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ORIGINAL DOCUMENTS IN SAFE

Case No. 173

Date of filing: 31 oct 1988

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

** 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 _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: Correction To English version
of the award
- Date 31 oct 1988
4 pages in English _____ pages in Farsi

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CASE NO. 173

CHAMBER THREE

AWARD NO. 378-173-3

HOUSTON CONTRACTING COMPANY,
Claimant,

and

NATIONAL IRANIAN OIL COMPANY,
NATIONAL IRANIAN GAS COMPANY,
and THE ISLAMIC REPUBLIC OF IRAN,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL
دادگاه داری دعوی ایران - ایالات متحدہ

FILED - ثبت شد

Date 31 OCT 1988

تاریخ ۱۳۶۷ / ۱۰ / ۹

CORRECTION TO THE ENGLISH VERSION OF THE AWARD

I. Introduction

1. On 24 August 1988, the Claimant filed a "Request for Correction" to Award No. 378-173-3 pursuant to Article 36 of the Tribunal Rules.

2. Article 36, paragraph 1 of the Tribunal Rules, provides for the correction of "any errors in computation, any clerical or typographical errors, or any errors of similar nature."

II. The Claimant's Request For Correction

3. The Claimant first notes that the computation of a deduction made in paragraph 185 of the Award for costs of labor in excess of ten hours per day is not as reflected on the relevant timesheets and cost calculation sheets. The Tribunal determines that this is the result of an error in computation that should be corrected pursuant to Article 36, paragraph 1 of the Tribunal Rules.

4. Second, the Claimant asserts that in paragraph 193 the Tribunal has failed to take into account the Claimant's evidence of the standby costs of equipment for the period 10-30 September 1977. The Tribunal originally excluded this amount from the computation on the basis that the relevant daywork rate sheet was not submitted in evidence. The Tribunal now acknowledges that the daywork rate sheet has been submitted but that it was initially overlooked by the Tribunal as it has been incorrectly located by the Claimant in Appendix B to the relevant exhibit. The Tribunal concludes that an error in computation has arisen therefrom that should be corrected pursuant to Article 36, paragraph 1 of the Tribunal Rules.

III. CORRECTION

For the foregoing reasons, the Tribunal makes the following corrections to Award No. 378-173-3. Copies of the corrected pages are attached to this Correction and are made a part thereof.

1. Paragraph 185

In the twentieth and twenty-first lines of paragraph 185 the figures "Rls. 17,994,320" and "U.S.\$255,238.58" are replaced by "Rls. 2,865,560" and "U.S.\$40,646.24" respectively.

2. Paragraph 186

In the last line of paragraph 186 the figure "U.S.\$761,838.65" is replaced by "U.S.\$976,430.84."

3. Paragraph 193

In the last sentence of paragraph 193 the figures "Rls. 20,954,820" and "U.S.\$247,121.56" are replaced by "Rls. 21,920,820" and "U.S.\$260,823.69" respectively.

4. Paragraph 273

In the third and fifth lines the figures "U.S.\$2,963,971.66" and "U.S.\$3,161,412.16" are replaced by "U.S.\$3,192,265.98" and "U.S.\$3,389,706.48" respectively.

5. Paragraph 274

In the last sentence the figures "U.S.\$3,151,744.16," "U.S.\$3,161,412.16," "U.S.\$3,550,529.02" and "U.S.\$3,151,744.16" are replaced by "U.S.\$3,380,038.48,"

"U.S.\$3,389,706.48," "U.S.\$3,807,008.73" and
"U.S.\$3,380,038.48" respectively.

6. Paragraph 275

In the fourth line the figure "U.S.\$3,355,249.92" is replaced by "U.S.\$3,597,623.25."

7. Paragraph 276

In the fourth and fifth lines the figures "U.S.\$1,913,249.92" and "U.S.\$3,355,249.92" are replaced by "U.S.\$2,155,623.25" and "U.S.\$3,597,623.25" respectively.

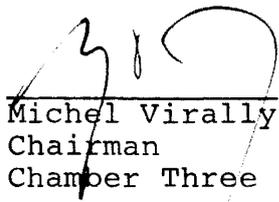
8. Paragraph 315 ii)

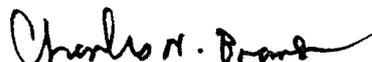
In the first line the figure "U.S.\$1,913,249.92" is replaced by U.S.\$2,155,623.25."

