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IN SAFE

Case No. 36 Date of filing: 18-DEC 86

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 18.12.86
6 pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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** DISSENTING OPINION of _____
- Date _____
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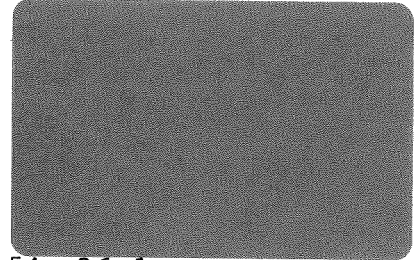
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحدہ

DUPLICATE ORIGINAL
دستور برابر اصل



CASE NO. 36
CHAMBER ONE
DECISION NO. DEC 54-36-1

FLEXI-VAN LEASING, INC.,
Claimant,

and

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL
دعوی داوری ایران - ایالات متحدہ
FILED - ثبت شد
۱۳۶۵ / ۹ / ۲۷
18 DEC 1986
36

DECISION

1. This Decision resolves the request of the Claimant FLEXI-VAN LEASING, INC. ("Flexi-Van") for an additional award in its Case against the Respondent THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (the "Government").

2. On 13 October 1986, the Tribunal filed Award No. 259-36-1 in this Case dismissing Flexi-Van's claims. On 10 November 1986, Flexi-Van filed, in a timely fashion, a Request for Additional Award pursuant to Article 37, paragraph 1, of the Tribunal Rules which provides that:

"Within thirty days after receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award."
(Emphasis added.)

3. Flexi-Van argues that while the Tribunal has dismissed the claims against the "Government of the Islamic Republic of Iran" in the Award, it has not made any award as to Flexi-Van's claims against the "Islamic Republic of Iran," the Respondent named in the caption of Flexi-Van's Statement of Claim. Accordingly, Flexi-Van requests that the Tribunal render an additional award as to claims presented against the "Islamic Republic of Iran."

4. In paragraph 4 of its Statement of Claim, Flexi-Van stated:

"The Respondent is THE ISLAMIC REPUBLIC OF IRAN (also referred to herein as "IRAN"). As used in this Statement of Claim, the terms "Islamic Republic of Iran" and "Iran" shall mean Iran as defined in Article VII, Paragraph 3, of the Claims Settlement Declaration pursuant to which this Tribunal is established, including without limitation the Government of Iran. Iran is a sovereign state. It has acted at material times herein through the Government of Iran and through agencies, instrumentalities, and entities controlled by the Government of Iran, including, but not limited to, the following:

PORT AUTHORITY OF BANDAR KHOMEINI
Bandar Khomeini, Iran;

PORT AUTHORITY OF KHORRAMSHAR
Khorramshar, Iran;

FOUNDATION FOR THE OPPRESSED
Tehran, Iran;

STAR LINES TEHRAN^[1]
Tehran, Iran;

and

IRAN EXPRESS LINES
Tehran, Iran."

¹At the Pre-Hearing Conference, Flexi-Van stated that this name should have read "Star Line Iran Co."

In paragraph 23 of the Statement of Claim, Flexi-Van stated that "it was entitled to recover [its claim] from the Government of Iran."

5. Whatever ambiguities may have been created by this form of pleading were completely removed by Flexi-Van's statements and actions in the course of the arbitral proceedings which clarified beyond doubt that the only Respondent was the Government.

6. The first clarification as to the identity of the Respondent came at the Pre-hearing Conference. By that time, the Foundation for the Oppressed ("Foundation"), Star Line Iran Co. ("Star Line"), Iran Express Lines Co. ("Iran Express") and the Government had filed Statements of Defence. At the Pre-hearing Conference, Flexi-Van moved to strike the Statements of Defence of the Foundation, Star Line and Iran Express on the ground that they had not been named as Respondents. The Government was offered the option of adopting as its own these Statements of Defence, but it declined to do so. Accordingly, in an Order filed on 17 June 1982, the Tribunal granted Flexi-Van's motion to strike the Statements of Defence of the Foundation, Star Line and Iran Express, leaving the Government as the only Respondent that had pleaded.

