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- Date of Award 3/11/89
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** DECISION - Date of Decision _____
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** CONCURRING OPINION of _____
- Date _____
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** SEPARATE OPINION of _____
- Date _____
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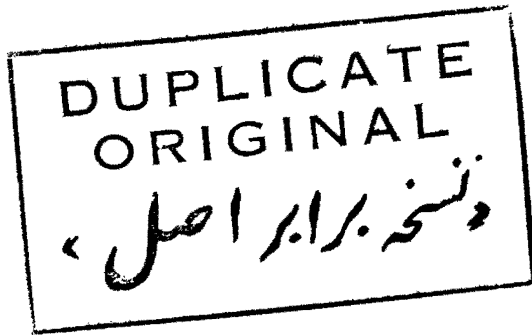
** DISSENTING OPINION of _____
- Date _____
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 10087
CHAMBER TWO
AWARD NO. 446-10087-2

WILLIAM RAY HOLLYFIELD,
a claim of less than U.S.\$ 250,000
presented by
THE UNITED STATES OF AMERICA,
Claimant,
and
THE ISLAMIC REPUBLIC OF IRAN,
Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE 3 NOV 1989	
	تاریخ ۱۳۶۸ / ۸ / ۱۳

AWARDAppearances:

For the Claimant: Ms. Kathryn M. Nutt,
Attorney-Adviser, Department of State
Mr. Kenneth J. Jones,
Witness
Mr. Dennis J. Gallagher,
Director Small Claims Section,
Department of State
Mr. Michael F. Raboin,
Deputy Agent of the Government of the
United States of America.

For the Respondent: Mr. Ali H. Nobari,
Deputy Agent of the Islamic Republic
of Iran
Mr. Seifollah Mohammadi,
Legal Adviser to the Agent
Mr. Mohammad Asbaghi,
Legal Assistant to the Agent
Mr. Dariush Mohazzebi,
Rebuttal witness
Mr. Jafar Niaki,
Legal Adviser to the Agent.

I. PROCEDURAL HISTORY

1. On 19 January 1982 the United States of America filed a Statement of Claim against the ISLAMIC REPUBLIC OF IRAN ("Iran") on behalf of the Claimant, WILLIAM RAY HOLLYFIELD. The Claimant alleges that General Systems Company ("GSC") failed to pay to the Claimant certain salary and benefits owed to him under an employment contract with GSC, a company allegedly controlled by Information Systems Iran ("ISIRAN") and Iran. The Claimant seeks compensation in the amount of US \$18,550 plus interest and costs.

2. A Hearing was held on 10 May 1989.

II. FACTS

3. In June 1977, Advanced Technological Services Inc. (USA) recruited the Claimant to work as a general supply specialist for GSC. GSC was an Iranian company performing services, inter alia, under the Computer Automated Logistic System ("CALS") project, for the Imperial Iranian Ground Forces, under the direction of ISIRAN. Upon his arrival in Tehran, the Claimant signed an employment contract with GSC for an initial two-year period and was issued a work permit. Pursuant to this employment contract the Claimant was engaged in a training program for the Iranian Army concerning logistics and the computerization of the Army's supply system. The Claimant worked essentially at two locations, the Signal Depot in Tehran and the Ordinance Depot just outside Tehran.

4. After November 1978, the Claimant and all other employees in the CALS project experienced difficulties in receiving their salary payments. At the end of January 1979, armed militia allegedly prevented GSC from operating, and the worksites were closed. The Claimant departed from Iran on 18 February 1979 on an evacuation flight.

5. Shortly after his return to the United States, the Claimant received a letter from GSC, informing the Claimant that GSC was "exercising its option to declare [a state of] force majeure in accordance with Paragraph 4, Part II of your contract," because "on or about 11 February 1979 the American and British Embassies in Tehran announced that their respective citizens ... were strongly urged to depart Iran immediately ..." and that GSC was terminating the Claimant's employment as of 17 February 1979. According to the letter, the Claimant was entitled to a total of Rials 632,874 for unpaid salary for the period from 21 November 1978 through 17 February 1979, 10 days accrued leave and return transportation to the United States, less a deduction of Rials 2,900 for a parka the Claimant allegedly had failed to return when he left the job. The letter confirmed that all monies due would be transferred in Dollars. The letter also stated, however, that "Because of the current cash flow situation in Iran it is impossible for the Company to pay you the above amount due to you at this time", but "upon resolution of the cash flow problem this Company will take action to transfer all monies due ...".