9. Paragraph 480 a)3.

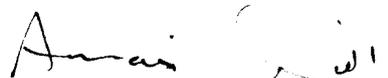
In the first, second and third lines the phrase "the sum of Four million four hundred three thousand five hundred eighty-one United States Dollars and Four Cents (U.S.\$4,403,581.04)" is replaced by "the sum of Four Million six hundred forty-five thousand nine hundred fifty-four United States Dollars and Thirty-seven Cents (U.S.\$4,645,954.37)"

Dated, The Hague
31 October 1988


Michel Virally
Chairman
Chamber Three


Charles N. Brower

In the Name of God


Parviz Ansari Moin

The timesheets list the hours for each laborer and indicate delay in supply of materials as the reason for the standby, and are all signed or initialled by Foster Wheeler staff. The Tribunal is, however, not convinced as to the claim for payments made to laborers for a number of hours in excess of those for which the labor was actually on standby. While this may have been a necessary factor for HCC to retain its workforce (and this has not been proven by HCC), it is not a basis for full reimbursement from NIOC. Equally, signature by Foster Wheeler is clearly for the record of work performed and not, as alternatively provided for on the time sheets, for payment. Given that Clause 8.8.3 of the Special Conditions provides that the Contractor must endeavor to "minimise or eliminate extra costs" as a result of delay in delivery of Company supplied materials (see paragraph 184, supra), the Tribunal will consider only the portion of the claim which reflects the normal 10 hours working day and deducts the sum of Rls. 2,865,560 equal to U.S.\$40,646.24, from the claim. The deduction is calculated by taking the figure shown on each timesheet for extension beyond normal hours and multiplying this by the relevant number of days covered by the timesheet.

186. The Tribunal also deems it appropriate to reduce the claim by the amount of Rls. 115,585,016, being the amount claimed by HCC in respect of "Interruption of Working Programme." These expenses, which relate to management, warehouse and administrative costs, are not evidenced by any supporting documents or calculations and the Tribunal is not convinced that they reflect additional expenses that would otherwise not have been incurred. The Tribunal therefore awards HCC the sum of U.S.\$976,430.84.

187. Item 7 - Standby of civil crews. HCC claims the sum of U.S.\$956,958.26 for delays and standby costs allegedly incurred by its civil work crew as a result of Foster Wheeler's and OSCO's failures and delays in supplying materials over an eight month period. Again HCC supports its

correspondence to Foster Wheeler, in which HCC continuously advised it of the situation.

192. NIOC submits no substantive defense but contends, in the Becker affidavit, that there are numerous errors in calculation, that the timesheets are not signed, that the claims are unsupported by the documents submitted and that HCC has not provided the basis for its calculations.

193. The documents submitted by HCC clearly establish that all Parties were aware of the existence of a delay due to lack of materials from 10 September to 31 October 1977. The Tribunal finds this part of the claim to be sufficiently evidenced both as to the amount of the claim and notification to NIOC of the claim no later than November 1977. However, there is no signed authorization for the standby costs of the erection equipment and no contemporaneous evidence quantifying the claims for extended costs of the erection equipment, extended costs and inefficiency of the prefabrication crew or the additional camp costs or site services. Therefore, the Tribunal awards HCC only the sum of Rls. 21,920,820 for September and October 1977, as evidenced by HCC under this part of the claim, less Rls. 3,532,750 deduction for labor costs in excess of ten hours per day, to give a net figure of U.S.\$260,823.69.

194. Item 11 - Padding of pipe. The next claim is in the sum of U.S.\$396,043.99, being the costs claimed for padding the pipe in rocky areas. HCC contends that, in addition to the rock blasting work performed under Variation Order No. 26 (see paragraph 162, supra), it was requested to provide padding for the pipe and that it has not been paid for this additional item. In evidence are the relevant worksheets, indicating that this work was actually performed, and several letters from HCC requesting payment.

195. NIOC does not deny that the work was performed but asserts that payment for the padding was included in the

268. HCC has submitted the relevant timesheets as evidence of the calculation of its claim.

269. The Tribunal finds this claim to be adequately documented, showing both Foster Wheeler's instruction and the quantification of the claim. The Tribunal therefore awards HCC the sum of U.S.\$28,381.42.

270. Item 49 - Supply of c.p. materials. HCC's final claim for extra work is for U.S.\$1,713.48 for the supply and delivery costs for various materials allegedly provided by HCC for the cathodic protection system. HCC submits in evidence an HCC purchase order with the notation "charge to F. Wheeler," in the amount of Rls. 39,000, together with a timesheet for delivery of lime, for which HCC claims Rls. 9,150, and a summary showing the various other components of the claim.

271. NIOC contends that work on the cathodic protection system was never finished and that HCC's failure has caused damage to the pipeline, and denies that any payment is due to HCC.

