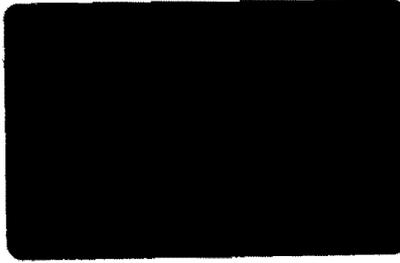


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IRAN - UNITED STATES CLAIMS TRIBUNAL

دادگاه داورى دعاوى ايران - ايالات متحده



CASE NO. 132
CHAMBER THREE

REXNORD INC.,
Claimant,

AWARD NO. 21 -132-3

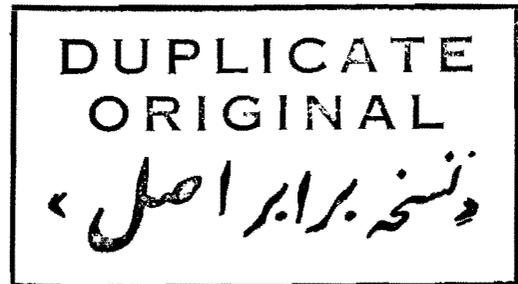
- and -

THE ISLAMIC REPUBLIC OF IRAN,
TCHACOSH COMPANY and IRAN SIPOREX
INDUSTRIAL AND MANUFACTURING WORKS,
LIMITED,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داورى دعاوى ايران - ايالات متحده
ثبت شد - FILED	
Date	۱۳۶۱ / ۱۰ / ۲۰
	10 JAN. 1983
No	۱۳۲

AWARD



APPEARANCES

For the Claimant:

Mr. A. Baum
Hughes, Hubbard & Reed, Paris
Attorney

Mr. W.H. Levit, Jr.
Secretary and General Counsel
Rexnord Inc.

Mr. R.A. Wheals
Financial Controller
Rexnord Inc.

Mr. R.G. Morgan
General Manager
Rexnord Inc.

For the Respondents:

Mr. M.K. Eshragh
Deputy Agent of the Islamic Republic
of Iran

Mr. Tabaie
Legal Adviser to the Agent

Mr. Moini
Tchacosh Company

Mr. Tarkeshi
Iran Siporex Industrial and
Manufacturing Works, Limited

I. FACTS.

Claimant, REXNORD INC. ("Rexnord" or "The Claimant") is a corporation organized under the laws of the State of Wisconsin of the United States and is a manufacturer of heavy industrial equipment.

The Respondents are the ISLAMIC REPUBLIC OF IRAN, TCHACOSH COMPANY ("Tchacosh"), a corporation organized under the laws of Iran and engaged in the business of building construction, and IRAN SIPOREX INDUSTRIAL AND MANUFACTURING WORKS, LIMITED ("Siporex"), a corporation organized under the laws of Iran for the production of building materials.

The Claimant has alleged that, through its Process Machinery Division located in Ealing, England, it entered into an agreement with Siporex and Tchacosh for the sale of stone crushing machinery and other equipment for use in a plant to be constructed in Abyek, Iran. This Agreement is represented by a series of telexed orders and invoices beginning on 21 February 1974. Under the terms of the agreement, the total purchase price of the equipment, together with estimated freight charges, was UK £ 570,915.25. Part of the price was to be paid by an irrevocable letter of credit as the equipment was delivered. The remainder of the purchase price was to be paid over a period of forty-two months upon presentation of drafts made to the order of Rexnord.

The equipment was delivered in shipments during 1975 and 1976. The letter of credit, representing UK £ 114,183.05 of the purchase price, was paid in full. Drafts in the amount of UK £ 231,061.95 were presented and also paid. However, the Claimant alleges that, beginning in November 1977, some drafts presented for payment were dishonoured and that, after October 1978, payment was refused for each remaining draft duly presented. Rexnord therefore makes a claim for the balance of the unpaid drafts, totalling UK £ 287,595.57.

