

CASE NO. 91

CHAMBER THREE

AWARD NO. 41-91-3

THE MANAGEMENT OF ALCAN ALUMINIUM LIMITED, ON BEHALF OF ITS SHAREHOLDERS WHO ARE UNITED STATES NATIONALS and JAMES P. MONAGHAN, ON BEHALF OF HIMSELF AND OTHER SHAREHOLDERS OF ALCAN ALUMINIUM LIMITED WHO ARE UNITED STATES NATIONALS,

Claimants,

and

IRCABLE CORPORATION,

Respondent.

AWARDAppearances:

For Claimants:

Mr. Lawrence A. Salibra
Mr. Michael M. Morran

For Respondent:

Mr. Mostafa Shahabi
Mr. Bijan Roshdieh

Also Present:

Mr. Mohammad K. Eshragh,
Deputy Agent of the Islamic
Republic of Iran

Mr. Seyed Hossein Tabaie,
Legal Adviser to the Agent of the
Islamic Republic of Iran

Ms. Jamison M. Selby,
Deputy Agent of the United
States of America

Mr. John Reynolds, Legal Advisor
to the Agent of the United States
of America

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
فیلڈ شد - FILED	
No. 91	شماره 91
Date	تاریخ
1362 / 2 / 13	1362 / 2 / 13
3 MAY 1983	



I. PROCEEDINGS, FACTS AND CONTENTIONS

Claimants, "THE MANAGEMENT OF ALCAN ALUMINIUM LIMITED ON BEHALF OF ITS SHAREHOLDERS WHO ARE UNITED STATES NATIONALS and JAMES P. MONAGHAN, ON BEHALF OF HIMSELF AND OTHER SHAREHOLDERS OF ALCAN ALUMINIUM LIMITED WHO ARE UNITED STATES NATIONALS", filed their claim against IRCABLE CORPORATION ("Ircable") on 18 November 1981. Claimants allege that Ircable is an entity controlled by the Government of Iran, and that, in 1977 and 1978, Ircable made various purchases of aluminium products from Alcan S.A. ("Alcansa"), a Swiss company and, allegedly, a wholly-owned subsidiary of Alcan Aluminium Limited ("Alcan"), a Canadian company. Payments were to be secured in part by letters of credit and in part by drafts. Claimants assert that none of the drafts was paid and that, on 16 October 1979, Ircable repudiated its debt. Claimants seek damages in the amount of U.S. \$6,930,428.38 together with interest. Claimants also allege that Alcansa maintains Rls.113,117,590 in Iran attributable to the forced sale of some of the purchased products but that such funds are blocked. Claimants state that "Alcan is prepared to release these funds to the Iranian government upon full settlement of its claim in U.S. dollars."

On 24 May 1982 Ircable filed a Statement of Defence in which it challenged the Tribunal's jurisdiction over the claim on the grounds that there was not sufficient evidence that Claimants were United States nationals or that the claim was a claim of United States nationals as those terms are defined by the Claims Settlement Declaration, and that Respondent is not an entity controlled by the Government of Iran. Ircable also denied that it is obligated for any monies due as a result of the alleged transaction.

On 18 February 1983, the Tribunal scheduled a hearing to determine the following three "preliminary questions":

1. Whether the claim is a claim of a national or nationals of the United States and, specifically, whether the ownership interests of United States citizens in Alcan Aluminium Limited ("Alcan") are sufficient to control the company. (Article VII, paragraph 2, of the Claims Settlement Declaration).
2. Whether claims of United States shareholders in Alcan may be presented to the Tribunal collectively and on their behalf by either the management of Alcan or by one of the United States shareholders.
3. Whether Respondent Ircable Corporation is an entity controlled by the Government of Iran or any political subdivision thereof. (Article VII, paragraph 3, of the Claims Settlement Declaration).

The parties submitted memorials and written evidence and a hearing was held on 12 April 1983.

Claimants contend that over 50 percent of the shares of Alcan were owned by United States citizens at the appropriate time and that therefore the ownership interests of United States nationals, collectively, were sufficient to control Alcan. Thus, according to Claimants, the Tribunal has jurisdiction over the claim under Article VII, paragraph 2, of the Claims Settlement Declaration.

The Claimants further argue that even if it is not established that United States nationals hold the majority of the Alcan stock, they hold in any event a sufficient number of shares to constitute control over the company.

Claimants also submit that the evidence establishes that Ircable is an entity controlled by the Government of Iran.

Finally, Claimants contend that issues concerning the appropriateness of the presentation of the claim by representatives of Alcan's United States shareholders and the proper remedies in such circumstances do not affect the question of jurisdiction over the claim. Rather, they maintain that these issues are matters of procedure and that the presentation of the indirect claims of United States shareholders by the corporation's management, in its fiduciary capacity, or by a representative shareholder, as in a class action, is an appropriate procedural mechanism.

Respondent contends that there is not sufficient evidence of the United States nationality of the Claimants; that there is insufficient evidence that Alcansa is a wholly owned subsidiary of Alcan; that unnamed Claimants are not proper parties before the Tribunal; and that the evidence is insufficient to show that Respondent is an entity controlled by the Government of Iran. Thus, Respondent asserts that the claim should be dismissed for lack of jurisdiction.

