

ORIGINAL DOCUMENTS IN SAFE

Case No. 328

Date of filing: 31 JAN 1984

\*\* AWARD - Type of Award FINAL AWARD.

- Date of Award 31 JAN 1984

5 pages in English 4. pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_

\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* CONCURRING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_

\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* SEPARATE OPINION of \_\_\_\_\_

- Date \_\_\_\_\_

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\*\* DISSENTING OPINION of \_\_\_\_\_

- Date \_\_\_\_\_

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\*\* OTHER; Nature of document: \_\_\_\_\_

- Date \_\_\_\_\_

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Chamber Two

Award NO. 109-328-2

TECHNOLOGY ENTERPRISES, INC.,  
Claimant,

and

FOREIGN TRANSACTION COMPANY,  
Respondent.



AWARD

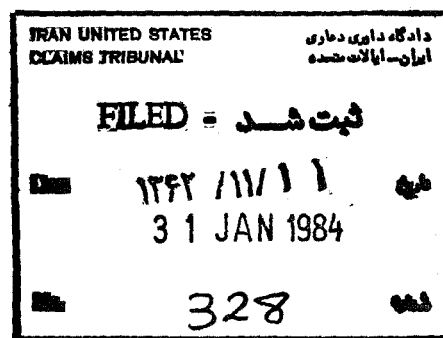
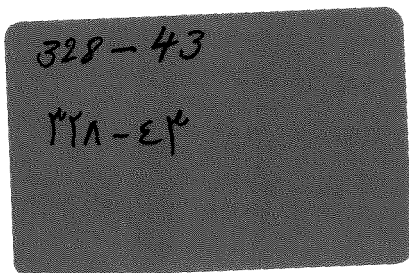
Representatives

For Claimant:

Mr. Bernard L. Friedman,  
President

For Respondent:

Mr. Javad Laleh-Parvaran,  
Attorney  
Dr. Morteza Movahadi Zadeh  
Managing Director



I. The Claim

The Claimant, a California corporation, has brought this claim which is based upon a contract dated 7 July 1974 for the supply of portland cement. The claim is for alleged failure to pay the full demurrage required by the contract for deliveries made in 1975 and 1976 and is in the amount of U.S. \$981,490.42, plus interest and costs. The Respondent asserts that the Tribunal lacks jurisdiction. On the merits, the Respondent acknowledged a debt of U.S. \$113,013.60 but counterclaimed for U.S. \$300,000 damages allegedly caused by delayed delivery and for U.S. \$23,400.90 allegedly owed by virtue of accelerated discharge of cargo, leaving a net counterclaim of U.S. \$210,387.30.

II. Jurisdiction

Article 13 of the contract provides:

All differences arising out of the execution of this contract if not settled amicably to be settled by the Iranian Judicial Courts.

In its statement of claim and subsequent comments on statements of defence the Claimant stated that the changes of circumstances that have occurred in Iran are such as to make the provision not binding, and it requested the right to respond further to this question following the decisions of the Full Tribunal on the forum-clause question in nine other cases (which were rendered on 5 November 1982). On 12

January 1983 the Tribunal filed an order that provided as follows:

The Tribunal has reviewed the forum selection clause in the contract on which the claim in this case is based. It would appear that the claim is excluded from the Tribunal's jurisdiction to the extent that it is based on contract.

See: George Drucker, Jr. and Foreign Transaction Company, Insurance Company of Iran, National Grain, Sugar and Tea Organization (Jurisdiction), Case No. 121, (Interlocutory Award 4-121-FT of 5 November 1982 Parts II and III).

The Parties are accordingly ordered to file with the Tribunal by 15 March 1983, any observations or briefs they wish to address to the Tribunal on the issue of jurisdiction.

Although the date of 15 March was subsequently extended at the Claimant's request to 1 May 1983, the Claimant failed to submit to the Tribunal any further observations. On 18 May 1983 the Tribunal informed the parties that it intended to proceed to render its decision on the issue of jurisdiction on the basis of the documents before it.

Article II, paragraph 1 of the Claims Settlement Declaration excludes from the jurisdiction of the Tribunal "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position".

The Tribunal notes that the contractual provision in question explicitly requires settlement by "Iranian Judicial Courts." There could be a question whether the phrase, "all differences arising out of the execution of this contract"

is adequate to meet the requirement of the exclusion provision in Article II, paragraph 1, that "any dispute" under the contract must come under the jurisdiction of Iranian courts. As in the Drucker Award, cited above, the Tribunal understands the word "execution" to include "performance" and concludes that, while it is conceivable that disputes concerning interpretation or validity of the contract could arise in the abstract, that is, as requests for declaratory judgments, separate from performance or non-performance of the contract, such disputes would not be disputes under the contract within the meaning of Article II, paragraph 1. In view of this, the Tribunal holds that the scope of Article 13 is sufficiently broad so as to meet the requirement of the exclusion provision in this respect.

As to the Claimant's contention that changes in circumstances make Article 13 not "binding" as required under the exclusion provision, the Tribunal finds it unnecessary to determine the enforceability of the clause for reasons identical to those stated by the Full Tribunal in the Drucker Award.

For the reasons given above, the Tribunal holds that Article 13 of the cement contract falls within the scope of the forum clause exclusion contained in Article II, paragraph 1, of the Claims Settlement Declaration. Consequently, the Tribunal decides that it has no jurisdiction over claims, including counterclaims, based on that contract.

III. Costs

Each party shall be left to bear its own costs of arbitration.

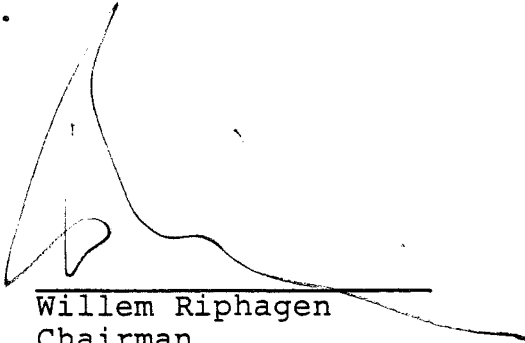
AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The claim and the counterclaim are dismissed for lack of jurisdiction.

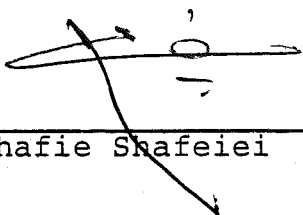
Each of the parties shall bear its own costs of arbitrating this claim.

Dated, The Hague  
31 January 1984

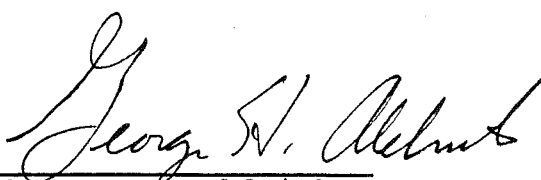


Willem Riphagen  
Chairman  
Chamber Two

In the name of God,



Shafie Shafeiei



George H. Aldrich