Rexnord also alleges that it entered into other agreements with Siporex and Tchacosh for equipment the purchase price of which has been paid in full. These agreements, as well as the above discussed agreement, all provided that freight charges in excess of those estimated at the time of purchase and included in the purchase price, would be for the purchaser's account. Rexnord paid a total of UK £ 513,996.85 in freight charges incurred in shipping the equipment under all of these agreements, of which amount UK £ 158,086.78 was later billed to Siporex as excess freight charges. In response to this billing, Tchacosh sent a letter dated 26 February 1978, indicating that it considered itself responsible only for the increases in shipping rates up to the shipping dates upon which the parties had originally agreed. Rexnord then dispatched a credit note to Siporex for UK £ 27,910.77 representing the disputed amount. Both the amount of the credit and the remaining amount outstanding were apparently accepted by Siporex and Tchacosh as no further objection was raised or

communicated. Rexnord therefore claims against Siporex for the remaining UK £ 130,176.01.

The Claimant alleges that both Tchacosh and Siporex are entities controlled by the Government of Iran by virtue of the Government's appointment, in August 1979, of directors who have managed the affairs of both companies since that date.

The Islamic Republic of Iran has not filed a Statement of Defence.

In its Statement of Defence of 5 March 1982, Tchacosh has objected to the Tribunal's jurisdiction in the case. First, it contends that the claim belongs to the Process Machinery Division which is an English company and that Rexnord has not proven its ownership of the division. Second, Tchacosh contends that it is a "national of Iran" and, by implication, not an entity controlled by the Government of Iran, because it "has not ... been nationalized". Third, Tchacosh alleges that it is now in the process of being formally liquidated under Iranian law and that the Claimant should have presented its claim to the liquidator.

Tchacosh does not deny that it owes the draft amounts claimed by Rexnord but contends that any liability must arise out of the drafts and not out of the agreement to purchase the equipment.

Siporex makes all of the above defences in its Statement of Defence also filed on 5 March 1982, and, in addition, denies that it is either a party to the purchase agreement in dispute or an obligor under the drafts. Instead, it argues, both the contract and the drafts are obligations entered into by Tchacosh for its own account.

On 14 April 1982, in response to a request made by the Tribunal, Rexnord filed a Statement Regarding the Public Character of Tchacosh and Siporex, containing its evidence and arguments in support of the allegation that these two Respondents are entities controlled by the Government of Iran.

A Pre-hearing Conference was held on 18 June 1982. On 29 June 1982, the Tribunal issued an Order for Hearing and written submissions. That Order required the Claimant to submit certain evidence and explanations by 23 August 1982 and required the Respondents to submit a Reply to the Claimant's 14 April Statement, along with evidence, and certain other explanations. The Order also required all parties to make final written statements by 1 October 1982 and fixed 22 October 1982 as the date for a Hearing.

The Claimant filed a memorial in the case, including evidence, and also its final written statement. The Respondents failed to file any of the submissions required by the Tribunal's Order.

A Hearing was held in the case on 22 October 1982 at which all of the parties were represented. Tchacosh later filed an unauthorized memorial raising new defences and arguments available to it early in the case.

Fairness, orderliness and possible prejudice to the other parties in the case require that the Tribunal disregard this latter submission.

II. REASONS FOR AWARD

1. Jurisdiction

a. The Claimant's Nationality

Jurisdiction is invoked under Article II, paragraph 1, of the Claims Settlement Declaration which establishes the Tribunal for the purpose, among others, of "deciding claims of nationals of the United States against Iran ...".

Rexnord has submitted evidence, including a certificate of the Secretary of State of the State of Wisconsin, indicating that it is a corporation organized under the laws of that State. Further evidence shows that 45 per cent of the 20,122,468 outstanding shares of Rexnord's common stock is held by persons having addresses in the United States and that the remaining shareholders having United States addresses are corporations, institutional investors and other entities; only 0.34 per cent of the shares were registered in the names of

persons or entities having addresses outside of the United States.

Furthermore, in a "Petition pertaining to Foreign Interests" submitted to the United States Government on 30 June 1982, Rexnord has represented, under penalty of criminal prosecution for a false statement, that foreign interests do not own directly or indirectly even five per cent of Rexnord's stock.

