

IRAN-UNITED STATES CLAIMS TRIBUNAL

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۲۴۴-۵۹

DUPLICATE
ORIGINAL
نسخه برابر اصل

CHAMBER ONE
CASE NO. 244
AWARD NO. 57-244-1

J.I. CASE COMPANY,
Claimant,

- and -

THE ISLAMIC REPUBLIC OF IRAN;
SHERKAT SAHAMI ETTEFAGH and
EUROPE CO.,

Respondents,

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه دایوری داری
ایران - ایالات متحده
ثبت شد - FILED
1362 / 2 / 25
15 JUN 1983
244 ۲۴۴

AWARD

Appearances

For the Claimant:

Lawrence W. Newman
Baker & McKenzie
Mr. J.H. Schoeffel
J.I. Case Company

For the Respondents:

Mr. Mohammad K. Eshragh
Deputy Agent of the
Government of the Islamic
Republic of Iran
Mr. A. Ghaemie
Legal Adviser to the
Agent

Also present:

Mr. Arthur W. Rovine
Agent of the Government
of the United States of
America

I. FACTS AND CONTENTIONS

The Claimant J.I. Case Company ("Case") is engaged in the manufacture of various sorts of agricultural equipment, including tractors and trenchers. Case is a corporation organized and existing under the laws of the State of Delaware. Since at least 1 January 1977 all of its shares have been owned by Kern County Land Company, also a Delaware corporation. All of Kern County's shares have similarly been owned by Tenneco Corporation, a Delaware corporation, all of whose shares are owned by Tenneco, Inc., a Delaware corporation. Tenneco, Inc. has submitted evidence sufficient under the decisions in Flexi-Van Leasing Inc. (Case No. 36) and General Motors Corp. (Case No. 94) to prove that more than 50% of its stock is owned by natural persons who are citizens of the United States.

Both Sherkat Sahami Ettefagh ("SSE") and Europe Co. ("EC") are corporations organized under the laws of Iran. SSE was for several years engaged chiefly in the distribution and servicing of Case's agricultural equipment in Iran. SSE was one of Case's oldest distributors worldwide, and was accorded Case's highest credit rating, such that SSE was entitled to purchase goods from Case with payment typically to be made by means of sight drafts for 10% of the purchase price, and the balance by means of longer-term, interest-bearing promissory notes.

The Claimant contends : On 21 October 1975 SSE issued its promissory note N-7516A in favor of Case for \$76,864.50 as partial payment for certain equipment shipped to SSE by Case. The note was payable in 6 instalments, all but one of which was paid. The unpaid instalment was due on 21 April 1979 in the amount of \$13,355.21. On 24 October 1975 and 20 October 1977 SSE issued similar promissory notes in favor of

Case, for shipments of goods, on each of which only one instalment remains unpaid. On note N-7510A, SSE did not pay the \$8,595.77, due on 21 April 1979. On note N-8489A SSE did not pay the \$7,636.25, due on 20 April 1979. On 20 December 1978 Case shipped a quantity of spare parts to SSE, submitting invoice No. B-66722 with payment to be made in two instalments, one due on 20 December 1979 in the amount of \$76,378.66, and the other due on 20 December 1980 in the amount of \$84,493.88. At SSE's request, Case agreed to extend the due date on the first instalment to 20 March 1981, in exchange for an additional late interest charge of \$8,115.23. No payments, however, have been made with respect to either instalment under the invoice. On 28 December 1971, Case shipped various trenching and line-laying equipment to Europe Co. at the latter's request. Case submitted its Invoice No. 69322 in the amount of \$82,214.51. EC issued a sight draft to Case's order, in the invoice amount plus a certain sum of interest which would accrue during the maturity period of the draft, leaving a total owing of \$84,578.18, due on 5 August 1978. Only \$25,000, however, of the total was ever paid, leaving a balance of \$59,578.18.

Case seeks the balances due on the SSE promissory notes and the EC sight draft. Case has claimed both against the two companies as controlled entities, and the Government of Iran for its acts alleged to have prevented the companies from making payment, which prevention of payment amounted to a denial of property rights.

Evidence was presented by Case at the hearing to the effect that SSE, at least, was willing and able to pay Case at all relevant times, and that it made repeated attempts to obtain authorization from its bank to exchange Rials in order to remit payment to Case in dollars. This evidence

took the form of testimony by Mr. R.S. von Kotzebue, Case's Sales Manager for the Middle East from 1979 to 1981, who told the Tribunal of a conversation in May 1981 with Mr. Tavakoli, the Managing Director of SSE in which Mr. Tavakoli said that SSE had not been allowed by its bankers to transfer foreign currency. The Claimant produced a telex dated 18 May 1981 sent by Mr. von Kotzebue to Case's office confirming his conversation with Mr. Tavakoli.

