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ATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

ORIGINAL DOCUMENTS IN FILE

Case No. 951 Date of filing: 14 Jan 87

** AWARD - Type of Award _____

- Date of Award _____

_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 14 · 1 · 87

10 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: _____

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- Date _____

_____ pages in English _____ pages in Farsi

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[redacted]TES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داوری دعاوی ایران ـ ایالات متحده
FILED - ثبت شد
Date 14 JAN 1987 تاریخ
۱۳۶۵ /۱۰/ ۲۴
No. 951 شماره

CASE NO. 951 46
CHAMBER ONE
DECISION NO. DEC 56 -951-1

DUPLICATE ORIGINAL
نسخه برابر اصل

THE GOVERNMENT OF THE
ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE GOVERNMENT OF THE UNITED
STATES OF AMERICA,
Respondent.

DECISION

I. PROCEDURAL HISTORY

1. On 17 December 1984, the Tribunal issued an Award on Agreed Terms in Case No. 772, Award No. 152-772-SC, in which it accepted and recorded a Settlement Agreement, together with two Appendices and two Annexes, which had been concluded between, on the one hand, ELECTRONIC DATA SYSTEMS CORPORATION ("EDS") and, on the other hand, THE SOCIAL SECURITY ORGANIZATION OF IRAN ("SSO") on its own behalf and on behalf of a number of other Iranian entities. The Settlement Agreement provided, inter alia, that EDS secure the release of certain funds attached in the United States, that SSO pay to EDS $7,100,409.20 and that SSO withdraw Cases Nos. 579, 951 and A6 and a portion of Case No. A15. Case No. 772 was terminated by the Award on Agreed Terms on 17 December 1984, and Case No. 579 was terminated by an Order on the same date.

2. On 1 June 1983, a "Request to withdraw and dismiss claims" was filed in the present Case. That request was signed by Mr. A.F.S. Panahi "[f]or the Claimants" and by Mr. T.W. Luce (III) "[f]or the Respondents". On 25 October 1984, the Tribunal issued an Order inviting the Parties to submit their comments on the above request, addressing in particular the question whether its signatories were authorized to sign on behalf of the Claimant and the Respondent, respectively.

3. On 10 December 1984, a letter was filed, signed by the "Chairman of the Board and Managing Director and Deputy Minister of Health and the Social Security Organization", in which the withdrawal of Case No. 951 was confirmed. The letter stated, however, that such withdrawal "is contingent upon the remittance and receipt of all the sums set forth in the letter of understanding which must be deposited to the account of Social Security Organization in Iran". On 27 February 1985, the Respondent United States filed its

comments and stated that while it was not a party to the Settlement Agreement filed in Case No. 772, while it had no information about the authority of Mr. Panahi to sign the 1 June 1983 Request on behalf of the Claimant and while Mr. Luce was not authorized to represent the United States, it "concurs in the Dismissal of [Case No. 951]".

4. On 15 January 1985, the Tribunal issued the following Order:

> "The notification of the Award on agreed terms No. 152-772-SC having been made promptly upon its filing on 17 December 1984, and assuming that thereupon the required payments were made, the Tribunal hereby informs the Parties that it intends to terminate this case unless it is informed by the Parties of the contrary by 22 February 1985."

5. On 22 February 1985, the Agent of the Government of the Islamic Republic of Iran submitted a telex from SSO stating that SSO had received $145,000 less than the total amount agreed to in the Settlement Agreement concluded in Case No. 772. SSO stated that it was pursuing the matter, and it requested the Tribunal to refrain from terminating Case No. 951 until it had submitted its final comments in this context.

6. In view of this notice, the Tribunal, by Order of 18 June 1985, requested the Claimant to file its final comments on the termination of Case No. 951, drawing the Claimant's attention also to the comments that the United States had filed in Case No. A6. In Case No. A6,[1] where the Tribunal on 22 January 1985 had requested the Claimant SSO to confirm the withdrawal of that case as soon as the

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[1] The Respondents in Case No. A6 are the United States and EDS.

relevant conditions were fulfilled,[2] the United States, on 18 March 1985, had commented on Iran's objection to termination of Case Nos. A6 and 951 and requested that the Tribunal dismiss Case No. A6.

7. On 21 August 1985, SSO filed its final comments on the termination of Case No. A6, and on 28 February 1986 the identical final comments were filed in the present Case.[3] SSO argues that the Settlement Agreement concluded in Case No. 772 has not been fully implemented and it "reserves the right to pursue the related cases before the Tribunal and other internal international juridical fora" until a final decision is taken as to whether that Settlement Agreement has actually been fully performed.

