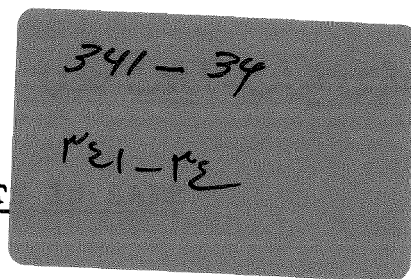


ORIGINAL DOCUMENT



Case No. 341

Date of filing: 28 FEB 85

** AWARD - Type of Award FINAL
 - Date of Award 28 FEB 85
6 pages in English 6 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 _____
 _____ 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



CASE NO. 341

CHAMBER ONE

AWARD NO. 165-341-1

WESTERN DYNAMICS CORPORATION,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,

THE ETKA ORGANIZATION,

Respondents.

AWARD

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	28 FEB 1985 تاریخ
	۱۳۶۳ / ۱۲ / ۹
No.	341 شماره

I. Facts and Contentions

On 18 January 1982, WESTERN DYNAMICS CORPORATION ("the Claimant") filed a claim with the Tribunal seeking damages for alleged breach of a contract for the sale of garbanzo beans entered into with THE ETKA ORGANIZATION ("Etk"), one of the Respondents in this case. Etk has contended in its Statement of Defence, inter alia, that the claim against it is excluded from the Tribunal's jurisdiction because the contract on which it is based provides for the exclusive jurisdiction of the Iranian courts. Etk relies on the provision of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes from the Tribunal's jurisdiction "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 Claimant addressed this question in its Reply to the Statement of Defence.

In its Order of 29 February 1984 the Tribunal indicated its intention to decide the issue of whether it has jurisdiction or not in this case in view of the forum selection clause in the contract between the Parties on the basis of the written pleadings and documents submitted. No further pleadings were submitted by the Parties.

In December 1978 the Claimant and Etk entered into a contract for the sale of 2000 metric tons of garbanzo beans. The contract was concluded by an exchange of three telexes:

- (i) a telex of 18 December 1978 from Etk to the Claimant inviting the Claimant to make a proposal for the sale and setting out Etk's standard terms and conditions of purchase;
- (ii) a telex of 22 December 1978 from the

Claimant to Etkā setting out its offer;
and

- (iii) a telex of 25 December 1978 from Etkā to the Claimant confirming acceptance of the offer and stating that "All other terms and conditions as per our telex dated Dec. 22."; the telex further stated that "This contract is now binding ...".

The contract provided, inter alia, that the Claimant would submit a performance bond and that Etkā, upon receipt of such bond, would open a letter of credit in Claimant's favour to cover the purchase price.

The Claimant contends that it arranged for the required performance bond, but that Etkā did not establish the letter of credit and thereby breached the contract. As a result of this breach of contract Claimant alleges to have suffered damages in the amount of \$770,000.00 for lost profits which it claims together with interest and costs. Claimant also contends that this loss was caused by "currency restrictions imposed by Respondent the Islamic Republic of Iran, which made it impossible for Respondent Etkā Organization to fulfill its contractual obligations with Claimant."

Etkā states that "[i]n the event of misconception of the Claimant as to the conclusion of a contract between the parties, since no goods have been delivered or services rendered there is no ground for any claim against the Respondent. But assuming that the Claimant rightly contends the conclusion of a contract as the result of the communication of the above-mentioned telexes", Etkā contends that the claim must be dismissed for lack of jurisdiction since the settlement of disputes would then be governed by the following clause contained in Etkā's telex of 18 December 1978:

"Conflicts and Settlements:

Eventual disputes must be finally and

exclusively settled in Iranian court."

Etka asserts that this clause was confirmed in its telex of 25 December 1978 by a general reference to the terms and conditions in its previous telex.

Etka contends that this forum selection clause falls within the exclusion provided by Article II, paragraph 1, of the Claims Settlement Declaration, and that the claim must therefore be dismissed for lack of jurisdiction.

