

CASE NO. B51

CHAMBER TWO

AWARD NO. 334-B51-2

IRAN NATIONAL AIRLINES COMPANY,

Claimant,

and

THE GOVERNMENT OF THE UNITED

STATES OF AMERICA,

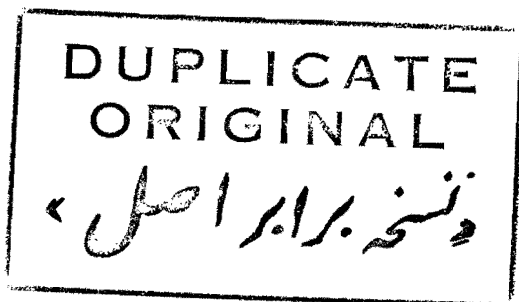
Respondent.

IRAN UNITED STATES CLAIMS TRIBUNAL		دادگاه دآوری دعوی ایران - ایالات متحده	
FILED - ثبت شد			
Date	3 8 1957	تاریخ	
	۱۳۴۶/۹/۲		
No.	B51	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. Jelial 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.\$113,891.42 and interest thereon in connection with over 100 Iran Air invoices which allegedly remain unpaid.¹ The invoices were submitted in respect of various aircraft services and supplies allegedly rendered at different times between 1965 and 1979 to military aircraft of the United States.

2. A Hearing in this Case was held on 10 November 1986, in conjunction with Cases Nos. B8, B9, B10, and B12.

II. JURISDICTION

3. In accordance with the reasoning set forth in Case No. B8, Award No. 333-B8-2, the Tribunal holds that it has jurisdiction over this Case under Article II, paragraph 2, of the Claims Settlement Declaration.

III. REASONS FOR THE AWARD

A. Admission of Liability

4. On the basis of the Respondent's admission of liability, the Tribunal finds the Respondent liable to the Claimant for the sum of U.S.\$75,026.98, being the total amount claimed on all of the invoices in Table 1, below:

¹The Claim was originally U.S.\$254,322 plus 17 percent interest based on 115 invoices, but was adjusted by the Claimant at the Hearing to reflect withdrawal of its claims on Invoices Nos. 121496, 153951, 153963, 152268, 149788, 154006, 149998, and 144151 and clarification of the amount claimed on Invoices Nos. 144353, 144354, and 144356.

Table 1

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> <u>(U.S.\$)</u>
137325	-- May 1976	123.87*
154206	25 Nov. 1978	37,332.68*
154207	25 Nov. 1978	35,260.51*
154208	25 Nov. 1978	767.54*
152469	25 Nov. 1978	769.12*
144354	06 Mar. 1979	773.26*
		<u>\$ 75,026.98</u>
		=====

* Invoice amount converted from Iranian rials into U.S. Dollars at the rate of 70.60 rials/dollar used by both Parties in this Case.

B. General Issues

1. Time Limitation

5. In accordance with the reasoning set forth in Case No. B8, Award No. 333-B8-2, the Tribunal addresses the question of unreasonable delay in this Case in connection with invoices presented prior to 17 April 1974.²

²The 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 of the invoice date as the relevant date.

6. Only five of the invoices in this Case were presented prior to 17 April 1974. These invoices are dated between February 1972 and March 1974. According to the evidence submitted by the Claimant, it addressed a letter dated 5 May 1975 to the Armish Maag³ in Tehran regarding its claims for non-payment on all but Invoices Nos. 108470 and 109350, some one to three years after the invoices were issued.⁴

7. The claims on Invoices Nos. 108470 and 109350, dated February 1972 and 22 October 1972 respectively, were apparently first notified to the Respondent as part of the Statement of Claim in this Case, filed with the Tribunal in January 1982. In the circumstances, the Tribunal holds that the claims on Invoices Nos. 108470 and 109350 are barred due to unreasonable delay in their presentation. With respect to the other invoices, and taking into account the above considerations, the Tribunal decides that the delay involved was not unreasonable and that the claims based on these invoices need not be barred.

