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۱۶۲-۱۶۴

ORIGI

Case No. 382

Date of filing: 22 FEB 85

\*\* AWARD - Type of Award ITM  
- Date of Award 22 FEB 85  
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\*\* 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 \_\_\_\_\_  
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CHAMBER THREE

CASE NO. 382

AWARD NO. ITM 46-382-3

BEHRING INTERNATIONAL, INC.,  
Claimant,

and

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

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داوری دعوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	22 FEB 1985 ۱۳۶۳ / ۱۲ / ۲
No.	382

INTERIM AWARD

The Tribunal is seized with two requests for preliminary action. First, Respondents have requested interim measures providing for the transfer of its property from Claimant's Edison, New Jersey warehouse to a new warehouse that they have selected. Respondents have also requested that the Tribunal instruct the expert appointed by the Tribunal by Decision dated 19 December 1983, as amended by Decision of 3 May 1984, to perform the work called for by such Decisions at the new warehouse Respondents have selected. Second, Claimant has requested that the Tribunal determine its jurisdiction over the claims and counterclaims as a preliminary matter. Having considered the views of the Parties as expressed in the written submissions and at the meeting of the parties held before the Tribunal on 12 February 1985, the Tribunal decides as follows:

1. The Tribunal has decided that, in this case, it is appropriate that the Tribunal determine its jurisdiction over the claims and counterclaims as a preliminary matter. See Tribunal Rules, Article 21, paragraph 4. Accordingly, the Tribunal requests that the Parties submit any written evidence and memorials they wish the Tribunal to consider, relating only to jurisdiction, by 29 March 1985. In light of the fact that the parties already have expressed themselves on the jurisdictional issues in their written submissions and at the meeting of 12 February 1985, it is not anticipated that any extensions will be granted. After 29 March 1985, the Tribunal will determine whether any further oral argument on jurisdictional issues is necessary.

2. With respect to the request for interim measures, the Tribunal decides that as of the present time a prima facie showing of jurisdiction over the claims and counterclaims has been made so as to enable it to entertain such requests as a general matter. See Ford Aerospace & Communications Corp. v. Air Force of Islamic Republic of Iran, Interim Award No. 39-159-3 (4 June 1984) at 8; Bendone-Derossi Int'l v. Iran, Interim Award No. 40-375-1 (7 June 1984) at 3.

Claimant itself has invoked the Tribunal's jurisdiction by filing its claims here. It has asserted its United States nationality, and Respondents have not challenged such assertion. Its claim seeks compensation for warehousing services rendered prior to 19 January 1981 and other relief relating to a 1979 Settlement Agreement between the Parties. The claim thus appears to constitute a claim of a U.S. national against Iran, outstanding as of 19 January 1981, and arising out of debts, contracts, expropriations or other measures affecting property, as required by Article II, paragraph 1 of the Claims Settlement Declaration. The Third Circuit Court of Appeals of the United States has reached the identical conclusion. Behring Int'l, Inc. v. Imperial Iranian Air Force, 699 F.2d 657, 661-65 (3d Cir. 1983). Noting, however, Claimant's argument that Respondents' consent in the 1979 Settlement Agreement to the jurisdiction of the United States federal court for purposes of enforcing the Agreement divests the Tribunal of jurisdiction (a contention squarely rejected in the aforementioned decision of the Third Circuit Court of Appeals of the United States), the Tribunal specifically invites the parties to address this contention in any memorials they choose to submit.

As to the counterclaim seeking the inventorying and delivery of the goods in Claimant's warehouse to which the request for interim measures relates, the Tribunal likewise determines that a prima facie showing of jurisdiction has been made. This counterclaim, on its face, relates to obligations established under the 1979 Settlement Agreement, which provides the basis for Claimant's claims, and thus appears to arise out of the same contract, transaction or occurrence that constitutes the subject matter of Claimant's claim, as required by Article II, paragraph 1 of the Claims Settlement Declaration. The same is true of Respondents' counterclaim for damages to their warehoused goods allegedly caused by Claimant's wrongful acts, to which counterclaim

the work of the expert is especially pertinent. Noting that Claimant contends that the counterclaims are unrelated to the 1979 Agreement, however, the Tribunal likewise invites the parties to address this issue in any memorials they may submit.

