



CASE NO. 16  
CHAMBER THREE

AWARD NO. 30-16-3

RAYGO WAGNER EQUIPMENT COMPANY,  
Claimant,

and

IRAN EXPRESS TERMINAL CORPORATION,  
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
No. 16 19	شماره
Date 18 MAR 1983	تاریخ
۱۳۶۱ / ۱۱ / ۲۷	

DUPLICATE  
ORIGINAL  
نسخه برابر اصل

AWARD

APPEARANCES:

For the Claimant : Mr. M. Stern  
Frederikson, Byron, Colborn,  
Bisbee & Hansen, Minneapolis  
Attorney  
  
Mr. Ch. Mencil  
President  
RayGo Wagner Equipment Company

For the Respondent : Mr. M. Shams  
Iran Express Terminal  
Corporation

Also Present : Mr. M.K. Eshragh, Agent of  
the Islamic Republic of Iran  
  
Mr. A.W. Rovine, Agent of the  
of the United States of America

I. FACTS

RAYGO WAGNER EQUIPMENT COMPANY ("Claimant" or "RayGo Wagner"), a division of RayGo Wagner, Inc., is a corporation organized under the laws of the State of Oregon, United States.

IRAN EXPRESS TERMINAL CORPORATION ("Respondent" or "Express Terminal") is a company of Iranian nationality. According to its Articles of Association - a copy of which was submitted by Respondent and was not objected to by Claimant - its object is cargo handling for a company called Iran Express Lines and the operation of a cargo terminal.

The general agent for Iran Express Lines was at the relevant time a Florida corporation, the Uiterwyk Corporation. President of that corporation is a Mr. Hendrik Uiterwyk, and Chairman of its Board of Directors a Mr. Robert H. Uiterwyk. It may be inferred from the evidence and pleadings in the present case that Uiterwyk Corporation or individual members of the Uiterwyk family held an equity interest in Iran Express Lines.

When Express Terminal was formed, 49% of its shares were subscribed to by Hendrik Uiterwyk and Mr. Jan D. Uiterwyk, while the remaining shares were held by Iranian nationals. At the Founders Meeting and the first meeting of the Board of Directors, both held on 15 November 1977, Hendrik and Jan D. Uiterwyk were elected members of the Board, together with three Iranian shareholders, Jan D. Uiterwyk as Chairman.

Both Iran Express Lines and Express Terminal were operating in the Port of Khorramshahr.

RayGo Wagner's claim is based upon two equipment rental agreements allegedly entered into with Respondent, both dated 29 August 1977. These agreements provided that RayGo Wagner would

lease two Model MHE-80 port packers, serial numbers 7502 and 7507, to Express Terminal for a monthly rental payment of \$12,600 or \$6,300 per machine. The lease period was to commence on 1 September 1977 and provided by its terms the option to renew for two successive one year terms at the same rental. Thus the lease period was to terminate no later than 30 September 1980. At the conclusion of the lease period, Express Terminal was required to return the leased machinery to RayGo Wagner unless it chose to exercise the purchase options provided for in the rental agreements. The agreements provided that past-due lease payments would accrue interest at the annual rate of 12 per cent.

RayGo Wagner alleges that Express Terminal failed to make the monthly rental payments due since 1 March 1979 and failed to exercise its purchase option rights or to return the two pieces of machinery, despite demand.

RayGo Wagner further alleges that Express Terminal is an entity controlled by the Government of Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration and, thus, that the Tribunal has jurisdiction over the claim.

RayGo Wagner seeks to recover monetary losses sustained as a result of Respondent's alleged breach of contract in the amount of \$950,813.70 including amounts for rental payments not made, interest under the agreement for late payments and payments not made, the fair market value of the equipment as of September 1980 estimated at \$190,000 each, "loss of use of equipment and loss of interest on unpaid amounts", calculated at 15% per annum, and costs.