In view of this evidence, which has not been challenged by the Respondents, the Tribunal holds that Rexnord is a national of the United States as defined in Article VII, paragraph 2, of the Claims Settlement Declaration.

b. Ownership of the Claim

The Claimant also submitted sufficient evidence that the Process Machinery Division, located in Ealing, England, is not a juridical person separate from Rexnord, but that it was, at all appropriate times, an operating branch of the Claimant. Therefore, the Tribunal holds that the claim is owned directly by Rexnord.

c. Control of Tchacosh and Siporex

The Claimant has submitted evidence demonstrating that, after the revolution, the Government of the Islamic Republic of Iran

through various agencies, appointed a succession of managing directors to operate both Tchacosh and Siporex. The directives by which the appointments were made cite various laws as authority. It is unnecessary to discuss the specific sources for such authority because the Respondents do not contest the fact of the governmental appointment of managers. Instead, they rest their defence on the allegation that no expropriation or nationalization of Tchacosh and Siporex has occurred.

The evidence thus presented by the Claimant clearly shows that the power to appoint and dismiss managers and directors in charge of the day-to-day management of the companies has been with the Government of Iran or its appropriate Ministry or Agencies since the latter half of 1979 and that this power has been exercised with regard to both companies. In view of this, and regardless of whether the two companies were in effect nationalized or expropriated by Iran, the Tribunal holds that both Tchacosh and Siporex are entities controlled by Iran.

d. Effect of liquidation proceedings

Tchacosh and Siporex have both alleged that they are currently under liquidation in Iran and that the Claimant may present its Claims to the liquidators. The process of liquidation in Iranian law is to be distinguished from the

process of bankruptcy. The latter commences upon a declaration of insolvency to a court having bankruptcy jurisdiction which thereupon appoints an official receiver. Liquidation, however, is a process undertaken by the owners of a company to wind up its affairs after a decision to dissolve the company. The Claims Settlement Declaration does not exclude claims which may be brought under either of these processes. The mere availability of a local remedy, whether judicial or otherwise, cannot preclude the Tribunal from jurisdiction.

e. Conclusion

The Tribunal determines that the claim is the claim of a national of the United States against Iran within the meaning of the Claims Settlement Declaration and that, therefore, the Tribunal has jurisdiction.

2. The Merits

a. Unpaid drafts

The Claimant maintains that both Tchacosh and Siporex are liable on the unpaid drafts because both were parties to, and therefore liable on, the underlying purchase agreement. It bases Siporex's liability on the agreement upon a theory of agency. It asserts that Tchacosh is liable on the ground that the two companies were "mixed" to such an extent that there is an identity of parties.

The evidence supports the view that Siporex was the principal upon whose behalf the agreement was executed. The initial communication in the transaction, a telexed order dated 21 February 1974, was sent by Tchacosh but specifically requested that the pro forma invoice for the equipment be prepared in Siporex's name. This order was responded to by a letter from Rexnord to Siporex. Further telexed instructions were sent on 13 March 1974 by Siporex indicating the exact format to be used in preparing the pro forma invoices including the requirement that they be issued to Siporex. The invoices finally prepared indicated that Siporex was the purchaser. Subsequent communications regarding the purchase were received by Rexnord from both Tchacosh and Siporex. Finally, the drafts presented for payment were signed by "Tchacosh Co. For Iran Siporex Industrial & Manufacturing Works Limited".

The transaction was not without some confusion regarding the identity of the purchaser. The source of this confusion is to be found primarily in the fact that the managing director of Tchacosh and the managing director of Siporex were one and the same person. This person also appears to have been the major shareholder in both companies.

However, it would be reasonable to infer that, if the managing director of one company signs a bill as acceptor on behalf of a second company of which he is also the managing director, he has authority to act as agent for the latter

company. That Rexnord shipped the equipment directly to Siporex and that Siporex received and used the equipment further support the conclusion that in this case such an agency relationship existed.

The Tribunal therefore holds that Siporex is liable on the unpaid drafts in the amount of UK £ 287,595.57.

On its own admission of its indebtedness to Rexnord, Tchacosh shall be held liable, jointly and severally with Siporex, for that same amount.

b. Excess Freight Charges

The evidence shows that the agreement under which the drafts were issued and three additional purchase agreements, which have otherwise been paid in full, all contain provisions which render the buyer liable for freight charges in excess of those estimated and included in the purchase price terms.

Like the agreement discussed above, the three additional agreements, after a correction in one instance, indicate Siporex as the purchaser.