II. FACTS AND CONTENTIONS OF THE PARTIES

8. Award No. 152-772-SC, filed in Case No. 772 on 17 December 1984, recorded as an Award on Agreed Terms a Settlement Agreement, together with two Appendices and two Annexes, which had been concluded between EDS and SSO. That Settlement Agreement provided, inter alia, that EDS secure the release of certain funds attached in the United States, that SSO pay to EDS $7,100,409.20 and that SSO withdraw Cases Nos. 579, 951 and A6 and a portion of Case No. A15 (IV). The Award provided that the $7,100,409.20 be paid out of the Security Account.

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[2] On the same date, the Tribunal requested the Claimant in Case No. A15 (IV), the Government of Iran, to file its confirmation concerning the withdrawal of the relevant portion of that case. The Respondent in that case, the United States, had previously filed its concurrence.

[3] Although SSO stated that it submitted these comments to "Supplement[] Previous Submissions and Defenses in Cases A/6, and A/15 and 951", these comments were not filed in Case No. A15 (IV).

9. In connection with the disputes between EDS and SSO, funds had been attached in the United States which as of 15 March 1983 totalled $26,847,979.40 ("the Attached Account"). The Settlement Agreement provided that, through an "Escrow Agent" bank designated by the parties, $10,302,979.40 be paid out of the Attached Account to SSO and $16,545,000.00 less certain deductions be paid to EDS. The net sum payable to EDS, which the Settlement Agreement calculated as $7,100,409.20, was to come out of the Security Account. The parties agreed that "the President of the Tribunal shall as soon as possible direct the Central Bank of Algeria to promptly transfer through its normal procedures the sum of $7,100,409.20 from the security account to the Escrow Agent to be paid to EDS in accordance with the disbursement procedure provided [in the Settlement Agreement]. Such amount shall hereinafter be referred to as 'the Settlement Fund'".

10. Appendix Two of the Settlement Agreement envisaged two ways how the disbursements to EDS and SSO could be made. In the first alternative, the Escrow Agent bank, after receiving the Attached Account and the Settlement Fund, was to disburse to SSO $26,847,979.40 plus specified interest, and to EDS $6,958,401.02 plus specified interest. The second alternative was to apply in the event that the Escrow Agent had not received the Settlement Fund on or before the second day after receipt of the Attached Account. In that event, the Escrow Agent bank was first to disburse the Attached Account as follows: to SSO $19,747,570.20 plus specified interest, and to EDS $7,100,409.20 plus specified interest. Thereafter, upon receipt of the Settlement Fund, the Escrow Agent bank was to disburse the amount received to SSO.

11. In fact, the second alternative took place. The Attached Account was released and deposited with the Escrow Agent bank long before the Settlement Fund was received.

Consequently, the Escrow Agent bank on 31 May 1983 disbursed $19,747,570.20 to SSO and $7,100,409.20 to EDS. After issuance of the Award on Agreed Terms, the Escrow Agent bank received from the New York Federal Reserve Board ("New York Fed") $6,958,401.02 in payment of that Award. This amount consisted of the $7,100,409.20 less 2 percent deducted by the New York Fed, which deduction the New York Fed was required by United States law to make from awards from the Security Account in favour of United States claimants. The $6,958,401.02 was then disbursed by the Escrow Agent bank to SSO. It is until a final decision on this difference of $142,008.18 - equalling the 2 percent deducted by the New York Fed - is made by the Tribunal that SSO objects to the termination of the present Case.[4]

12. SSO acknowledges that there is a difference of $142,008.18 in the amount payable to EDS pursuant to the Settlement Agreement for both alternative ways of disbursement. SSO also acknowledges that this difference is accounted for by the 2 percent which the New York Fed would deduct from the $7,100,409.20 that was to come from the Security Account. The explanation given by SSO for this difference in the figures of the disbursement to EDS is as follows. In the first alternative where the Settlement Fund would be received by the Escrow Agent bank before the disbursement to EDS would be made, that Settlement Fund would reach the Escrow Agent bank only in an amount of $6,958,401.02 (i.e., $7,100,409.20 out of the Security Account minus 2 percent deducted by the New York Fed), and the Escrow Agent bank would then disburse this $6,958,401.02 to EDS. In the second alternative where the disbursement to EDS would be made before the Escrow Agent bank had received

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[4] The same objection has been raised by SSO in its Comments filed in Case No. A6 on 21 August 1985. See supra footnote 3 and accompanying text.

the Settlement Fund, $7,100,409.20 would be paid to EDS, and EDS would then have to pay the 2 percent to the United States Government as and when the Settlement Fund would be paid out of the Security Account. It is clear from the Settlement Agreement, SSO argues, that EDS, and not SSO, was to bear the 2 percent and that EDS would ultimately not be entitled to more than $6,958,401.02. SSO would ultimately be entitled to the full amount of the Attached Account, or $26,847,979.40, and the Settlement Agreement could not make SSO responsible for payment of what constitutes a tax levied by the United States Government on United States claimants receiving payment out of the Security Account. SSO contends that the United States Government, by deducting the 2 percent, prevented the Settlement Agreement between EDS and SSO from being fully implemented and it states that the United States Government "can now exercise its sovereignty to collect its legal tax from EDS", which would bring about the full implementation of the Settlement Agreement.