Express Terminal defends by contending that the Tribunal does not have jurisdiction over the claim on the ground that Express Terminal is not controlled by the Government of Iran as required under the Claims Settlement Declaration. Furthermore, it denies that the rental agreements were validly entered into

and binding upon it since the agreements were not signed by two of the company's directors as required under a company resolution. Express Terminal denies that it made any rental payments for the port packers. Express Terminal further denies that the equipment described in the rental agreements was ever in its possession and states that, in its belief, this equipment does not exist in Iran.

This matter came up for hearing before Chamber Three of the Tribunal on 1 and 2 September 1982, at which the parties presented their final arguments as well as oral evidence.

## II. JURISDICTION OF THE TRIBUNAL

The relevant basis for determining whether the Tribunal has jurisdiction over the claim is to be found in Article II, paragraph 1, of the Claims Settlement Declaration which establishes the Tribunal for, among other, the "purpose of deciding claims of nationals of the United States against Iran...".

The Claimant has submitted evidence which establishes for all relevant points in time that it was organized under the laws of the state of Oregon and that natural persons who are United States citizens have held, indirectly, an interest in the Claimant equivalent to well over 50% of its capital stock.

Thus, the Claimant is a United States national within the meaning of the Claims Settlement Declaration.

It remains to be determined whether the claim against Express Terminal is a claim "against Iran". Article VII, paragraph 3, of the Claims Settlement Declaration defines the term "Iran" to mean:

...the Government of Iran, any political subdivision of Iran, and any agency, instrumentality or entity controlled by the Government of Iran or any political subdivision thereof.

On the basis of evidence before it, the Tribunal concludes that, since the revolutionary events in Iran, Express Terminal has not been run by its registered Manager and Board of Directors and that the shareholders have not been in a position to exert their rights and fulfil their duties as shareholders. Furthermore, it is clear that Express Terminal has been administered by persons who have been appointed by some governmental authority, although no formal decree to this effect has been presented. In support of its contention that it is a private entity not controlled by Iran, Express Terminal has submitted evidence showing that no formal changes have been officially registered in Iran with regard to the company. This evidence, however, does not in itself answer the question whether or not Iran Express is controlled by Iran.

Against this background and in view of the fact that Respondent has presented insufficient evidence in support of its position that it is a private entity, the Tribunal finds that there are convincing reasons for holding that the company is controlled by Iran within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration.

This conclusion is supported by two further circumstances. Firstly, under the Constitution of the Islamic Republic of Iran Article 44, the state sector of the economy is to include, inter alia, the shipping industry; port loading and unloading facilities, with which Express Terminal is dealing, are an integral part of the shipping industry.

Secondly, in a law suit before a United States Court initiated by RayGo Wagner, Express Terminal took the position that the Court lacked jurisdiction over the claim raised against it, asserting that the company was administered by the Government of

Iran and that under the appropriate laws of the United States it was a sovereign entity immune from the jurisdiction of the United States Courts. The position thus taken directly contradicts the assertion made before the Tribunal that Express Terminal is an independent, private entity.

### III. THE MERITS OF THE CLAIM

The evidence shows that RayGo Wagner executed two rental agreements on 29 August 1977 for two Model MHE-80 port packers. These agreements were signed by Robert Uiterwyk, purportedly for Express Terminal. Robert Uiterwyk's signatures were followed by the abbreviation "Mg. Dir." in hand-writing. In a letter of 31 August 1977 addressed to a Mr. Walter A. Rollins, indicated as being Vice-President of "Jan C. Uiterwyk, Inc.", Florida, RayGo Wagner proposed an amendment to the rental agreements. This proposal was accepted by Hendrik Uiterwyk, purportedly for Express Terminal, on 19 September 1977.

