141-0354) issued on 18 January and 20 February 1979 for services rendered in December 1978 and January 1979, respectively. The following are the relevant invoices at issue in this case:

Invoice No.	Date	U.S.$ amount
141-0227	19 Sep 1978	27,222
141-0228	19 Sep 1978	8,027
141-0255	5 Oct 1978	27,920
141-0256	5 Oct 1978	6,631
141-0264	9 Nov 1978	34,551
141-0265	9 Nov 1978	15,356
141-0286	15 Dec 1978	33,504
141-0287	18 Dec 1978	7,678
	Subtotal	160,889
141-0297	18 Jan 1979	27,571
141-0298	18 Jan 1979	9,423
141-0301	18 Jan 1979	12,600
141-0354	20 Feb 1979	4,510
Credit on 141-0256		(349)
	Subtotal	53,755
	Total	214,644

B. The Merits

12. The Parties do not dispute that a valid contract existed between them. There is also no dispute that a sum

of U.S.$160,889 was transferred by OSCO through IROS on 19 January 1979, and that this sum was received by the Claimant.

13. The Claimant argues that the U.S.$160,889 was disbursed against the eight invoices (nos. 141-0227, 141-0228, 141-0255, 141-0256, 141-0264, 141-0265, 141-0286 and 141-0287) issued from 19 September 1978 through 18 December 1978, and outstanding at the time OSCO made the wire transfer. The Claimant, therefore, asserts that the invoices issued on 18 January 1979 and 20 February 1979 (Nos. 141-0297, 141-0298, 141-0301 and 141-0354) for a total of U.S.$53,755[5] remained unpaid.

14. NIOC, however, denies that it or OSCO ever received or had any knowledge of the last two 1978 invoices, Nos. 141-0286 and 141-0287. NIOC asserts further that the Claimant has shown no proof that it sent these invoices to OSCO or that the latter had in fact authorized the invoiced travel in accordance with the Air Transportation Agreement. NIOC, therefore, argues that the U.S.$160,889 remitted by OSCO constituted a payment which was, in part, used to pay the first six 1978 invoices that NIOC claims were all that OSCO had received before 19 January 1979, and, in part, an advance payment to be disbursed against invoices which the Claimant sent after 18 January 1979. NIOC maintains that, after the four 1979 invoices were accounted for (and U.S.$6,637 initially deducted for charges disputed by NIOC), only U.S.$4,540 remained outstanding. This sum, according to NIOC, was also subsequently remitted to the Claimant.[6]

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[5] The total amount owed on all four invoices is U.S.$54,104. The Claimant, however, applied to the total amount a credit due on Invoice 141-0256 of U.S.$349.

[6] In the course of the pleadings and at the Hearing, NIOC acknowledged that subsequent verification in the summer of 1979 indicated that the U.S.$6,637 previously deducted

(Footnote Continued)

15. The Tribunal concludes that OSCO's remittance on 19 January 1979 of U.S.$160,889 was for the payment of amounts then outstanding on all eight 1978 invoices. All eight of the 1978 invoices were issued and were due before this transfer was made by OSCO. The full amounts indicated in those invoices add up exactly to the total amount of U.S.$160,889. It seems highly improbable that the remittance could have been, as NIOC asserts, merely a payment for some of those past invoices (as well as for unknown future invoices), when the amount in fact corresponded precisely with the total amounts on all the invoices already issued. Furthermore, the Air Transportation Agreement does not provide, nor was there a practice between the Parties, for OSCO to pay for invoices on an advance payment basis. Had it in fact been OSCO's intention to make an advance payment, thereby deviating from the Agreement and the established practice of the Parties, it should have advised the Claimant of this intention at the time the wire transfer was made. There is no evidence that OSCO did this. Finally, the Tribunal notes that the two 1978 invoices (Nos. 141-0286 and 141-0287) disputed by NIOC covered charter flights for the month of November 1978 exclusively. Given the apparent continuous conduct of the Parties, and having been provided no evidence of any interruption of services during that month, the Tribunal has no reason to conclude that such services were not performed by the Claimant.

16. The Tribunal, therefore, determines that the transfer of U.S.$160,889 from OSCO was in full payment of all the invoices then outstanding and due, including Invoices 141-0286 and 141-0287. Taking into account all of these circumstances, the Tribunal concludes that Invoices 141-0297, 141-0298, 141-0301 and 141-0354 remain unpaid. The

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(Footnote Continued)
from the four 1979 invoices was in fact payable to the Claimant. NIOC asserts, and the evidence indicates, that this amount was authorized for payment in July 1979.

