

185-58
185-58

ORIGINAL DOCUMENTS IN SAFE

Case No. 185

Date of filing: 2 sept 1983

** AWARD - Type of Award FINAL
- Date of Award _____
16 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

DUPLICATE
ORIGINAL

نسخہ برابر اصل

CASE NO. 185

CHAMBER THREE

AWARD NO. 70-185-3

CHAS. T. MAIN INTERNATIONAL, INC.,

Claimant,

and

MAHAB CONSULTING ENGINEERS, INC.
and THE MINISTRY OF ENERGY OF THE
ISLAMIC REPUBLIC OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
فیت شد - FILED	
1262 / 6 / 11	2 SEP 1983
185	185

AWARD

Appearances

For the Claimant:

Ms. Carol Goodman,
Attorney
Mr. Marc Sager,
Co-counsel
Mr. John J. Sullivan,
Vice President, Chas. T. Main
International, Inc.

For the Respondents:

Mr. Mohammad K. Eshragh,
Deputy Agent of the Islamic
Republic of Iran
Dr. Mohammad Khavar,
Legal Adviser to the Agent
Mr. Ahmad Babaie,
Attorney of Mahab Consulting
Engineers, Inc.
Mr. Ali Amini
Mr. Mohammad Nili,
Mahab Consulting Engineers,
Inc.
Mr. Safar Behzadi Zad,
Ministry of Energy

Also present:

Mr. Arthur W. Rovine
Agent of the United States
of America

I. THE PROCEEDINGS

Claimant Chas. T. Main International, Inc. ("Main") filed its claim on 21 December 1981 against Respondents Mahab Consulting Engineers, Inc. ("MAHAB") and the Ministry of Energy of the Islamic Republic of Iran ("Ministry of Energy").

On 20 May 1982, MAHAB, now known as Electrical Engineering Services Company (or Moshanir), and the Ministry of Energy filed their Statements of Defence. In its Statement of Defence the Ministry also raised a counterclaim.

On 1 December 1982, a Pre-Hearing Conference was held. Pursuant to an order of the Tribunal, the parties were required to file at specified times prior to the hearing their evidence and memorials. The Hearing was held on 17 May 1983.

II. CONTENTIONS OF THE PARTIES

Main contends that it is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, one of the states of the United States, and a wholly-owned subsidiary of another Massachusetts corporation, a majority of whose shares are owned by citizens of the United States.

Main is a professional engineering firm that provides engineering and construction management services internationally on electric power generation and transmission projects.

The claim is based on a General Service Agreement ("the Agreement") entered into on 14 February 1976 by MAHAB and an Iranian corporation, Parsmain, Inc. ("Parsmain"), in which Main had a 49 per cent interest.

The Agreement stated that Parsmain was to provide engineering services, technical assistance and cooperation to MAHAB in matters related "to Generation-Transmission-Distribution of Power in all phases of work also management, inspections and research services related to the Ministry of Energy and its subsidiaries projects "(Article 2). There was no further definition of the services and no prices set forth for the services. The Agreement provided that "[o]ffers for projects of cooperation shall be submitted by Parsmain to MAHAB upon request of MAHAB. The offers shall specify particular terms and conditions" (Article 3.1). The Agreement provided that "Parsmain shall not be entitled to enter any works, in the fields covered by this Agreement, with any other associates except Chas. T. Main (from date of Agreement)". The Agreement also stated that compensation for services rendered would be paid "on the basis to be mutually agreed upon".

Main contends that it performed services upon the direct request of MAHAB and seeks compensation for these services in the amount of US \$745,450.50 plus interest. Although the Agreement was executed by MAHAB and Parsmain, Main argues, there was a direct contractual relationship between Main and MAHAB. According to Main this relationship resulted either from the original intention of the parties or, in the alternative, from a subsequent alteration of the Agreement by which Main was substituted for Parsmain as the party to perform the engineering services and to be paid directly. As alternative theories, Main argues that it can be viewed as a third-party beneficiary of the Agreement or that it is entitled to compensation for services actually rendered to MAHAB at the direct request of MAHAB.

