

381-227

CLAIMS TRIBUNAL

دیوان داری داری ایران - ایالات متحدہ

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Case No. 381

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- Date _____
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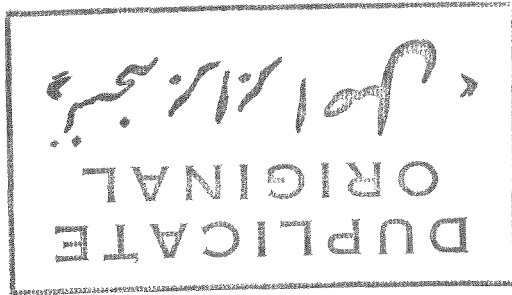
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CASE NO. 381

CHAMBER ONE

AWARD NO. 375-381-1

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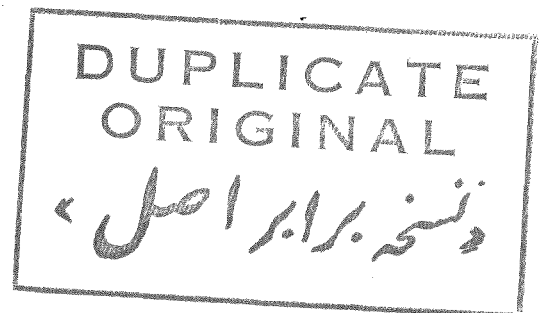
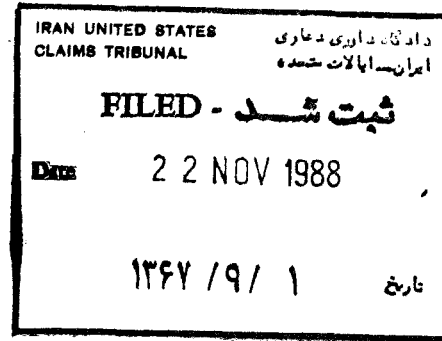


UITERWYK CORPORATION,
JAN C. UITERWYK,
MARIA UITERWYK,
ROBERT UITERWYK,
HENDRIK UITERWYK,
JAN D. UITERWYK,
Claimants,

and

THE GOVERNMENT OF THE ISLAMIC
REPUBLIC OF IRAN,
THE MINISTRY OF ROADS AND
TRANSPORTATION,
PORTS AND SHIPPING ORGANIZATION,
IRAN EXPRESS LINES,
SEA-MAN-PAK,

Respondents.



DECISION AND CORRECTION TO PARTIAL AWARD

A. DECISION

I. Introduction

1. On 4 August 1988, the Claimants filed a "Request for Interpretation and Correction" of Partial Award No. 375-381-1 pursuant to Articles 35 and 36 of the Tribunal Rules.

2. On 5 August 1988, the Agent of the Government of the Islamic Republic of Iran filed, on behalf of the Respondents, a "Request for Correction" to the same Partial Award.

3. Article 35, paragraph 1 of the Tribunal Rules states that a party "may request that the arbitral tribunal give an interpretation of the award." Article 36, paragraph 1 of the Tribunal Rules, provides for the correction of "any errors in computation, any clerical or typographical errors, or any errors of similar nature."

II. The Claimants' Request for Interpretation and Correction

4. The Claimants' request seeks an "interpretation and correction" of paragraphs 98 and 177 of the Partial Award. Paragraph 98 states:

Accordingly, the Tribunal concludes that 1,396 containers were in Iran and that Uiterwyk is entitled to the replacement value for those containers, as a cost which it has "actually incurred." The Tribunal notes, however, that six of the container owners have claims directly against Iranian entities currently pending before this Tribunal. Should those container owners recover directly in respect of the same containers, Uiterwyk's recovery would have to be proportionately reduced. The Tribunal thus retains jurisdiction over \$1,564,537.36 of Uiterwyk's claim, representing the portion allocable to those container owners with outstanding claims before the Tribunal. For the remainder of this part of the claim, the Tribunal awards \$2,948,619.50. (footnote omitted)

Paragraph 177 states:

The Tribunal has concluded that Uiterwyk is entitled to recover \$2,948,619.50 for the replacement value of the containers left in Iran. See supra para. 98. The Tribunal awards interest on this amount from 29 February, 1980, the date on which the IEL, and the containers, came under the control of the Respondents.

Thus paragraphs 98 and 177 are clear as to the granting of interest on the \$2,948,619.50 that the Tribunal awards in the Partial Award. It is also self-evident that the jurisdiction that the Tribunal retains "over \$1,564,537.36 of Uiterwyk's claim" includes jurisdiction to grant interest on that amount, in accordance with the Tribunal's usual practice of granting interest on claims and consistent with the awarding of interest on the other claims granted in this Case.