As to EC, Mr. G. van Alkemade, Case's Sales and Finance Manager for Africa and the Middle East, testified that he had been informed in a telephone conversation which took place at about the same time, May 1981, with Mr. Firouzgar, whom he knew had held a senior position in Europe Co., that Bank Markazi had withheld permission to make payments. Mr. von Kotzebue also said that during a visit to Iran in August 1982 he had been informed by Mr. Shafeiei, who had been EC's Sales Manager, that it had been prevented by exchange restrictions from making the payments to Case. The company had since ceased trading.

The Government appeared at the hearing; SSE and EC did not, SSE having maintained in its Statement of Defence that it is a private company, and EC being said by the Government to be untraceable as a company existing in Iran. In its Statement of Defence SSE states, "Claimant has presented no proof or evidence to substantiate its claim. It has only referred to its former commercial relationship with Respondent and to certain figures which do not per se constitute any evidence in favour of Claimant." The Government has denied that it took any action to prevent payment, and maintained instead that none of its foreign exchange restrictions barred payment for the goods sold and delivered. The Government advanced the hypothesis that SSE and EC did not pay either because they were without

sufficient funds, or because the goods were not in conformity with the orders.

The Claimant, the Government of Iran and SSE have each requested an award of their costs of this arbitration.

The Respondent, the Government of Iran, has requested an extension for filing a memorial as to, inter alia, the nationality of the Claimant. However, considering the Tribunal's conclusions on the merits, the Tribunal finds it unnecessary to grant such an extension.

II. REASONS

Since Case produced no evidence that either SSE or EC is under the control of the Government of Iran, the Tribunal concludes that it has no jurisdiction over Case's claims against these two corporations. The only Respondent, therefore, is the Government of Iran, which is alleged by the Claimant to have taken action which had the effect of preventing payment to Case of the amounts owed by the two companies.

Of the amounts claimed by Case, one instalment under Invoice E-66722 only became due on 20 March 1981, pursuant to an extension granted by Case. Since no claim could have been made by Case for nonpayment of that instalment until after 19 January 1981, this part of the Claim was not "outstanding" as of that date within the meaning of Article II, paragraph 1 of the Claims Settlement Declaration, and is therefore outside the Tribunal's jurisdiction. All other claims for unpaid debts from SSE and EC, did arise prior to 19 January 1981, and are within the Tribunal's jurisdiction.

On the basis of the evidence described above, the Tribunal is asked to conclude that the only reason that payments were not made to Case was that there was government action of a sort which was designed to and did have the effect of improperly preventing SSE's and EC's banks from transferring amounts from Rials to dollars in Case's favor.

The Tribunal does not find the available evidence sufficient, even in the absence of any evidence to the contrary, to support the conclusion that the non-payment of the debts was due to the acts of the Government of Iran. There may have been a number of other factors - civil unrest, strikes, or disruptions of the sort which accompany a revolution - any of which might have contributed to or resulted in the inability or reluctance of the companies to pay. It is equally possible that EC, at least, may have been experiencing financial difficulties even before the Revolution began. This is evidenced by its failure to pay the balance of \$59,578.18 of the sight draft amount which fell due on 5 August 1978, at which time the previous Government is most unlikely to have sought to impose restrictions on payment.

The Tribunal concludes, therefore, that there is insufficient evidence to justify a finding that the Government of the Islamic Republic of Iran can be held liable for the Claimant's losses on the ground that it interfered with the Claimant's property rights.

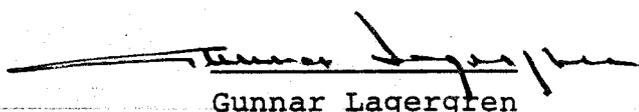
III. CONCLUSION

Case's claim for U.S. \$84,493.88 for the unpaid 20 March 1981 instalment under SSE invoice E-66722 is dismissed for lack of jurisdiction.

The remainder of Case's claim is dismissed on the merits.

The Tribunal decides that each Party shall bear its own costs of arbitrating this claim.

Dated, The Hague
15 June 1983



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani
Concurring



Howard M. Holtzmann
Dissenting Opinion