With regard to part of the claim representing an invoiced amount of US \$378,340, Main argues, in addition, that the monies were assigned to Main, at Parsmain's request and with MAHAB's authorization. In this connection Main contends that in October 1979 MAHAB instructed Bank Markazi Iran to transfer to Main the United States dollar equivalent of 26,710,829 Rials, i.e. US \$378,340, to Main's Boston bank account. This sum represented payment in full of Main's invoice nos. 3, 4 and 5 plus an amount that MAHAB had previously retained on invoice nos. 1 and 2 less Iranian taxes and other charges. MAHAB informed Bank Markazi that all necessary approvals had been obtained for payment and requested that the transfer be made.

Respondents defend by arguing that, the claim being based on a contract with Parsmain, an Iranian company, the Tribunal has no jurisdiction over it. They further contend that MAHAB is contractually bound only to Parsmain and that, as a mere subcontractor, Main has no claim, contractual or otherwise, against either of the Respondents.

In its counterclaim, the Ministry seeks US \$5,000 in "damages caused in defending an unfounded claim" against it.

All parties seek their costs of the arbitration.

III. JURISDICTION

Main presents this claim on its own behalf, and therefore the Tribunal need not determine whether, as contested by Respondents, Main could have asserted a claim on behalf of Parsmain.

Main submitted evidence that at all relevant points in time it was organized under the laws of the United States. Main also submitted evidence that it is a wholly-owned subsidiary of C.T. Main Corporation, and that the latter is organized under the laws of Massachusetts. Furthermore, Claimant submitted affidavits from employees of C.T. Main Corporation indicating that they are United States citizens and that they own more than 50% of the capital stock of that

company. In light of this evidence the Tribunal holds that the claim is a claim of a national of the United States within the meaning of Article VII, paragraph 2, of the Claims Settlement Declaration.

It is undisputed that MAHAB is an entity controlled by the Government of Iran. Thus it is clear that Respondents come within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

In conclusion, the Tribunal finds that it has jurisdiction over the claim under Article II, paragraph 1, of the Claims Settlement Declaration.

IV. THE MERITS OF THE CASE

A review of the evidence shows that the parties' course of conduct was consistent with the Respondents' contention that Main performed as a subcontractor to Parsmain and that all parties concerned understood this to be the case. The offers of employees to work on MAHAB projects were often made in the context of the Agreement. One telex from Main states that "Parsmain is pleased to introduce" a named Main employee. In a letter from Main to Parsmain dated 17 May 1978, Main refers to the General Agreement and "authorizes Parsmain to assign MAIN experts to MAHAB" and "to take action as required to facilitate the work of these experts". An appendix to this letter sets forth the fees to be charged

by Main and provides that "PARSMAIN (or a third party when appropriate) shall pay directly to Chas. T. Main International, Inc." amounts due for the services of Main employees. A telex dated 4 August 1978 from Parsmain to MAHAB announces that "Parsmain is pleased to introduce to MAHAB" another named Main employee. In another letter to Mahab dated 10 August 1978, Main refers to "our experts assisting MAHAB in PARSMAIN related contracts".

A similar pattern is found in reports on the progress of work. A report from Main to MAHAB dated 31 January 1979 is entitled "Progress Report on PARSMAIN Work". The subject of MAHAB's letter in reply, received by Main on 27 April 1979, is similarly described as "Progress on Parsmain Work". The same title appears on Main's next report, dated 24 May 1979.

The parties' behaviour with regard to payment is also in the context of the Agreement. As noted above, the letter of 17 May 1978 contemplates that payment for Main's services was normally to be made directly by Parsmain. Indeed, all of Main's invoices were submitted to Parsmain which submitted total invoices, including its own charges, to MAHAB. That MAHAB paid Main directly on one occasion, and attempted to do so on a second occasion, does not suggest that a direct contractual relationship existed between Main and MAHAB; these actions were apparently taken upon the instruction of Parsmain.

Thus it is evident that all of Main's work was performed in connection with Parsmain's obligations under the Agreement. Main's role was that of a sub-contractor, a possibility clearly contemplated in Article 4 of the Agreement. That Main performed work directly with MAHAB employees and at MAHAB's direct request is not inconsistent with the subcontractor relationship. The Tribunal must, therefore, reject Claimant's contention that it had a direct contractual relationship with MAHAB relating to the work that it performed.