2. Adequacy of the Evidence

8. The Respondent also argued as a general defense that many of the invoices were not supported by any document indicating that an official of the United States had requested the invoiced services or supplies, or that the services or supplies recited on the invoices had in fact been supplied.

³Armish Maag stands for United States Army Mission Headquarters -- Military Assistance Advisory Group.

⁴The Tribunal notes that subsequent letters dated in 1976, 1977, and 1978 state only an outstanding balance, without the itemized statement of accounts sent therewith which listed the invoices and invoice amounts considered as still outstanding.

9. The Tribunal has to determine in the circumstances whether or not valid debts remain unpaid. In order for the Tribunal first to determine whether a contractual obligation existed with respect to the Respondent, the Claimant must satisfy the Tribunal with respect to each invoice that services and supplies were requested by the Respondent and were in fact provided by the Claimant. Accordingly, the Tribunal decides that the invoices must be supported with documentation signed by a representative of the Respondent, indicating that the requested supplies or services were rendered to the Respondent's aircraft.

10. The Tribunal observes that the practice of the Parties was for Iran Air to include with its invoices the appropriate substantiating documentation. Indeed, each invoice recites that the relevant documentation is attached to it. In these proceedings, the Tribunal received no explanation for the absence of supporting documentation in connection with certain invoices. Consequently, the claims based on the invoices listed in Table 2 below, all of which are unaccompanied by any documentation, are dismissed for lack of proof.

<u>Table 2</u>		
<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> <u>(U.S.\$)</u>
124773	-- May 1974	518.20*
129768	02 Oct. 1976	69.77*
152944	02 Aug. 1977	50.10*
144353	06 Mar. 1977	<u>773.26</u> *
Total		\$1,411.33
=====		

* Invoice amount converted from Iranian rials into U.S. Dollars at the rate of 70.60 rials/dollar used by both Parties in this Case.

11. The nature of the proof presented by the Claimant in connection with the remaining invoices will be discussed in Part III.C, below.

3. Presumption of Payment

12. The Respondent argues further that U.S. regulations and procedures relating to payments in connection with AF Form 15 transactions create a presumption that the sums owed on such invoices had already been paid. The Respondent asserts that this presumption should be applied because, due to the application of U.S. regulations governing destruction of past records, it was no longer possible for the Respondent to produce records of payment for AF Form 15 transactions over three years old. The Claimant contends in response that the ability of the Respondent to produce records on some past payments involving transactions more than three years old vitiates the Respondent's position of a presumption of prior payment, or the contention that all records actually had been destroyed.

13. The Tribunal does not doubt that the timely submission of invoices supported by AF Form 15s usually results in payment. The Tribunal decides, however, that the evidence in this Case is inadequate to justify application of a presumption of prior payment, which would unfairly shift the burden of proof back to the Claimant to show that no payment had been made.

C. Specific Issues

14. In addition to the general defenses considered above, the Respondent denied liability on the remaining invoices for a variety of reasons. For convenience and in order to facilitate its decision, the Tribunal has classified the invoices still in dispute into the following categories: (1)

invoices supported by Air Force Form 15s; (2) invoices supported by Iran Air Work Orders; and (3) other invoices.

1. Air Force Form 15 Invoices

15. Air Force Form 15 is a purchase order form used by USAF aircraft crews to purchase supplies and services during stops at non-USAF air terminals. Use of the Form 15 is mandated by Air Force regulations. The Respondent asserts that a Form 15 completed by an authorized official is both a contract of purchase and a certification that the supplies and services have been received. Execution of the certificate portion of the Form 15 by an authorized official creates a legally binding debt on the part of the United States in favor of the named vendor. The Tribunal notes that many of the invoices in this category are also supported by Iran Air Work Orders which duplicate the information contained in the Form 15s.

