

DUPLICATE
ORIGINAL
نسخه برابر اصل

CASE NO. 57

CHAMBER TWO

AWARD NO. 46-57-2

KIMBERLY-CLARK CORP.,

Claimant,

and,

BANK MARKAZI IRAN,
NOVZOHOUR PAPER INDUSTRIES,
GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحده
ثبت شد - FILED	
Date	۱۳۶۲ / ۲ / ۶
	27 MAY 1983
No.	57
	۵۷

REASON FOR ABSENCE OF SIGNATURE
OF MR. SHAFIE SHAFEIEI



Reason for absence of signature.

Mr. Bellet wrote to me a letter during the course of deliberation, which letter was private, in French and of such content that its disclosure would be an affront to the integrity of this Tribunal. In my reply, I did not request Mr. Bellet to "postpone the signature" (Sic) of the Draft Award. Parts of my reply related to deliberative matters and need not be repeated. In other parts I suggested that certain issues should be discussed. With regard to "interest", for instance, I wrote that:

"The issue of interest requires adequate study. Even if the majority should require the payment of interest, a further question arises: from what effective date should the interest be paid -- From the date that the claim arose? From the date of legal notice? From the time on which the Statement of Claim was submitted? or from the date of the award? In Iran, and apparently in France and Sweden, interest is payable from the date on which the statement of claim or legal notice is filed. At any event, this issue requires adequate discussion and deliberations. In my opinion, these issues need to be clarified, and the Parties to the case should be requested to give comments in connection with them."

In relation to the alleged U.S. nationality of the claimant, I drew the attention of my colleagues to the fact that:

"By virtue of Article 7, Paragraph 1 of the Claims Settlement Declarations,

'1. A 'national' of Iran or of the United States, as the case may be, means (a) a natural person who is a citizen of Iran or the United States, and (b) a corporation or other legal entity which is organised under the laws of Iran or the United States or any of its states or territories, the District of Columbia of the Commonwealth of Puerto Rico, if, collectively, natural persons who are citizens of such country hold directly, an interest in such corporation or entity equivalent or fifty per cent or more of its capital stock'

American nationality, in accordance with the terms of this Article, is one of the basic conditions for this Tribunal's jurisdiction; therefore, a careful determination of this condition must be made. We have not

yet uttered a single word in discussion on this issue. Further, I need time to study it; as you are aware, the workload of the Chamber and the arbitrators is extremely difficult and concentrated and so I have had practically no opportunity to study this, or other related issues".

I finally indicated my readiness to further discuss the Case, and sign a different draft Award when prepared by stating that:

"I am of the opinion that this issue and other issues should be studied and discussed with greater care. I am preparing myself for this study and shall have completed this work in the coming weeks. The Award will certainly have been signed prior to the termination of your incumbency".

Mr. Bellet himself writes in his letter of 23 May that:

"....il est bien entendu que le 26 mai 1983 prochain sera la dernière limite et je vous invite à venir le 25 mai à 17.00 heures dans mon bureau".

There had been no understanding therefore, that the draft Award would necessarily be signed on 25 May 1983. Deliberations of the case were in no way completed as must be in arbitral proceedings whose awards are not appealable to the same body and where there are serious probabilities for error and destruction of the Parties rights.

I was convinced in all sincerity that further deliberations were called for, and hoped that the issues I had raised would at least be discussed. On 25 May I attended the Tribunal with a short delay, but my colleagues signed the draft Award in my absence.

The final deliberations and signing of the Award in the present case have been conducted in my absence and without my participation. I have played no role in those respects and therefore bear no responsibility.

A handwritten signature in black ink, appearing to be 'DR. SHAFIE SHAFEIEI', written over a horizontal line. The signature is stylized and somewhat cursive.

DR. SHAFIE SHAFEIEI