Neither party has requested the costs of the arbitration.

II. REASONS FOR AWARD

Under Article II, paragraph 1, of the Claims Settlement Declaration, the Tribunal has jurisdiction over "claims of nationals of the United States against Iran". Claims of nationals of the United States are defined in Article VII, paragraph 2, of the Claims Settlement Declaration as including,

claims that are owned indirectly by such nationals through ownership of capital stock or other proprietary interests in juridical persons, provided that the ownership interests of such nationals, collectively, were sufficient at the time the claims arose to control the corporation or other entity, and provided further, that the corporation or other entity is not itself entitled to bring a claim under the terms of this Agreement.

It is uncontested that Alcan is a corporation organized under the laws of Canada, that Alcansa is a corporation organized under the laws of Switzerland and that, therefore, neither is itself an eligible claimant before the Tribunal.

Neither party has submitted evidence supporting or contesting the allegation that Alcansa is wholly owned by Alcan. Even assuming this allegation to be true, Claimants must still meet the other requirements of Article VII, paragraph 2.

That the ownership interests of shareholder-claimants who are United States nationals were, collectively, sufficient to control a corporation at the time the claim arose may be demonstrated in several ways. It may be shown that, at the appropriate time, such shareholders controlled the corporation in fact, regardless of the total proportion of their shares. Also it may be shown that such shareholders had sufficient voting strength or other rights to assert control; this would generally require ownership of 50 per cent or more of the shares.

Claimants rely entirely on the fact that, as demonstrated by a declaration of Alcan's Assistant Secretary, on dates close to the date on which the claim arose, between 52.1 and 52.8 percent of Alcan's voting shares were owned by shareholders reporting United States addresses. Based upon this fact, Claimants contend that an inference should be drawn that Alcan's United States shareholders owned a majority of its shares, or at least a substantial minority interest, and thus, in either case could have controlled the corporation.

In support of this suggested inference, Claimants further point to statistics showing that 98 percent of the residents of the United States are citizens of that country.* By presuming a similar relationship between the addresses and citizenship of Alcan's shareholders, Claimants suggest that it would be reasonable to infer that between 51.06 and 51.74 percent of Alcan's shareholders were at the appropriate time United States nationals. Moreover, Claimants suggest that it should be inferred that at least some of the shareholders with addresses outside the United States are United States nationals.

In view of the practical difficulties inherent in attempting to directly prove the exact percentage of shares of widely-owned corporations which are held by United States nationals, it may, in the Tribunal's opinion, be necessary in certain cases to draw reasonable inferences concerning such percentage from the evidence before the Tribunal based upon probabilities. In the present case, however, the facts

* It has been stated that in 1980, of the 226,505,000 population of the United States, 5,381,000 were aliens. U.S. Department of Commerce, Bureau of Census, Statistical Abstract of the United States 5, 94 (1981).

do not provide an adequate basis to draw the inferences suggested by Claimants. The proportion of shareholders with United States addresses is only very marginally above 50 percent. Also, it must be recognized that Alcan is a Canadian corporation. Thus, while there is no evidence on the point, it is not unreasonable to suppose that it has a higher percentage of investors listing United States addresses who are not United States citizens than an American corporation would be likely to have.

Based on the specific facts of this case, and without any additional material in evidence of the nationality of Alcan's shareholders, the Tribunal finds that it cannot make the inference that United States nationals held 50 per cent or more of Alcan's shares at the time the claim arose.

No proof has been presented in support of the Claimants' contention that, even if United States nationals did not hold 50 per cent or more of Alcan's shares, such nationals were in fact in a position to control the company at the time the claim arose.*

In conclusion, since Claimants have not submitted sufficient evidence to show that at the time the claim arose they had sufficient ownership interests in Alcan to control it, Claimants have not established that this claim consti-

* It is noted that the majority of directors were non-United States citizens.

tutes a claim of a national of the United States within the meaning of Article VII, paragraph 2 of the Claims Settlement Declaration. Accordingly, the Tribunal lacks jurisdiction over the claim.

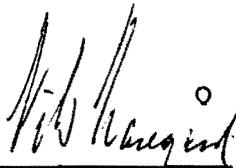
In light of this holding, the Tribunal need not reach the other jurisdictional or procedural issues raised by the Respondent.

III. AWARD

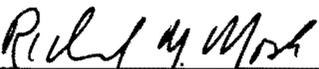
The Tribunal awards as follows:

The Claim of THE MANAGEMENT OF ALCAN ALUMINIUM LIMITED ON BEHALF OF ITS SHAREHOLDERS WHO ARE UNITED STATES NATIONALS and JAMES P. MONAGHAN, ON BEHALF OF HIMSELF AND OTHER SHAREHOLDERS OF ALCAN ALUMINIUM LIMITED WHO ARE UNITED STATES NATIONALS against IRCABLE CORPORATION is hereby dismissed for lack of jurisdiction.

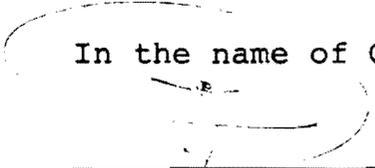
Dated, The Hague
3 May 1983



Nils Mangard
Chairman
Chamber Three


Richard M. Mosk
Concurring opinion

In the name of God


M. Jahangir Sani