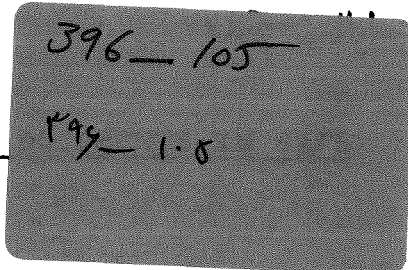


ORIGINAL



Case No. 396

Date of filing: 8 MAY 85

** AWARD - Type of Award ITM
- Date of Award 8 MAY 85
6 pages in English 5 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 _____
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DUPLICATE
ORIGINAL
نسخہ برابر اصل

CASE NO. 396

CHAMBER ONE

AWARD NO. ITM 50-396-1

ATLANTIC RICHFIELD COMPANY,
Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
THE NATIONAL IRANIAN OIL COMPANY,
LAVAN PETROLEUM COMPANY,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	داوان داوری دعاوی ایران - ایالات متحدہ
FILED - ثبت شد	
Date	8 MAY 1985 تاریخ
	۱۳۶۴ / ۲ / ۱۸
No.	396 شماره

INTERIM AWARD

On 18 January 1982 ATLANTIC RICHFIELD COMPANY ("ATLANTIC RICHFIELD") filed with the Tribunal a claim against THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN, THE NATIONAL IRANIAN OIL COMPANY ("NIOC") and LAVAN PETROLEUM COMPANY ("LAPCO"). The claim is for amounts allegedly due under a contract ("the Service Agreement") entered into on 19 February 1966 between ATLANTIC RICHFIELD (then THE ATLANTIC REFINING COMPANY) and LAPCO.

In its Statement of Defence filed on 8 July 1983 NIOC raised a Counterclaim which included a claim for damages allegedly incurred by NIOC as a result of proceedings initiated by ATLANTIC RICHFIELD against it in the courts of the United States, and as a result of the freezing of account number 910-1-222025 held in the name of LAPCO at Chase Manhattan Bank in New York.

On 24 December 1984 NIOC filed a "Motion for Order Against the United States Government and the Claimant in Case No. 396 for Cancellation or Withdrawal of the Writs of Attachment Issued by the Southern District Court of New York, under which and for the Suits Subject Matter of Claim 396, the Assets of Lapco (one of the Respondents) in the United States Have Been Attached, or for Withdrawal of the Case No. 396 by the Respondent".

On 11 December 1979 ATLANTIC RICHFIELD, together with two of its wholly-owned subsidiaries, instituted proceedings against LAPCO in the District Court for the Southern District of New York for the recovery of amounts allegedly owed by LAPCO under agreements for the supply of personnel and technical services, and for the return of, or an accounting for, certain advances allegedly paid into LAPCO's bank account. On the same date it obtained an attachment order against an account containing a balance of \$807,918 held in the name of LAPCO at Chase Manhattan Bank. After the signing of the Algiers Declarations on 19 January 1981, the President of the

United States of America issued Executive Order 12279 whereby funds or deposits owned by the Government of Iran or its agencies, instrumentalities or controlled entities and held by banks subject to the jurisdiction of the United States of America, were to be transferred to the Federal Reserve Bank of New York for subsequent return to Iran, and attachments in respect of them nullified.

On 2 July 1981 Chase Manhattan Bank applied to the Office of Foreign Assets Control ("OFAC") of the United States Treasury Department for confirmation that the attached LAPCO account was subject to Executive Order 12279 on the grounds that LAPCO was an "Iranian entity" within the meaning of Section 535.301 (a) (2) of the Iran Assets Control Regulations. ATLANTIC RICHFIELD made representations to OFAC in which it submitted that a license for the transfer of the funds in the account to Iran should be denied on the grounds that LAPCO was not an entity controlled by Iran for the purposes of the applicable regulations; and that ATLANTIC RICHFIELD was asserting a claim in the New York proceedings to beneficial ownership of the funds in the account.

On 9 July 1981 OFAC issued a revocable order to Chase Manhattan Bank directing it to exclude the LAPCO account from transfer under the applicable regulations and ordering it not to transfer or otherwise dispose of the funds in the account without specific authorisation, pending OFAC's decision. By a letter dated 3 September 1982 to the attorneys for Chase Manhattan Bank, the Director of OFAC confirmed that the order of 9 July 1981 remained in force until further notice and the account remained blocked, "pending review by the Iran-United States Claims Tribunal on the underlying issues" of entitlement to the account.

