

CASE NO. B12

CHAMBER TWO

AWARD NO. 336-B12-2

73

IRAN NATIONAL AIRLINES COMPANY,
Claimant,

and

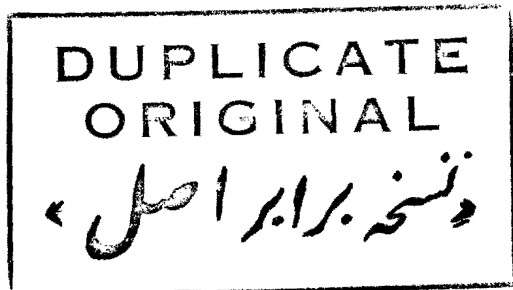
THE GOVERNMENT OF THE UNITED
STATES OF AMERICA,
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه داوری دعاوی ایران - ایالات متحده	
ثبت شد - FILED			
Date	30 NOV 1987	تاریخ	۱۳۶۶ / ۹ / ۹
No.	B12	شماره	

AWARD

Appearances:

For Claimant:



Mr. Mohammed K. Eshragh,
Agent of the Islamic
Republic of Iran,
Dr. Akbar Shirazi,
Legal Adviser to
the Agent
Mr. Abdol-Majid Aghighi,
Assistant to the
Agent,
Mr. Mohammad Reza Askari,
Mr. Ghaffar Kaveh,
Mr. Garabid Mansourian,
Mr. Jelal Al Hossini,
Representatives of
Airlines of the
Islamic Republic of
Iran.

For Respondent:

Ms. Lucy F. Reed,
Attorney Adviser,
U.S. Department
of State,
Mr. Michael F. Raboin,
Deputy Agent of the
United States of
America.

I. THE CLAIMS

1. The Claimant IRAN NATIONAL AIRLINES COMPANY ("Iran Air") filed a Statement of Claim on 15 January 1982 against THE GOVERNMENT OF THE UNITED STATES OF AMERICA ("the Respondent"). Iran Air seeks recovery of U.S.\$12,770.76 and interest thereon in connection with eleven Iran Air invoices which allegedly remain unpaid. The invoices were submitted in respect of Iran Air passenger tickets allegedly issued to various U.S. Navy officials for purposes of travel by air at different times between May 1974 and January 1980 pursuant to routes and fares specified by the Respondent in U.S. Government Travel Requests ("GTR").¹

2. A Hearing in this Case was held on 10 November 1986, in conjunction with Cases Nos. B8, B9, B10, and B51.

II. JURISDICTION

3. The Parties do not dispute, and the Tribunal is satisfied, that the Claimant is an "agency, instrumentality, or controlled entity" of the Government of the Islamic Republic of Iran and therefore comes within the definition of "Iran" contained in Article VII, paragraph 3, of the Claims Settlement Declaration.

¹The U.S. Government Travel Request ("GTR") is the official U.S. Government travel authorization and procurement form. Form 1169, the original GTR (blue), is given to the traveler for presentation to the agent of the carrier for issuance of a ticket, is evidence of the service required, and is a supporting document for the carrier's bill for the transportation charges. Three memorandum copies are carbon interleaved for simultaneous preparation with the original. Also carbon interleaved is Form 1113, the original Public Voucher for Transportation Charges (white), and a memorandum copy of the same. Form 1113 is used by the carrier to bill the transportation charges, and includes a tear-off slip to be returned to the carrier along with the payment.

4. The Respondent is the Government of the United States of America² and clearly comes within the definition of "United States" contained in Article VII, paragraph 4, of the Claims Settlement Declaration.

5. The Claim is therefore an "official claims" between "Iran" and the "United States" pursuant to Article II, paragraph 2, of the Claims Settlement Declaration. However, the Tribunal's jurisdiction over such claims is limited to those which arise out of "contractual arrangements between [Iran and the United States] for the purchase and sale of goods and services." While the Parties dispute in this Case the precise contractual basis for the claims, the Tribunal is satisfied that passenger transportation by Iran Air for the account of the United States constitutes "contractual arrangements" for the purchase and sale of services within the meaning of Article II, paragraph 2. Accordingly, the Tribunal holds that it has jurisdiction over this Case.

III. REASONS FOR THE AWARD

A. General Issues

1. Terms of the Contractual Arrangements

6. In relation to the general arguments of both Parties, the Tribunal notes their disagreement on the law applicable to the issues in dispute. The Respondent asserts that U.S. law governs the transactions and argues that issuance of an airline ticket based on a GTR creates a contract between the U.S. agency concerned and the carrier which is subject to

²While the Claim was originally directed against the United States Navy, the United States Government has responded to it, considering that this is more consistent with the Algiers Declarations. In its subsequent pleadings, the Claimant directed its claims against the United States.