7. Article VII, paragraph 3, of the Claims Settlement Declaration defines "Iran" as "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". Thus, after the Tribunal's Order of 17 June 1982 granting Flexi-Van's motion, only the Government or any entity within the scope of Article VII, paragraph 3 -- other than the Foundation, Star Line and Iran Express -- could be considered as a Respondent. Flexi-Van never thereafter pursued any claim against any other entity, including the Port Authority of

Bandar Khomeini and the Port Authority of Khorramshar, both of which had been mentioned in the Statement of Claim.

8. Further clarification as to who Flexi-Van considered the Respondent came at the Hearing, at which only the Government appeared as Respondent, when, according to the Minutes, Flexi-Van "confirmed that [it] was asserting its claim solely against the Government of Iran".² Significantly, at the Hearing Flexi-Van submitted a document entitled "Basis of claim" in which it summarized the bases of its claim. See Award, p. 16. Flexi-Van stated that this document should be regarded as a clarification, not an amendment, of its claim. This document described four bases which allegedly supported Flexi-Van's claim. As to each of these four bases, Flexi-Van explicitly named only the Government as the responsible party. In particular, Flexi-Van alleged that the "Government of Iran" (i) had expropriated Flexi-Van's contractual rights by causing Star Line and Iran Express to breach the lease agreements; (ii) had interfered with Flexi-Van's contractual relations by preventing payments of amounts due under the lease agreement and return of equipment; (iii) is liable for the breach and repudiation of the lease agreements by Star Line and Iran Express; and (iv) was unjustly enriched through the retention and use of Flexi-Van's equipment. Thus, it is clear that these four bases constituted Flexi-Van's "claims presented in the arbitral proceedings" as referred to in Article 37, paragraph 1, of the Tribunal Rules and that the Government was the sole Respondent as to each of those four bases of claim.

²Note 7 to Article 25 of the Tribunal Rules provides that the Tribunal "shall draft minutes of each hearing. . . . The arbitrating parties in the case, or their authorized representatives, shall be permitted to read such minutes". The Minutes were filed on 16 July 1984. Flexi-Van has not commented on them.

9. The Tribunal specifically addressed in its Award each of Flexi-Van's four bases offered in support of its claim. The Tribunal held that Flexi-Van had failed to prove (i) that the Government had expropriated Flexi-Van's contractual rights (Award, pp. 17-23); (ii) that the Government had interfered with contractual relations (Award, pp. 23-24); (iii) that the Government caused Star Line and Iran Express to breach lease agreements or was automatically liable for any such breaches (Award, pp. 24-25); and (iv) that the Government was unjustly enriched (Award, pp. 25-30). Thus, none of Flexi-Van's claims were left unresolved.

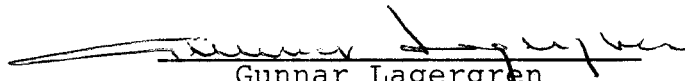
10. As noted, Article 37, paragraph 1, of the Tribunal Rules permits an additional award only with respect to "claims presented in the arbitral proceeding but omitted from the award". The record in this Case, as described above, leaves no doubt that no claims were omitted from the Award, for all of the claims were directed solely against the Government and all were explicitly decided by the Tribunal. Accordingly, there is no basis for an additional award under the Tribunal Rules.

11. For the foregoing reasons,

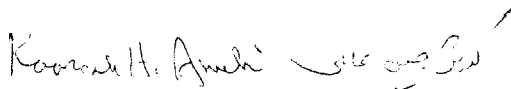
THE TRIBUNAL DECIDES AS FOLLOWS:


The request of FLEXI-VAN LEASING, INC. for an additional award is denied.

Dated, The Hague
18 December 1986


Gunnar Lagergren
Chairman
Chamber One

In the name of God


Koorosh-Hossein Ameli


Howard M. Holtzmann