

ORIGINAL DOCUMENTS IN SAFECase No. 430

430-165

Date of filing: 21 Dec 1989

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

** DECISION - Date of Decision _____
_____ 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

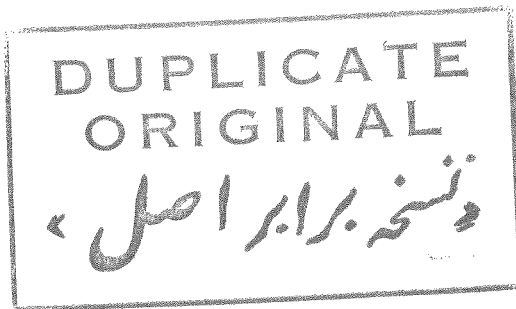
** OTHER; Nature of document: Correction to Award

438-430-1

- Date 21 Dec 1989
4 pages in English 5 pages in Farsi

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 430

CHAMBER ONE

AWARD NO. 438-430-1

ROCKWELL INTERNATIONAL SYSTEMS, INC.,

Claimant,

and

THE GOVERNMENT OF THE ISLAMIC
 REPUBLIC OF IRAN (THE MINISTRY OF
 NATIONAL DEFENCE),

Respondent.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	21 DEC 1989
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CORRECTION TO AWARD

1. On 3 October 1989, the Claimant, Rockwell International Systems, Inc. ("Rockwell"), submitted to the Tribunal a request, pursuant to Article 36 of the Tribunal Rules, that two corrections be made to the Award in this Case, filed on 5 September 1989. Award No. 438-430-1 (5 Sept. 1989), reprinted in ____ Iran-U.S. C.T.R. _____. The Tribunal notes that Rockwell's request was filed within the 30-day period required by the Tribunal Rules.

2. Rockwell first requests a correction of paragraph 252 of the Award to reflect the fact that Mellon Bank guarantee No. G-24 and corresponding letter of credit No. 40572 were replaced by bank guarantee No. G-41 and letter of credit No. 42139. Although this replacement was not mentioned in Rockwell's request for relief from its bank guarantee and letter of credit obligations, the replacement is reflected in an Exhibit attached to Rockwell's Hearing Memorial. As a result of Claimant's request to correct paragraph 252, and in granting that request, the Tribunal determines that two typographical errors in the Award should be corrected and that the designation of the first bank guarantees listed as issued by Bank Sepah should be "2760-2774" instead of "2760-2674" and that L/C Nos. "405780-405781" corresponding to the Mellon Bank N.A. guarantees should be "40580-40581." The Tribunal determines that these corrections concern errors within the meaning of Article 36 of the Tribunal Rules and corrects the Award accordingly.

3. Secondly, Rockwell requests the Tribunal to correct the Award to grant an additional U.S.\$135,993 for cancellation charges that were paid by Rockwell's principal subcontractor, Fischbach-Oman International Corporation ("Fischbach-Oman"), to its subcontractors, and were then invoiced to, and paid by, Rockwell. Rockwell notes that Fischbach-Oman entered into these subcontracts prior to August 1979, which the Tribunal held to be the date of contract termination. Rockwell argues that these cancellation charges properly constitute termination costs as defined in, and granted by, the Award. Rockwell further argues that awarding these

cancellation charges would be consistent with the Tribunal's decision to grant certain credits to the Respondent. See Award No. 438-430-1 at para. 225, reprinted in ___ Iran-U.S. C.T.R. at _____. In Rockwell's view, the Tribunal must have "overlooked" these charges and therefore a correction should be made to the Award.

4. Pursuant to Article 36 of the Tribunal Rules "either party . . . may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature." For the reasons discussed below, the Tribunal finds that Rockwell's request does not fall within the scope of this provision.

5. The termination of Contracts No. 119 and 120 (the "Contracts"), as well as the distinction between performance and termination costs, were key issues in this Case. They were discussed extensively by the Parties in their written pleadings and at the Hearing. In its written pleadings, Rockwell consistently argued that it did not consider the Contracts or subcontracts terminated until June 1980; prior to that time, they were merely "suspended." The question of the termination of subcontractors and sub-subcontractors was also discussed at some length at the Hearing. Rockwell expressly stated that "none" of the performance costs that it allegedly incurred between September 1979 and June 1980 -- which would include the cancellation charges at issue here -- constituted "termination costs." See Award No. 438-430-1 at para. 194, reprinted in ___ Iran-U.S. C.T.R. at _____. Specifically with respect to these cancellation charges, the stenographic transcript of the Hearing records that Rockwell stated that "under those circumstances, whatever costs were incurred in . . . cancelling sub/subcontractors were not considered by Rockwell at the time . . . as termination costs." In sum, Rockwell never classified or claimed these charges as termination costs until its request for correction of the Award. The Tribunal considers the request in this respect to be an impermissible

attempt to reargue the Case. Accordingly, Rockwell's request for this correction is denied.

6. For the foregoing reasons,

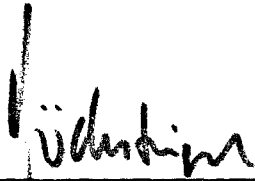
The Tribunal decides as follows:

a) Paragraph 252(2) of the Award is corrected to read as follows:

2. The bank guarantees Nos. 2760-2774, 2776-2777 and 2779-2780 issued by Bank Sepah pursuant to Article 7.1 of Contract No. 119, and bank guarantees Nos. 8/237 and 8/238, issued by Bank Tejarat pursuant to Article 7.1 of Contract No. 120, and Mellon Bank N.A. guarantees relating to Contract No. 119, guarantee Nos. G-13-G-23, G-25-G-27, G-29-G-30, G-32-G-33 and G-41 (corresponding to L/C Nos. 40561-40571, 40573-40575, 40577-40578, 40580-40581 and 42139), as well as Citibank N.A. standby letters of credit relating to Contract No. 120, Nos. WCG-G70389F and WCG-G70390F, have no further purpose. The Respondent, THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF IRAN (THE MINISTRY OF NATIONAL DEFENCE), shall withdraw all demands for payment in connection with the guarantees and shall refrain from making any further demands thereon. The Respondent shall take all action necessary to ensure that Bank Sepah and Bank Tejarat cancel the guarantees, release the letters of credit, withdraw all demands for payment made in respect of the letters of credit, and refrain from making any further demands thereon.

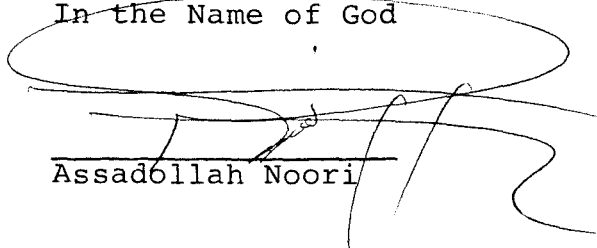
b) The remainder of the request is denied.

Dated, The Hague
21 December 1989


Karl-Heinz Böckstiegel
Chairman
Chamber One


Howard M. Holtzmann

In the Name of God


Assadollah Noori