

ORIGINAL DOCUMENTS IN SAFE

Case No. 11102

Date of filing: 15 Dec 1989

** AWARD - Type of Award Final
 - Date of Award _____
6 pages in English 7 pages in Farsi

** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
 - Date _____
 _____ pages in English _____ pages in Farsi

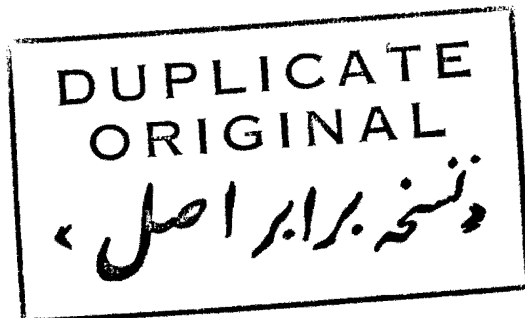
** DISSENTING OPINION of _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داورى دعاوى ایران - ایالات متحدہ



CASE NO. 11102

CHAMBER THREE

AWARD NO. 456-11102-3

OCEAN-AIR CARGO CLAIMS, INC.,
 a claim of less than U.S.\$250,000
 presented by THE UNITED STATES OF AMERICA,
 Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN
 Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان داورى دعاوى ایران - ایالات متحدہ
FILED	ثبت شد
DATE	15 DEC 1989
	تاریخ ۱۳۶۸ / ۹ / ۲۴

AWARD

I. INTRODUCTION AND PROCEDURAL HISTORY

1. The Claimant, OCEAN-AIR CARGO CLAIMS, INCORPORATED (the "Claimant") is stated to be a United States corporation incorporated under the laws of the State of New York. On 19 January 1982 the United States filed a claim on behalf of the Claimant against THE ISLAMIC REPUBLIC OF IRAN (the "Respondent") to recover amounts paid to insured parties who suffered damages when three consignments of goods shipped by Iran Express Lines were lost or damaged in transit.¹ The Claimant brings the claim in its capacity as agent for a French insurance company.

2. The Claimant seeks recovery of U.S.\$4,844.56² plus interest and costs.

3. On 1 June 1987 the Tribunal ordered the Claimant to file a Supplementary Statement of Claim together with any documentary evidence on which it wished to rely. On 30 September 1987 the Claimant filed a "Request for Preliminary Determination as to Tribunal Jurisdiction."

4. In response to the Tribunal's Orders of 2 and 28 March, 31 May and 12 July 1988, the Respondent filed its "Brief as to Tribunal Jurisdiction" in which it stated "Respondent believes that the Tribunal lacks jurisdiction over the claim."

¹The claim in respect of two of the shipments was later withdrawn.

²Originally claimed as U.S.\$10,600.

II. FACTS AND CONTENTIONS

5. The claim relates to the alleged loss and damage incurred in respect of a shipment of coffee aboard a vessel of Iran Express Lines to a consignee in New York pursuant to a contract of carriage allegedly entered into on 19 September 1978.³ Iran Express Lines is said to be an entity controlled by the Government of Iran. The consignee, ACLI International, Incorporated ("Acli") is alleged by the Claimant to be a U.S. national.

6. Acli had insured the consignment with an insurance company in France and lodged a claim with that company for the loss suffered. Once satisfied as to the loss, the insurance company instructed the Claimant as agent of the insurer to make payment to Acli. The payment allegedly was made pursuant to an oral agreement between the Claimant and the insurer. Evidence of payment of the sum of U.S.\$4,844.56 by the Claimant to Acli in 1976 has been submitted to the Tribunal.

7. The Claimant contends that through its payment to Acli, it became the subrogee of Acli and as such is entitled to pursue Acli's claim. To this end, the Claimant stated that it filed suit in United States courts in the name of Acli, which suit was suspended on implementation of the Algiers Accords of 1981.