U.S. law. The Claimant denies that U.S. law is applicable to the transactions and argues that its submission of GTR forms with its invoices should not be construed as acceptance of the application of U.S. laws and regulations to eventual disputes. The Claimant also denies that the GTR is a document that creates a contract. Rather, it argues that a GTR is a mere travel request and that the air ticket issued by the Claimant constitutes the contract. The Claimant draws support for this argument from the fact that air tickets are considered contracts under the relevant International Air Transport Association (IATA) regulations and many conventions, such as the Warsaw Convention.³ As its air tickets are issued subject to Iran Air's conditions of carriage, the Claimant argues that Iranian law governs the dispute.

7. Before addressing these contentions, the Tribunal must first determine whether any of the provisions or conditions included in the relevant documents control the issue in dispute rather than the provisions of some system of law. The Tribunal observes that a GTR is clearly a request for specific services and an offer to pay for those services subject to certain conditions enumerated on the form. A carrier accepts the GTR conditions when it offers a ticket conforming to the terms specified in the GTR. However, the airline passenger tickets also contain other terms and conditions and are themselves contractual documents. The U.S. Government accepts these terms and conditions of contract when its sponsored traveler uses the ticket for the requested transportation. The subsequent submission of the carrier's invoice or Form 1113, the Public Transportation Voucher provided with the original GTR for that purpose, together with the original GTR and the used ticket, clearly

³Convention for the Unification of Certain Rules Relating to International Carriage by Air, 12 October 1929.

confirm that a contract was formed and that both Parties accepted the terms and conditions contained in both the GTR and the passenger ticket. Only if those terms and conditions are inconsistent or incomplete might the Tribunal need to consider a question of applicable law. However, the Tribunal decides that the issues presented in this Case do not require such an analysis and that all questions may be resolved by reference to the practice of the Parties and the relevant provisions of the contract formed by the GTR and the passenger ticket.

2. Time Limitation

8. A principal contention of the Respondent is that all invoices dated prior to 1976 are barred by the relevant U.S. Statute of Limitations or by application of the principle of extinctive prescription under international law.

9. The Claimant's responses to these defenses are that the U.S. Statute of Limitations and the principle of extinctive prescription are not applicable and that it regularly notified the Respondent of past due invoices thereby interrupting the run of time which might otherwise have provided a basis for the Respondent's defense of extinctive prescription. The Claimant submitted to the Tribunal copies of its letters to the Respondent regarding the invoices involved in this Case.

10. The Tribunal has held previously that municipal statutes of limitation are not necessarily binding on claims before international tribunals. However, such periods may be taken into account when determining the effects of an unreasonable delay in pursuing a claim before such a tribunal. Alan Craig and Ministry of Energy of Iran et al., Award No. 71-346-3 (2 September 1983) pp. 15-16; Harnischfeger Corporation and Ministry of Roads and

Transportation et al.,, Award No. 144-180-3 (13 July 1984) p. 46.

11. Time limitations specified by contract, however, are enforceable. The Islamic Republic of Iran and The United States of America, Award No. ITL 60-B1-FT (4 April 1986) p. 14; Carolina Brass, Incorporated and Arya National Shipping Lines, S.A. et al., Award No. 252-10035-2 (12 September 1986) pp. 8-10.

12. As the claims in this Case are grounded on contractual arrangements, the Tribunal must first determine whether specific provisions in the relevant contractual documents operate to bar any of these claims. The Tribunal notes that no mention is made in the GTR of a limitation of claims or a governing law which contains such a limitation. The Tribunal also notes that Iran Air passenger tickets subject the passenger transportation services to the rules and limitations relating to the carrier's liability for loss or damage established by the Warsaw Convention, supra, the provisions of which are not relevant to the issues raised in this Case. The ticket conditions also stipulate that services performed are subject to (i) provisions contained in the ticket, (ii) applicable tariffs, and (iii) the carrier's conditions of carriage and related regulations. Iran Air did not, however, submit in its pleadings a copy of the referenced conditions of carriage and related regulations.

13. The Tribunal decides, on the basis of the evidence before it, that the Parties did not agree to any contractual limitation period which would operate to bar any of these claims or any governing law which clearly controls the issue of a time limitation.

14. With respect to the Respondent's alternative argument, the Tribunal recognizes that extinctive prescription is an

established principle of public international law which has been applied by international tribunals. I. Brownlie, Principles of Public International Law 505-06 (3d ed. 1979). Given the commercial nature of the transactions at issue, however, the Tribunal does not consider it appropriate to apply the principle of extinctive prescription as a matter of public international law. Therefore, the Tribunal must decide the time limitation issue by reference to whether there has been any unreasonable delay by the Claimant in notifying the Respondent of its claims such that it would be unfair to require the Respondent to answer to such stale claims. In this connection, the Tribunal recognizes that one purpose of time limitations in commercial practice is to allow parties to discard their records after they are no longer necessary, such as when no dispute has arisen and the specified period has expired. See Carolina Brass, supra, para. 8.