16. The Tribunal decides that the copies of AF Form 15s submitted by the Claimant with the invoices in this category are sufficient to establish the validity of its claims on these invoices. Noting that the Respondent has not proven prior payment on the above invoices, the Tribunal holds the Respondent liable for U.S.\$25,090.81, being the total amount sought on all the invoices listed in Table 3 below.⁵

⁵Except for Invoice No. 109861, which was denominated in U.S. Dollars, all of the other invoice amounts in Table 3 have been converted from Iranian rials at the rate of 70.60 rials/dollar used by both Parties in this Case.

Table 3

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> <u>(U.S.\$)</u>
108472	-- Mar. 1972	509.92
109861	-- Mar. 1974	260.50
124757	-- May 1974	28.33
124794	-- May 1974	1,007.61
124795	-- May 1974	1,007.61
124796	-- May 1974	1,007.61
124814	-- May 1974	383.85
124840	-- May 1974	2,878.90
124842	-- May 1974	1,727.34
147006	-- May 1976	35.75
147045	-- May 1976	71.50
147050	-- May 1976	107.25
142690	28 Nov. 1976	155.55
142692	28 Nov. 1976	155.55
142512	27 Dec. 1976	155.55
152378	11 May 1977	317.00
152380	11 May 1977	33.71
152264	-- May 1977	502.93
152269	-- May 1977	502.93
152983	05 July 1977	353.81
152987	05 July 1977	353.81
152845	10 Sep. 1977	577.51
152846	10 Sep. 1977	577.51
152847	10 Sep. 1977	611.22
152848	10 Sep. 1977	920.06
152814	11 Oct. 1977	577.51
152817	11 Oct. 1977	212.59
152818	11 Oct. 1977	577.51
149783	12 Nov. 1977	212.07
149784	12 Nov. 1977	145.17
149785	12 Nov. 1977	577.51
149786	12 Nov. 1977	577.51
149781	09 Nov. 1977	577.51
149892	25 Dec. 1977	577.51
149893	25 Dec. 1977	212.59
149991	26 Jan. 1978	145.17
149995	26 Jan. 1978	577.51
153927	14 May 1978	648.34
153941	14 May 1978	159.72
153944	14 May 1978	648.34
153946	14 May 1978	648.34
154190	26 June 1978	271.69
153301	10 Sept. 1978	678.82
153342	10 Sept. 1978	623.26
153343	10 Sept. 1978	648.34
153294	25 Nov. 1978	250.85
153470	25 Nov. 1978	209.86
154205	25 Nov. 1978	159.69
154223	25 Nov. 1978	159.69
154224	25 Nov. 1978	159.69
154225	25 Nov. 1978	159.69
144356	06 Mar. 1979	451.02
Total		<u>\$25,090.81</u> =====

2. Iran Air Work Orders

17. This category of the Claimant's invoices is supported only by Iran Air Work Orders. The Claimant argued that its Work Orders are standard documents which, when properly authorized, are commonly accepted in international aviation practice as debt documents. The defense of the Respondent is that the copies of these Work Orders bear no signature of a U.S. official such that a contractual obligation of the United States can be shown and that the Claimant has failed to prove the contractual basis for use of Work Orders in lieu of the Respondents' Form 15. The Claimant replies that the Work Orders are signed by U.S. officials and that the practice of the parties was to accept Work Orders as well as AF Form 15s. Based on the evidence before it, the Tribunal is satisfied that the Work Orders submitted by the Claimant are signed in the appropriate places by a U.S. official, showing that the services were requested and attesting that they were performed satisfactorily. The Tribunal decides, therefore, that these Work Orders are sufficient to establish the validity of the claims on these invoices. Noting that the Respondent has not proven prior payment, the Tribunal holds the Respondent liable for U.S.\$6,231.42, being the total amount claimed on the invoices listed in Table 4, below:

