

123-135

AIMS TRIBUNAL

دیوان داوری دعاوی ایران - ایالات متحدہ

123-135

ORIGINAL DOCUMENTS IN SAFE

135

Case No. 123

Date of filing: 28.4.87

** AWARD - Type of Award _____
- Date of Award _____
_____ pages in English _____ pages in Farsi

** DECISION - Date of Decision 28.4.87
6 pages in English _____ pages in Farsi

** CONCURRING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** SEPARATE OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** DISSENTING OPINION of _____
- Date _____
_____ pages in English _____ pages in Farsi

** OTHER; Nature of document: _____

- Date _____
_____ pages in English _____ pages in Farsi

135

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه دآوری دعاوی ایران - ایالات متحدہ
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Date	28 APR 1987 ۱۳۶۶ / ۲ / ۸
No.	123

CASE NO. 123

CHAMBER ONE

DECISION NO. DEC 61-123-1

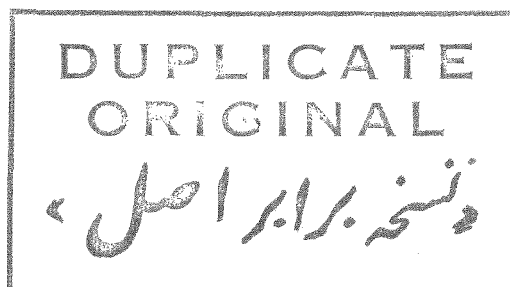
INTERNATIONAL SCHOOLS
SERVICES, INC.,

Claimant,

and

THE ISLAMIC REPUBLIC OF IRAN,
NATIONAL DEFENSE INDUSTRIES
ORGANIZATION,

Respondents.



DECISION

1. On 2 March 1987, the Agent of the Islamic Republic of Iran filed, within the permitted time limit, a "Request for an Additional Award" ("the Request"), in which it is claimed that the Tribunal's Award No. 290-123-1 ("the Final Award") filed in this Case on 29 January 1987, failed to address all the counterclaims raised by the Respondent NATIONAL DEFENSE INDUSTRIES ORGANIZATION ("NDIO"). The Request argues that, while the Award disposed of three counterclaims raised by NDIO, it failed to address a fourth counterclaim also raised by NDIO. It therefore requests that the Tribunal render an additional award to dispose of this fourth counterclaim.

2. On 13 March 1987, the Claimant INTERNATIONAL SCHOOLS SERVICES, INC. ("ISS") filed an "Opposition to Respondent's Request for an Additional Award" ("the Opposition"). ISS argues that NDIO's Request should be denied because the Tribunal addressed all of NDIO's counterclaims in the Final Award and that, in any event, the alleged fourth counterclaim was without merit. ISS further requests that it be awarded its costs incurred in preparing the Opposition.

3. The relevant provision of the Tribunal Rules, Article 37, paragraph 1, provides that:

"Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award." (Emphasis added).

Thus, in determining whether the Request is justified, the Tribunal must decide whether the alleged fourth counterclaim was a claim "presented in the arbitral proceedings but omitted from the award."

4. The complex procedural history of this Case is set forth in detail in Award No. ITL 57-123-1, pp. 1-6 (30 January 1986) ("the Interlocutory Award"). In the Interlocutory Award, the Tribunal decided to admit an Amendment, filed on 24 February 1983, to the original Statement of Claim, and established a schedule for further proceedings culminating in a hearing on 16 July 1986. Id. pp. 14 - 15.

5. The schedule laid down in the Interlocutory Award required the Respondents to file by 18 April 1986 "a Hearing Memorial answering the substance of the Amendment" together with evidence. The Claimant was to file a Reply by 16 May 1986, and the Respondents a Rejoinder and any evidence in rebuttal by 27 June 1986.

6. NDIO filed a document entitled "Statement of Defence and Documentary Evidence" on 18 April 1986. It contained three counterclaims. The Claimant objected, in its Reply filed on 16 May 1986, that the counterclaims should be dismissed as untimely filed pursuant to Article 19, paragraph 3, of the Tribunal Rules since they had not been raised in the Statement of Defence filed in March 1982. It nevertheless went on to reply to these three counterclaims on the merits.

