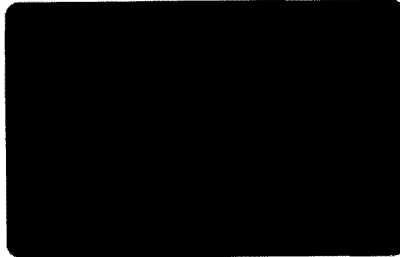


64.



CASE NO. 17  
CHAMBER THREE

RAYGO WAGNER EQUIPMENT COMPANY,  
Claimant,

AWARD NO. 20-17-3

- and -

STAR LINE IRAN COMPANY,  
Respondent.

AWARD

|                                       |   |
|---------------------------------------|---|
| IRAN UNITED STATES<br>CLAIMS TRIBUNAL | دادگاه داری دعاوی<br>ایران - ایالات متحده |
| ثبت شد - FILED                        |   |
| Date                                  | ۱۳۶۱ / ۹ / ۲۴<br>15 DEC. 1982             |
| No.                                   | ۱۷  |

DUPLICATE  
ORIGINAL  
«نسخه برابر اصل»

APPEARANCES:

For the Claimant:

Mr. M. Stern  
Frederikson, Byron, Colborn,  
Bisbee & Hansen  
Attorney

Mr. C. Mencil,  
President, RayGo Wagner Equipment  
Company

For the Respondent:

Mr. N. Siahposh  
Star Line

Also Present:

Mr. M.K. Eshragh, as Agent of the  
Islamic Republic of Iran

Mr. A.W. Rovina, as Agent of the  
United States of America

RayGo Wagner alleges that Star Line 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 Star Line's alleged breach of its obligations under the lease agreement in the amount of \$527,839.00 including amounts for rental payments not made from January 1979 until the date of the Award, interest on the unpaid lease payments, the fair market value of the equipment as of March 1979, estimated at \$210,000, and costs.

Star Line defends by contending that the Tribunal does not have jurisdiction over the claim on the ground that Star Line is not controlled by the Government of Iran as required under the Claims Settlement Declaration. Furthermore, Star Line denies that a lease agreement was ever concluded between Star Line and RayGo Wagner and that, consequently, Star Line is not under any liability to make any lease payments or return any equipment. Star Line states, however, that it presently has possession of the leased piece of machinery.

## 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 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 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 this point the Claimant has submitted written materials, including an order dated December 1979 by the Islamic Revolutionary Court of Karamshar and Abadan, ordering Star Line to be confiscated, and a press cutting of February 1980 indicating that the majority of the shares in Star Line were confiscated. Star Line, however, replies that neither document reflects the real circumstances, asserting that in both cases the evidence is incomplete and misleading. Star Line has submitted a certificate issued by the Corporate Registration Bureau of Iran, showing that no fact in relation to Star Line has been registered indicating any form of state control over this company.

In this case, the Tribunal concludes, on the basis of evidence before it, that since the revolutionary events in Iran, Star Line 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, there are clear indications that Star Line has been administered by persons who have been appointed by some public authority, although no formal Decree to this effect has been presented.

This, in the Tribunal's view, establishes prima facie evidence that the Respondent is controlled by the Government of Iran. In rebuttal of this evidence the Respondent asserts that no formal changes have been officially registered in Iran with regard to the company. As evidence of non-control this must, however, be regarded insufficient. No other evidence has been presented in support of the position that the Respondent is a private entity. Such evidence, if it exists, would be in the possession of the Respondent and could have been produced by it.

The Tribunal therefore 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 further supported by the fact that under the Constitution of the Islamic Republic of Iran, Article 44, the state sector of the economy includes, inter alia, the shipping industry; port loading and unloading facilities, with which Star Line is dealing, are an integral part of the shipping industry.

### III. THE MERITS OF THE CLAIM

The Respondent has denied the validity of the lease agreement, asserting that it was concluded between RayGo Wagner and Star Line Shipping Company, Inc., who purported to act as agent for Star Line Iran Company but who had, in effect, no powers to bind the latter company.

There is convincing evidence before the Tribunal to the effect that the leased machinery was delivered to the port in Iran where it was subsequently used in the operations of Star Line. The Respondent states that the machinery is still in its possession. In view of these circumstances any objection to the validity of the rental agreement is put to rest by the Respondent's subsequent ratification of the agreement in receiving and using the equipment. The Tribunal thus finds that the lease agreement is binding on Star Line.

It is evident that Star Line failed to make lease payments as required under the lease agreement for the months of January and February 1979, and that it did not exercise its purchase option right. As from March 1979 the agreement was terminated by the Claimant.

Therefore, RayGo Wagner is now entitled to the lease payments for January and February 1979.

As for the time thereafter RayGo Wagner is not entitled to any lease payments. RayGo Wagner should however be compensated for the value of the equipment which was not returned to the lessor after termination of the agreement. In view of the unrebutted evidence offered by RayGo Wagner on this point, this value shall be determined at \$210,000.00.

RayGo Wagner is further entitled to interest on the unpaid rental amounts at a rate of 12 per cent per annum as provided for in the rental agreement. RayGo Wagner should also be awarded interest at the same rate on the amount equivalent to the value of the equipment as from the date of termination of the rental agreement.

RayGo Wagner has claimed compensation for costs in connection with this arbitration in the amount of \$10,950.00. Applying Articles 38(1) and 40(1) of the Tribunal Rules, the Tribunal decides that each party shall bear its own costs in this case.

III. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

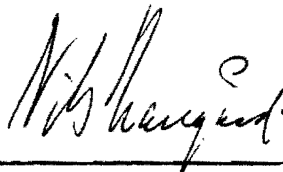
The Respondent, STAR LINE COMPANY OF IRAN, shall pay to the Claimant, RAYGO WAGNER EQUIPMENT COMPANY:

1. The sum of Five Thousand Four Hundred Twenty-Four United States dollars (\$5,424.00) plus annual interest thereon calculated at the rate of twelve (12) per cent as from 1 January 1979 up to and including the date of this Award;
2. The sum of Five Thousand Four Hundred Twenty-Four United States dollars (\$5,424.00) plus annual interest thereon calculated at the rate of twelve (12) per cent as from 1 February 1979 up to and including the date of this Award;
3. The sum of Two Hundred Ten Thousand United States dollars (\$210,000.00) plus annual interest thereon calculated at the rate of twelve (12) per cent as from 1 March 1979 up to and including the date of this Award.

Such payment shall be made out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

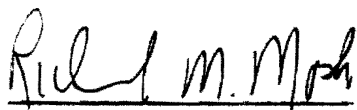
This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague,  
15 December 1982



Nils Mangård  
Chairman  
Chamber Three

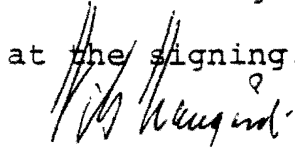

In the name of God,



Richard M. Mosk

\_\_\_\_\_  
M. Jahangir Sani

Judge Jahangir Sani took part in the hearing and deliberations in this case. The Tribunal was informed that he in effect would not sign the award, and he was not present or available at the signing.

  
Nils Mangård  
Richard M. Mosk