Table 4

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed (U.S.\$)</u>
121473	-- Jan. 1975	1,302.79
142280	11 Sep. 1976	269.00
142348	11 Sep. 1976	104.00 *
142605	25 Dec. 1976	8.50
142509	27 Dec. 1976	354.00 *
142573	27 Dec. 1976	5.67 *
142574	27 Dec. 1976	17.00 *
142501	27 Dec. 1976	17.00 *
142507	27 Dec. 1976	17.00 *
142568	27 Dec. 1976	28.33
144707	29 Jan. 1977	112.00 *
152844	10 Sep. 1977	8.50 *
152855	10 Sep. 1977	17.00 *
152854	10 Sep. 1977	8.50 *
152840	10 Sep. 1977	8.50
149769	08 Nov. 1977	207.80
149762	08 Nov. 1977	51.00 *
149985	10 Jan. 1978	25.50 *
149902	01 Jan. 1978	53.82 *
149905	01 Jan. 1978	33.99
154139	01 Apr. 1978	70.00 *
153100	14 May 1978	135.99 *
153932	14 May 1978	8.50 *
153936	14 May 1978	17.00 *
154092	14 May 1978	8.50 *
154096	14 May 1978	8.50
153912	15 Aug. 1978	100.00
152777	16 Aug. 1978	500.00
153347	05 Sep. 1978	792.12
153350	05 Sep. 1978	386.75
153331	05 Sep. 1978	1,313.50
153328	05 Sep. 1978	95.00 *
153444	26 Nov. 1978	40.00 *
153473	26 Nov. 1978	22.66
144352	06 Mar. 1979	83.00
Total		\$6,231.42 =====

* Invoice amount converted from Iranian rials into U.S. Dollars at rate of 70.60 rials/dollar used by both Parties in this Case.

3. Other Invoices

Table 5

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Claimed</u> <u>(U.S.\$)</u>
149508	--	1,678.00
153945	14 May 1978	159.72 [*]
149768	08 Nov. 1977	1,868.00
142908	-- Sept. 1977	117.92 [*]
109315	03 Oct. 1972	355.81
142421	--	126.23 [*]
154216	28 Oct. 1978	66.86 [*]
154219	28 Oct. 1978	<u>740.65</u>
	TOTAL	\$5,113.19

^{*} Invoice amount converted from Iranian rials into U.S. Dollars at rate of 70.60 rials/dollar used by both Parties in this Case.

18. In relation to Invoice No. 149508, which is undated, the Tribunal notes that the supporting document submitted by the Claimant is an Iran Airport Services invoice, rather than an AF Form 15 or Iran Air Work Order, which were usually used by the Parties as supporting documentation. The Tribunal need not decide whether this document is adequate to substantiate the claim, as the crucial information is illegible on the document. The Tribunal therefore dismisses the claim based on Invoice No. 149508.

19. The Respondent asserts that it is not liable for the sums owed on Invoice No. 153945 because the supporting AF Form 15 bears no signature by a representative of the United States. The Claimant contended that the use and distribution of AF Form 15s is "severely controlled" by the Respondent and that a mere submission of the Form 15, even if

unsigned, creates liability for payment. The Tribunal considers that the Claimant has the responsibility to ensure that the AF Form 15, on which it relies in seeking payment, was properly signed. In the circumstances, any loss incurred due to the lack of authorization by a U.S. official must be borne by the Claimant. Accordingly, the Tribunal dismisses the claim based on Invoice No. 153945.

20. In relation to Invoice No. 149768, the Tribunal notes that the accompanying Work Order is not signed by a U.S. official, unlike the other work orders considered in Part III.B.2 above, which are signed. For the reasons set forth in Part III.A.2 above, the claim based on Invoice No. 149768 is dismissed.

