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ORIGINAL DOCUMENTS IN SAFE

Case No. 136

Date of filing: 10.oct83

** AWARD - Type of Award _____
- Date of Award _____
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
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** DISSENTING OPINION of Mr. M. Holtzman
- Date 10.oct83
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CERTIFIED
IRAN UNITED STATES CLAIMS TRIBUNAL
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دیوان داوری دعوی ایران - ایالات متحدہ

CASE NO. 136
CHAMBER ONE
AWARD NO. 80-136-1

THE GENERAL TIRE & RUBBER COMPANY,
GENERAL TIRE INTERNATIONAL COMPANY,
GENERAL INTERNATIONAL INCORPORATED,
GENERAL TIRE REALTY COMPANY,
Claimants,

and

IRAN TIRE MANUFACTURING (PUBLIC
JOINT STOCK) COMPANY,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	۱۳۶۲ / ۷ / ۱۰ 10 OCT 1983
No.	136

DISSENTING OPINION OF HOWARD M. HOLTZMANN
TO AWARD ON AGREED TERMS

I.

I dissent from the Award on Agreed Terms in this case because there is a serious and unresolved question as to whether the Settlement Agreement entered into by the parties results in the use of funds from the Security Account to purchase goods which were not ordered before 19 January 1981, and which consequently were not included in the Statement of Claim. If that is the true nature of the transaction it does not fall within the framework of the Algiers Declaration, and thus within the standards enumerated by the Full Tribunal in Case A-1 for recording a settlement as an Award on Agreed Terms.

The Award on Agreed Terms accepts and annexes a Settlement Agreement which provides for payment to Claimant of \$2,420,000, of which \$2,300,000 appears to be in settlement

of various elements of the claim, and \$120,000 is in consideration of an undertaking by the Claimant to ship certain goods to Iran Tire Manufacturing Company. The goods which Claimants agree to ship are described in the Settlement Agreement as "those items set forth at Schedule 4, paragraph B of General Tire's Statement of Claim and further described in Attachment C hereto."

Serious questions arise, however, when one compares Schedule 4, paragraph B of General Tire's Statement of Claim with Attachment C to the Settlement Agreement, for the two appear to be different in several respects. For example, the total amount claimed in Schedule 4, paragraph B of the Statement of Claim is less than the total amount shown on Attachment C to the Settlement Agreement; the breakdown on the schedule to the Statement of Claim is different from the more detailed itemization in the attachment to the Settlement Agreement and it is quite impossible to reconcile the two documents as submitted to the Tribunal; in those few instances where the two documents include items which would appear to cover the same thing, (e.g., freight expenses), the amounts differ. Moreover, Attachment C is said to be a "facsimile" of a "pro-forma invoice" listing the items which are to be delivered pursuant to the Settlement Agreement. The "pro-forma invoice" is, however, undated and the Tribunal has been given no explanation of when, or for what purpose, it was prepared. Further questions arise because Attachment C consists of 9 pages, the second through the

seventh pages of which appear to have been printed by a computer, telex or some similar means, while the first and last pages are typewritten quite differently and seem to have been specially produced at a different time. The earliest page of what appears to be the computer or telex material is headed "page 2 of 10", yet there are only 9 pages in all, including the separately typed first and last pages. The Parties have given no explanations with respect to these discrepancies. Additional uncertainties arise from the fact that the last page of Attachment C includes several items for which only estimated amounts are given, and which do not appear, as such, on Schedule 4.

A statement in my dissent in the VSI Case is equally applicable here:

[P]arties who propose a settlement which poses the type of questions which arise in this case must reasonably demonstrate by explanation and evidence that the transaction is appropriately within the framework of the Algiers Declaration. I do not consider that the parties have done so in this case. Because a settlement is a package, it is not possible to approve part and dissent from part. Therefore, the Settlement Agreement should not, in my view, have been recorded as an Award on Agreed Terms.

Opinions of Howard M. Holtzmann re Three Awards on Agreed Terms; Concurring as to Case Nos. 19 and 387; Dissenting as to Case No. 15 (part II).

In the light of the questions which inescapably arise from the documents presented to the Tribunal, I would have given the parties the opportunity to present explanations. I would have asked the parties to submit the orders which

were placed before 19 January 1981, and which formed the basis for the Statement of Claim, and would have compared those orders with Attachment C to the Settlement Agreement. It may well be that such explanations and documents would have resolved the questions I have raised, in which event the Tribunal could have approved the settlement with confidence. Without such further information, however, the Award on Agreed Terms constitutes an unsupported and unwarranted withdrawal of funds from the Security Account.

The majority of the Chamber concluded that it was unnecessary to secure the additional information necessary to resolve the questions which the settlement poses. I think that was a serious mistake of principle and procedure, and I therefore dissent with regret.

II.

The Settlement Agreement requires that the Respondents "shall pay to Bank Markazi Iran the Rial equivalent of the Settlement Amount and will obtain Bank Markazi's approval for the payment thereof to be made to General Tire out of the Security Account."

The reasons for my objections to the inclusion of such a provision in a document annexed to an Award on Agreed Terms are set forth in my opinions in other cases and need not be repeated here. See Concurring Opinions of Howard M. Holtzmann to Awards on Agreed Terms in Case Nos. 279, 427 and 807.

III.

Mr. Kashani has inserted over his signature on the Award on Agreed Terms a statement, similar to that in several recent cases, which reads as follows:

I agree with the Chairman in accepting and recording of the Settlement Agreement as an award on agreed terms but I dissent as to the remaining part of this Award not only because that part unilaterally condemns one of the parties to the performance of its obligations and ignores the reciprocal obligations of the other party but it also provides for an enforcement procedure, which a judge is barred from after deciding the dispute or accepting and recording the settlement according to Article 34 of the UNCITRAL Rules.

My comments with respect to Mr. Kashani's statement are also set forth in earlier opinions and need not be repeated. See Concurring Opinions of Howard M. Holtzmann to Awards on Agreed Terms in Case Nos. 279, 427 and 807 (Part IV); Case No. 243, Concurring Opinion of Howard M. Holtzmann to Award on Agreed Terms.

Dated, The Hague
10 October 1983


Howard M. Holtzmann