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IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دادگیری و معاون امان و احکام متعینه
FILED - ثبت شد	
Date 23 JUN 1986	۱۳۶۵ / ۶ / ۲۱
No. 158	۹۶۰

In His Exalted Name

CASE NO. 158
CHAMBER ONE
AWARD NO. 238-158-1

AERONUTRONIC OVERSEAS
SERVICES, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
THE AIR FORCE OF THE ISLAMIC
REPUBLIC OF IRAN,

Respondents.

DUPPLICATE
ORIGINAL
نسخه برای اصل

SEPARATE OPINION OF JUDGE MOHSEN MOSTAFAVI

I concur in the dismissal of the claims relating to delays and re-engineering, and in the non-award of costs of arbitration. I have already expressed my opinion with respect to interest, taxes and social security premiums and the [applicable] exchange rate (Award No. 180-64-1, Sylvania Technical Systems v. The Government of the Islamic Republic of Iran. In connection with the [applicable] exchange rate, see: Award No. 215-52-1, Blount Brothers Corporation v. The Government of the Islamic Republic of Iran). Here, I consider it necessary only to note several points relating to the claim for attorneys' fees.

As the majority has noted, the costs demanded in connection with attorneys' fees related to the petition for

review of the assessment recommended by the Preliminary Tax Commission. In this connection too, the Claimant's letter dated 19 January 1976 to the Air Force expressly states that the attorneys' fees for protesting the Commission's assessment were quite high and must be paid by the Iranian Air Force :

"For example, the tax assessment for 1973 is such that the attorney fee is \$73,000 just to protest the illegal assessment."

In a subsequent letter dated 27 January 1976 and relating to the Tax Commission's hearing to consider the 1973 tax assessment protest, the Claimant wrote to the Air Force that it was going to take part in a hearing to be held on Tuesday, 4 February 1976, at the Taxation General Office, and that

"It should be noted that in previous years the tax assessment had been made in the aforementioned manner and, following the defense by our attorney, the Committee determined that the case be referred to the Ministry of Economic Affairs and Finance to be settled directly with the Ministry of War and IIAF at the highest level."

A copy of this letter was sent to Mr. Sohrabi, an associate in the law office of Dr. Sotoudeh. It must also be noted that the invoice for those services (referred to in the majority's Award as the first invoice), for the amount of Rials 4,700,178 (\$67,434), bears Mr. Sohrabi's signature. This is the only document available in this case pointing to the provision of an attorney's services prior to 19 January, 1981. There exists no other document in this case indicating that any other law office provided the Claimant with attorney's services in connection with the tax issue prior to this last-mentioned date. A comparison of the date of the 19 January 1976 letter (whose contents have been relied upon by the majority in connection with all four invoices) with the date of the first invoice relating to attorneys' fees viz 10 March, 1976, ie. nearly three months

later), clearly shows that the letter upon which the majority relies in relation to all four invoices relates solely to the first invoice and has no bearing upon the remaining invoices. Only three invoices, dated 11 May 1981, have been submitted by the law office of Dr. Kordestani. Their contents expressly relate, respectively, to :

- "1976 Tax Litigation (per Mr. Costello telexed authorization of 23 January 1981";
- "1977 Tax Litigation (per Mr. Costello telexed authorization of 23 January 1981)"; and
- "1978 Tax Litigation (per Mr. Costello telexed authorization of 27 February 1981)."

That is to say, the authorization for engaging the attorney's services came after 23 January 1981 and 27 February 1981, respectively, and the services were thus necessarily rendered after those dates. Therefore, contrary to the opinion of the majority, this claim cannot have been outstanding as of 19 January 1981, at least as regards the three aforesaid invoices, because on principle, the authorization for legal representation was granted after 19 January 1981, and the services must, naturally, have been rendered after that date as well.

