

382 - 116  
۳۸۲ - ۱۱۶

ORIGINAL DOCUMENTS IN SAFE

Case No. 382

Date of filing: 19-12-83

\*\* AWARD - Type of Award \_\_\_\_\_  
- Date of Award \_\_\_\_\_  
\_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

\*\* DECISION - Date of Decision: 19 Dec 83  
\_\_\_\_\_ 7 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  
نسخه برابر اصل

CHAMBER THREE

CASE NO. 382

BEHRING INTERNATIONAL, INC.,  
Claimant,

- and -

ISLAMIC REPUBLIC IRANIAN AIR FORCE,  
IRAN AIRCRAFT INDUSTRIES and THE  
GOVERNMENT OF IRAN,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL  
دادگاه داوری دعاری ایران - ایالات متحده  
ثبت شد - FILED  
۱۳۶۲ / ۹ / ۲۸  
19 DEC 1982  
382 - ۳۸۲

382-116  
۳۸۲-۱۱۶

DECISION

On 18 January 1982, the Claimant, BEHRING INTERNATIONAL, INC., filed a Statement of Claim against the Respondents IRANIAN AIR FORCE, IRAN AIRCRAFT INDUSTRIES and THE GOVERNMENT OF IRAN, seeking recovery of warehouse and storage costs in connection with certain property belonging to the Respondents.

On 2 December 1982, THE MINISTRY OF DEFENSE OF THE ISLAMIC REPUBLIC OF IRAN ("Ministry of Defense") filed a Statement of Defence on behalf of the above named Respondents, including a Statement of Counterclaim and a Request for Interim Award for the conservation of the goods stored in the Claimant's warehouse.

On 15 February 1983, the Claimant filed a Reply to the Statement of Defence and Counterclaim, including a response to the Request for Interim Award. On 1 March 1983, the Deputy Agent of the Islamic Republic of Iran, on behalf of the Respondents, requested that proceedings with regard to the Request for Interim Award be expedited.

By an Order dated 18 March 1983, the Tribunal requested the Claimant to file an inventory of the materials of the Respondents stored in the Claimant's warehouse.

On 31 March 1983, the Claimant filed a Supplemental Reply to Respondent's Request for Interim Award and supporting submission. On 18 April 1983, the Respondents filed a Supplement to their Statement of Counterclaim stating an additional counterclaim.

On 29 April 1983, the Claimant filed a Reply to the Supplement to the Statement of Counterclaim and a Cross-petition for Interim Measures of Protection. In its Cross-petition, the Claimant requested, inter alia, that the ordered inventory be conducted by the Respondents either solely or in conjunction with the Claimant.

By an Order dated 11 May 1983, the Tribunal vacated its Order of 18 March 1983 and requested the Respondents to file a Reply to the Claimant's submissions of 31 March and 29 April 1983. The time for filing the Reply was set for 20 June 1983 and subsequently extended to 20 July 1983.

On 7 July 1983, the Claimant filed a notice of its intention to sell on 15 August 1983 the goods held in the warehouse and to deposit the proceeds in a blocked account pending further authorisation by the United States Department of Treasury.

On 20 July 1983, the Respondents filed their Reply to the Claimant's submissions of 31 March and 29 April 1983.

On 4 August 1983, the Ministry of Defense filed a Request for Interim Order, ordering, inter alia, the Claimant to refrain from auctioning the goods at issue pending a final decision of the Tribunal.

On 10 August 1983, the Claimant filed a Reply to the Ministry's 4 August 1983 Request. On the same date, the Tribunal issued an Interim Award, in which the Tribunal, inter alia, requested the Claimant to take whatever measures necessary to assure that the sale of assets scheduled for 15 August 1983 was not carried out, and ordered a Hearing to be held on 27 September 1983 at which the Parties would have the opportunity to present oral arguments in relation to the 2 December 1982 and 4 August 1983 Requests of the Ministry of Defense. A statement of clarification of the Interim Award was transmitted to the Parties on 11 August 1983.

On 30 August 1983, the Tribunal cancelled the 27 September 1983 Hearing previously scheduled, stating that it was the Tribunal's intention to decide the issues of interim measures of protection on the basis of the Parties' written submissions.

On 15 September 1983, the Ministry of Defense filed a memorial in which it alleged that the Interim Award of 10 August 1983 had been disobeyed by the Claimant and requested that the Tribunal designate an expert or experts of the Tribunal's choice to (a) take the inventory of the items existing in Behring's warehouse; (b) record the exact condition of the Iranian properties in a technically acceptable way; (c) supervise the physical turnover of the properties and records to the Ministry of Defense designee; (d) submit to the Tribunal and the Parties certified copies of the inventories taken and the recording of the condition of the items; and (e) report to the Tribunal on any other

material and relevant facts, circumstances or developments concerning the taking of the inventory and the removal of the Iranian properties from Behring's warehouse. Attached to the Request of the Ministry of Defense was a Memorandum of Agreement executed by the Parties on 14 August 1983. In this Memorandum, Behring undertook, inter alia,

"[t]o provide reasonable access to representatives of Iran to inspect the stored property and to turn over to Iran at the Edison, N.J., warehouse all existing records, inventories and other documents generated in connection with the transportation and storage of the stored property".