The assertion that there was a substituted contract directly with Main is contradicted by other evidence. Minutes of meetings dated 28 July 1978, 23 June 1978 and 9 September 1978 indicate that MAHAB was "pleased with Parsmain's work", that Parsmain gave directions to Main concerning the work and that Parsmain was actively involved with MAHAB in arranging for the acquisition of technical materials for the work to be performed by Main. This evidence indicates that Parsmain's actual role was consistent with that contemplated in the Agreement even after the time at which Claimant contends that a substitution was effected.

Similarly there is not sufficient evidence indicating that Main was a third-party beneficiary under the Agreement. The Agreement assigns to Parsmain alone both the duty to perform the works which the parties might subsequently agree upon and the right to receive payments. The Agreement's compensation provisions set forth in detail how invoices were to be rendered for work done and specify that payment was to be made to Parsmain. Moreover, when compensation rates were eventually negotiated, it was contemplated that they would be made a part of the Agreement. Parsmain's own rate proposal restated the exclusive right of Parsmain to receive the payments made at those rates. That MAHAB acted to make payments directly to Main is irrelevant since those actions were in response to Parsmain's invoices and explicit directions as to payment.

The circumstances of the instant case have not been shown to be such as to justify any exception from the established principle that generally a subcontractor has no direct rights as against the party with whom the contractor has a contract. Main agreed that the contracting party would be Parsmain, a company in which it had an interest. It knew or should have known that it would have to look to Parsmain for payment. Accordingly, MAHAB is not liable for any payment to Main, except to the limited extent explained below.

Claimant contends that, by course of conduct, Parsmain's rights to payment were assigned to Main and that MAHAB acknowledged its debt to Main. In support of this position, Claimant cites provisions of Iranian law and decisions of United States courts. At the Hearing, Claimant acknowledged that these theories would support a claim for only the amounts which Parsmain instructed be paid directly to Main and interest thereon.

The evidence demonstrates that, in October 1979, MAHAB instructed Bank Markazi Iran to transfer to Main's Boston bank account the rial equivalent of US \$378,340 for amounts requested in invoice nos. 3, 4 and 5, plus the amount retained from the previous payment and less Iranian taxes and other charges. Bank Markazi failed to make such transfer even after being informed by MAHAB, on 6 November 1979, that requested approval by the Ministry of Energy was not required and after a repeated request for transfer by MAHAB.

These facts support a finding that Parsmain assigned to Main its right to payment of the amounts invoiced by Main and that MAHAB consented to this assignment. Main therefore has a direct right to recover from MAHAB US \$378,340.

The Tribunal finds that Claimant is entitled to interest from 6 November 1979 on the principal amount owed. Such interest should be calculated at the fair rate of 10 per cent per annum to the date on which the Escrow Agent instructs the Depositary Bank to pay the Award.

The Tribunal does not find sufficient grounds for holding Respondent the Ministry of Energy liable under the claim. The claim against the Ministry shall therefore be dismissed. In view of the circumstances of the case, however, the counterclaim of the Ministry of Energy for "damages caused in defending an unfounded claim" should not be granted.

In the circumstances of this case, and applying Articles 38 and 40 of the Tribunal Rules, the Tribunal determines that Claimant shall be awarded costs of arbitration in the amount of US \$15,000 and that each of the Respondents shall bear its own costs.

V. AWARD

THE TRIBUNAL AWARDS AS FOLLOWS:

The Claim is dismissed insofar as it is directed against Respondent MINISTRY OF ENERGY OF THE ISLAMIC REPUBLIC OF IRAN.

The Counterclaim of Respondent MINISTRY OF ENERGY OF THE ISLAMIC REPUBLIC OF IRAN is dismissed.

Respondent, MAHAB CONSULTING ENGINEERS, INC., is obligated to pay and shall pay to Claimant, CHAS. T. MAIN INTERNATIONAL, INC.,

1. the amount of Three Hundred and Seventy Eight Thousand Three Hundred and Forty United States Dollars (US \$378,340) plus interest at the annual rate of ten (10) per cent calculated from 6 November 1979 to the date on which the Escrow Agent instructs the Depository Bank to effect payment out of the Security Account;

2. the amount of Fifteen Thousand United States Dollars (US \$15,000) in costs of arbitration.