6. The Claimant never received any funds allegedly owed to him. He thus asserts a claim before the Tribunal in the amount of US \$18,550 reflecting those monies that GSC admitted owing him in its letter plus three months salary, based on Clause 7(c) of his employment contract. This clause provided that GSC would give three months written notice of termination or pay three months salary in lieu of notice. The Claimant alleges that the failure of GSC to make salary payments after 21 November 1978 constituted a breach of his employment contract and he therefore is entitled to be paid three months' salary.

7. The Respondent GSC does not deny the Claimant's allegations but argues that the Claimant is not entitled to any damages because he, in fact, breached his contract by leaving Iran on 18 February 1979.

III. JURISDICTION

8. There is no dispute between the Parties as to the United States nationality of the Claimant. The Claimant has submitted a copy of his U.S. passport as proof of his nationality, and the fact that he was born in Tennessee on 16 May 1922.

9. The Respondent challenges the Tribunal's jurisdiction to hear this Case on the ground that GSC is not a controlled entity of Iran as required by Article VII, paragraph 3, of the Claims Settlement Declaration. Iran argues that GSC at all relevant times was a private, independent company with no connection with the Government other than the fact that it was performing services for ISIRAN as an independent contractor. In support of this position GSC submits its Articles of Association showing that it was organized by two individuals, Dariush Mohazzebi and Parirokh Haji Otmishi.

10. In addition, GSC submits a copy of the amended Articles of Association and an extract from the Official Gazette No. 9246, dated 23 September 1976, showing that Dariush Mohazzebi, Cyrus Khajeh Nassiri and Hossein Pazirandeh were the shareholders of the company.

11. The Claimant alleges that GSC is an entity controlled by ISIRAN, which the Tribunal has already decided is itself an entity controlled by the Government of Iran. See Ultrasonics Inc. and Islamic Republic of Iran, Award No. 27-84-3, at 8-9 (4 March 1983), reprinted in 2 Iran-U.S. C.T.R. 100, 105. The Claimant argues that, though in form GSC was a private company, GSC was de facto controlled by ISIRAN. According to the Claimant, the CALS project was administered, directed and monitored by ISIRAN. By means of affidavit testimony of former employees of ISIRAN and GSC the Claimant alleges that ISIRAN controlled the daily workings of GSC. This included, inter alia, receiving working instructions, approving the payment of salaries of GSC employees by the Commanding General of the Iranian Army,

and issuing Security Cards bearing the name and logo of the Ministry of War. In addition, the Claimant points out that the contract between ISIRAN and GSC for the CALS project included a provision expressly granting ISIRAN the right to manage and control the work performed by GSC and its employees.

12. The question whether a corporation was controlled by the Government of Iran on the date of the Algiers Accords so as to be included within the definition of "Iran" in Article VII, paragraph 3, of the Claims Settlement Declaration is one of fact, and the issue is not just whether the entity existed in private form or whether it was formally nationalized or expropriated. See DIC of Delaware, Inc. et al. and Tehran Redevelopment Corp. et al., Award No. 176-255-3 (26 April 1985), reprinted in 8 Iran-U.S. C.T.R. 144, and Foremost Tehran, Inc. et al. and The Government of the Islamic Republic of Iran et al., Award No. 220-37/231-1 (10 April 1986), reprinted in 10 Iran-U.S. C.T.R. 288. Decisive elements for a finding of control are the identity of the company's shareholders, the composition and behavior of its board of directors, and whether government appointed managers were in charge of the company on 19 January 1981. See Foremost Tehran, Inc. et al., supra; see also Rexnord Inc. and The Islamic Republic of Iran et al., Award No. 21-132-3 (10 January 1983), reprinted in 2 Iran-U.S. C.T.R. 6.