The Motion of NIOC filed on 24 December 1984 argues that ATLANTIC RICHFIELD has adopted a position in the New York proceedings with regard to LAPCO's status which is

inconsistent with its contention in its pleadings before the Tribunal in Case No. 396, that LAPCO is an "agency, instrumentality, or entity controlled by the Government of Iran", within the meaning of Article VII, paragraph 3 of the Claims Settlement Declaration. NIOC submits that this is "illogical and inequitable", and that for ATLANTIC RICHFIELD to continue to maintain "two contradictory positions" in two different fora would result in damage to the Respondents in Case No. 396. NIOC further alleges that the GOVERNMENT OF THE UNITED STATES OF AMERICA is in breach of its obligations under the Algiers Declarations in failing to nullify the attachment.

NIOC requests the Tribunal to issue an Order requiring the GOVERNMENT OF THE UNITED STATES OF AMERICA and ATLANTIC RICHFIELD to take all appropriate measures to ensure that the latter accepts the applicability of the Algiers Declarations, and to withdraw the writs of attachment obtained in the United States Courts; or, in the alternative, an order requiring ATLANTIC RICHFIELD to withdraw Case No. 396 from the Tribunal.

In its Comments filed on 15 February 1985, the GOVERNMENT OF THE UNITED STATES OF AMERICA asserted that since it was not a party to Case No. 396, no relief could be sought against it.

ATLANTIC RICHFIELD also filed Comments on 15 February 1985, in which it contended that there was no necessary contradiction in its respective arguments before the New York Court and the Tribunal because the legal basis on which the attachment had been obtained, that of beneficial ownership of the money in the account, did not depend on whether LAPCO was deemed to be an entity controlled by Iran. Nor was there any inconsistency present in the different claim it had made before the Tribunal for breaches of international law. ATLANTIC RICHFIELD further argued that as long as the New York Court proceedings remained suspended and the account

blocked, there was no prejudice to either party and no risk of inconsistent rulings.

The Tribunal holds that, as to the claim for interim relief against THE GOVERNMENT OF THE UNITED STATES OF AMERICA, it cannot grant the relief sought because THE GOVERNMENT OF THE UNITED STATES OF AMERICA is not a party to Case No. 396. The Tribunal notes, however, that the subject-matter of the present request is before the Full Tribunal as part of Case A-15, and the present decision in no way prejudices the eventual outcome of that Case.

As to the relief sought against ATLANTIC RICHFIELD, the Tribunal does not consider that there exists any threat of grave or irreparable damage to NIOC, or to the Tribunal's jurisdiction, such as to justify the granting of interim measures. On the contrary, the preservation of the status quo appears to be assured by the continued blocking of the LAPCO account and the suspension of the New York Court proceedings pending the Tribunal's determination of the present case.

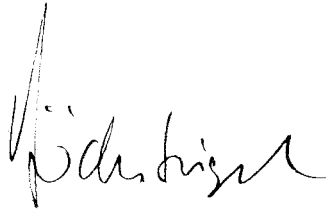
ATLANTIC RICHFIELD admits that it is "true that [it] has resisted transfer of the funds in the LAPCO bank account to Iran on the ground that LAPCO was not an entity controlled by Iran for purposes of the transfer order". While this may indicate the existence of a contradiction between the positions taken by ATLANTIC RICHFIELD respectively as Claimant in the present case and as Plaintiff in the New York court proceedings, this is not per se relevant to the question of whether the grant of interim relief is appropriate. Nor is it necessary for the Tribunal to make any decision on this point at the present stage of the proceedings. It is rather an issue to be considered by the Tribunal as part of the merits of Case No. 396.

For the foregoing reasons,

The request of the Respondent NIOC for interim relief against ATLANTIC RICHFIELD and THE GOVERNMENT OF THE UNITED STATES OF AMERICA is denied.

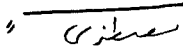
Dated, The Hague

8 May 1985



Karl-Heinz Bockstiegel
Chairman
Chamber One

In the name of God



Mohsen Mostafavi
Dissenting



Howard M. Holtzmann