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CLAIMS TRIBUNAL

دیوان داوری دعاری ایران - ابالات متحد

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ORIGINAL DOCUMENTS IN SAFE

Case No. 829

Date of filing: 9. Jun 88

** 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 Mr Aldrich
- Date 9. Jun 88
3 pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

DUPLICATE
ORIGINAL
نسخہ برابر اصل

CHAMBER TWO

139

CASE NO. 829

AWARD NO. 367-829-2

LOCKHEED CORPORATION,
Claimant,

and

THE GOVERNMENT OF IRAN,
THE IRANIAN MINISTRY OF WAR, and
THE IRANIAN AIR FORCE,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
9 JUN 1988	تاریخ
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829	شماره

CONCURRING OPINION OF GEORGE H. ALDRICH

I concur fully in the Award except insofar as it rejects Claim Two (D), the claim based on unjust enrichment. In my view, there can be little dispute that the continuation of Lockheed's services from the end of July 1978 to January 1979 was known to the IAF and was of benefit to the IAF, because the services were performed at an IAF facility and, prior to July 1978, the IAF had paid substantial compensation for Lockheed's performance of these same services. The Tribunal's rejection of the claim, as I understand it, is based, not on disagreement that benefit was conferred and knowingly accepted, but rather on a finding that Lockheed, by deciding to continue the services without first either receiving a formal request from the IAF or taking the initiative to request alternative payment arrangements accepted (presumptively for commercial reasons of its own) the risk of nonpayment. I cannot agree with this result.

Lockheed and the IAF enjoyed an ongoing and long-standing commercial relationship. Moreover, the services at issue, which were a relatively minor part of this overall relationship, were the subject of a previous FMS contract which both Lockheed and the IAF evidently wished to renew. The fact that no alternative payment arrangements were insisted upon by Lockheed during the months when the IAF was attempting to have the Ministry of Defense renew the FMS contract was an understandable response by Lockheed to a problem encountered by a long-standing client, but that response, whatever Lockheed's motives, should not deprive Lockheed of compensation. Anyone who continues to perform services after the expiration of a contract term invariably runs some practical risks, but such a person does not assume the risk of losing his legal and equitable right to be paid the value of his services.

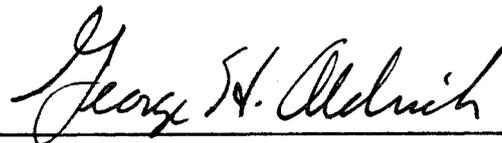
Although the record contains no evidence of a request by the IAF for the continuation of these services after expiration of the FMS contract, evidence of such a request is not necessary to support a claim based on unjust enrichment. Moreover, the IAF accepted the benefits of the services for more than six months without objection, and there is evidence that the IAF supported extension of the FMS contract. There is no evidence that Lockheed intended these services to be a gift, and the IAF could not have expected to receive them as a gift; the IAF should have known that it would eventually be held accountable for payment, either through renewal of the FMS contract or directly to Lockheed. Accordingly, I believe it is unjust for the IAF to escape liability for payment for the value of the services it received from Lockheed.

To the best of my knowledge, this is the first instance in which the Tribunal has refused to award damages based on unjust enrichment in circumstances where it is clear that the Claimant has incurred unreimbursed costs, the Respondent

has received benefits for which it has not paid, and no enforceable contract existed covering the benefits conferred. I think it most unfortunate to create in this manner a hole of uncertain extent in the unjust enrichment "safety net" which serves to prevent injustice. We cannot know for certain why Lockheed continued to provide these services without a contract in force, but I cannot agree that Lockheed's motives are relevant. Lockheed may well have assumed a risk that there might be practical difficulties in obtaining payment -- and it may have done so for sound commercial reasons -- but it is both unfair and unprecedented to hold that it thereby lost its legal and equitable right to compensation for the value of the benefits it conferred on the IAF.

Dated, The Hague

9 June 1988

A handwritten signature in cursive script, reading "George H. Aldrich". The signature is written in dark ink and is positioned above a horizontal line.

George H. Aldrich