



CASE NO. 112

CHAMBER ONE

AWARD NO. 75-112-1

CONTINENTAL GRAIN EXPORT
CORPORATION,

Claimant,

and

GOVERNMENT TRADING CORP.,
FOREIGN TRANSACTIONS COMPANY,
MINISTRY OF WAR-ETKA CO. LTD.,
CENTRAL UNION OF CONSUMERS
CO-OPERATIVES FOR IRANIAN
WORKERS,

Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دیوان داوری دعای ایران - ایالات متحدہ
فہت شد - FILED	
No. 112 112	
Date: 5 SEP 1983	
۱۳۶۲ / ۶ / ۱۴	

PARTIAL AWARD

DUPLICATE
ORIGINAL
نسخہ برابر اصل

Introduction

The claim of CONTINENTAL GRAIN EXPORT CORPORATION ("the Claimant") was filed with the Tribunal on 18 November 1981. The Claimant seeks damages for alleged breach of four contracts for the sale of wheat and rice entered into, respectively, with THE GOVERNMENT TRADING CORPORATION (GTC), THE FOREIGN TRANSACTIONS COMPANY (FTC), THE MINISTRY OF WAR-ETKA CO. LTD., and the CENTRAL UNION OF CONSUMERS COOPERATIVES FOR IRANIAN WORKERS, the four Respondents herein.

The first three Respondents have each contended in their Statements of Defence that the claims against them are excluded from the Tribunal's jurisdiction because the contracts on which they are based provide for the exclusive jurisdiction of the Iranian courts. They each rely on the provision of Article II, paragraph 1, of the Claims Settlement Declaration, which excludes from the Tribunal's jurisdiction "claims arising under a binding contract between the parties specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts in response to the Majlis position".

The Claimant addressed this question in its Reply to the Statements of Defence, filed on 7 January 1983. At the invitation of the Tribunal each Respondent filed further comments on the issue of jurisdiction on 1 August 1983.

In its Order of 4 March 1983 the Tribunal indicated its intention to decide the issue of jurisdiction on the basis of the documents submitted.

1. The claims against GOVERNMENT TRADING CORPORATION and FOREIGN TRANSACTIONS COMPANY

The claims against the first two Respondents are based on similar facts and present the same issues. A single Statement of Defence was filed by GTC on its own behalf and as successor to FTC.

(i) The FTC Contract

In May 1978 the Claimant and FTC entered into a contract for the sale of a quantity of wheat. The contract was concluded by an exchange of three telexes:

- (a) a telex of 18 May 1978 from FTC to the Claimant inviting offers and setting out its standard terms and conditions of purchase;
- (b) a telex of 19 May 1978 from the Claimant to FTC setting out its offer; and
- (c) a telex of 22 May 1978 from FTC to the Claimant confirming acceptance of the offer and stating that, "Everything else not specified above and in yr offer dd May 19th, 1978 as per our tender invitation number 4946 dated May 18th, 1978".

The contract provided, inter alia, that the buyer would be liable for carrying charges in the event of its vessel not filing notice of readiness to load the wheat during the specified delivery period. The Claimant contends that it incurred certain charges and seeks reimbursement together with interest.

In its Statement of Defence in relation to the claim against FTC, GTC cites the disputes settlement provision in the telex of 18 May 1978 which states:

"Conflicts and Settlements:

Eventual disputes must be finally and exclusively settled in Iranian Courts. If the contract is concluded we require one of your senior officers to come to Tehran to sign and submit required Government of Iran affidavit. This officer must be fully authorised to so act on yr behalf."

GTC contends that this clause falls within the exclusion provided by Article II, paragraph 1, of the Claims Settlement Declaration, and that the claim must be dismissed for lack of jurisdiction. Its Counterclaim, in which it seeks to recover damages from the Claimant for delay in loading, on the basis of the same contract, is impliedly filed contingently upon a finding that the Tribunal has jurisdiction.

(ii) The GTC Contract

In August 1978 the Claimant entered into a contract for the sale of wheat to GTC. This contract is evidenced by a similar exchange of three telexes and its main terms are substantially the same as those of the FTC contract. The disputes settlement clause in this case simply provides:

"Eventual disputes must be finally and exclusively settled in Iranian Courts."

The claim against GTC is for carrying charges with interest incurred as a result of the failure of the buyer's vessel to file notice of readiness to load within the specified period.

Here, too, GTC contends that the claim is excluded from the Tribunal's jurisdiction by virtue of the forum selection clause. Its Counterclaim for damages for delay in loading allegedly caused by the Claimant is similarly to be construed as contingent upon a finding that the Tribunal has jurisdiction.

In relation to both these claims, the Claimant has argued that the clauses should not be construed against the Claimant as the contracts were entered into from a position of unequal bargaining power; and that the forum selection clauses were not binding because revolutionary changes in Iran had fundamentally altered the judicial system in the Parties' contemplation when the contracts were signed.