The Claimant argues that the provision for settlement of disputes in the contract does not apply to a total breach of the contract such as allegedly occurred in this case. It also contends that access to an Iranian court is not available to the Claimant, nor is meaningful relief available in such courts.

II. The Tribunal's Jurisdiction

On 5 November 1982 the Full Tribunal rendered interlocutory awards on jurisdiction in nine test cases involving a selection of contracts with different forum clauses. The operative words appearing in the contract clause presently under consideration are identical to those examined by the Full Tribunal in the case of George W. Drucker, Jr. and Foreign Transaction Co. et al. (Interlocutory Award No. ITL 4-121-FT, Part III (2) "The Cement Offer")¹. In that case, the Full Tribunal found that the wording clearly meant that disputes between the parties must be referred to the courts

¹ The following two sentences which in "The Cement Offer" case came under the heading "Conflicts and Settlements", in this case appeared under the heading "Affidavit" on Etk'a's telex of 18 December 1978: "If the contract is concluded, we require one of your senior officers to come to Tehran to sign and submit the required Government of Iran affidavit. This officer must be fully authorized to so act on your behalf."

of Iran, and that, consequently, it fulfilled the requirement of the exclusion provision of the Claims Settlement Declaration which sets forth that a claim falls outside the jurisdiction of the Tribunal if it arises under a contract between the parties "specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts".

The Tribunal finds no reason to reach a different conclusion with respect to the wording of the clause in the present contract.

As to the Claimant's contention with regard to changed circumstances in Iran, that issue is disposed of in the Full Tribunal's decision in the George W. Drucker, Jr. Award (Part II, "The Rice Contract").

Insofar as the claim is directed against the Islamic Republic of Iran, it appears to be based largely on the allegations in the Statement of Claim that "Etko Organization may have been willing to make the monetary transfer required by its contract, but may have been foreclosed from doing so by the currency restrictions imposed by the Islamic Republic of Iran" [emphasis added]. The Claimant adds, "If such is the case, Claimant believes that the Islamic Republic of Iran has acted in a confiscatory manner" from which follows an obligation to pay compensation [emphasis added]. The Claimant has not in its Statement of Claim, or in its Reply to the Statement of Defence, presented any support for its vague allegation of what it "believes" "may" have been the relevant circumstances. Nor did the Claimant upon being informed by the Tribunal's Order, filed on 1 March 1984, that the Tribunal intends to decide the issue of jurisdiction "on the basis of the written pleadings and documents submitted", present any clarification or support of its allegation. The

Tribunal cannot base its jurisdiction on such undefined and unsubstantiated allegations.

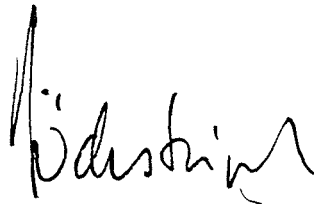
Insofar as the Claimant bases its claim against the Islamic Republic of Iran on the allegation that Etkā is a subdivision of the Government of Iran and its actions are therefore attributable to the Government, such a claim also arises under the contract between the Claimant and Etkā and is consequently excluded from the Tribunal's jurisdiction.

III. Conclusion

The Tribunal decides that it has no jurisdiction over the claims based on the contract between the Claimant and Etkā.

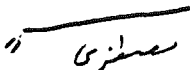
The Tribunal accordingly dismisses the claims against THE ISLAMIC REPUBLIC OF IRAN and THE ETKA ORGANIZATION.

Dated, The Hague
28 February 1985

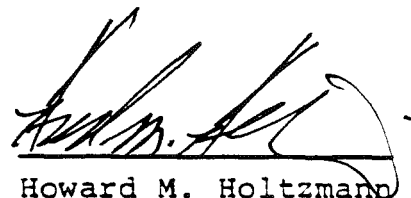


Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Seyed Mohsen Mostafavi Tafreshi


Howard M. Holtzmann