5. The Tribunal has held that Article 35, paragraph 1, was intended to apply only when an award contains ambiguous language. See, e.g., Ford Aerospace and Communications Corporation and The Government of the Islamic Republic of Iran, Decision No. DEC 59-93-1, para. 6 (23 Apr. 1983); Paul Donin de Rosiere, et al. and The Islamic Republic of Iran, et al., Decision No. DEC 57-498-1, para. 6 (10 Feb. 1987); Pepsico, Inc. and The Government of the Islamic Republic of Iran, Decision No. DEC 55-18-1, para. 2 (19 Dec. 1986). Paragraphs 98 and 177 are specific and unambiguous. Accordingly, the Tribunal finds that paragraphs 98 and 177 do not require interpretation within the meaning of Article 35, paragraph 1.

6. Further, the Claimants "request clarification that the amount awarded and set aside in [paragraph] 98 will be sequestered in the settlement fund." As discussed above, an interpretation of an award is authorized by Article 35 only when there is an ambiguity. No request that any amounts be "sequestered in the settlement fund" was made during the proceedings in this Case and, accordingly, that matter is

not ruled upon in the Partial Award. The Tribunal finds that in these circumstances this request is not within the scope of Article 35 of the Tribunal Rules.

7. While the Claimants describe their requests as being for "interpretation and correction," the Tribunal notes that they do not point to any computational, typographical or clerical error in either paragraph 98 or 177. Accordingly, there is no basis for a correction pursuant to Article 36, paragraph 1.

8. For the foregoing reasons, the Claimants' Request for Interpretation and Correction is denied.

III. The Respondents' Request for Correction

9. The Respondents first note that there is a discrepancy between the amount awarded for "per diem rental" in paragraphs 101 and 102 of the Partial Award and the figure in paragraphs 189 and IV(i). The Tribunal determines that this is due to a typographical error. The amount awarded for "per diem rental" should be corrected, pursuant to Article 36, paragraph 1 of the Tribunal Rules.

10. Second, the Respondents note that in paragraph 189 the total amount awarded the Claimant does not correspond to the sum of the amounts referred to in earlier paragraphs of the Partial Award. The Tribunal determines that this is the result of an error in computation that should be corrected pursuant to Article 36, paragraph 1 of the Tribunal Rules.

11. Third, the Respondents point out that the amount due Uiterwyk with respect to Sea-Man-Pak bonds was included in the Award against Iran Express Lines as well as in the Award against Sea-Man-Pak. The Tribunal determines that this is due to an error in computation that should be corrected

pursuant to Article 36, paragraph 1 of the Tribunal Rules because, as stated in paragraph 157 of the Partial Award, this portion of the Partial Award is payable only by Sea-Man Pak.

12. Taking into account the cumulative effect of the corrections referred to in paragraphs 9,10 and 11 of this Decision, Iran Express Lines is obligated to pay Uiterwyk U.S.\$16,244,770.23, plus interest, rather than U.S.\$16,524,450.56, plus interest, as set forth in the Partial Award.

13. Fourth, the Respondents' Request for Correction objects to the date selected in paragraph 174 of the Partial Award for calculating interest on the award of legal expenses paid by the Claimants for Iran Express Lines. The rationale for choosing the date is explained fully in the Partial Award and the Tribunal notes that there is no inaccuracy in paragraph 174. Tribunal precedent is clear:

Insofar as the Request constitutes an attempt . . . to reargue certain aspects of the Case and to disagree with the conclusions of the Tribunal in its . . . Award, there is no basis in the Tribunal's Rules of Procedure or elsewhere for review of an award on such grounds.

Paul Donin de Rosiere et al., and The Islamic Republic of Iran, Decision No. DEC 57-498-1, para. 4 (10 Feb. 1987), quoted in Ford Aerospace and Communications Corporation and The Government of the Islamic Republic of Iran, Decision No. DEC 59-93-1, para. 4 (23 Apr. 1987); Harris International Telecommunications, Inc. and The Islamic Republic of Iran, Decision No. DEC 73-409-1, para. 3 (26 Jan. 1988). The Tribunal finds that the request to change the date from which interest is awarded on legal expenses does not fall within the scope of Article 36, paragraph 1. The Tribunal therefore denies this portion of the Request.

14. Finally, the Respondents' Request for Correction objects to the Tribunal's treatment of interest with respect to voyage expenses. The Tribunal concluded that certain adjustments to the interest calculation were necessary in order to prevent a double recovery by the Claimants of interest paid on money they borrowed to meet obligations of Iran Express Lines. See Partial Award, para. 188. The methodology of these adjustments is explained fully in paragraph 188 and there is no inaccuracy in the amounts awarded. This request does not fall within the scope of Article 36 and, as discussed above, there is no other basis for review pursuant to Tribunal Rules. The Tribunal denies this portion of the Request.

