

ORIGINAL DOCUMENTS IN SAFECase No. 11803Date of filing: 19/3/90

\*\* AWARD - Type of Award Award  
 - Date of Award 19 MAR 90  
11 pages in English 12 pages in Farsi

\*\* DECISION - Date of Decision \_\_\_\_\_  
 \_\_\_\_\_ pages in English \_\_\_\_\_ pages in Farsi

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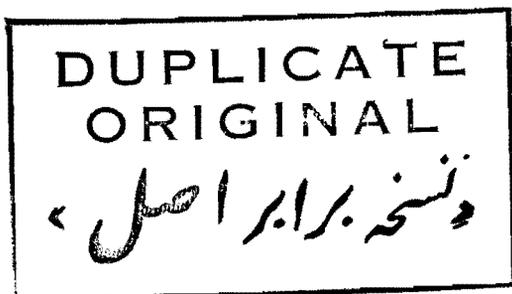
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داوری دعوی ایران - ایالات متحدہ



CASE NO. 11803

CHAMBER ONE

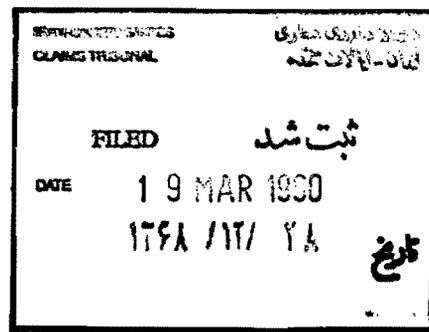
AWARD NO. 476 - 11803 - 1

DONALD W. DAVID,  
a claim of less than U.S. \$250,000,  
presented by

THE UNITED STATES OF AMERICA,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
Respondent.

AWARDAppearances:

For the Claimant:

Ms. Judith K. Cole,  
Attorney-Adviser, U.S. Department of State,  
Mr. Michael F. Raboin,  
Deputy Agent of the United States of America.

For the Respondent:

Mr. Ali H. Nobari,  
Agent of the Government of the Islamic Republic of Iran,  
Mr. Mohammad Hassan Bordbar,  
Legal Adviser to the Agent,  
Mr. Karam Ali Kamayestani,  
Legal Assistant.

I.           INTRODUCTION

1.           On 19 January 1982, the UNITED STATES OF AMERICA filed a Statement of Claim, presenting a Claim of less than U.S.\$250,000 on behalf of DONALD W. DAVID ("the Claimant"), against THE ISLAMIC REPUBLIC OF IRAN, or, more specifically, IRAN AIRCRAFT INDUSTRIES ("IACI"). The Claimant seeks damages of U.S.\$9,861 (plus interest and costs) for salary and benefits earned under an employment contract with IACI, and for the loss of personal property which he states occurred because of his wrongful expulsion from Iran.<sup>1</sup> IACI contends that it has paid the Claimant all sums owed him under the contract. In addition, the Government of Iran denies responsibility for any property loss the Claimant may have suffered as a consequence of his departure from Iran. By Presidential Order No. 69 of 6 July 1989, Mr. Robert Briner was designated to act as Chairman of Chamber One in this Case, instead of Mr. Bengt Broms. A Hearing was held on 21 November 1989.

II.           FACTS AND CONTENTIONS

2.           In July 1977 the Claimant signed an employment agreement with IACI (also "the agreement" or "the contract") covering a period of eighteen months, starting on 17 August 1977, the day he reported for final processing as a new employee at IACI headquarters in Tehran, and expiring on 17 February 1979. The Claimant was employed as "Engine Tech.

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<sup>1</sup> At the Hearing, Claimant amended his request for compensation, which in the Supplemental Statement of Claim was U.S.\$11,122.56. The amount initially claimed has been adjusted downward by the Claimant to reflect, inter alia, the sum of Rials 63,300 paid him by IACI in late January 1979, while he was still in Iran (see para. 7, infra), and a reduction of U.S.\$379 in the Claim for storage fees allegedly incurred in the United States.

'A' Inspector". In October 1977 he was joined in Iran by his wife.