Such payment shall be made out of the Security Account established pursuant to paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

This Award is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague

2 September 1983



Nils Mangård
Chairman
Chamber Three

In the name of God



Richard M. Mosk
Concurring Opinion

M. Jahangir Sani

EXPLANATION FOR FAILURE OF
JUDGE SANI TO SIGN AWARDS

The deliberations in this case were held, with members Mangård, Jahangir Sani and Mosk present, after the Hearing which was held on 17 May 1983 and before the Tribunal's summer recess, which began on 11 June 1983. During the Chamber's final meeting prior to the recess, it was determined that the Chamber would reconvene in early August 1983. In conformity with this determination, the Chairman issued a memorandum on 13 June 1983, requesting the arbitrators to reserve 8, 10 and 12 August 1983 for deliberations. Presidential Order No. 10, dated 15 June 1983, provided that, in cases involving requests for interim relief or other urgent matters, Chamber Two was authorized to act in lieu of Chamber Three until 31 July 1983. Furthermore, the Tribunal's official schedule of proceedings, dated 6 June 1983, indicated that a meeting of the Full Tribunal was scheduled for 15-17 August 1983, that Hearings before Chamber Three were scheduled for 18, 19, 25 and 30 August, and that a Pre-Hearing Conference before Chamber Three was scheduled on 1 September 1983.

On 6 August 1983, the Chairman of Chamber Three issued a schedule of meetings under which the finalization of awards was to take place in Case Nos. 84, 124, 185 and 346 on 11 and 12 August 1983, and further deliberations were to be held in Case Nos. 35, 62, 67 and 127 on 13 August 1983.

By a letter dated 10 August 1983, the Agent of the Islamic Republic of Iran stated to the Tribunal,

that Judge Mostafa Jahangir Sani the Iranian Arbitrator of Chamber Three of the Tribunal has submitted his resignation to the Government of the Islamic Republic of Iran. His resignation has been accepted by the Government and will be effective as of 10 August 1983. His successor will be introduced to the Tribunal in due course.

No reasons were cited for the purported resignation.

The President of the Tribunal ordered that certain Hearings before the Full Tribunal, which were scheduled to take place during its 15-17 August 1983 meetings, be postponed. In addition, the Chairman of Chamber Three cancelled the meetings set for the finalization of awards and further deliberations during the week of 8 August 1983.

Judge Jahangir Sani did not appear at the Full Tribunal meeting held on 15 August 1983. At the 17 August 1983 Full Tribunal meeting, the President stated that the Tribunal had as yet received no valid reasons for Judge Jahangir Sani's absence and had not authorized that absence. The President also declared that it would be for Chamber Three and the Full Tribunal to determine the legal consequences of that

absence in the individual cases pending before them. Thereafter, the Chairman of Chamber Three ordered that the Hearings scheduled for 18, 19 and 25 August and the Pre-Hearing Conference scheduled for 1 September be postponed.

By a letter dated 18 August 1983 and conveyed by post and telex, the Chairman of Chamber Three informed Judge Jahangir Sani of the President's declarations and notified him that a new schedule had been set under which, inter alia, the finalization and signing of the award in this case would take place on 2 September 1983.

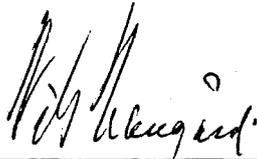
In a telex dated 24 August 1983 to the Chairman of Chamber Three, Judge Jahangir Sani acknowledged receipt of the letter of 18 August 1983 and informed the Chairman that he considered his resignation to the Islamic Republic of Iran to be effective upon the Tribunal and that he was no longer legally authorized or empowered to participate in the taking of decisions or the issuance of awards except for "the preparing and drafting, or drawing up and elaborating, of a judicial opinion or award which has previously been communicated or announced".

Neither in this telex nor in a telex received on the following day, addressed to the Full Tribunal, did Judge Jahangir Sani state that it would be physically impossible for him to take part in the meeting of 2 September.

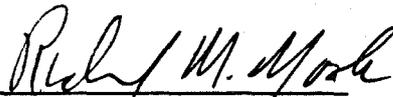
Judge Jahangir Sani was not present for the signing of the Award in this case at the 2 September Chamber meeting.

Under the above circumstances, the Tribunal has determined that it may proceed with the signing of the Award in the absence of Judge Jahangir Sani pursuant to Article 32, paragraph 4, of the Tribunal Rules.

Dated, The Hague
2 September 1983



Nils Mangård
Chairman
Chamber Three



Richard M. Mosk