B. CORRECTION

For the foregoing reasons, the Tribunal makes the following corrections to Partial Award No. 375-381-1. Copies of the corrected pages are attached to this Decision and Correction and are made a part thereof.

1. Paragraph 99

In the first line of paragraph 99, the figure "\$3,443,282.28" is replaced by "\$3,433,282.28."

2. Paragraph 189

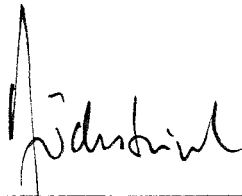
(a) In the second line of paragraph 189 the figure "\$16,524,450.56" is replaced by "\$16,267,270.23."

(b) In the eighth line of the table contained in paragraph 189, which begins "Per diem rental" the two figures "\$3,443,282.28" and "\$3,443,282.28" are replaced by "\$3,433,282.28" and "\$3,433,282.28."

3. IV. AWARD, paragraph (i)

- a) In the second line of paragraph (i), the phrase "Sixteen million five hundred twenty-four thousand four hundred fifty United States Dollars and fifty-six cents (U.S.\$16,524,450.56)" is replaced by "Sixteen million two hundred forty-four thousand seven hundred seventy United States Dollars and twenty-three cents (U.S.\$16,244,770.23)."
- b) In the fifth line of the table contained in paragraph (i), the figure "\$3,443,282.28" is replaced by "\$3,433,282.28."

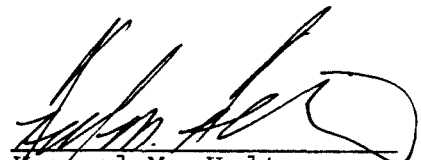
Dated, The Hague
22 November 1988



Karl-Heinz Böckstiegel
Chairman
Chamber One

In the Name of God

Mohsen Mostafavi



Howard M. Holtzmann

The present Decision and Correction was forwarded to Mr. Mostafavi for signature under cover of a letter from Mr. Böckstiegel dated 19 October 1988, and delivered to Mr. Mostafavi on 23 October 1988. That letter stated that the absence of a reply by 9 November 1988 would be taken as an indication that Mr. Mostafavi had no comments on, and did not wish to sign, the present Decision and Correction. No reply having been received to date, the Decision and Correction accordingly bears only the signatures of the other two Members of the Chamber, Mr. Böckstiegel and Mr. Holtzmann. Mr. Mostafavi also refused to sign Partial Award No. 375-381-1, to which this Decision and Correction refers, for the reasons set forth in his letter of 3 June 1988 to Mr. Böckstiegel, and in the Supplemental Opinion of Mr. Böckstiegel and Mr. Holtzmann, both of which were filed with that Partial Award on 6 July 1988.

98. Accordingly, the Tribunal concludes that 1,396 containers were in Iran and that Uiterwyk is entitled to the replacement value for those containers, as a cost which it has "actually incurred." The Tribunal notes, however, that six of the container owners have claims directly against Iranian entities currently pending before this Tribunal.⁶ Should those container owners recover directly in respect of the same containers, Uiterwyk's recovery would have to be proportionately reduced. The Tribunal thus retains jurisdiction over \$1,564,537.36 of Uiterwyk's claim, representing the portion allocable to those container owners with outstanding claims before the Tribunal. For the remainder of this part of the claim, the Tribunal awards \$2,948,619.50.

b) Per diem rentals

99. Uiterwyk claims \$3,433,282.28 in per diem rentals on containers, consisting of costs incurred up to 29 February 1980 on a total of 2,442 containers made available to IEL. It appears from the record that Uiterwyk attempted to recover these liabilities from IEL, but was not paid. There is no evidence, nor any assertion, that Uiterwyk paid any of this money to the respective container owners. The questions for the Tribunal are whether this liability was incurred by Uiterwyk before 19 January 1981 in the proper

(Footnote Continued)
principals may themselves escape liability. Compare Restatement (Second) of Agency § 320 ("Unless otherwise agreed, a person making or purporting to make a contract with another as agent for a disclosed principal does not become a party to the contract") with § 322 ("An agent making a contract on account of an undisclosed principal is a party to the contract"). Thus, Uiterwyk is liable on these contracts.

