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Case No. 12183

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- Date of Award 6 OCT 89  
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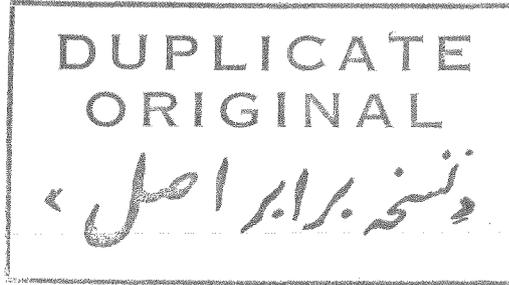
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\*\* CONCURRING OPINION of \_\_\_\_\_  
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CASE NO. 12183

CHAMBER ONE

AWARD NO. 440-12183-1

65

JIMMIE B. LEACH,  
a claim of less than US\$250,000  
presented by the UNITED STATES OF AMERICA,  
Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,  
Respondent.

UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعوی ایران - ایالات متحده
FILED	ثبت شد
DATE 6 OCT 1989	
1368 / 7 / 14	تاریخ

AWARDAppearances:

For the Claimant: Mr. Michael F. Raboin,  
Deputy Agent of the United  
States of America,  
Prof. Richard B. Lillich,  
Ms. Kathryn M. Nutt,  
Attorney Advisers,  
Department of State.

For the Respondent: Mr. Mohammad K. Eshragh,  
Agent of the Government of the  
Islamic Republic of Iran,  
Mr. Ali Heyrani Nobari,  
Deputy Agent,  
Dr. Nasser Ali Mansourian,  
Mr. Nozar Dabiran,  
Mr. Sohrab Rabiee,  
Legal Advisers to the Agent,  
Mr. Karam Ali Kamayestani,  
Legal Assistant to the Agent.

A. PROCEDURAL HISTORY

1. On 19 January 1982, the United States of America filed a Statement of Claim presenting a claim of less than \$250,000 of JIMMIE B. LEACH ("the Claimant") against the Islamic Republic of Iran. The Claimant seeks to recover lost salary and employment benefits of \$23,186.59 resulting from his alleged expulsion from Iran. A Supplemental Statement of Claim was filed on 18 November 1985.

2. The Respondent filed a Statement of Defence on 19 November 1986. Both Parties filed further pleadings and evidence, including the Factual and Legal Memorials of the United States on the issue of expulsion, and the Statement of Defence on the issue of expulsion of the Islamic Republic of Iran, which were incorporated by reference from the record in Case No. 10729, Curtis L. Torfin, Jr. and Islamic Republic of Iran (terminated by Order of 18 April 1988). A Hearing was held on 8 December 1988.

3. Mr. Karl-Heinz Böckstiegel, whose resignation took effect on 15 December 1988, continued to participate in the Award in this Case in accordance with Article 13, paragraph 5, of the Tribunal Rules.

B. FACTS AND CONTENTIONS

4. The Claimant, Mr. Leach, was first employed in Esfahan Iran by Bell Helicopter International, Inc. ("BHI") as a rotary wing mechanic commencing on 8 December 1975. Six months later, he accepted a promotion to the post of quality control instructor at Kermanshah, training graduate mechanics. His work there formed part of the helicopter support program provided by BHI to the Iranian Army Aviation under a contract that, allegedly, was to continue in effect until 1981.

5. The Claimant alleges that his contract with BHI was renewed annually although, like the contracts of other BHI employees, it contained a clause whereby BHI could terminate "at any time . . . with or without cause." See Kenneth P. Yeager and Islamic Republic of Iran, Partial Award No. 324-10199-1, para. 7 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. 92, 93. Allegedly, the last renewal occurred on 8 December 1978. Mr. Leach contends that, on the basis of the recommendations and favourable reports he received from his employer, he expected and intended to renew his contract and remain with BHI in Kermanshah until the program came to an end in 1981.

6. The Claimant alleges that United States nationals were subjected to harassment beginning in late 1978 and that he experienced difficult conditions in Kermanshah in the period leading up to the Islamic Revolution in February 1979. BHI evacuated certain of its work force from Kermanshah by air in January 1979, but the local airport was closed shortly afterwards. Subsequently, BHI attempted, again as alleged by the Claimant, to move its workers to Tehran on buses, but these were forced back by roadblocks manned by revolutionary elements. The rioting in Kermanshah had become so violent by 1 February 1979 that the Claimant could no longer safely drive to work and had to travel to the Air Force base by bus each day. He continued to live in his rented house in Kermanshah until 13 February 1979.

