

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	23 APR 1987
	۱۳۶۶ / ۲ / ۲
No	93

CASE NO. 93

CHAMBER ONE

DECISION NO. DEC 59-93-1

FORD AEROSPACE & COMMUNICATIONS CORPORATION,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,
BANK MARKAZI IRAN,

Respondents.

DUPLICATE
ORIGINAL

نسخه برابر اصل

DECISION

1. On 16 February 1987, the Agent of the Government of the Islamic Republic of Iran filed with the Tribunal a Request for "Correction and Interpretation" and a "Request for Additional Award" with respect to the Tribunal's Partial Award No. 289-93-1 filed on 29 January 1987. Both Requests, the first made pursuant to Articles 35 and 36 of the Tribunal Rules of Procedure, the second pursuant to Article 37, were filed within the thirty-day period provided by the Rules.

2. The Request for "Correction and Interpretation", with which the Tribunal deals first, concerns the part of

the Award dealing with the Counterclaim for the delivery of buyer-furnished equipment that the Claimant received from the Watkins-Johnson Company on behalf of the Government of Iran (paragraphs 101-105 of the Award). The Tribunal noted that the Claimant claimed no right to this equipment, to which both Iran and Watkins-Johnson have allegedly asserted claims to ownership. It further noted the Claimant's statement that it holds the equipment simply as a custodian until the Tribunal or another appropriate forum determines which party is entitled to possession and that, upon the issuance of any export or other licence required, the Claimant would make the equipment available to the appropriate party (paragraph 101).

3. Acknowledging that the Respondent stated at the Hearing that there was no dispute as to Iran's ownership of the equipment, the Agent of the Government of Iran objects to paragraph 104 of the Award because it fails to mention Iran's alleged request for "an award for the delivery of that equipment on that premise". The Agent further alleges that the proposal to retain jurisdiction was made by the Respondent only if the Tribunal found "that the ownership of Watkins-Johnson materials was, contrary to Respondent's position, disputed and could not order delivery." The Agent requests the Tribunal "to correct and/or interpret the Award to include an accurate account of the Respondent's statement, as well as the reason why the Tribunal cannot grant the Respondent's Counterclaim before deciding Case No. 370". There is a further request "not to order payment to the Claimant until the Respondent's Counterclaim on the items produced by Watkins-Johnson is decided in the light of the decision to be reached in Case No. 370, and the equipment belonging to the Respondent is delivered."

4. Insofar as the Request constitutes an attempt "to reargue certain aspects of the Case and to disagree with the conclusions of the Tribunal" in its Award, the Tribunal

stresses once again that "there is no basis in the Tribunal Rules of Procedure or elsewhere for a review of an award on such grounds." See Paul Donin de Rosiere et al., and Islamic Republic of Iran, Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987).

5. As to the request for a "correction" of the Award, the Tribunal notes that there is no inaccuracy in paragraph 104. The Award is consistent with the minutes of the Hearing and with Judge Mostafavi's Dissenting Opinion. Furthermore, the Tribunal emphasizes once again that Article 36, paragraph 1, of the Tribunal Rules provides only for the correction of "errors in computation, any clerical or typographical errors, or any errors of similar nature." The Tribunal finds that the present request for a "correction" does not fall within the scope of Article 36, paragraph 1, and therefore denies this request.

6. As to the request for an "interpretation", the Tribunal notes once again that Article 35, paragraph 1, was intended to apply only where an award contains language which is ambiguous. See Paul Donin de Rosiere, supra, para. 6. The Tribunal finds no ambiguity with respect to the part of the Award at issue. Thus, there is nothing that requires interpretation within the meaning of Article 35, paragraph 1.

7. In the "Request for Additional Award" the Agent states that the Respondent, in its written pleadings as well as at the Hearing, "requested the Tribunal to award the delivery of all its equipment lying at the disposal of the Claimant". The Agent alleges that "the majority has simply addressed that part of the Respondent's equipment provided by Watkins-Johnson, but has made no ruling on the Respondent's equipment acquired by the Claimant at the Respondent's expense." With reference to the reasons stated in

Judge Mostafavi's Dissenting Opinion, p. 12, the Agent requests the Tribunal "to make an additional award by virtue of Article 37 of the Tribunal Rules on the Respondent's Counterclaim for the delivery of the other portion of its equipment remaining at the Claimant's disposal". The Tribunal is further requested "to defer payment to the Claimant until this part of the Counterclaim is decided, and the Respondent's equipment delivered".

8. The Tribunal notes that in the Award, paragraphs 70-72, it held that the Claimant was entitled to sell the equipment and materials it had purchased for its performance in order to mitigate damages. The Award is based on the assumption that all the equipment purchased by the Claimant for the Contracts was sold in the salvage sales, as explicitly stated by the Claimant in Doc. No. 160 filed on 19 December 1984 at p. 29. The Respondent never denied this. When requesting delivery of items allegedly in the possession of the Claimant in its written pleadings, it only referred to the buyer-furnished equipment. This is also the case with regard to the request in Doc. 207, p. 116, filed on 16 October 1985, referred to by the Agent, asking for an award returning "Respondent's equipment which has been at the disposal of Claimant." Throughout Doc. 207, pp. 52, 69, 78, 110 the Respondent raised objections to the sale of the equipment acquired by the Claimant, but never alleged that the Claimant was still in possession of any equipment of this type. On p. 113 of Doc. 207 the Respondent specifically identified the equipment it sought to recover: "the equipment delivered by Counter-Respondent by related contractors" which "should be delivered to Counter-Claimant together with payment for late delivery damages". The Respondent identified no other equipment. This makes it clear that the request for delivery of equipment in the following paragraph refers to buyer-furnished material:

"In view of the foregoing, the Honourable Tribunal is requested to issue necessary award in respect of delivery of equipment in accordance with related export licences" (emphasis added).

Similarly, at the Hearing the Respondent only contested the justification for the salvage sales and only alleged that the Claimant had more buyer-furnished equipment that it admitted.

9. All of this demonstrates that there was no allegation that the Claimant had retained a part of the equipment it had procured itself for the Contracts. Consequently, there was no claim for delivery of this equipment "presented in the arbitral proceedings but omitted from the award" as required by Article 37, paragraph 1, of the Tribunal Rules. The Tribunal could not rely on Document 223 to reach a different conclusion as set out in Judge Mostafavi's Dissenting Opinion, p. 12 et seq. This Document was lodged with the Registry only as "Back-Up Financial Data" and does not constitute properly introduced pleadings or evidence. There is no need, therefore, to enter into an examination, for the first time after the Hearing, whether this Document actually refutes the Claimant's contention, never before disputed by the Respondent, that in the salvage sales it sold all the equipment it had purchased for the Contracts.

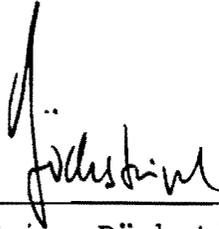
10. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

- a) The Request for Correction and Interpretation of Partial Award No. 289-93-1 (29 Jan. 1987), filed on 16 February 1987 by the Agent of the Government of the Islamic Republic of Iran, is denied.

- b) The Request for Additional Award with regard to Partial Award No. 289-93-1 (29 Jan. 1987), filed on 16 February 1987 by the Agent of the Government of the Islamic Republic of Iran, is denied.

Dated, The Hague
22 April 1987



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God



Mohsen Mostafavi
Dissenting Opinion



Howard M. Holtzmänn