At the Hearing Tchacosh and Siporex raised the argument that the freight charges demanded by Rexnord are exorbitant in comparison with the freight charges normally applied by the

shipping trade at the relevant time. Therefore, they contend, the Respondents are not liable for the excess freight charges, or, at any rate, not liable in their full amount. In support of their position, Tchacosh and Siporex submitted materials at the Hearing indicating the standard rates applied by shipping companies around the period in question.

The Tribunal notes that Tchacosh, in its letter to Rexnord of 26 February 1978, did not raise any objection to the invoice concerning freight charges, except with regard to one portion of the invoiced amount; a credit note was later issued by Rexnord accordingly, which did not meet with any reaction from the Respondents' side. In view of this, and of the inconclusive character of the evidence presented by the Respondents at the Hearing in support of their defence, the Tribunal finds no valid grounds established for not holding the buyer of the equipment liable for the excess freight charges in the amount claimed.

Siporex is therefore liable for the outstanding excess freight charges which amount to UK £ 130,176.01.

No grounds have been shown for holding Tchacosh liable, besides Siporex, with respect to this part of the claim.

c. Interest

The law applicable to the agreements is that of the United Kingdom. Under English law, where a bill is dishonoured by non-payment interest on the principal debt is awarded at a rate reflecting the rates which would have been incurred had the prevailing party borrowed the amount at the time it fell due. The date from which the interest is to be calculated is the time of the maturity of the bill except in cases where the bill is payable on demand.

The Claimant has submitted a schedule specifying its borrowing rates for the period after each portion of the debts for the unpaid drafts and excess freight charges matured. Neither the standard applicable nor this schedule of rates has been contested by the Respondents. Under these calculations, UK £ 169,464.00 under the unpaid drafts and UK £ 96,476.00 under the claim for excess freight charges is due as interest on the principal amounts of these respective claims.

Therefore, the Tribunal finds that Tchacosh and Siporex are jointly and severally liable in the amount of UK £ 169,464.00 for interest on the draft amounts, and that Siporex is liable in the amount of UK £ 96,476.00 for interest on the excess freight charges.

d. Costs

Applying Articles 38(1) and 40(2) of the Tribunal Rules, the Tribunal determines that the costs of this arbitration shall be apportioned in such a way that the Respondents shall bear the Claimant's costs in the amount of \$25,000.

e. Conversion of the Amounts Due

The amounts specified above which have been calculated and submitted in United Kingdom pounds sterling, shall be converted to United States dollars at the current rate.

Accordingly, the amounts due under each element of the claims equal the following amounts in United States dollars.

Amount due on unpaid drafts	-	US \$	468,205
Amount due for freight charges	-	US \$	211,927
Amount due for interest on unpaid drafts	-	US \$	275,887
Amount due for interest on freight charges	-	US \$	157,063
The Tribunal's costs	-	US \$	25,000

the Claimant REXNORD INC.:

129 082

The Respondents, TCHACOSH COMPANY and IRAN SIPOREX INDUSTRIAL AND MANUFACTURING WORKS LIMITED, are jointly and severally liable to pay and shall pay the sum of Seven Hundred Sixty-Nine Thousand Ninety-Two United States dollars (US \$769,092).

The Respondent, IRAN SIPOREX INDUSTRIAL AND MANUFACTURING WORKS LIMITED shall pay the sum of Three Hundred Sixty-Eight Thousand Nine Hundred Ninety United States dollars (US \$368,990).

Such payment, totalling One Million One Hundred Thirty-Eight Thousand Eighty-Two United States dollars (US \$1,138,082) shall be made out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Democratic and Popular Republic of Algeria dated 19 January 1981.

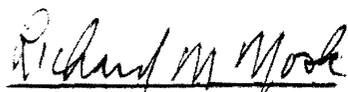
This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague,
10 January 1983



Nils Mangård
Chairman
Chamber Three

In the name of God,



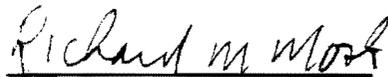
Richard M. Mosk

M. Jahangir Sani

Judge Jahangir Sani took part in the hearing and deliberations in this case. He has refused to sign the award and has stated that he would not sign it.



Nils Mangard



Richard M. Mosk