15. The Tribunal notes that the Parties were aware of a decision of the U.S. Court of Claims that claims such as these could be brought by Iran Air in the United States at any time up to six years after the transportation services were rendered. See Iran National Airlines Corp. v. The United States, 360 F.2d 640 (1966). Thus, under the circumstances of this Case, a delay of up to six years in bringing a claim is not unreasonable, given that no contractual provision specified a shorter period and records would have to be maintained at least that long. However, it would not be reasonable to expect that the Claimant had any realistic opportunity to bring suit against the Respondent in the U.S. Court of Claims after 17 April 1980, the date of Executive Order 12211, which the President of the United States declared would have the effect of closing down the offices in the United States of Iran Air. Consequently, the Tribunal will only consider the question of unreasonable

delay in this Case in connection with invoices presented for services performed prior to 17 April 1974.⁴

16. None of the invoices at issue in this Case were presented prior to 17 April 1974. Consequently, none of the claims in this Case are barred.

3. Adequacy of the Evidence

17. The Respondent also argues as a general defense that most of the invoices were not supported by original GTRs or were not presented in proper form for payment.

18. In response, the Claimant argues that it was unable now to produce original GTRs when it had already submitted them, together with the invoice, for payment. It argues further that even if the original GTRs were not received by the Respondent, the latter had an opportunity to raise the issue of non-receipt when the Claimant wrote reminding the appropriate agency or agencies of outstanding amounts owed on the invoices. According to the Claimant, the lack of response constituted an implicit confirmation that the original GTRs had been received in proper form by the Respondent.

19. The Tribunal does not agree with the Respondent's contention that, in order to prevail on its claims in this Case, the Claimant be required to produce the original GTRs or to observe the procedures established by the U.S. Government for lost GTRs. The payment regulations of the United States are not dispositive of the issue of the

⁴The Tribunal notes that the services at issue were performed prior to the date of each invoice. However, the Respondent informed the Tribunal at the Hearing that it did not object, for the sake of convenience, to use the invoice date as the relevant date.

existence of a debt and the Tribunal is only called on in this Case to determine whether or not valid debts remain unpaid. In order for the Claimant to establish the validity of its claims, it must demonstrate in connection with each invoice that a contract for the carriage of passengers by air was entered into with the Respondent and that the requested services were performed.

20. The Respondent further denies liability in connection with several invoices on the grounds that, in some instances, inadequate substantiating documentation has been submitted, in that copies of the GTR or the airline ticket are not provided to prove the existence of a contract with the United States. The Claimant, on the other hand, relies on the sufficiency of its evidence. The Tribunal decides that, in order to prove the existence of a contractual debt involving the United States, the Claimant's invoices must be supported by a copy of the airline ticket and the GTR, or if these are not available, some document, such as Form 1171, which indicates that a GTR was issued. All of the claims on invoices in this Case satisfy this standard.

21. The Tribunal notes that the only defense maintained with respect to Invoices Nos. 156639 and 156632 was that they were not accompanied by the original GTRs.⁵ As the Claimant submitted copies of both the GTR and the passenger ticket, the Tribunal holds the Respondent liable in the total amount of \$3,279.16 on these two invoices.

⁵The Tribunal notes that another defense, related to the cost of the services in Bahraini dinars, was withdrawn by the Respondent during the Hearing.

B. Specific Issues

22. In addition to the general defenses considered above, the Respondent denied liability on the remaining invoices on a variety of grounds. For convenience and in order to facilitate its decision, the Tribunal has classified the invoices into the following categories: (1) invoices where the Respondent has admitted partial liability, and (2) invoices supported only by Form 1171.

1. Invoices where the Respondent has admitted partial liability

Table 1

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> (U.S.\$)
145223	4 Mar 1978	1,154.28
145224	18 Jan 1978	1,154.28
154718	22 Oct 1979	1,880.83
156737	29 Jan 1980	<u>2,785.78</u>
	Total	\$6,975.17 =====

23. In connection with these invoices, the Respondent has admitted partial liability in the total amount of \$2,903.85 on the grounds that it is only obligated to pay to the carrier the lowest applicable fare and that the amounts invoiced reflect overcharging for the services requested. However, the Respondent has not submitted any evidence or argument showing the Tribunal how it calculated the fare amounts it concedes. In addition, the Tribunal notes that many of the GTRs show the same fare amount as the ticket and the invoice. In these circumstances, the Tribunal finds the Respondent liable to the Claimant for a total of U.S.\$6,975.17, being the sum owed on all the invoices in Table 1 above.