The majority engages in non sequitur in drawing its conclusions from the Claimant's letter of 19 January 1976, which letter has been described above and relates specifically to the protest of the tax assessments for the years 1973 on and to the involvement of Dr. Sotoudeh's law office. The majority states:

"... The letter then lists as an example attorneys' fees of \$73,000 only to protest the 1973 assessment. The attorneys' fees reflected in the May 1981 invoices thus relate to legal services that started not later than 1973, were caused by events occurring from then through 1978 and were of a continuing nature..."

This conclusion bears no relation to the letter of 19 January 1976. This letter, and the invoice submitted on the basis thereof and bearing the signature of Mr. Sohrabi on behalf

of Dr. Sotoudeh, clearly demonstrate that this letter related to the legal services of Dr. Sotoudeh's law office and is unrelated to Dr. Kordestani's office; moreover, this is the reason why a copy thereof was sent to Mr. Sohrabi, an associate in Dr. Sotoudeh's law office. Furthermore, the fact that these legal services both relate to a single matter-- namely to taxes-- does not in any way constitute evidence that if the services of Dr. Sotoudeh's law office were completed prior to 19 January, 1981, those of Dr. Kordestani's law office were also carried out throughout this same period of time. The invoices submitted by those two offices are five years apart (the invoice by Dr. Sotoudeh's law office was sent on 10 March 1976, and those by Dr. Kordestani's office were sent on 11 May 1981). This fact demonstrates only that even if both offices submitted invoices relating to tax disputes, said invoices nonetheless definitely arose out of separate services relating to very different periods of time. It is thus not at all clear just why the majority holds that the services of Dr. Kordestani's office ended in 1978, or why it infers this from the letter dated 19 January 1976, even though the invoices themselves reveal that his office acted in accordance with authorizations granted them on 23 January 1981 and 27 February 1981, and not in 1978 or thereabouts.

Aside from the foregoing, no demand was ever made for the amount relating to the 10 March 1976 invoice signed by Mr. Sohrabi and sent by Dr. Sotoudeh's law office, even though it was mentioned in the letter of 19 January 1976. Confirmation of this position can be found in the text of the Award itself. We read in Paragraph 46 thereof that

"...At a meeting of representatives of the Claimant and the Air Force on 16 August 1978... the claim for additional costs was also not mentioned. Finally, the record contains a telex dated 19 October 1978 from the Claimant's program manager, who at the time was charged with supervising the performance of all of the Claimant's military contracts in Iran, to its superior. The telex gives 'the status of /the Contract/' ...it lists the... three invoices, the payment of which the Claimant seeks in the present Claim, as

'remain[ing] outstanding' ... At the end, the telex describes the situation with regard to taxes assessed against the Claimant in Iran. Although the telex purports to deal with the status of the whole Contract, and in fact deals with all other issues of the present Claim, it contains no reference to any claim for additional costs." [emphasis added]

In this way, it may be seen that no demand whatsoever has been made or raised in this telex with respect to the claim for attorneys' fees. Since the Claimant has even mentioned a claim for the sum of \$7,760 relating to the invoice dated 29 January 1974 in connection to Amendment No. 7 in the said telex, how could it possibly have failed to make mention of a claim amounting to over \$130,000 in attorneys' fees, if it had deemed itself entitled to compensation for attorneys' fees?

In addition to this, another interesting point reflected in the telex is, that it states that the Claimant was in contact with Mr. Sohrabi in connection with taxes. This clearly shows that up to that time-- ie. 19 October 1978-- the issue of taxes had been taken up only by Dr. Sotoudeh's law office, and that the inference of the majority in Paragraph 57 of the Award, that "The attorneys' fees reflected in the May 1981 invoices thus relate to legal services that started not later than 1973, were caused by events occurring from then through 1978 and were of a continuing nature" [emphasis added], is incorrect. Therefore, it is abundantly clear that the invoices relating to May 1981 concern services rendered after 19 January 1981; and the invoice dated 19 January 1976 has also not been demanded, for reasons which the Tribunal itself has also accepted.

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Mohsen Mostafavi