

ORIGINAL DOCUMENTS IN SAFE

Case No. 12458

Date of filing: 9/2/90

\*\* AWARD - Type of Award Award  
- Date of Award 9 Feb 90  
6 pages in English 7 pages in Farsi

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

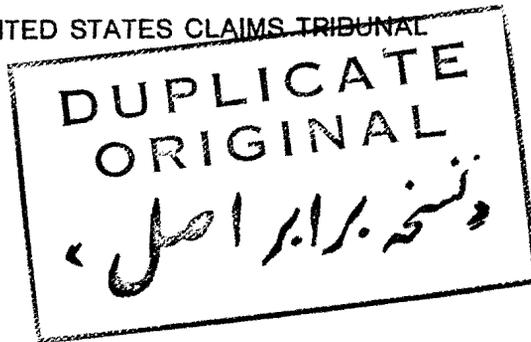
\*\* CONCURRING OPINION of \_\_\_\_\_  
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IRAN-UNITED STATES CLAIMS TRIBUNAL



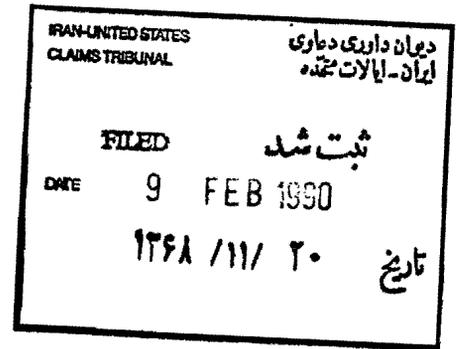
دیوان داورى دعاوى ایران - ایالات متحده

CASE NO. 12458

CHAMBER TWO

AWARD NO. 468-12458-2

CHARLES P. STEWART,  
 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. Jessica R. Holmes,  
 Attorney-Adviser, U.S. Department of  
 State  
 Mr. Michael F. Raboin,  
 Deputy Agent of the Government of the  
 United States of America  
 Ms. Lucy F. Reed  
 Agent Designate of the Government of  
 the United States of America

For the Respondent:

Mr. Seifollah Mohammadi,  
 Legal Adviser to the Agent  
 Mr. Abbas Ejtahadi,  
 Legal Assistant to the Agent

I. INTRODUCTION

1. CHARLES P. STEWART ("the Claimant") departed from Iran on 31 December 1978 on an evacuation flight arranged by his employer Parsons Overseas Corporation ("Parsons"). Parsons was engaged in the construction of two gas processing plants in Ahwaz for the Oil Services Company, and the Claimant was working as Chief Cost Engineer on that project. He seeks US \$8,911 as compensation for the alleged expropriation of his personal property by the Revolutionary Council.<sup>1</sup> Originally, the Claim also included a portion in the amount of US \$5,167.22 for loss of property as a result of Claimant's alleged wrongful expulsion from Iran. Subsequent to the Tribunal's Awards in several other expulsion cases, the Claimant withdrew this portion of the Claim. He also claims interest from 21 August 1980, according to him the latest possible date on which the claim may have arisen, and an additional 1.5% of the amount of the award for costs incurred.

2. The Respondent argues that after withdrawal of the claim based on wrongful expulsion there remains no issue for the Tribunal to decide. It further asserts that, at any rate, the Claimant has failed to prove that he suffered any property loss through acts attributable to the Government of Iran.

3. A Hearing was held on 3 November 1989.

II. THE FACTS

4. The Claimant arrived in Iran with his wife in May 1977.

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<sup>1</sup> This amount represents the depreciated value of the goods on the date of the alleged taking, as set forth and revised by the Claimant at the Hearing. Initially, in the Supplemental Statement of Claim and subsequent pleadings, the Claimant had sought compensation for the replacement value of the property in the amount of US \$12,116.99.

5. As the Islamic Revolution progressed, living conditions in Iran became increasingly difficult and hazardous. In the Fall of 1978, Parsons began to consider the possibility that an evacuation of its expatriate employees from the country might suddenly become necessary and therefore decided to arrange for the shipment of its employees' personal effects to the United States. For this reason Parsons' personnel were advised by their employer to pack all non-essential belongings into two sea containers which were made available by Parsons. In late November 1978, the Claimant packed his possessions and placed them into the sea containers. The containers were located at Parsons' central warehouse yard in Kureyt, near Ahwaz. Parsons was to make arrangements for their shipment to the United States.