13. The Tribunal does not find that a company becomes controlled merely by virtue of doing business with a government entity. The work performed by GSC was part of a sensitive military project, the ultimate beneficiary of which was the Imperial Iranian Ground Forces. The Tribunal finds it reasonable that the Iranian Army exercised certain control over the access to the premises, over the work performed and over the payments to be made. After considering the written evidence and the testimonies at the Hearing, the Tribunal concludes that, quite apart from the irrelevance of the relationship in 1978 and early 1979 to the question of control in January 1981, the Claimant has

failed to prove that the control exercised by the Ground Forces and by ISIRAN over GSC went beyond that which one could expect from the employer and contractor in a contractor-subcontractor relationship for such a sensitive military project. Such control does not make GSC "Iran" as defined in Article VII, paragraph 3, of the Claims Settlement Declaration.

14. The Claimant also argues that, in any event, GSC was a controlled entity after February 1979. To indicate this government control the Claimant has introduced written and oral testimony stating that, in the spring of 1979, some seven employees of GSC were requested by representatives of the new Revolutionary Government to prepare a report relating to the status of the CALS Project at the depots, and the status of the work that needed to be completed. Upon completion of this study these employees received payment for the report made, together with a partial payment of the salary owed to them under their employment contracts with GSC.

15. However, given the complexity of the military project GSC was involved in, the Tribunal finds it understandable that the new Revolutionary Government wanted to find out what the status of the project was. The request by the new Government to the seven employees to prepare a report on the status of the CALS Project must be seen within this context, and the Tribunal does not find that it can be construed as evidence of control over the company.

16. The Claimant has also pointed to evidence that the Government of Iran managed GSC's affairs after February 1979. First, he suggests that Revolutionary Guards occupied the offices of GSC in that month. This occurrence, standing alone, does not lend support to a conclusion that GSC's management had been assumed by the Government or that such occupation persisted until 19 January 1981. Indeed, the testimony of Mr. Mohazzebi (the Chairman of the Board of Directors of GSC) at the Hearing was that GSC operations

were sharply curtailed after February 1979, but that the company maintained its independence from the Government, to the extent even of engaging in a protracted contract dispute with ISIRAN. In reply, the Claimant alleged that GSC held no regular annual meetings between 1980 and 1985, and that it had, in fact, ceased to be a separate corporate entity. The Tribunal credits Mr. Mohazzebi's testimony and finds that GSC, while largely dormant as of 19 January 1981 for reasons both of lack of funds and of computer software business, was not, as of that date, under the management or control of the Government of Iran or any Government-controlled entity.

17. The Tribunal concludes that the Claimant has failed to prove that GSC was controlled by the Government of Iran, within the meaning of Article VII, paragraph 3, of the Claims Settlement Declaration as of 19 January 1981. The Claim based on a contract with GSC is therefore not a claim against IRAN as defined in that Article and is thus not within the jurisdiction of the Tribunal.

IV. COSTS

18. Each Party shall bear its own costs.

V. AWARD

19. For the foregoing reasons,

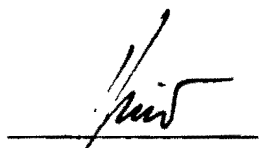
THE TRIBUNAL AWARDS AS FOLLOWS:

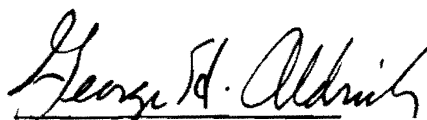
- a. The Claim is hereby dismissed for lack of jurisdiction.

- b. Each of the Parties shall bear its own costs of arbitrating this Claim.

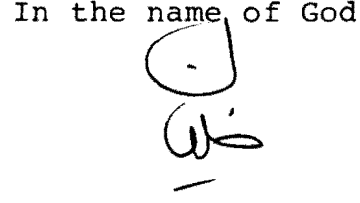
Dated, The Hague

3 November 1989


Robert Briner
Chairman
Chamber Two


George H. Aldrich

In the name of God


Seyed K. Khalilian
See Separate Opinion
in Award No.
346-10973-2 (29
January 1988)
(18 Iran-U.S. C.T.R.
377 at 382)