13. According to the United States, the parties to the Settlement Agreement in Case No. 772 had agreed that the party to bear the 2 percent (or $142,008.18) - EDS or SSO - would depend on which method of disbursement would apply. It is clear from the figures stipulated in the Settlement Agreement that in the first alternative EDS would only receive $6,958,401.02 and would thus bear the 2 percent, the United States Government asserts. It argues that it is equally clear from the formulation of the second alternative that in that case SSO was to bear the 2 percent. In that alternative, the Settlement Fund from the Security Account would reach the Escrow Agent bank only after the New York Fed had deducted the 2 percent, and could thus be disbursed to SSO by the Escrow Agent bank only in that reduced amount of $6,958,401.02.

III. REASONS FOR DECISION

14. As noted, the Settlement Agreement concluded between EDS and SSO in Case No. 772 and recorded as Award on Agreed Terms provided for the deposit of both the Attached Account and the Settlement Fund out of the Security Account with an Escrow Agent bank. The Escrow Agent bank would then make disbursements to EDS and SSO, respectively. The instructions contained in Appendix Two to the Settlement Agreement for such disbursements envisaged two alternatives. In the first alternative, the $26,847,979.40 from the Attached Account plus specified interest was to be disbursed to SSO, and "the sum of $6,958,401.02" plus specified interest was to be disbursed to EDS. The second alternative was to apply in the event that the Settlement Fund was not received by the Escrow Agent bank within two days after receipt of the Attached Account. In that alternative, the Attached Account was to be disbursed as follows: to SSO $19,747,570.20, and to EDS $7,100,409.20. Thereafter, upon receipt of the Settlement Fund, the amount received was to be disbursed to SSO. Because the Settlement Fund was not deposited with the Escrow Agent bank within two days after the Attached Account, the second alternative of disbursements applied and, in fact, took place.

15. The parties agreed that the Settlement Fund was to be paid out of the Security Account pursuant to the "normal procedures" (emphasis added). See supra paragraph 9. This formulation seems to indicate that both EDS and SSO knew, and had agreed, that, while the President of the Tribunal would direct the transfer of $7,100,409.20 from the Security Account, the New York Fed would in the course of the "normal procedures" deduct 2 percent therefrom, as it did with regard to any other amount paid out of the Security Account in favour of a United States claimant. Consequently, the Settlement Fund reaching the Escrow Agent bank would be $6,958,401.02 (i.e., the $7,100,409.20 awarded less 2

percent), and it would be this $6,958,401.02 that in the second alternative of disbursement EDS and SSO had agreed would be disbursed to SSO upon receipt by the Escrow Agent bank.

16. The first alternative of disbursement, which eventually did not apply, lends support to this interpretation of EDS' and SSO's understanding of and agreement on the net amount of the Settlement Fund that would reach the Escrow Agent bank out of the Security Account. In that first alternative, disbursement to SSO was to be in the amount of $26,847,979.40, corresponding to the Attached Account, and disbursement to EDS was specifically to be in the amount of "$6,958,401.02". That latter disbursement would thus have corresponded to the $7,100,409.20 coming from the Security Account, less the 2 percent that the New York Fed would deduct in the course of the "normal procedures" of paying out Tribunal awards.

17. The New York Fed in fact deducted the 2 percent before it deposited the Settlement Fund with the Escrow Agent bank, and the Escrow Agent bank disbursed the $6,958,401.02 it received to SSO. This was thus "in accordance with the disbursement procedure provided" in the Settlement Agreement which instructed the Escrow Agent bank to disburse to SSO "the amount received" as Settlement Fund. While it is correct that in this alternative the 2 percent deducted by the New York Fed is in effect borne by SSO, this is what EDS and SSO agreed to in their Settlement Agreement. Where they had agreed that EDS would in effect bear the 2 percent, as in the first alternative of disbursement, EDS and SSO provided for that. Having thus determined that the Settlement Agreement concluded by EDS and SSO in Case No. 772 has been fully implemented, the Tribunal cannot find that SSO has raised justifiable grounds for objecting to the termination of Case No. 951 which is provided in that Settlement Agreement.

IV. DECISION

18. For the foregoing reasons,

THE TRIBUNAL DECIDES AS FOLLOWS:

Case No. 951 is hereby terminated.

Dated, The Hague
14 January 1987

Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Mohsen Mostafavi
Dissenting

Howard M. Holtzmann