2. Invoices with supporting documentation (U.S. Form 1171) other than a copy of a GTR

Table 2

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> (U.S.\$)
117655	11 May 1974	295.75 ^a
127256	09 Feb. 1975	361.87 ^a
134115	20 July 1975	442.30
114796	28 Jan. 1976	428.70
114795	28 Jan. 1976	<u>1,029.65</u>
	Total	\$2,558.27
		=====

^a Deficit payment amount converted from the rial amount at the rate of 70.60 rials/dollar.

24. With reference to Invoices Nos. 117655 and 127256, the Tribunal notes that the claims on these invoices relate to shortfalls in payment by the Respondent (in the case of Invoice No. 117655 for 6 GTRs issued for a total of U.S.\$1,184.02 and in the case of Invoice No. 127256 for 17 GTRs issued for a total of U.S.\$4,917.89). No copies of the GTRs and/or tickets are available to enable the Tribunal to determine which transactions listed in the invoice were paid and which were not paid by the Respondent. Furthermore, the Tribunal notes that Invoice No. 117655 is accompanied by an audit sheet from the Respondent, detailing its objections to certain amounts claimed in the invoice. The Claimant has not provided any information in response to these contemporaneous objections explaining why it believes that it is nonetheless entitled to payment. For these reasons, the Tribunal dismisses the claims based on Invoices Nos. 117655 and 127256.

25. With respect to the remaining invoices, the Respondent argued that the claims should be dismissed because of lack of adequate supporting documentation. The Tribunal notes that the Claimant submitted in support of these invoices a copy of U.S. Form 1171 (Public Voucher for Transportation of Passengers) or Form 1171A (Memorandum copy) which matches the GTR number recited in each of the Iran Air Invoices. As indicated in Part II.A.3 above, and despite the lack of a copy of the GTR or a copy of the Iran Air ticket indicating the relevant GTR number, the Tribunal finds the submission of a copy of Form 1171 that attests to the issuance of a GTR sufficient to establish claims on the above invoices. The Tribunal notes that none of the other defenses raised by the Respondent to these invoices have been accepted by the Tribunal.

26. Accordingly, the Tribunal holds the Respondent liable for U.S.\$1,900.65, being the total sum of the remaining invoices in Table 2 above.

C. Summary

27. The Tribunal notes that the services were rendered by the Claimant to the United States Navy. The amount found to be owing in the present Award is based on the following invoices:

U.S. Navy

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Awarded</u> (U.S.\$)
134115	20 July 1975	442.30
114795	28 Jan. 1976	1,029.65
114796	28 Jan. 1976	428.70
145224	18 Jan. 1978	1,154.28
145223	04 Mar. 1978	1,154.28
156632	24 Apr. 1979	2,957.41
156639	10 May 1979	321.75
154718	22 Oct. 1979	1,880.83
156737	29 Jan. 1980	<u>2,785.78</u>
	Total	\$12,154.98
		=====

V. INTEREST

28. In order fully to compensate the Claimant for the delay in payment of the amounts found owing, the Tribunal awards simple interest at the annual rate of 10 percent (365-day basis) from the date 30 days after the date of each invoice awarded, up to and including the date the Respondent effects payment to the Claimant.

VI. COSTS

29. Each Party shall bear its own costs of arbitration.

VII. AWARD

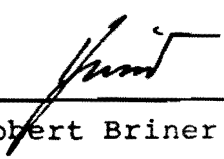
30. For the foregoing reasons,

THE TRIBUNAL AWARDS AS FOLLOWS:

- (a) The Respondent THE GOVERNMENT OF THE UNITED STATES OF AMERICA is obligated to pay the Claimant IRAN NATIONAL AIRLINES COMPANY the sum of Twelve Thousand One Hundred Fifty-Four United States Dollars and Ninety-Eight Cents (U.S.\$12,154.98), plus simple interest at the annual rate of 10 percent (365-day basis) from the date 30 days after the date of each invoice awarded up to and including the date the Respondent effects payment to the Claimant.
- (b) Each Party shall bear its own costs of arbitration.
- (c) All other claims arising from this Case are dismissed.

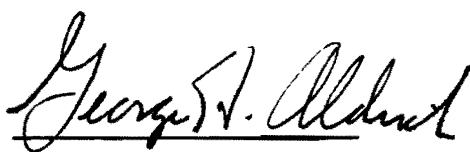
Dated, The Hague

30 November 1987

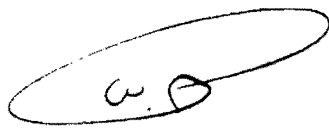


Robert Briner
Chairman
Chamber Two

In the name of God



George H. Aldrich



Hamid Bahrami-Ahmadi
Concurring in part, Dissenting in part, as to official claims see my Dissenting Opinion in Awards in Cases B2, B13, B18 and B20.