7. Mr. Leach contends that BHI intended to evacuate most of the 139 workers it had at Kermanshah. Only a core group of 17 had been selected to stay and maintain the essential work on the support program, and Mr. Leach allegedly was one of this group.

8. The reduced work force attended a meeting at 10 a.m. on 13 February 1979 at which they were briefed by BHI officials about the conditions they were likely to encounter and instructed to move into the BHI employee relations

building since their homes were no longer considered safe. Early the same afternoon, Mr. Leach alleges, the employees were recalled and told by BHI that it had become necessary to evacuate all employees as a result of an order given to BHI in Tehran by Deputy Prime Minister Yazdi.

9. It is alleged that Mr. Robert Mackinnon, a Vice President and General Manager of BHI who was a retired Major-General of the U.S. Army, was taken by armed guards on 12 February 1979 to meet Deputy Prime Minister Dr. Ibrahim Yazdi at the headquarters of the Revolutionary Government in Tehran. It is alleged that Dr. Yazdi explicitly told Mr. Mackinnon that "BHI employees must leave Iran," and that Mr. Mackinnon interpreted this as an unequivocal expulsion order. BHI decided on 13 February 1979 to act promptly on this directive and took immediate steps to evacuate its remaining personnel from Iran, including those at Kermanshah.

10. Mr. Leach alleges that when news of the "Yazdi Order" reached Kermanshah he was allowed to return home and pack one suitcase. He sold or gave away most of his personal property, packed, and reported back to the BHI compound at the Air Force base. On 20 February, he and his fellow workers were taken by bus to Tehran, and on 21 February he flew out of Iran. On the same day, the Claimant's contract with BHI was terminated.

11. Mr. Leach contends that his departure from Iran and the termination of his employment were a direct consequence of the order of Dr. Yazdi that BHI employees should leave Iran. If no such order had been given, he contends that he would have remained in Kermanshah and continued to be employed by BHI. It is argued that the Yazdi order constituted a specific measure of expulsion and that it was unjustified and discriminatory. The expulsion is also alleged to have been unlawful because it allowed insufficient time for the Claimant to put his affairs in order.

12. Mr. Leach secured new employment in the United States within a few months and subsequently obtained a position with Saudi Arabian Airlines. At the Hearing the Claimant acknowledged that he had received \$614 in severance pay from BHI. He therefore now claims \$22,572.59 as compensation for his alleged expulsion. This is the difference between the \$37,805.59 he would allegedly have earned if he had continued to be employed by BHI for the "term" of his contract (up to 8 December 1979) and the \$15,233 that he did earn in that period from the severance pay that he received from BHI and from the employment that he subsequently obtained. In the alternative, he seeks compensation for loss of earnings for "a reasonable time" after expulsion.

13. The Respondent denies that Mr. Leach was expelled from Iran. It denies that Dr. Yazdi ever met with Mr. Mackinnon or issued any instruction such as the one alleged by the Claimant. It denies that any Provisional Government was formed at that particular time and further disputes that Dr. Yazdi held any office in the new Provisional Government that would make his pronouncements attributable to the State and the State liable for his actions.

14. The Respondent contends that BHI withdrew its work force voluntarily from Iran. Even if BHI had chosen to stay and continue with the helicopter support program, there is no basis for a finding that Mr. Leach would have continued to be employed by BHI. His damage claim is therefore too speculative, and, further, it is said to be insufficiently evidenced.

15. The Respondent contends that Mr. Leach was unable to prove that his contract was extended for one year, as alleged, from 8 December 1978. Referring to the principle of privity of contracts, the Respondent, further, denies the admissibility of any claims against it based on the contract between Leach and BHI.

C. REASONS FOR AWARD

I. Jurisdiction

16. The Claimant asserts that this claim falls within Article II, paragraph 1, of the Claims Settlement Declaration since it is based on "measures affecting property rights."

17. The Respondent argues that the Tribunal lacks jurisdiction over an expulsion claim on the grounds that the Claims Settlement Declaration does not include tortious acts. It also argues that the claim is excluded by operation of paragraph 11 of the General Declaration, which provides that the Tribunal has no jurisdiction over claims arising out of the activities of "popular movements."