On 5 November 1982 the Full Tribunal rendered interlocutory awards on jurisdiction in nine test cases involving a selection of contracts with different forum clauses. The operative words appearing in the two contract clauses presently under consideration are identical to those examined by the Full Tribunal in the case of George W. Drucker, Jr. and Foreign Transaction Co. et al.

(Interlocutory Award No. ITL 4-121-FT, Part III (2) "The Cement Offer"). In that case, the Full Tribunal found that the wording clearly meant that disputes between the parties must be referred to the courts of Iran, and that, consequently, it fulfilled the requirement of the exclusion provision of the Claims Settlement Declaration which sets forth that a claim falls outside the jurisdiction of the Tribunal if it arises under a contract between the parties "specifically providing that any disputes thereunder shall be within the sole jurisdiction of the competent Iranian courts".

This Chamber finds no reason to reach a different conclusion with respect to the wording of the clauses in the present contracts.

The Chamber finds that the Claimant's allegation of unequal bargaining power falls far short of the showing which would be required in order to vitiate the forum selection clauses.

As to the Claimant's contention with regard to changed circumstances in Iran, that issue is disposed of in the Full Tribunal's decision in the George W. Drucker, Jr. Award (Part II, "The Rice Contract").

2. The claim against MINISTRY OF WAR-ETKA CO. LTD.
("ETKA")

ETKA entered into two contracts on 8 May 1978 for the purchase of a quantity of rice from the Claimant, who now seeks demurrage charges together with interest arising out of delays in discharging the cargo at Iranian ports.

Article 14 of each contract provides:

"Any dispute which is not settled in a friendly manner will be referred to the Iranian legal Authorities".

ETKA contends that, on the basis of this clause, the sole jurisdiction of the Iranian courts is "evident and indisputable". Its counterclaim, in respect of discrepancies in the quantity of rice shipped, overpayments and damages for infestation of the consignments by lice and insects, is expressly stated to be contingent upon the Tribunal's finding that it has jurisdiction.

In the George W. Drucker, Jr. Award, the Full Tribunal had before it an almost identical clause (Part II, "The Rice Contract") which provided that disputes,

"shall be settled by reference to the legal authorities of Iran".

The conclusion of the Full Tribunal with respect to that clause was as follows:

"it can be assumed that the contracting parties when referring disputes to be settled by 'legal authorities' intended this expression to cover such bodies or authorities that exist within the legal system for the purpose of resolving commercial disputes. Therefore, the scope of the expression 'legal authorities' in the present context cannot be so wide as to cover governmental or other official bodies or agencies not dealing with disputes settlement. Nor would it be reasonable to read into Article 14 a reference to settlement through arbitration; such an interpretation would not be compatible with the word 'authorities' which indicates a body enjoying the status emanating from the State. In view of this, the Tribunal considers that 'legal authorities' must be understood to have the same meaning as 'courts', a term that itself includes administrative as well as judicial tribunals."

This Chamber finds no reason to reach a different conclusion with respect to the wording of the present contract.

3. The claim against CENTRAL UNION OF CONSUMERS
CO-OPERATIVES FOR IRANIAN WORKERS

This claim, for demurrage charges incurred on a shipment of rice, arises out of a contract dated 15 June 1978. Article 11 of the General Terms and Conditions of the contract provides,

"This contract shall be governed by the laws of the State of New York and of the United States of America".

There is in addition, a provision for arbitration under the Grain Arbitration Rules of the American Arbitration Association.

There can be no question of this claim falling within the exclusion provision of Article II, paragraph 1, of the Claims Settlement Declaration.

The issue of whether the CENTRAL UNION OF CONSUMERS CO-OPERATIVES FOR IRANIAN WORKERS is an agency or instrumentality of the Government of Iran or entity controlled by that Government or any political subdivision thereof, and thus a proper Respondent to a claim before this Tribunal, remains to be decided.

Conclusion

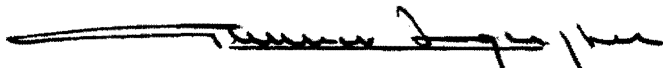
The Tribunal decides that it has no jurisdiction over the claims against GOVERNMENT TRADING CORPORATION, FOREIGN TRANSACTIONS COMPANY, and MINISTRY OF WAR-ETKA CO. LTD.

The Tribunal accordingly dismisses the claims against these three Respondents, and the counterclaims filed by them.

The Respondents GOVERNMENT TRADING CORPORATION, FOREIGN TRANSACTIONS COMPANY, and MINISTRY OF WAR-ETKA CO. LTD. are hereby directed to be stricken from the proceedings. The claim will proceed as against the remaining Respondent,

CENTRAL UNION OF CONSUMERS CO-OPERATIVES FOR IRANIAN
WORKERS.

Dated, The Hague,
5 September 1983.



Gunnar Lagergren
Chairman
Chamber One



Mahmoud M. Kashani
Concurring Opinion



Howard M. Holtzmann
Concurring Opinion