IRAN 167 [redacted] BUNAL

دیوان داوری دعاوی ایران - ایالات متحده

IGINAL DOCUMENTS IN SAFE

214

Case No. 167

Date of filing: 12 Jan 87

** AWARD - Type of Award Corrections To English Text

- Date of Award 12 Jan 87

2 pages in English _____ pages in Farsi

** DECISION - Date of Decision _____

_____ 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: _____

_____

- Date _____

_____ pages in English _____ pages in Farsi

R/12

214

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحده

CASE NO. 167
CHAMBER THREE
AWARD NO. ITL 65-167-3

ANACONDA-IRAN, INC.,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN and THE NATIONAL IRANIAN COPPER INDUSTRIES COMPANY,
Respondents.

CORRECTION TO ENGLISH TEXT
OF INTERLOCUTORY AWARD

1. The following corrections are hereby made to the English text of Award No. ITL 65-167-3, filed in this Case on 10 December 1986:

a. At paragraph 67, line 4, the word "were" is deleted and the word "was" is inserted.

b. At paragraph 89, line 6, the word "have" is deleted and the word "has" is inserted.

c. At paragraph 97, line 9, the citation "Decision No. 32-A18-FT" is deleted and the citation "Decision No. DEC 32-A18-FT" is inserted.

2. A copy of the corrected pages is attached.

Dated, The Hague
12 January 1987

Michel Virally
Chairman
Chamber Three

In the Name of God

Charles N. Brower

Parviz Ansari Moin

Opinions are the same as to the main Award

submitted a one page listing of the allegedly reimbursable expenses and the underpayment.

66. NICIC objects to compensation for the allegedly reimbursable costs on the ground that they were and have remained in dispute between the Parties since, at least, June 1978 up to present. NICIC relies on a letter dated 21 June 1978 from AI, signed by "W.L. Orrell, Manager Policy and Control" and countersigned by "J. Borhany, Director of Finance-NICICO."

67. The Tribunal notes that it appears from the above-mentioned letter of 21 June 1978 that at that date payment for expenses in the total amount of U.S. $121,786.39 was disputed and that it was agreed between the Parties that this amount would not be paid pending investigation and resolution of the question as to whether reimbursement for these costs was allowable under the TAA or not. There is no evidence offered substantiating that these items were clarified subsequently to the satisfaction of NICIC. The Tribunal therefore rejects this part of the Claim. The alleged underpayment is also rejected for want of substantiation.

68. AI further claims, with the support of contemporaneous documentation in the form of copies of invoices including supporting documentation, costs in the amount of U.S. $976,860.86 for the period of May 1978 through March 1979 and U.S. $233,439.57 for the period of April 1979 through May 1979.

69. Although NICIC generally agrees that expenses in this category are due AI under the TAA, NICIC disputes, on the basis of the Audit Report, the amounts claimed. NICIC admits liability for the months May 1978 through March 1979 in the amount of U.S. $201,334.10. As to the months of April and May 1979 NICIC admits no liability, on the following ground:

have risen considerably" and that it had "not yet reached commercial production." NICIC further contends that "[b]y submitting the Feasibility Study Report [called for by Section 2.01 (d) of the TAA], which formed an inseparable part of the [TAA], [AI] committed to implement and complete the project." In its enumeration of the damages NICIC lists "cost overrun", "repairing various sections" of the facilities, "[d]amages caused by the prolongation of the length of the project" or "because the smelter and concentrator were not ready on schedule" and "for repairing the sedimentation dam".

89. The Claimant contends that the counterclaims are outside the jurisdiction of the Tribunal and inadmissible on other grounds as well. In support of its contentions the Claimant raises a series of arguments which also constitute answers to the questions raised by the Tribunal in its Order filed 7 June 1984. NICIC also has replied extensively to these questions.

90. The Tribunal finds that certain of the arguments raised by the Parties can be examined separately as a preliminary matter, while others raise issues so intrinsically related to the merits that they cannot be separated therefrom.

B. JURISDICTION AND ADMISSIBILITY

i) CONTRACTUAL LIMITATION

91. The principal argument against the Tribunal's jurisdiction is based on Article 9 of the TAA (see paragraph 31, supra) which, according to the Claimant, expressly prevents NICIC from asserting a counterclaim.

92. This elaborate provision creates, inter alia, a very specific mechanism for settling disputes between the

reductions and offsets, including "excess profits." It is doubtful, however, that a contractual provision like the one here at issue effectively would have protected AI in such a case. In the event of nationalization the disputes that may arise in respect of compensation do not necessarily or exclusively arise out of a possible breach of contract, but rather from the application of the law of nationalization. Such disputes therefore are not always regulated solely by the application of contractual provisions for the settlement of disputes between the parties.

96. According to AI the contractual limitations to the jurisdiction and powers of the ICC apply similarly to this Tribunal. AI asserts that "[a]s Respondent could not have asserted a counterclaim or set-off before the ICC, it therefore may not be permitted to assert a counterclaim before this Tribunal without this Tribunal violating the sanctity of the Contract upon which it is sitting in judgment."

97. This sweeping assertion completely misconceives the nature of this Tribunal and of its jurisdiction. This Tribunal has not been instituted by a contractual agreement between the Parties and does not derive its authority from their will. It has been instituted by an inter-governmental agreement having the status of an international treaty and it is subject to international law. This already has been recognized in previous awards and decisions. Cf., e.g., Case No. A18, Decision No. DEC 32-A18-FT at 14-15 (6 April 1984), reprinted in 5 Iran-U.S. C.T.R. 251, 259; and Burton Marks and Harry Umann and Islamic Republic of Iran, Award No. ITL 53-458-3 at 8-9 (26 June 1985). This agreement is evidenced, inter alia, by two declarations, the General Declaration and the CSD ("Algiers Accords"), which have defined the Tribunal's powers and jurisdiction.

98. The Algiers Accords have established a mechanism of settlement of all claims described in Article II of the CSD not settled by the parties. Pursuant to General