

IRAN-UNITED STATES CLAIMS TRIBUNAL

DUPLICATE  
ORIGINAL

نسخه برابر اصل

دیوان دآوری دعاوی ایران - ایالات متحدہ

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CASE NO. 120

CHAMBER TWO

AWARD NO. 239-120-2

CHAS T. MAIN INTERNATIONAL, INC.,

Claimant,

and

KHUZESTAN WATER AND POWER AUTHORITY

and THE MINISTRY OF ENERGY OF THE

ISLAMIC REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	20 JUN 1986 ۱۳۶۵ / ۳ / ۲۰
No.	120

CONCURRING OPINION OF GEORGE H. ALDRICH

I concur in the Award in this Case except that I believe the Claimant should be compensated for one-half of the work it did during 1979, that is an additional U.S. \$454,283. The amount awarded, U.S. \$1,225,464.55, was merely the cost of the work done in 1978. In my view, it would have been as irresponsible for the Claimant to stop all work on the project on 1 January 1979 as it was for it to continue thereafter at the same rapid pace as in 1978.

I have difficulty in understanding how the Award reaches and justifies its result. In paragraph 17 it finds that the work done in 1978 "was basically performed adequately and accurately and according to standards of good engineering practice." That finding, by itself, justifies the compensation awarded. What then of the work in 1979? In paragraph 14, the Award finds that "the Claimant's work in 1979 was not in compliance with the standards of good engineering practice" and justifies that finding by stating that the circumstances "should have caused the Claimant to

slow down its work." But I simply cannot understand the logic of that statement. How can the maintenance of too fast a pace make all its work in 1979 inconsistent with the contractual standards of good engineering practice and thus not compensable? My estimate that one-half of the work done in 1979 should be compensable under the contract is admittedly an estimate on which views can differ, but I can see no basis for the conclusion of the Award that the Claimant's failure to slow down and limit the work it did after January 1, 1979 should deprive it of any compensation for any part of that work.

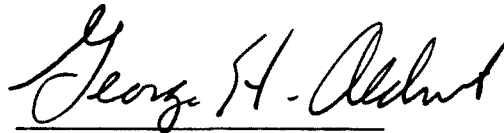
In my view, it was reasonable, and consistent with good engineering practice, for the Claimant to continue working in 1979 on those aspects of the RSK II project that were least affected by geological considerations or the need for frequent consultations with KWPA. On the other hand, such work should not have been pressed forward on the basis of the September schedule, and site selection and other work for which geological considerations and mutual consultations were highly relevant should have been suspended until better communications and the necessary data were available. The standards of good engineering practice require closer contact and cooperation with the Owner than circumstances permitted in early 1979. Thus, a considerable part of the work done in 1979 was not done in conformity with the contractually required standards of good engineering practice. I cannot agree, however, that all work during 1979 was so deficient.

Moreover, the behavior of KWPA during 1979 was not consistent with a conclusion that it wanted the Claimant to stop all work on the project. Certainly, KWPA should have said something to the Claimant earlier than its stop work order of 14 May 1979 once it realized that the Claimant was continuing its work at a rapid pace in the United States. Progress Report No. 1 was sent on 31 January 1979 and KWPA

says that it was received during the third week in February. The Site Selection Report and an Interim Progress Report were both forwarded on 1 March 1979, and the latter Report, in particular, made clear the nature and pace of the ongoing work. On 9 April 1979, the Claimant received a telex from its Iranian partner, Mahab Consulting Engineers, which asked for revised invoices and reported that KWPA had stated that the actual services performed by the Claimant were not as much as the invoices and that the "rate for man month is high." In context, such a communication, coupled with the absence of any order to stop work, gave the Claimant reason to believe that its continuing work on the project was desired, or at least not opposed, by KWPA.

I am satisfied that the standards of good engineering practice required close and continuous cooperation between the Claimant and KWPA. While the Claimant was justified in continuing to do some work on the project until it received the stop-work telex, it acted imprudently and in a way that fell short of its contractual obligations in continuing unabated its full schedule of work in the absence of important geological data and meaningful communication with KWPA. The Claimant's decision to proceed with work dependent on geological data, including the selection of a site; without KWPA's consent, knowing the importance of such data and of collaboration with the Owner, meant that it did so at its own risk. Like the Award, I recognize the difficulty in drawing any firm line with respect to the work done by the Claimant that is properly compensable and work that is not. I concur with the Experts that the Claimant is entitled to the value of its work through December 1978 -- U.S. \$1,225,464.55, and I believe that approximately

one-half of the work done in 1979 should also be compensable. Thus, in my view, the Claimant is entitled to compensation in the total amount of U.S. \$1,679,748, plus interest.

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