272. The Tribunal does not accept that the purchase order constitutes sufficient evidence of the claim in respect of the items shown thereon and that part of the claim is therefore rejected, together with Rls. 72,650 for the items documented only on the summary. Equally, the Tribunal finds no evidence that the lime was delivered at Foster Wheeler's request and therefore the Tribunal also dismisses this final part of the claim.

273. To summarize, the Tribunal has accepted as valid or partly conceded, 19 of the disputed claims for extra work, totalling U.S.\$3,192,265.98. When added to the amount for items fully conceded by NIOC, a total of U.S.\$3,389,706.84 is arrived at for extra work.

274. The Tribunal must now consider to what extent a cost adjustment factor should be applied to these sums. As stated in paragraph 166, supra, the Tribunal has determined that cost adjustments are applicable to work performed under Variation Orders at the contractual rates unless specifically agreed otherwise. Variation Orders should have been issued by OSCO for all of the extra works awarded above, other than those conceded by HCC in its Rebuttal as not being subject to adjustment, namely item 84, for Rls. 681,600, equal to U.S.\$9,668. As the remainder of the amounts awarded are all based on the contractual schedule of rates, the Tribunal considers it appropriate to apply the last cost adjustment factor of 12.34608% to those amounts i.e., U.S.\$3,380,038.48 (being U.S.\$3,389,706.48 minus U.S.\$9,668) to reach a total of U.S.\$3,807,008.73 (being U.S.\$3,380,038.48 x 112.34608% plus U.S.\$9,668).

275. The Tribunal must now address the issue of deductions and retentions for contractor's tax and Social Security payments. Contractor's tax of 5.5% must be deducted from the adjusted figure to give a net figure of U.S.\$3,597,623.25. The Tribunal finds it unnecessary to apply any further withholding for the reasons discussed in paragraph 173, supra.

276. It is not contested by the Parties that of the U.S.\$5,000,000 payment reflected in Payment Certificate No. 16 HCC has received only U.S.\$1,442,000. The Tribunal therefore awards HCC the sum of U.S.\$2,155,623.25 (U.S.\$3,597,623.25 less U.S.\$1,442,000 already received) in respect of extra work performed but not paid.

e. Release Of Retention Monies

277. HCC claims the release to it of U.S.\$1,700,229 in retention monies withheld by OSCO during the term of the Gach Saran Contract, which were to be released to HCC on

312. The Tribunal dismisses this counterclaim for lack of evidence, without having to address the merits.

xii) Taxes And Social Security Premia

313. NIOC's final counterclaims are in respect of allegedly unpaid Social Security premia of Rls. 306,366,030, plus an unspecified amount for unpaid taxes. NIOC refers the Tribunal to the fact that the Gach Saran Contract provided, in Clause 41 of the General Conditions, for deduction of 5% of each payment for Social Security contributions, to be released on production of a clearance certificate from the Social Security Organization. NIOC has also submitted separate memoranda relating to the liability for and calculation of the amounts claimed.

314. On review of this evidence, the Tribunal notes that the only piece of evidence relating to the claim for Social Security payment is dated 29 May 1986, and refers to a "declaration of liability ... dated 1st December 1984." The Tribunal dismisses these counterclaims for the same reasons as those elaborated in respect of the Esfahan-Rey Contract.

g. Summary

315. The Tribunal has therefore found that HCC is entitled to receive the following sums under the Gach Saran Contract:

- i) U.S.\$1,050,099.12 for unpaid cost adjustments;
plus
- ii) U.S.\$2,155,623.25 payment for extra work and work performed under the Variation Orders;
plus
- iii) U.S.\$1,440,232 payment due on termination of the Gach Saran Contract.

~~interest due at the rate of ten percent (10%) per annum (365-day basis) from 4 November 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account;~~

3. the sum of Four million six hundred forty-five thousand nine hundred fifty-four United States Dollars and Thirty-seven Cents (U.S.\$4,645,954.37), plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 15 December 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account; and
4. the sum of Twenty-three thousand four hundred United States Dollars (U.S.\$23,400) as one half of the awarded costs of arbitration.

All other claims of HOUSTON CONTRACTING COMPANY against NATIONAL IRANIAN OIL COMPANY are dismissed.

b) The Respondent NATIONAL IRANIAN GAS COMPANY is obligated to pay to HOUSTON CONTRACTING COMPANY:

1. the sum of Three hundred ninety-nine thousand seven hundred eighty-six United States Dollars and Fifty-six Cents (U.S.\$399,786.56), plus simple interest due at the rate of ten percent (10%) per annum (365-day basis) from 30 September 1979 up to and including the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account;
2. the sum of One hundred eighty-three thousand four hundred forty-four United States Dollars and Thirty-five Cents (U.S.\$183,444.35), plus simple interest due at the rate of ten percent (10%) per