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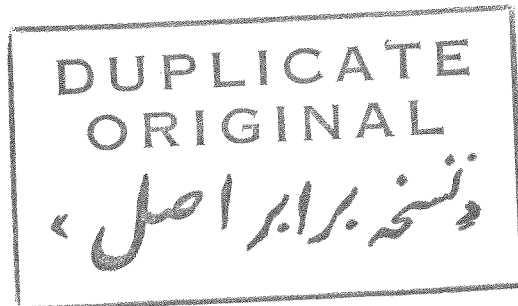
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IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان دآوری دعاوی ایران - ایالات متحدہ



CASE NO. 440

CHAMBER THREE

AWARD NO. 484-440-3

ORTON/McCULLOUGH CRANE COMPANY,
Claimant,

and

IRANIAN STATE RAILWAYS,
BANK MARKAZI IRAN.

Respondents.

IRAN-UNITED STATES CLAIMS TRIBUNAL	دیوان دآوری دعاوی ایران - ایالات متحدہ
FILED	ثبت شد
DATE	25 JUN 1990
	تاریخ ۱۳۶۹ / ۴ / ۴

AWARD

Appearances:

For the Claimant : Mr. Martin McCullough,
Vice-President, General Manager;
Mr. Henry W. Gron Jr.,
Attorney-at-law.

For the Respondent : Mr. Ali H. Nobari,
Agent of the Government of the
Islamic Republic of Iran;
Dr. Mohammad Taghi Naderi,
Legal Adviser to the Agent;
Mr. Abbas Edjtehadi,
Legal Assistant;
Mr. Mahmoud Dadkhah Tehrani,
Legal Representative of Iranian
State Railways;
Mr. Mohammad Reza Agha Seyed Hashem,
Legal Representative of Iranian
State Railways;
Mr. Seyed Ali Mosavi,
Legal Representative of Bank
Markazi Jomhouri Islami Iran.

Also present: Mr. T. Ramish,
Agent of the Government of the
United States of America.

I. INTRODUCTION

1. The Claimant is ORTON/McCULLOUGH CRANE COMPANY ("Orton"). Orton states that it is a corporation organized under the laws of the State of Indiana. The Respondents are (i) IRANIAN STATE RAILWAYS ("ISR"), and (ii) BANK MARKAZI IRAN ("Bank Markazi").

2. In its Statement of Claim, filed on 18 January 1982, Orton formulated its claim as follows. Orton and ISR entered into an agreement in November 1977 (the "Contract") pursuant to which ISR agreed to purchase sixteen cranes from Orton for a total purchase price of \$3,100,800.¹ Orton constructed, shipped and received payment for the first twelve cranes in the order. After completing construction of the last four cranes, however, Orton was allegedly unable to ship them to ISR, first because of the actions of the United States government on 14 November 1979 blocking the transfer of Iranian property interests in the United States² and later because of the failure of ISR to extend the letter of credit arranged to secure payment. This letter of credit had been initially issued by Bank Markazi and was valid only until 30 April 1980.

3. Orton requested the Tribunal to order Bank Markazi to extend the letter of credit for a period of not less than five and one-half months or, if Bank Markazi was unable to do so, to order ISR to provide for a new letter of credit for the same period, and in addition, to award Orton \$14,490.68 in damages. Alternatively, if no letter of

¹All references to dollars in this Award are to United States dollars.

²Exec. Order No. 12170, 44 Fed. Reg. No. 222 (1979) (hereinafter "Executive Order 12170").

credit could be provided for, Orton requested \$775,200 in damages.

4. In their respective Statements of Defense, both filed on 22 November 1982, Bank Markazi and ISR rejected Orton's claims. ISR filed three counterclaims totaling \$1,986,496 for (i) the amount allegedly due pursuant to a contractual delay penalty (\$1,612,416); (ii) the difference between the agreed price for the four cranes and the price for which ISR allegedly was forced to purchase the cranes elsewhere (\$64,000); and (iii) the amount of a guarantee (\$310,800) arranged by Orton to secure performance of the Contract, which ISR alleged that Orton's correspondent bank had refused to pay.

5. In its subsequent submissions, Orton stated that since its Claim was filed, Executive Order 12170 had been lifted and the four cranes had been exported to ISR through Electric & Diesel Locomotive Company Limited, England. Orton therefore withdrew its Claim subject to withdrawal of the Counterclaims by ISR. ISR did not, however, withdraw its Counterclaims.