6. The Claimant alleges that in late December 1978 a bomb exploded in Parsons' office in Ahwaz and, further, that on 31 December, Parsons was warned by a local employee that militants were planning an attack on the company's personnel that night. The Claimant asserts that Parsons' management then decided upon an immediate evacuation of its employees. That day, Parsons' employees - among them the Claimant and his wife - were evacuated from Iran.

7. Strikes and revolutionary turmoil in the course of December 1978 prevented Parsons from arranging for the shipment of the two sea containers to the United States. For this reason, before the evacuation of the employees, Parsons entrusted the containers to a local firm, Yassinpour Contracting and Trading Company ("Yassinpour") and instructed it to keep the goods in storage and to ship them to the United States as soon as possible.

8. For over a year after the evacuation, Parsons allegedly had periodic telephone contact with Yassinpour relating to the status of the sea containers. Apparently, during that period Yassinpour had not been able, due to the current situation in

the country, to arrange for their shipment to the United States. Between March and late August 1980, Parsons allegedly received a telephone call from Yassinpour informing it that the two sea containers had been discovered and confiscated by the Revolutionary Council.

9. On 21 August 1980, Parsons informed its employees that the goods placed into the two sea containers had been confiscated and that the insurance coverage on the goods did not cover damages arising out of revolution and confiscation. Consequently, Parsons offered its employees partial compensation for their property losses. The Claimant contends that, as he then no longer worked for Parsons and his whereabouts were unknown to the company, he did not at the time receive their communication and that he received no compensation.

### III. REASONS FOR AWARD

#### a) Jurisdiction

10. There appears to be no dispute that the Claimant is a national of the United States. Nor is there any doubt that he has owned the Claim continuously. The Claim is based on the alleged expropriation of the Claimant's property, clearly within the Tribunal's subject-matter jurisdiction under Article II, paragraph 1, of the Claims Settlement Declaration. The Tribunal therefore has jurisdiction over this Claim.

#### b) The Merits

11. The Claimant alleges that his personal belongings, placed in the two sea containers stored at Yassinpour's storage facilities in Ahwaz, were confiscated by the Revolutionary Council between March and late August 1980. The Claimant argues that, as the acts of the Council are directly attributable to the Respondent, the latter is responsible for the direct expropriation of his personal property.

12. The Claimant, however, has failed to produce evidence establishing that the Government of Iran was responsible for the loss of his property in Ahwaz. The evidence adduced by the Claimant could demonstrate, at the most, that on some unknown date, probably in August 1980, Parsons' office was informed in a telephone conversation with Yassinpour that persons referred to either as "Iranian Revolutionary Council" or "officials of the Iranian Government" had "confiscated" the sea containers. The Claimant has been unable, however, to submit any evidence whatsoever confirming the accuracy of Yassinpour's explanation as to what actually happened to the containers, such as correspondence exchanged between Parsons and the insurer of the containers (who, according to Parsons, had refused to cover the property losses), or evidence regarding the steps Parsons undertook to recover the containers. The mere fact that Parsons informed its employees in 1980 that their property had been confiscated by the "Iranian Revolutionary Council" is of only marginal evidentiary value with respect to the alleged liability of the Respondent. The evidence is inadequate to find that the Claimant suffered a property loss through acts attributable to the Respondent. For this reason the Claim is dismissed for lack of proof.

IV. COSTS

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

V. AWARD

14. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

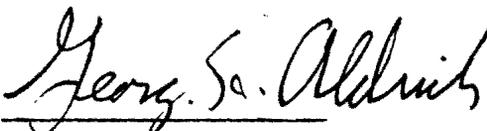
(a) The Claim of CHARLES P. STEWART is dismissed for lack of proof.

(b) Each Party shall bear its own costs of arbitration.

Dated, The Hague  
09 February 1990

  
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Robert Briner  
Chairman  
Chamber Two

In the Name of God

  
\_\_\_\_\_  
George H. Aldrich

  
\_\_\_\_\_  
Seyed K. Khalilian

While concurring in the dismissal of the Claimant's claim for lack of proof, I deem it appropriate to note that in order to substantiate his claim that his property had been expropriated, the Claimant filed with the Tribunal six affidavits, which quite explicitly testified that the expropriation had been carried out by the Revolutionary Council. Despite this, the Tribunal correctly gave no weight to those affidavits, and dismissed the Claimant's claim inasmuch as it was unsupported by proof. Upon receiving the draft Award, I proposed to my colleagues that this fact be set forth fully in the Award -- i.e., that the manner in which the supporting evidence was evaluated be explicitly set forth in the text of the Award as it actually transpired. Regrettably, however, they sometimes prefer, in view of considerations best known to themselves, not to set forth all the facts.