In support of its 15 September 1983 Application, the Ministry of Defense argued that the adjudication of the remedies sought by the Ministry's counterclaim filed on 2 December 1982

"requires that the exact number, specifications and conditions of Iran's items in Behring's warehouse be ascertained before the removal of those items to the warehouse selected by ... (the Ministry of Defense)".

On 20 September 1983, the Agent of the Islamic Republic of Iran filed a submission stating that

"... according to the information received from the Ministry of National Defense of Iran the items in question are mainly aircraft components and spare parts.

The aircraft components and spare parts in Behring's warehouse fall into three main groups: (a) hardware spare parts, (b) electric equipment, (c) hydrolytic components. As to group (a) normal visual check would suffice, but groups (b) and (c) should be necessarily tested by special testers, and thus technical know-how in the fields of electronics and hydrolyte is required.

The remaining miscellaneous properties consist of items such as machineries and chemicals".

On 7 October 1983, the Claimant filed a Reply to the Request of the Ministry of Defense concerning Experts. The Claimant asserted, inter alia, that there were no sufficient reasons to grant the Request for Experts because, in the 14 August 1983 Memorandum of Agreement, Behring had agreed to provide reasonable access to representatives of Iran to inspect the stored property and to turn over all existing records, existing inventories and other documents generated in connection with the transportation and storage of the stored property. Behring further argued that the Tribunal should decide as a threshold matter the question of its jurisdiction over the claim and counterclaim.

On 18 October 1983, the Ministry of Defense filed a submission reiterating its Request concerning experts.

Having considered the Parties' submissions in this case, the Tribunal finds that the advice of independent expertise with regard to the status of the goods would assist the Tribunal in the adjudication of this case. Strong practical reasons suggest that the necessary expert investigation should be carried out already at the present stage of the proceedings, in connection with the intended transfer of the goods from Behring's warehouse.

The Tribunal therefore appoints Mr. Sigfrid Akselson, President of FFV Engineering Systems, Inc., 205 The Strand, Alexandria, VA 22314 U.S.A. as expert in this case.

The Tribunal sets forth the following as the terms of reference for the expert:

1. The expert shall inventory the items of property belonging to the Air Force of the Islamic Republic of Iran and being stored in Behring's warehouse, indicating the following particulars, as may be applicable to each specific item:

- a. nomenclature (name of the item)
- b. unit of issue (number of items)
- c. part number
- d. stock number
- e. serial number
- f. date of arrival at the warehouse
- g. consignor
- h. consignee
- i. shelf life time.

2. The expert shall determine the condition of the above items through visual inspection or through any kind of required tests, including electronic or hydrolytic tests, as may reasonably be warranted by the nature of the equipment. If an item is found to be faulty or damaged, the expert should, if possible, give his opinion as to whether the fault or damage is likely to have occurred during the time before 19 January 1981 in which it was in Behring's custody.

3. The expert shall submit to the Tribunal a copy of the inventory taken in accordance with point 1. and a report on his findings with regard to the items in accordance with point 2. above.

4. The expert shall be entitled to obtain from any party inventories or other documents which he deems necessary for the performance of his work under these terms of reference.

5. The expert may be assisted in performing his work under these terms of reference by another person of his own choice.

6. The cost of the expert's work (including any assistance as mentioned under 5.) must not exceed the sum of US \$30,000. If the expert finds that this amount is not sufficient to cover all the costs, he shall refer to the Tribunal for further directives.

7. In case of any difficulty in the course of performing his work under these terms of reference, the expert may refer to the Tribunal for clarification or resolution, as may any party.

8. The Tribunal decides, in accordance with Article 41, paragraph 2, of the Tribunal Rules that the Respondents shall deposit the sum of Thirty Thousand United States Dollars (US \$30,000) as advances for the costs of expert advice, to be deposited within 20 days from the date of this Decision. This amount shall be remitted to account number 24.58.28.583 (Dollar Account) at Pierson, Heldring and Pierson, Korte Vijverberg 2, 2513 AB The Hague, in the name of the Secretary-General of the Iran-United States Claims Tribunal (Account No.II). The account shall be administered by the Secretary-General of the Tribunal, who shall consult with the Tribunal. The Tribunal further retains jurisdiction to request from arbitrating parties such other amounts as may be required from time to time in connection with the expert's work, or to decide any disputes which may arise in connection with that work.

The Tribunal shall later determine as to which party shall ultimately bear the cost of the expert's work (including any assistance as mentioned under 5. above).

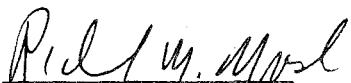
Dated, The Hague

19 December 1983



Nils Mangård  
Chairman  
Chamber Three

In the Name of God

  
Richard M. Mosk  
Dissenting Opinion

  
Parviz Ansari Moin

01/12/83  