3. The Tribunal, however, determines that the granting of the full interim relief requested by Respondents, in particular, the transfer to Respondents of possession, custody and control of the warehoused goods (Respondents' title to which is not disputed by Claimant), would be tantamount to awarding Respondents the final relief sought in their counterclaim. The Tribunal decides that, under the circumstances of this particular case, it cannot award such relief prior to determining as a final matter that it has jurisdiction.

4. The Tribunal decides that certain interim measures requested by Respondents nonetheless are appropriate at this time to preserve the rights of the Parties pending the Tribunal's final determination concerning its jurisdiction. In this respect, the Tribunal notes in particular that the parties agree that the facility in which the goods are currently stored is inadequate to preserve and protect the goods and the Tribunal deems their removal to a more modern air-conditioned and humidity-controlled facility to be essential to conserve the goods. Accordingly:

- (a) The Tribunal orders the expert to commence to perform the tasks assigned to him in the terms of reference set forth in the Decision dated 19 December 1983, as amended by the Decision dated 3 May 1984. The Tribunal approves the staff requirements and budget estimate of \$64,500 submitted by the expert by letter dated 26 June 1984 and requests that he hire staff and make such other arrangements as are necessary to permit commencement of inventorying and the other

assigned tasks as soon as possible. The expert is requested to submit periodically statements of expenses, which shall be paid by the Tribunal out of the deposit referred to in paragraph (d) below.

(b) Noting that at the meeting of the Parties before the Tribunal on 12 February 1985 Claimant advised the Tribunal that it was willing to terminate the lease of its subtenant in its Edison, New Jersey warehouse on short notice and make the space thereby vacated in the modern portion of the warehouse available for storage of Respondents' property (now stored in an older, non-air-conditioned, non-humidity-controlled portion of the warehouse) and for carrying out the expert's work, the Tribunal:

(1) Requests Claimant to notify the Tribunal within ten days of the date of this award whether it indeed is terminating the sublease and, if so, the date by which the modern area will be available for the expert to begin removing Respondents' goods to the modern area and otherwise carry out his work.

(2) Orders that if Claimant does make its modern warehouse space available as it offered and as set forth above, it will be compensated, upon application to the Tribunal, for the reasonable value of the use of such facility during the period required by the expert for performance of his work, with such value to be determined finally by the Tribunal upon completion of the expert's work. Such compensation will be paid out of the deposit to be provided by Respondents for the expert, discussed in paragraph (d) below.

- (c) If Claimant does not make its modern warehouse space available as set forth above, or cannot make it available prior to 15 April 1985, the Tribunal will thereupon issue a further order providing for the warehousing of Respondents' property under conditions suitable to protect the goods and to permit the expert's work.
- (d) The Tribunal orders that, in accordance with Article 26, paragraph 2 and Article 41, paragraph 2, of the Tribunal Rules, Respondents shall provide an additional \$70,000 (for a total deposit outstanding of \$100,000) toward the expenses of the expert and costs associated with his work, including the leasing of the full Behring warehouse, to be deposited within 30 days from the date of this Decision (and prior to the actual commencement of inventorying and the other tasks assigned specifically to the expert). 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 which party will ultimately bear the cost of the expert's work.

- (e) Claimant and Respondents shall each provide the expert with a complete copy of the 1979 inventory, stated at the meeting of the Parties to have been conducted jointly by the Parties and containing a descriptive itemization of the warehoused goods, as well as copies of such other inventories as may exist.

The Tribunal retains jurisdiction over the request for interim measures and may revise or supplement this Decision as appropriate.

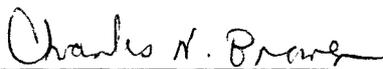
Dated, The Hague

22 February 1985

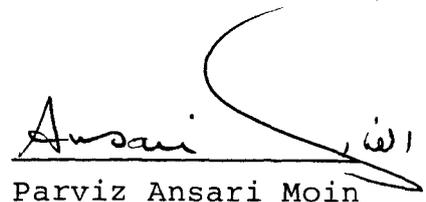


Nils Mangård  
Chairman  
Chamber Three

In The Name Of God



Charles N. Brower



Parviz Ansari Moin