6. At the Respondents' request a hearing was held on 12 March 1990.

II. JURISDICTION

7. The Respondents initially argued that the Tribunal lacks jurisdiction because, among other things, the Claimant is bound by a forum selection clause in the Contract. At the Hearing the Respondents withdrew their jurisdictional objections. As has been repeatedly recognized in the Tribunal's jurisprudence, however, the Tribunal's power to adjudicate claims derives from the Claims Settlement Declaration ("CSD") and not from the consent of the

individual parties to cases. The Tribunal may raise jurisdictional issues on its own motion. See, e.g., Parguin Private Joint Stock Company and United States of America, Award No. 275-12783-3 (15 Dec. 1986), reprinted in 13 Iran-U.S. C.T.R. 261; Burton Marks and Harry Umann and Islamic Republic of Iran, Interlocutory Award No. ITL 53-458-3 (29 June 1985), reprinted in 8 Iran-U.S. C.T.R. 290.

8. The last phrase of Paragraph 1 of Article II of the CSD excludes from the Tribunal's jurisdiction:

claims arising under a binding contract between the parties specifically providing that any dispute thereunder shall be within the sole jurisdiction of the competent Iranian courts, in response to the Majlis position.

9. Whether a claim is excluded from the Tribunal's jurisdiction by this provision of the CSD will depend on the specific language of the forum selection clause at issue. Early in the Tribunal's history the Full Tribunal considered a number of different forum selection clauses in various cases to decide whether or not the language of each specific clause would divest the Tribunal of its jurisdiction. See Gibbs and Hill, Inc. and Iran Power Generation and Transmission Company (Tavanir) of the Ministry of Energy of the Government of Iran, et al., Interlocutory Award No. ITL 1-6-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 236; Halliburton Company, et al. and Doreen Imco, et al., Interlocutory Award No. ITL 2-51-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 242; Howard, Needles, Tammen and Bergendoff and Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 3-68-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 248; George W. Drucker, Jr. and Foreign Transaction Co. et al., Interlocutory Award No. ITL 4-121-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 252; T.C.S.B. Inc. and Iran, Interlocutory Award No. ITL 5-140-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 261;

Ford Aerospace and Communications Corporation, et al. and Air Force of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 6-159-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 268; Zokor International, Inc. and Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 7-254-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 271; Stone and Webster Overseas Group, Inc. and National Petrochemical Company, et al., Interlocutory Award No. ITL 8-293-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 274; Dresser Industries, Inc. and Government of the Islamic Republic of Iran, et al., Interlocutory Award No. ITL 9-466-FT (5 Nov. 1982), reprinted in 1 Iran-U.S. C.T.R. 280.

10. In this Case there is no dispute that the claims and counterclaims are based on the Contract. Article 14 of the English text of the Contract provides as follows:

Any difference or dispute from the execution of the contract that may not be settled amicably, should be settled through Iranian Courts.

As translated by the Tribunal's translation department, the Persian text of the same article, which according to the Contract is equally authoritative, reads as follows:

Any disputes arising out of the performance of this contract, if not settled amicably, shall be settled through the legal authorities of Iran.

11. The wording of the Persian version of this clause is virtually identical to the forum selection clause discussed by the Full Tribunal in George W. Drucker Jr. and Foreign Transaction Co., et al., Award No. ITL 4-121-FT, p. 2 (5 Nov. 1982); reprinted in 1 Iran-U.S. C.T.R. 252, 253. In that Case, the Full Tribunal decided that it had no jurisdiction because the Contract contained the following

forum selection clause:

Any dispute arising from the performance of this contract, not settled amicably, shall be settled by reference to the legal authorities of Iran.

The Tribunal therefore concludes that it has no jurisdiction over claims, including counterclaims, in this Case. See also Technology Enterprises, Inc. and Foreign Transaction Company, Award No. 109-328-2, p. 4 (31 Jan. 1984), reprinted in 5 Iran-U.S. C.T.R. 118, 119.

III. COSTS

12. Each party shall bear its own costs of arbitrating this Case.

IV. AWARD

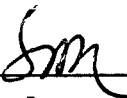
13. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- a. The Claims and the Counterclaims are dismissed for lack of jurisdiction.

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

Dated, The Hague,
25 June 1990



Gaetano Arangio-Ruiz
Chairman
Chamber Three

In the Name of God



Richard C. Allison



Parviz Ansari Moin