With regard to the defence raised by Express Terminal that the rental agreements were not validly entered into, the Tribunal notes that, according to a decision taken at the first meeting of the Board of Directors on 15 November 1977, two out of three named persons (none of those being Robert or Hendrik Uiterwyk) were authorized to sign jointly "all documents and deeds ... creating any obligation for the Company"; each of those three persons were, under that same decision, authorized to delegate his or her authority.

The first question that arises is whether the signing of the rental agreements by Robert Uiterwyk, or the later signing of the amendment to those agreements by Hendrik Uiterwyk, constituted any contractual obligation for Express Terminal. The Tribunal finds insufficient evidence that Robert Uiterwyk or Hendrik Uiterwyk at any relevant point in time had any authority to sign contracts for Express Terminal. It should be noted in this

context that according to its Articles of Association, this company was in fact not formed until 15 November 1977; under such circumstances there could hardly be any authorization for Robert Uiterwyk or Hendrik Uiterwyk to sign for Express Terminal as early as in August or September 1977. In view of the foregoing, and as no evidence has been presented in favour of the contrary position, the Tribunal concludes that these agreements ab initio were not binding on Respondent.

The question then arises whether the rental agreements, although not binding at the outset and in the absence of any express subsequent approval by competent organs of Express Terminal, were approved by Express Terminal by its receiving and using the two port packers. In this regard the Tribunal notes that there is no evidence showing that any of the lease payments were made by Express Terminal. In fact, Claimant admitted that the payments were made by Uiterwyk Corporation, but stated that the said corporation did so as general agent for Express Terminal and on its behalf.

Claimant has submitted a Bill of Lading showing that the two pieces of equipment were shipped to Port Khorramshahr by Iran Express Lines and indicating "Iran Express Terminal Corp. Ltd." as assignee. This cannot, however, be considered as sufficient evidence that the equipment was in fact delivered to Respondent as this company did not yet exist at the time of shipment.

The Claimant has, furthermore, submitted a service report concerning the two port packers, prepared by a RayGo Wagner employee in June 1978. This report contains in its heading the name "Iran Express Terminal". The service report - and a film shown by the Claimant at the Hearing - does give support to Claimant's allegation that the port packers were located and used in Port Khorramshahr. In the Tribunal's view, however, this evidence is not sufficient to show that the port packers were being used by and in the possession of Express Terminal under the lease agreements.

A telex of 21 February 1980 from the Uiterwyk Corporation to "Ports and Shipping Organization, Port Khorramshar and Ministry of Road and Transport, Teheran" expressly states that Uiterwyk Corporation had its "own right, title, and interest" in relation to various pieces of equipment, including the two port packers, "as well as our responsibilities in relation thereto". This may give some support to Respondent's contention that it was never a party to the lease agreements.

It should be borne in mind that - once the Tribunal has found the lease agreements not binding on Respondent ab initio - it is incumbent on Claimant to prove that the agreements became binding on Respondent through subsequent action of the latter.

Weighing the evidence before it, the Tribunal does not find that the Claimant has submitted sufficient proof that the two rental agreements were ratified through Respondent's receiving, paying for, or using the equipment, so as to make the lease agreements binding on Respondent. The claim therefore cannot be granted.

IV. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The claim of RAYGO WAGNER EQUIPMENT COMPANY against IRAN EXPRESS TERMINAL CORPORATION is hereby dismissed.

Each of the parties shall bear its own costs of arbitrating this claim.

Dated, The Hague

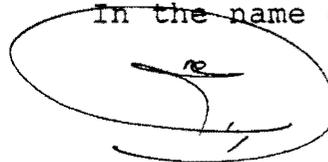
18 March 1983



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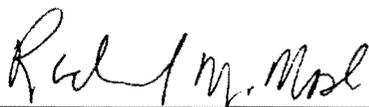
Nils Mangård  
Chairman  
Chamber Three

In the name of God



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M. Jahangir Sani  
(Dissenting Opinion  
as to Part II)



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Richard M. Mosk  
(Dissenting Opinion  
as to Part III)