3. The Claimant contends that in late December 1978 he went with his wife to Thailand for the Christmas holidays. He asserts that, at the conclusion of the vacation, because of the increasing hazards of living in Iran, his wife returned directly to the United States. The Claimant flew back to Tehran on or about 13 January 1979. He alleges that he had intended to return to Iran on 3 January 1979; however, as all flights to Iran had been cancelled and Mehrabad Airport was closed, it had been impossible for him to come back as he had scheduled.

4. The Claimant alleges that upon his return he found that during his absence his supervisor had instructed employees not to report to work until conditions became safe again. The Claimant contends that IACI had assured employees that, nonetheless, they would be paid in full. He further asserts that, beginning approximately 1 February 1979, he and many other American employees personally went every day to IACI's relocated offices at Mehrabad Airport to determine whether there was any work. The Claimant states that, although he continuously remained at the disposal of IACI, attendance of work was not possible.

5. A "Termination Clearance" form indicates that by the last day of January 1979 the Claimant had returned to IACI all of the tools and equipment that had been issued to him by the company, and that he was specifically cleared in this respect on 30 and 31 January 1979. The same form also indicates 17 February 1979 as the "last day of work" as well as the "effective date" of the termination.

6. On 4 February 1979 the Claimant obtained from IACI the necessary authorization for the shipment of 500 lbs. of

his household effects to the United States at the company's expense. The authorization document, which was signed by both IACI and the Claimant, identified 14 February 1979 as the date on which the goods were to be collected for shipment. The Claimant's belongings were actually picked up by the shipper, Four Winds International Inc., on 17 and 18 February 1979 and were eventually received by him in the United States.

7. The Claimant asserted in his written submissions that IACI ceased to pay him his salary and allowances after 21 December 1978. IACI, however, submitted evidence to show that in late January 1979 it transferred Rials 63,300 to the Claimant's salary account at Bank Sepah and that in February 1979, approximately two weeks before his departure, he withdrew Rials 64,000 from that account. At the Hearing, the Claimant accepted this evidence and reduced his Claim accordingly.

8. The Claimant contends that on 17 February 1979 - the last day of his employment - IACI officials advised him and other American employees gathered at the Mehrabad Airport offices that IACI would not reopen, and that the employees should leave the country. He asserts that Iran Aircraft officials stressed that conditions in Iran made it unsafe for Americans to stay in the country, and that employees should leave Iran immediately. The Claimant alleges that IACI assured all employees that they would be paid the full amounts due through 17 February 1979.

9. The Claimant asserts that, before he departed from Tehran on an emergency evacuation flight on 21 February 1979, he tried to arrange for the shipment of his furniture to the United States. He states that he also placed advertisements in a local newspaper in an attempt to sell this property. His efforts, however, were allegedly to no avail, so that he was forced to leave his furniture behind in his apartment.

10. The Claimant states that IACI, despite its repeated assurances, has never paid him the entire compensation he earned under the employment agreement. The Parties agree that the only payment the Claimant received from IACI after his departure from Iran was the amount of U.S.\$2,997.07, which was transferred to his account in the United States in February 1981.

### III. JURISDICTION

11. There appears to be no dispute and the Tribunal is satisfied that the Claimant is a national of the United States. Nor is there any doubt that these Claims were owned continuously by such a national, as required by Article VII, paragraph 2, of the Claims Settlement Declaration.

12. It is not disputed and the Tribunal has already found that Iran Aircraft Industries on 19 January 1981 was an entity controlled by the Government of Iran, and, therefore, falls within the definition of "Iran" as set forth in Article VII, paragraph 3, of the Claims Settlement Declaration. See Theodore Lauth and Islamic Republic of Iran, Award No. 233-10335-3, para. 4 (8 May 1986), reprinted in 11 Iran-U.S. C.T.R. 150, 151.

13. The Claims arise out of an alleged breach of contract and the expropriation of the Claimant's property as a consequence of his alleged wrongful expulsion from Iran, both within the Tribunal's subject-matter jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration. See Alfred L.W. Short and Islamic Republic of Iran, Award No. 312-11135-3, para. 11 (14 July 1987), reprinted in 16 Iran-U.S. C.T.R. 76, 79; Kenneth P. Yeager and Islamic Republic of Iran, Award No. 324-10199-1, para. 30 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 99; Jack Rankin and Islamic Republic of Iran, Award No. 326-10913-2, para. 17 (3 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 135, 139.