⁶ Interpool, Case No. 445; Sea Containers, Case No. 260; ITEL, Case No. 490; XTRA, Case No. 500; CTI, Case No. 451; and Integrated Container Service (TransAmerica), Case No. 452.

would amount to at least a partial double recovery of interest. Accordingly, the Tribunal finds that Uiterwyk is entitled to recover as damages the interest it actually incurred in borrowing money to meet IEL's obligations, together with interest on these amounts. Uiterwyk is not entitled to recover in addition interest on the items of damages for which these funds were borrowed. To award both would be, in effect, to grant the Claimants interest at the Sylvania rate, and then again at its actual rate. Therefore the Tribunal must, for the purposes of awarding interest only, deduct from the amount awarded to Uiterwyk \$5,325,000, the amount borrowed by Uiterwyk in "working capital" loans to pay IEL's expenses from 28 December 1978 through 23 August 1979. By allowing recovery of Uiterwyk's actual cost of borrowing \$5,325,000, and disallowing the additional recovery of interest on this same amount, the Tribunal is able precisely to compensate Uiterwyk for its losses. Accordingly, the Tribunal, for the purposes of calculating interest, deducts \$3,536,998.82 (the amount due Uiterwyk for voyage expenses), \$1,083,334 (the amount due Uiterwyk for cargo handling equipment), and \$704,667.18 (the majority of the amount due Uiterwyk for legal expenses), from the amounts on which interest should be calculated. These deductions total \$5,325,000 -- the amount borrowed by Uiterwyk to pay IEL's expenses. The expenses against which they have been deducted were incurred at approximately the same time as the \$5,325,000 loan was utilized.

q) Conclusion

189. The Tribunal therefore awards to Uiterwyk a total of \$16,267,270.23 plus interest as follows:

Item	Award	Plus	Interest On	From
Voyage expenses	\$3,536,998.82		--	--
General expenses	\$779,884.48		\$779,884.48	31 Jan. 1981
Legal expenses	\$793,938.95		\$89,271.77	30 Nov. 1980
Paid settlements	\$119,713.34		\$119,713.34	30 Oct. 1979
Unpaid settlements	\$394,909.25		--	--
Container replacement	\$2,948,619.50	\$2,948,619.50		29 Feb. 1980
Per diem rental	\$3,433,282.28	\$3,433,282.28		29 Feb. 1980
Container repair	\$218,152.89	\$218,152.89		29 Feb. 1980
Loan No. 34529	\$1,187,803.09	\$1,187,803.09		08 Dec. 1982
Loan No. 34507	\$1,337,957.20	\$1,325,000.00		18 Oct. 1985
Loan No. 34548	\$212,599.43	\$212,599.43		18 Jan. 1980
Pishtaz payment	\$81,800.00	\$81,800.00		26 July 1978
Cargo equipment	\$1,083,334.00		--	--
SMP Bonds	\$22,500.00	\$22,500.00		30 Mar. 1980
Transnave Charter	\$115,777.00	\$115,777.00		30 May 1980

F. Costs

190. The Claimant has requested legal costs, fees and expenses totalling \$938,909. Bearing in mind the nature and outcome of the proceedings and taking account of factors such as those outlined in Sylvania Technical Systems, Inc. and The Government of the Islamic Republic of Iran, Award No. 180-64-1, pp. 35-38 (27 June 1985), the Tribunal considers it reasonable to make an award of \$75,000 under this head.

IV. AWARD

For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

i) The Respondent IRAN EXPRESS LINES is obligated to pay the Claimant UITERWYK CORPORATION the amount of Sixteen million two hundred forty-four thousand seven hundred

seventy United States Dollars and twenty-three cents (U.S. \$16,244,770.23) plus interest as follows:

at 10.0 per cent per annum on	\$779,884.48	from 31 January 1981
at 10.0 per cent per annum on	\$89,271.77	from 30 November 1980
at 10.5 per cent per annum on	\$119,713.34	from 30 October 1979
at 10.25 per cent per annum on	\$2,948,619.50	from 29 February 1980
at 10.25 per cent per annum on	\$3,433,282.28	from 29 February 1980
at 10.25 per cent per annum on	\$218,152.89	from 29 February 1980
at 8.5 per cent per annum on	\$1,187,803.09	from 8 December 1982
at 7.0 per cent per annum on	\$1,325,000.00	from 18 October 1985
at 10.25 per cent per annum on	\$212,599.00	from 18 January 1980
at 10.5 per cent per annum on	\$81,800.00	from 26 July 1978
at 10.0 per cent per annum on	\$115,770.00	from 30 May 1980

up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account; plus costs of arbitration of U.S. \$75,000;

ii) The Respondent SEA-MAN-PAK is obligated to pay the Claimant UITERWYK CORPORATION the amount of Twenty-two thousand five hundred United States Dollars (\$22,500.00) plus interest thereon at 10.25 per cent per annum from 30 March 1980 up to and including the date on which the Escrow Agent instructs the Depositary Bank to effect payment out of the Security Account;

iii) The counterclaims of IRAN EXPRESS LINES and THE MINISTRY OF ROADS AND TRANSPORTATION are dismissed.

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