

184-165

112-178

ORIGINAL DOCUMENTS IN SAFE

165

Case No. 184

Date of filing: 15-Dec-87

** AWARD - Type of Award _____
- Date of Award _____
_____ 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 Mr Ameli
- Date 15-Dec-87
5 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

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	15 DEC 1987 تاریخ
	۱۳۶۶ / ۹ / ۲۴
No.	184

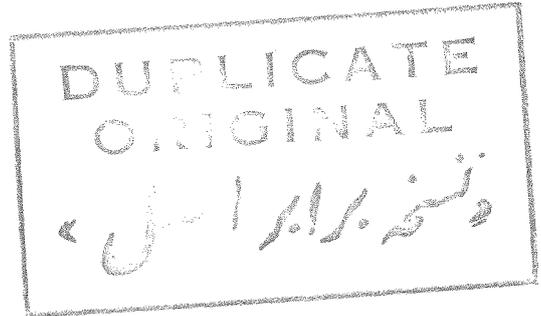
In His Exalted Name

CASE NO. 184

CHAMBER ONE

AWARD NO. 320-184-1

GRANGER ASSOCIATES,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
THE RADIO AND TELEVISION
ORGANIZATION OF THE ISLAMIC
REPUBLIC OF IRAN,
THE TELECOMMUNICATION COMPANY
OF IRAN, THE CIVIL AVIATION
ORGANIZATION OF IRAN,
Respondents.



SEPARATE OPINION OF MR. AMELI

I am pleased to learn that finally Mr. Böckstiegel¹ and Mr. Holtzmann in their Separate Opinion filed on 24

¹ Nonetheless it is unprecedented for a Chairman to join a party-appointed arbitrator in commenting on Dissenting Opinion of another party-appointed arbitrator in this Tribunal. Even Mr. Mangard avoided doing so in an analogous situation. See Mr. Sani's Reasons for not signing the Award, Mr. Mosk's Comments, Mr. Sani's Reply and Mr. Mosk's Further Comments in RayGo Wagner Equip.
(Footnote Continued)

November 1987 came to recognize the significance of the Claimant's prior knowledge of the Tribunal's Order of 1 October 1987, that I had pointed out in my Dissenting Opinion of 20 October 1987. However their examination of the matter, after the Award had been issued, was one-sided and speculative.

The integrity of the Tribunal would have been better vindicated if long before the Award was issued, that is, when I raised the question with him, the Chairman had held a deliberative session. The decision as to the person to be investigated and who should conduct the investigation should have been made by the Chamber and pursuant to a Chamber deliberation rather than by the above mentioned two colleagues and without consulting or even informing me of it. For example, if the matter involved the Chamber Clerk or other staff member of the Tribunal, the investigation must have been conducted by the Secretary General pursuant to Articles 1 and 9 of the Tribunal Staff Rules.²

(Footnote Continued)

Co. and Starline Iran Co., Award No. 20-17-3 (15 December 1982), reprinted in 1 Iran-U.S. C.T.R. 411, 415-441.

²Article 1 in pertinent paragraphs provides:

"(3) Members of the Secretariat shall exercise the utmost discretion in regard to official matters. They shall not communicate to any person any information known to them by reason of their official position which has not been made public, except in the course of their duties or by authorization of the Secretary-General, nor shall they use such information to their private advantage. These obligations do not cease upon separation from the Secretariat.

(4) In the exercise of their functions and the performance of their duties and obligations, the members of the Secretariat are responsible to the Secretary-General; provided, however, that any member of the Secretariat assigned the function of assisting one or

(Footnote Continued)

Neither is there anything in the record in this Case nor otherwise am I aware of any information to support the veracity of my colleagues' statement that the Chamber Clerk and not the others received telephone inquiries on behalf of the Claimant and in particular the Claimant's reasons for those telephone calls. It is unfair to use as a scapegoat for the wrongs of others an excellent and reliable Chamber Clerk who has worked in same position for over four years, to attribute to him some wrongs and then inaccurately attempt to justify them.

For instance, even if as alleged the Chamber Clerk answered the Claimant's telephone inquiries, it was wrong for him to inform the Claimant that the conformity of the initial Bill of Sale with the Settlement Agreement was at issue and under deliberation within the Chamber. Likewise, it was wrong for him to advise the Claimant that it was premature to file anything at the time because the Tribunal was still deliberating upon the matter. No doubt both instances are in violation of Article 1(3) of the Tribunal Staff Rules cited in footnote 2 supra. But there is nothing to support my

(Footnote Continued)

more members of the Tribunal in research or related activities shall, in the performance of that function, be responsible to and subject to the supervision of, such member or members of the Tribunal."

Article 9 in pertinent paragraphs provides:

"1. The Secretary-General may impose disciplinary measures on Staff members whose conduct is not satisfactory. He may summarily dismiss a Staff member for serious misconduct.

2. The disciplinary measures referred to in the preceding paragraph shall consist of (1) written censure, (2) suspension without pay, (3) demotion or (4) dismissal for misconduct. Suspension pending investigation shall not be considered a disciplinary measure."

colleagues' alleged facts. In fact, for the same reason I did not accuse others on the Tribunal and limited myself to raising the question in my Dissenting Opinion, although I could guess who the source was.

It is also wrong for my colleagues to confirm the improper actions of the Claimant in pestering the Chamber Clerk with repeated telephone inquiries and thereby encourage other American claimants to follow the improper conduct that they normally do not pursue in their own court system. Moreover, to state as my colleagues do, that the Claimant's telephone inquiry was because the Award on Agreed Terms had not been issued is neither alleged by the Claimant nor substantiated by my colleagues. In fact, it is not the practice of American claimants to inquire from chamber clerks as to the Tribunal's reasons for delay in rendering of awards, particularly where the settlement agreement, such as the one in this Case, does not specify a time-limit within which the Tribunal to issue the Award on Agreed Terms. Considering the practice of the Tribunal with regard to other cases there had been no unusual delay in this Case.

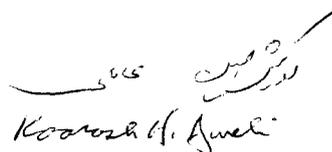
It is completely unjustifiable to contend, as my colleagues do, that the Claimant's recognition of the incorrectness of the initial Bill of Sale was obvious to anyone comparing it with the explicit text of the Settlement Agreement. The non-conformity was not at all obvious even to my colleagues themselves. They were ready to issue the Award on Agreed Terms as soon as they had examined the material and checked with their Legal Assistants, until I raised the issue with the Chairman and pursuant to which I was requested by him to write a memorandum for further clarification. It was only after a reply memorandum by my counter-part, and the Chairman's further examination of the matter that my colleagues agreed with me on two of my three points. It is

unbelievable now to state that it was obvious from the outset that the initial Bill of Sale was incorrect. Moreover, if the matter was obvious why did it not occur to the Claimant's able attorneys in the beginning?

Therefore, contrary to my colleagues' view, it is clearly both unusual and surprising that the Claimant knew before the Tribunal's Order of 1 October 1987 that it should correct, and how it should correct, the Bill of Sale it had originally submitted pursuant to the Settlement Agreement. My colleagues have gone a long way in their speculation by stating that the Claimant itself had anticipated what would be required and had acted so as to have a correct Bill of Sale available in The Hague for immediate filing. My colleagues have no basis to support these contentions. They even lack any assertions by the Claimant on which to base these speculations.

Dated, The Hague,

24 Azar 1366 / 15 December 1987



Koorosh H. Ameli

Koorosh H. Ameli