Tribunal also concludes from the evidence before it that there is insufficient proof of payment of the amount of U.S.$4,540 which NIOC alleges it transmitted to the Claimant in addition to the U.S.$160,889 to complete payment for these invoices. Nor is there any proof of payment of the U.S.$6,637 which NIOC authorized for payment. Furthermore, the Tribunal notes that NIOC did not maintain the objections it had previously raised regarding the services charged in the invoices. The Tribunal, therefore, finds the Respondent liable for U.S.$53,755, the total amount owed on the invoices.

IV. THE CLAIM BASED ON THE MALTA SCHOOL AGREEMENT

A. The Facts

17. In August 1977, the Claimant opened the Verdala School in Valetta, Malta, for the purpose of providing education to dependents of its expatriate staff as well as for dependents of staffs of other companies assigned to operations in the Middle East. The Claimant and OSCO evidently agreed orally that the educational facilities at the Verdala School would be made available for dependents of OSCO expatriate personnel.

18. There is conflicting evidence before the Tribunal as to who bore the responsibility for payment to the Claimant of school fees. On the one hand, there is evidence that OSCO did authorize and make payments on at least four invoices (Nos. 99-125, 99-140, 141-223 and 141-269) submitted by the Claimant for the Fall Semesters of the 1977-1978 and 1978-1979 scholastic years. Two other invoices (Nos. 142-0170 and 141-0184 for the Spring Semester of the 1977-78 scholastic year) were authorized for payment but, according to the Claimant, no payment for these two invoices was received. On the other hand, OSCO, through various communications,

informed Medserv[7], its agent in Malta, and its expatriate staff that the direct responsibility for paying the school fees lay with OSCO expatriates who chose to send their dependents to the Verdala School and that OSCO would then reimburse the fees (minus a minimal charge) to its employees.

19. Between March 1978 and March 1979, the Claimant submitted five invoices (Nos. 142-0170, 141-0184, 142-0289, 142-0323, 142-0361), as well as a Credit note (No. 142-0379), to OSCO representing school fees for the Fall Semester of the 1977-78 scholastic year and for both semesters of the 1978-79 scholastic year. These invoices are itemized as follows:

Invoice No.	Date	Invoiced Amount	Description
142-0170	16.3.78	9,600.00	School fees for Spring Semester of 1977-78 scholastic year
141-0184	25.4.78	7,433.35	School fees for Spring Semester of 1977-78 scholastic year
142-0289	14.12.78	1,383.33	School fees for Fall Semester of 1978-79 scholastic year
142-0323	29.1.79	31,300.00	School fees for Spring Semester of 1978-79 scholastic year
142-0361	26.2.79	1,775.00	School fees for Spring Semester of 1978-79 scholastic year
Credit Note No. 142-0379	19.3.79	(18,375.00)[8]	Credit on Invoice 142-0323 for School fees for Spring Semester of 1978-79 scholastic year
	Total U.S.$	33,116.68	

[7] Medserv stands for Mediteranean Oilfields Services Co. Ltd.

[8] The Claimant states that this credit amount is owed for school fees charged for dependents of OSCO expatriate personnel who were enrolled but did not, in fact, attend the school during this semester.

The last invoice was followed on 29 April 1979 by a telex to NIOC requesting payment. On 6 June 1979, Mr. T.W. Nagle, on behalf of the Claimant, wrote to Mr. Bigdeli of the Drilling Accounting section of OSCO noting receipt of an OSCO payment authorization for Invoices 142-0170 and 141-0184 and requesting payment for outstanding amounts on all the invoices issued for school fees. On 28 July 1979, NIOC replied to the 6 June 1979 letter, stating with reference to certain invoices for school fees that "although we have not touched these invoices, you should send such charges (school fees) direct to our head overseas staff administration for prompt action." On 6 September 1979, Mr. Nagle responded to the above letter enclosing the OSCO payment authorization for the two invoices and requesting payment thereon. The letter also requested NIOC to process the other outstanding invoices for payment.