14. The Tribunal concludes that it has jurisdiction over this Case.

IV. REASONS FOR AWARD

A. The Contract Claim

15. The Claimant seeks U.S.\$5,611 as the remaining compensation for unpaid salary and benefits allegedly due by IACI under the employment agreement, which expired on 17 February 1979. He also seeks interest on the claimed amount from that date, plus interest on U.S.\$2,997.07 for the period between 17 February 1979 and February 1981, when IACI paid him this sum.

16. The Respondent argues that the Claimant's employment agreement had already been terminated by IACI effective 3 January 1979, the last day of his annual leave, as the Claimant had failed without acceptable excuse to report to work for more than five days thereafter. According to the Respondent, such an inexcused absence constituted a cause for termination pursuant to Article XIII (A) (1) of the contract. The Respondent asserts that subsequently, on 20 January 1979, IACI and the Claimant entered into an Expatriate Settlement Agreement, according to which IACI undertook to pay Claimant the amount of Rials 252,066, which was the sum of all entitlements owed him under the employment agreement. Respondent contends that this sum was transferred to the Claimant's bank account in the United States in February 1981. The Respondent also argues that the Rials 63,300 paid by IACI to the Claimant in late January 1979 represented his salary and allowances for the period from 22 December 1978 through 3 January 1979. The Respondent concludes that IACI therefore paid the Claimant all the sums that it owed him.

17. The Respondent further argues that, at any rate, the Claimant is barred from bringing a claim arising out of the employment contract on the ground that Article XIV of that contract imposes a time limitation for the notification of any claim against IACI under the contract. Article XIV provides that:

XIV. Time Limitation

In the event of termination of this assignment, the Employee must, within 60 days after the date of such termination, submit in writing to IACI his claims to any entitlements under this Agreement. Should the Employee fail to submit his claims within the said period of 60 days, he shall not be entitled to any claims whatsoever against IACI.

The Respondent contends that the Claimant never notified IACI in writing of his alleged contractual entitlements. Hence his failure to act in accordance with Article XIV of the agreement constitutes a bar to the Tribunal's considering the Claim.

18. The Claimant's responses to this last defense are that the chaotic conditions prevailing at the time within the company and in Iran made it futile to give such a notification after he departed from the country. Further, IACI had waived its rights under Article XIV of the employment agreement by promising the Claimant that he would be paid the full amounts due through 17 February 1979. The Claimant also argues that by paying him the amount of U.S.\$2,997.07 in February 1981, IACI acknowledged that the time limitation provision was inapplicable.

19. The Tribunal has already held that time limitations specified by contract are generally enforceable. See Iran National Airlines Co. and United States of America, Award No. 335-B9-2, para. 9 (30 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 214, 217; Carolina Brass, Incorporated and Arya National Shipping Lines, S.A., et al., Award No.

252-10035-2, paras. 17-23 (12 Sept. 1986), reprinted in 12 Iran-U.S. C.T.R. 139, 143 et seq. The Tribunal therefore will have to examine whether the particular circumstances of this Case justify a departure from this principle.

20. The Respondent failed to prove that the Claimant was terminated for cause by IACI on 3 January 1979. The Respondent also failed to satisfy the Tribunal that a settlement agreement was concluded on 20 January 1979 between IACI and the Claimant. Particularly in this latter respect, the Respondent has submitted no proof that the Claimant was ever informed of the existence or even of the contents of the document denominated "Expatriate Settlement Agreement," which, in the Respondent's view, shows that IACI and the Claimant agreed on the payment of Rials 252,066, as the final settlement of all amounts due by IACI under the contract.

21. Reviewing the evidence as a whole, the Tribunal furthermore finds that the Claimant has not presented any convincing evidence demonstrating that at any time before his departure from Iran, IACI promised to pay him or acknowledged that it owed him the specific amounts claimed here.