18. The Respondent's arguments have been raised in a similar form in previous cases concerning alleged expulsions. In Kenneth P. Yeager and The Islamic Republic of Iran, Partial Award No. 324-10199-1, paras. 27-31 (2 Nov. 1987), reprinted in 17 Iran-U.S. C.T.R. at 98-100, the Tribunal found that, while expulsion "is a measure by nature directed against the Claimant himself," the term "measures affecting property rights" can include "claims arising out of a wrongful expulsion, if, and to the extent that it affects a Claimant's property rights." Id. at para. 30, reprinted in 17 Iran-U.S. C.T.R. at 100. As the Tribunal noted in that Case, a claim for loss of salary and employment benefits might or might not involve a "property right," depending on whether the particular claimant could establish that he would have continued to be employed after February 1979. With regard to Mr. Leach, this can only be determined by examining the merits of the case and is therefore discussed further below.

2.           The Merits

19.           The parallels between the Yeager case and the present Case are striking. The Claimant in Yeager also sought, inter alia, compensation for loss of salary and employment benefits. Like Mr. Leach, Mr. Yeager was employed by BHI in Iran. His contract, which was terminable "at any time . . . with or without cause," was terminated by BHI during February 1979 shortly after his withdrawal from Iran. The Tribunal noted in that Case,

There is no indication that Claimant's employment contract was terminated for any other reason than the cessation of BHI's activity in Iran. Consequently, Claimant would have lost his job and the benefits associated therewith anyway, even if he had not been expelled. The Tribunal cannot ignore this fact and grant compensation for the loss of salary and employment benefits Claimant would not have received.

Id. at para. 60, reprinted in 17 Iran-U.S. C.T.R. at 109-110. In briefings filed subsequent to the issue of the Tribunal's Award in Yeager, the present Claimant seeks to distinguish his case largely on the ground that he was one of the employees specifically chosen to remain in Iran after BHI had decided to evacuate the rest of its work force. Although BHI started to evacuate its personnel in January 1979, there is evidence to show that Mr. Mackinnon still believed, up until the time that the Revolution succeeded in February 1979, that BHI could continue to perform useful work in Iran and that a presence should be maintained until the situation improved. It was assumed that the helicopter support contract would continue.

20.           Whatever happened in Tehran on or about 12 February 1979 - and here the Tribunal finds no need to determine whether a meeting took place between Dr. Yazdi and Mr. Mackinnon and, if so, what was discussed - induced BHI to reverse its earlier intention and evacuate virtually all of its personnel, including Mr. Leach. Clearly, once BHI

had decided to withdraw from Iran, it terminated the contracts of its employees as there was no further work for them to do. The Tribunal sees no distinction to be drawn in this respect between the situation of Mr. Leach and that of Mr. Yeager. Although Mr. Leach's contract has not been put forward in evidence, it is conceded on his behalf that it contained the standard termination clause, identical to that at issue in Yeager.

21. Given the terms of his contract as regards termination, it cannot be said that Mr. Leach enjoyed any legal right to continued employment with BHI. He had no binding assurance that his contract would continue after BHI left Iran. All he had was the reasonable expectation that, if BHI were to remain, he would continue to be employed, at any rate until 8 December 1979.

22. For these reasons, the Tribunal finds that the claim for loss of salary and employment benefits is without merit and must be dismissed.

3. Costs

23. The Claimant has claimed 1½ percent of any amount awarded as costs of the arbitration. Given the Tribunal's decision to dismiss the claim, the Tribunal determines that each Party shall bear its own costs of arbitration.

D. AWARD

24. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a) The claim of JIMMIE B. LEACH against THE ISLAMIC  
REPUBLIC OF IRAN is dismissed.
- b) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
6 October 1989

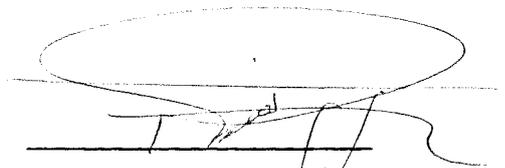


Karl-Heinz Böckstiegel  
Chairman  
Chamber One

In the Name of God



Howard M. Holtzmann



Assadollah Noori  
Separate Opinion