B. The Merits

20. The main issue before the Tribunal is whether there existed a contractual relationship between the Parties according to which OSCO is directly liable to the Claimant for the payment of school fees. The Tribunal notes that OSCO paid two invoices in May 1978 and two in April 1979 and also authorized two further invoices for payment. At no time did OSCO directly inform the Claimant that it would not pay such invoices and that the parents of the students should be billed directly for school fees. Nor is there any evidence that the parents ever paid the fees directly to the Claimant. The evidence produced by NIOC, to the effect that OSCO's agent in Malta and OSCO's staff were notified that the parents bore the responsibility for payment of school fees, consists only of internal documents. There is no evidence that these communications were ever brought to the attention of the Claimant. Based on the evidence presented, the Tribunal finds that a contractual course of dealing was established between the Parties according to which invoices for school fees were to be paid by OSCO.

21. OSCO authorized payment for Invoices 142-0170 and 141-0184, and the Tribunal sees no reason to doubt their validity. With respect to the later invoices, however, the Tribunal is aware of the fact that most OSCO expatriates left Iran during the winter of 1978-79, See Oilfield of Texas, supra. In this connection it must be noted that the Claimant has presented insufficient evidence regarding the services rendered under the remaining invoices 142-0289, 142-0323 and 142-0361 for the period September 1978 through June 1979. In particular, the Claimant did not produce evidence that the OSCO employees, whose dependents attended the Verdala School, continued to remain in the service of OSCO during that period. The Claim for payment of these three invoices (and the application of the corresponding credit) is therefore denied for lack of proof.

22. For the foregoing reasons, the Tribunal admits the two invoices that were issued by the Claimant and were authorized for payment by OSCO. The Tribunal, therefore, holds NIOC liable for U.S.$17,033.35, the total amount owed on Invoices 142-0170 and 141-0184.

V. COSTS

23. Each Party shall bear its own costs of arbitration.

VI. INTEREST

24. The Tribunal notes the interest rate of one and one half (1½) percent per month stipulated in the Air Transportation Agreement to be levied against all amounts remaining due and unpaid twenty days after receipt of invoices from the Claimant. The Tribunal has in the past awarded contractually stipulated interest rates, see, e.g., Howard, Needles Tammen & Bergendoff, supra; R.J Reynolds Tobacco Company and

Government of the Islamic Republic of Iran, et al., Award No. 145-35-3 (1 March 1985), also printed in 7 Iran-U.S. C.T.R. The Tribunal notes, however, from the practice of the parties, that the Claimant did not demand interest on invoices which were paid after the contractually stipulated time had elapsed and allowed OSCO a considerable grace period for final payments. The Tribunal, therefore, awards simple interest at the rate of one and one half (1½) percent per month (18 percent per annum) on the amount of U.S.$53,755 awarded under the claim based on the Air Transportation Agreement to run from 6 September 1979, the date of the last communication in evidence from the Claimant to NIOC.

25. With respect to the Malta School Agreement, the Tribunal notes that the two invoices authorized for payment by OSCO contain terms providing for an interest rate of one and one half (1½) percent per month (18 percent per annum) on amounts more than 30 days past due. The Tribunal, however, finds insufficient evidence that such interest rate was agreed to by OSCO. The Tribunal, therefore, awards simple interest at the fair rate of 10.5 percent per annum on the amount due of U.S.$17,033.35. The OSCO payment authorization submitted in evidence by the Claimant does not contain a date. The Tribunal, therefore, decides that the interest applied to the amount due on the Malta School invoices will also run from 6 September 1979.

VII. AWARD

26. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

(a) The Respondent, THE NATIONAL IRANIAN OIL COMPANY is obligated to pay the Claimant, READING & BATES DRILLING COMPANY, the sum of Fifty Three Thousand Seven Hundred Fifty-five United States Dollars (U.S.$53,755)

plus simple interest at the rate of 18 percent per annum (365-day basis) from 6 September 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account, and the sum of Seventeen Thousand Thirty-three United States Dollars and Thirty-five Cents (U.S.$17,033.35) plus simple interest at the rate of 10.5 percent per annum (365-day basis) from 6 September 1979 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account. These obligations 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 of 19 January 1981.

(b) The claim based on the alleged expropriation of personal property is dismissed for lack of jurisdiction.

(c) The counterclaim for social security premia is dismissed for lack of jurisdiction.

(d) Each Party shall bear its own costs of arbitration.

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

Dated, The Hague
16 March 1988

Robert Briner
Chairman

In the name of God,

George H. Aldrich

Hamid Bahrami-Ahmadi
Concurring in part
Dissenting in part