22. The Tribunal notes that the claimant in Lauth, supra, also an employee of IACI who had signed the same form contract at issue here and whose contract was terminated on 20 February 1979, had succeeded in notifying IACI in writing of his claims before his departure from Iran, thus complying with Article XIV of the employment agreement. The record in that Case shows that Mr. Lauth wrote another letter to IACI stating his claims in April 1979, after he had returned to the United States. The Claimant in this Case has not produced any evidence, nor offered any reasonable explanation regarding the reasons why he could not have acted likewise. Indeed, he did not even attempt to present his

claims to IACI. In view of the chaotic conditions which he asserts existed within the company and the fact that IACI had not expressly acknowledged in writing that it owed him specific amounts, one would have reasonably expected the Claimant to try to safeguard his interests by forwarding to IACI a written detailed statement of the entitlements and the benefits he deemed were owed him. Furthermore, as time passed and IACI had not remitted the amounts allegedly owed, the Claimant failed to demand payment or otherwise to put IACI on notice of his claims. Again, in February 1981 Claimant did not inform IACI, when he received from the company the amount of U.S.\$2,997.07, that this payment did not cover the full amount of his claim. In short, not only did Claimant fail to comply with Article XIV of the employment agreement, but he also omitted to pursue or inquire about his alleged entitlements at any time. Based on the foregoing, the Tribunal finds that the Claimant has not shown that there would exist any reason why Article XIV of the employment agreement should be disregarded. The Tribunal therefore determines that the contractual Claim is time-barred and, accordingly, must be dismissed.

B. The Personal Property Claim

23. This part of the Claim is based on the argument that Claimant was wrongfully expelled from Iran. He seeks compensation in the amount of U.S.\$4,250, representing the depreciated value of the furniture left behind.

24. The Claimant argues that he was forced to leave Iran on account of the widespread violent acts of anti-Americanism, instigated and fostered by the newly established Iranian Government, and pursuant to the explicit and specific instructions given him by IACI officials, and that he was thus expelled from the country. The Claimant alleges that his expulsion was wrongful in that he was not given

time to wind up his affairs and it was therefore in breach of the procedural and substantive standards established by customary international law and the Treaty of Amity, Economic Relations and Consular Rights of 1955 between Iran and the United States. In order to demonstrate Iran's responsibility, the Claimant would have to establish that his departure from the country was caused by wrongful actions attributable to the Government of Iran. See Kenneth P. Yeager, supra; Jack Rankin, supra. The Claimant has not met his burden of proof in this respect. There is no evidence on record showing that officials of Iran Aircraft Industries actually ordered employees to leave Iran, or that they issued any deadlines for the departure or imposed any conditions. The Tribunal therefore does not have to decide whether acts of said officials could entail the responsibility of the Government of Iran. The Tribunal finds that the Claimant's decision to leave Iran was predominantly influenced by the expiration of his employment contract on 17 February 1979.

25. In summary, the Tribunal finds that the Claimant has not demonstrated that he was wrongfully expelled from Iran. Accordingly, this part of the Claim is dismissed.

V. COSTS

26. Each Party shall bear its own costs of arbitrating this Claim.

VI. AWARD

27. For the foregoing reasons,

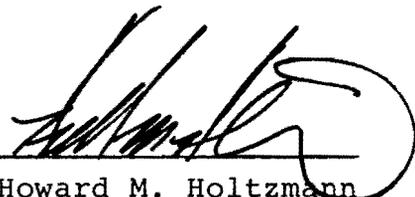
THE TRIBUNAL AWARDS AS FOLLOWS:

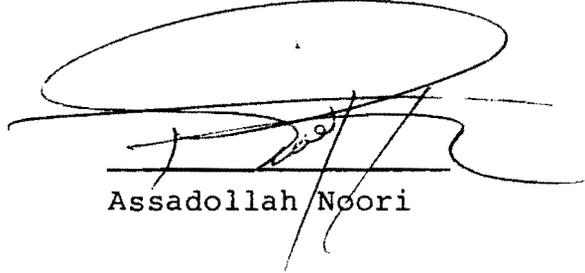
- (a) The Claim of DONALD W. DAVID is dismissed.
- (b) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
19 March 1990

  
\_\_\_\_\_  
Robert Briner  
Chairman  
Chamber One

In the Name of God

  
\_\_\_\_\_  
Howard M. Holtzmann  
Dissenting in part;  
Concurring in part.  
See Separate Opinion.

  
\_\_\_\_\_  
Assadollah Noori