7. NDIO filed a Rejoinder on 27 June 1986, which addressed the Claimant's reply to NDIO's three counterclaims. The portion of the Rejoinder dealing with the counterclaim for social security obligations contained two paragraphs relating to retained profits, quoted in the present Request, which the Agent of the Islamic Republic of Iran now seeks to characterize as a fourth counterclaim.

8. In its Final Award, the Tribunal dismissed each of the three counterclaims. See Final Award, pp. 20 - 21. In particular, the counterclaim for social security obligations was dismissed in its entirety for lack of jurisdiction.

9. As noted, the two paragraphs which the Agent of the Islamic Republic of Iran now seeks to characterize as a fourth counterclaim for wrongfully retained profits appear only in the part of the Rejoinder relating to social security counterclaims. To the extent that these two paragraphs were part of the social security counterclaim, they were resolved when that counterclaim was dismissed for lack of jurisdiction. But even if these two paragraphs were not intended by NDIO to be part of the social security counterclaim, they cannot be considered to have been a fourth counterclaim for two reasons. First, no request for relief was made with respect to the retained profits referred to in these two paragraphs; rather, the request for relief in the Rejoinder mentioned only the three counterclaims that had been made in the earlier pleading, thus indicating that NDIO itself did not consider the retained profits as giving rise to a separate counterclaim. Second, the issue of retained profits was raised for the first time in NDIO's Rejoinder, filed only three weeks before the hearing. A fourth counterclaim could not be added at that very late stage of the arbitral proceedings without the Tribunal's allowing an application for leave to do so pursuant to Article 19, paragraph 3, of the Tribunal Rules. No such application was ever made. Therefore, no such fourth counterclaim was ever before the Tribunal.

10. As noted, Article 37, paragraph 1, of the Tribunal Rules permits an additional award only with respect to "claims presented in the arbitral proceedings but omitted from the award." The record in this Case, as described above, leaves no doubt that no claims or counterclaims were omitted from the Final Award. Accordingly, the Tribunal concludes that the request for an additional award is not justified.

Award of Costs

11. ISS claims \$2,000 in attorneys' fees incurred in preparing its Opposition as its costs of arbitration. This Chamber has outlined its approach to costs in Sylvania Technical Systems, Inc. and Islamic Republic of Iran, Award No. 180-64-1, pp. 35 - 38 (27 June 1985). Taking into account the history of this proceeding, and pursuant to Article 38 of the Tribunal Rules, the Tribunal awards \$500 in costs to ISS.

For the foregoing reasons,

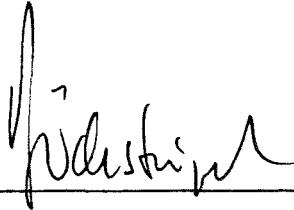
THE TRIBUNAL DECIDES AS FOLLOWS:

- (i) The Request for an Additional Award filed by the Agent of the Islamic Republic of Iran on 2 March 1987 is denied.
- (ii) The Respondent NATIONAL DEFENSE INDUSTRIES ORGANIZATION is obligated to pay the Claimant INTERNATIONAL SCHOOLS SERVICES, INC. the sum of Five Hundred United States Dollars (U.S. \$500.00) for costs of arbitration.

The above obligation shall be satisfied by payment out of the Security Account established pursuant to Paragraph 7 of the Declaration of the Government of the Democratic and Popular Republic of Algeria dated 19 January 1981.

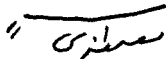
This Decision is hereby submitted to the President of the Tribunal for notification to the Escrow Agent.

Dated, The Hague,
28 April 1987

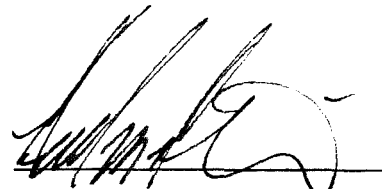


Karl-Heinz Böckstiegel
Chairman
Chamber One

In the name of God



Mohsen Mostafavi



Howard M. Holtzmann

My opinion here conforms to that which I have given with respect to Award No. ITL 57-123-1. I also believe that the Tribunal is not at liberty to award costs of arbitration, because (first) the Claimant submitted its response on its own motion and without any order by the Tribunal; and (second) the instant decision is of such a nature which does not necessarily require the Tribunal to invite pleadings of the other party to the Case.