8. In particular, the Claimant asserts that, by virtue of the payment made and the subrogation agreement in the original contract of insurance between Acli and the insurer, the insurer succeeded to all rights Acli had against Iran Express Lines, including the right to proceed against it before the Tribunal. Thus, the Claimant contends that upon its payment to Acli and in accordance with its alleged oral

³Actually, the Statement of Claim mentions a discharge date of 7/22/74.

agreement with the insurer, it received the right and obligation to pursue this claim and to receive a percentage of the recovery. The Claimant contends that the right to bring the claim was thus transferred from Acli, the original United States owner, to the Claimant "without a break in the continuous nationality of the claims."

9. Finally, the Claimant asserts that it has had a real and viable interest in the claim from the time payment was made by virtue of its alleged contractual right to participate in the recovery. The Claimant concedes that part of any such recovery would inure to the benefit of the insurer, which is not a United States national within the meaning of the Claims Settlement Declaration.

10. The Claimant acknowledges that in light of the Tribunal's subsequent pronouncements on the issue of continuous ownership of a claim, questions arise as to the Tribunal's jurisdiction over this claim. Although the Claimant has preserved the right to maintain suit in United States courts, it states that it can proceed there only after establishing that the claim is not within the jurisdiction of the Tribunal. Therefore, the Claimant requests a preliminary determination of jurisdiction.

11. The Respondent raises two arguments against the exercise of jurisdiction over this claim. The first is that the Claimant has added a new claim after 19 January 1982, because in the original Statement of Claim the Claimant contended that it entered directly into an agreement with Iran Express Lines whereas the Claimant subsequently changed its argument to seek damages on behalf of the foreign insurer.

12. Second, the Respondent contends that the Claimant's own evidence and affidavits make clear that the Claimant "is neither the owner of the claim nor successor to the rights

of the owner of the claim, but acts as an agent on the basis of an oral agreement and is entitled to a percentage of the recovered funds." Thus, the claim is still owned by the French insurer and, because the Claimant does not allege that it controls the French insurer so as to be entitled to bring an indirect claim on its behalf, the Claimant has no locus standi before the Tribunal.

13. The Respondent asks the Tribunal to dismiss the claim for lack of jurisdiction and requests an Award of costs.

14. The Tribunal will address the issue of jurisdiction over the claims as a preliminary matter.

III. JURISDICTION

15. The Tribunal notes that recently it has considered an almost identical issue of the question of its jurisdiction in Ocean-Air Cargo Claims, Incorporated, and Islamic Republic of Iran, Award No. 455-11429-3 (15 Dec. 1989), in which it concluded that it did not have jurisdiction over the claim. Although that case was decided at a later stage of the proceedings, it involved the same Claimant and Respondent as in this Case, the parties to the underlying transaction in this Case were also parties to one of the underlying transactions in that case and the nature of the underlying transaction is the same. In particular, both the Claimant and the Respondent raise the same jurisdictional arguments in support of or against the Claimant's alleged right to bring this claim as were raised in the Ocean-Air Cargo case, supra.

16. In Ocean-Air Cargo Claims, Inc. the Tribunal held that the Claimant had failed to establish that, for the purposes of the Claims Settlement Declaration, ownership of the claim had passed to the Claimant in its capacity as recovery agent

rather than to the foreign insurer as principal. The Tribunal also held that for purposes of jurisdiction the Claimant had not shown that it had acquired legal title to a pro rata interest in the claim corresponding to the extent of its agency interest by direct succession from the insured party. The Tribunal sees no reason why its ruling in that case should not be adhered to in the present Case. Accordingly the claim is dismissed for lack of jurisdiction.

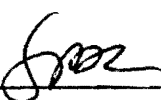
IV. AWARD

17. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

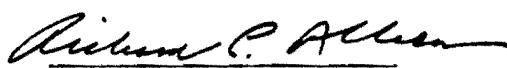
- a. The claim of OCEAN-AIR CARGO CLAIMS, INCORPORATED against the ISLAMIC REPUBLIC OF IRAN is dismissed for lack of jurisdiction.
- b. Each Party shall bear its own costs of arbitration.

Dated, The Hague
15 December 1989




Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin