

251-137

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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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- Date _____
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** DISSENTING OPINION of _____
- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعای ایران - ایالات متحدہ

DUPLICATE
ORIGINAL

دستخبر برابر اصل

CASE NO. 251

CHAMBER TWO

AWARD NO. 451-251-2

GEORGE EDWARDS,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN,

THE MINISTRY OF ROADS AND TRANSPORTATION,

OIL SERVICE COMPANY OF IRAN,

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعای ایران - ایالات متحدہ
FILED	ثبت شد
DATE	5 DEC 1989
	تاریخ ۱۳۶۸ / ۹ / ۱۴

AWARDAppearances:

For the Claimant:

Mr. S. Alan Stanley,
Counsel,
Mr. George Edwards,
Claimant.

For the Respondents:

Mr. Mohammad K. Eshragh,
Agent of the Islamic
Republic of Iran,
Mr. Ali H. Nobari,
Deputy Agent of the
Islamic Republic of Iran,
Mr. Seifollah Mohammadi,
Legal Adviser,
Mr. Mohammad Asbaghi,
Legal Assistant to the
Agent,

Mr. Ali A. Mahrokhzad,
Representative of NIOC,
Mr. Morteza Ziaie,
Attorney for the Ministry
of Roads and Transportation,
Mr. Ali Akbar Moghanjoughi,
Representative of the
Ministry of Roads and
Transportation,
Mr. Hossein Piran,
Legal Assistant to the
Agent.

Also present:

Mr. Timothy Ramish,
Agent of the United
States of America.

I. THE PROCEDURAL HISTORY

1. On 13 January 1982, George Edwards/F.E. Associates, Inc. filed a Claim against THE INTERNATIONAL BANK OF IRAN, THE GOVERNMENT OF IRAN ("IRAN"), THE MINISTRY OF ROADS AND TRANSPORTATION ("MORT") and OIL SERVICE COMPANY OF IRAN ("OSCO") ("Respondents"). Following a Pre-Hearing Conference held in this Case on 6 February 1986, the name of F.E. Associates was deleted from the caption, leaving George Edwards as the sole Claimant. The Claimant withdrew his Claim against THE INTERNATIONAL BANK OF IRAN on 8 December 1986. The Claimant alleges that due to acts of the Government of Iran, several contracts F. E. Associates had with other companies in Iran were breached, and equipment and personal items were expropriated. The Claimant also claims for recovery of loss and damages suffered from other measures affecting his property rights. The Claimant seeks compensation in the amount of U.S.\$614,287.56, plus interest from the date of filing of the Claim, and costs.

2. A Hearing was held on 23 June 1989.

II. FACTUAL BACKGROUND

3. The Claimant alleges that F. E. Associates, an Iranian corporation of which he was the principal owner, had concluded several contracts with U.S. corporations in Iran, including the Fortres-Icas Continental Group on 15 April 1978, the Northrop Corporation in November 1978, Pan American World Airways, Inc. also in November 1978, Boeing Aerosystems Corporation on 28 November 1978, and Westinghouse Corporation on 6 July 1979. The Claimant asserts that these contracts were breached due to actions of the Government of the Islamic Republic of Iran. Iran denies any responsibility for the alleged breach of the contracts and contends that if the Claimant has any claims, they should be asserted against the respective contract partners.

4. The Claimant also claims for damages he suffered due to the breach of two contracts F. E. Associates allegedly concluded with OSCO in October 1978 and with MORT, acting through its agent, Morrison-Knudsen Pacific Ltd. ("Morrison-Knudsen"), on 14 September 1978. Both NIOC and MORT deny the existence of such contracts.

5. The Claimant has also brought a claim based on expropriation. The Claimant asserts that in order for F. E. Associates to carry out its obligations under a Contract with OSCO, a large amount of equipment used for the assembly and installation of communications facilities had been delivered to the OSCO site in the Khuzestan area. The Claimant alleges that this equipment was expropriated by NIOC. The Claimant asserts that he had also stored personal items in a guesthouse of Morrison-Knudsen, which, according to the Claimant, were seized by the Government of Iran. NIOC denies any knowledge of the equipment or of their expropriation. Iran argues that the Claimant has failed to submit any evidence relating to the ownership and storage of the personal goods and the alleged government intervention, and it denies any such intervention.

6. Finally, the Claimant has asked for the value of his furniture left at his office in Tehran and for the expenses incurred in relocating his family to the United States. Iran argues that the Claimant voluntarily left Iran and it, therefore, cannot be held responsible for the expenses incurred with regard to this relocation. Iran also contends that it does not have any knowledge of the office furniture or of its alleged expropriation.

III. REASONS FOR THE AWARD

a) Jurisdiction

7. The Tribunal is satisfied that the Claimant is a

United States national. That the three named Respondents are included within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration likewise cannot be disputed. The Tribunal is also satisfied that F. E. Associates, an Iranian corporation, was at all relevant times controlled by American nationals. In view of its decision on the merits, infra, the Tribunal need not precisely determine the extent of the Claimant's ownership interest in F. E. Associates, which is in dispute.

b) The Merits

i) The Breach of Contract Claims

8. For the breach of contract claims, involving other American corporations, the Claimant carries the burden of proving, first, that the contracts in fact existed, and second, that measures taken by the Islamic Republic of Iran caused the breach. The Claimant has failed to submit copies of the contracts at issue, but instead has only filed some copies of pro-forma invoices. Apart from the considerable evidentiary problems this raises with regard to the existence of the contracts, the threshold issue in this Claim is whether the Claimant has proven, or even asserted to the Tribunal's satisfaction, a substantive basis for his claim.

9. The Claimant has failed to give any indication whatsoever as to what actions caused the breach of the contracts, or when they occurred, and how those actions are to be attributed to the Government of Iran. In the absence of any further details and evidence, the Claimant's allegation in this respect cannot suffice to demonstrate government interference with the contracts at issue. This part of the Claim is, therefore, dismissed for lack of proof, and the Tribunal need not determine under what circumstances

such interference would give rise to liability within the jurisdiction of the Tribunal.

10. With regard to the two contracts the Claimant alleges F. E. Associates had concluded with OSCO and MORT, the Tribunal is faced with similar evidentiary problems. The Claimant has submitted, inter alia, two affidavits. However, the affidavits, like the other documents submitted, fail to indicate the precise terms of the contracts, document the percentage of the work completed or account for the payments received under the contracts. At the Hearing, the attorney for the Claimant admitted that the copy of one of the invoices submitted to the Tribunal in fact did not relate to the amount claimed under the contract, as that particular invoice had already been paid. He stated that the copy was merely intended to prove the existence of the contract.

11. The Tribunal is mindful of the difficulties faced by the Claimant in producing evidence. The Claimant alleges that when he left Iran on 2 November 1979 he left behind almost all of his business records in F. E. Associates' offices in Tehran. As a result, the Claimant has suggested that because these documents were left in Iran, the Respondents are subject to inferences being drawn against them if they fail to offer proof in rebuttal of the Claimant's assertions. However, where there is no evidence that the Respondents came into actual possession of the documents in question, the Tribunal cannot shift the burden of proof in this fashion. See H. A. Spalding, Inc. and Ministry of Roads and Transport, Award No. 212-437-3, reprinted in 10 Iran-U.S. C.T.R. 22, at 31 (24 Feb. 1986). The Tribunal is thus forced to conclude that the Claimant has failed to prove the existence of the OSCO and MORT contracts. This part of the claim must, therefore, be dismissed for lack of proof.

ii) The Expropriation Claim

12. The Claimant contends that NIOC expropriated the equipment allegedly belonging to F. E. Associates which had been placed on the site of OSCO's operations. The Claimant alleges that the equipment was seized by NIOC as a result of the Revolution and that the Government of Iran is therefore responsible for this loss. However, the two affidavits relied on by the Claimant again fail to substantiate this part of the claim. Moreover, the Claimant has failed to show that F. E. Associates owned the equipment allegedly stored at the OSCO premises. The Claimant also seeks the value of personal goods allegedly stored in a guesthouse of Morrison-Knudsen. The Claimant admits that he has no evidence of their expropriation, but alleges that "from all the surrounding circumstances" the inference can be drawn that the property is in the control of the Respondent.

13. The Tribunal cannot find liability on the basis of unsubstantiated allegations. Based on the record before it, the Tribunal concludes that the Claimant has failed to prove these claims of expropriation. This part of the Claim, too, is dismissed for lack of proof.

iii) Claim Based on Other Measures Affecting Property Rights

14. Finally, Claimant seeks recovery for the value of furniture which he had left in his office when leaving Iran and for expenses incurred in relocating his family to the United States. The Tribunal holds that the Claimant has failed to submit any evidence to show that responsibility therefor can be attributed to the Government of Iran. This part is also dismissed for lack of proof.

IV. COSTS

15. Each Party shall bear its own costs.

V. AWARD


16. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The Claim is hereby dismissed for lack of proof.
- b. Each of the Parties shall bear its own costs of arbitrating this Claim.

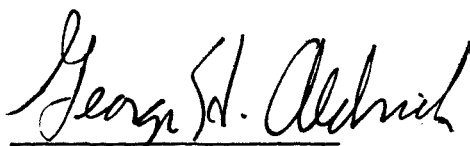
Dated, The Hague

05 December 1989




Robert Briner
Chairman
Chamber Two

In the Name of God



George H. Aldrich



Seyed K. Khalilian