21. Invoice No. 142908 relates to catering services. The document submitted in support of the invoice by the Claimant has been objected to by the Respondent on the ground that it was not signed by a U.S. official. The Claimant argued that its course of dealing with the Respondent confirmed the contractual basis for this invoice, submitting evidence that the U.S. Army had paid on similar invoices in the past. For the reasons set forth in Case No. B8, Award No. 333-B8-2, in relation to similar catering invoices, the Tribunal holds the Respondent liable for U.S.\$ 117.92, being the amount claimed on Invoice No. 142908.

22. The Tribunal notes that Invoice No. 109315 relates to a payment shortfall on the full amount stated in the invoice. The Claimant provided an explanation of how the claimed shortfall was calculated. However, the Tribunal is not persuaded by this explanation, as it is unable to determine which services were paid for and which allegedly remain unpaid. In the circumstances, the Tribunal dismisses the claim based on Invoice No. 109315.

23. Invoice No. 142421 and the supporting AF Form 15 was objected to by the Respondent on the ground that the AF Form 15 had been signed by the authorizing officer under protest that the requested services were not actually performed. The Claimant argued that notwithstanding such protest, attestation by an authorized official as to the services requested incurs the liability of the Respondent. The Tribunal decides that the Claimant has failed to rebut the evidence that the requested services were not performed. Accordingly, the Tribunal dismisses the claim based on Invoice No. 142421.

24. With respect to Invoices No. 154216 and 154219, the Respondent alleged and submitted various documentary evidence in the form of affidavits and log sheets that the amounts of these invoices had been fully paid. The Claimant argued that it never actually received payment. On Invoice No. 154216, the Tribunal notes that the Claimant seeks only a payment shortfall. The Claimant has not indicated, and the Tribunal is unable to determine from the documentary evidence provided, how the deficit amount has been computed by the Claimant. In line with its previous reasoning in paragraph 22 above, the Tribunal dismisses the claim based on Invoice No. 154216. On Invoice No. 154219, the Tribunal concludes that the evidence submitted by the Respondent is sufficient to establish a rebuttable presumption that payment was made on this invoice. The Claimant has not submitted any evidence, such as bank records, sufficient to rebut this presumption. The Tribunal therefore dismisses the claim based on Invoice No. 154219.

4. Summary

25. The Tribunal notes that the aircraft services and supplies in this Case were rendered to the United States Air Force. The amount found to be owing in the present Award is based on the following invoices:

Table 6

<u>Invoice No.</u>	<u>Date</u>	<u>Amount Awarded</u> <u>(U.S.\$)</u>
108472	-- Mar. 1972	509.92
109861	-- Mar. 1972	260.50
124757	-- May 1974	28.33
124794	-- May 1974	1,007.61
124795	-- May 1974	1,007.61
124796	-- May 1974	1,007.61
124814	-- May 1974	383.85
124840	-- May 1974	2,878.90
124842	-- May 1974	1,727.34
121473	-- Jan. 1975	1,302.79
137325	-- May 1976	123.87
147006	-- May 1976	35.75
147045	-- May 1976	71.50
147050	-- May 1976	107.25
142280	11 Sept. 1976	269.00
142348	11 Sept. 1976	104.00
142690	28 Nov. 1976	155.55
142692	28 Nov. 1976	155.55
142605	25 Dec. 1976	8.50
142501	27 Dec. 1976	17.00
142507	27 Dec. 1976	17.00
142509	27 Dec. 1976	354.00
142512	27 Dec. 1976	155.55
142568	27 Dec. 1976	28.33
142573	27 Dec. 1976	5.67
142574	27 Dec. 1976	17.00
144707	29 Jan. 1977	112.00
152378	11 May 1977	317.00
152380	11 May 1977	33.71
152264	-- May 1977	502.93
152269	-- May 1977	502.93
152983	05 July 1977	353.81
152987	05 July 1977	353.81
152840	10 Sept. 1977	8.50
152844	10 Sept. 1977	8.50
152845	10 Sept. 1977	577.51
152846	10 Sept. 1977	577.51
152847	10 Sept. 1977	611.22
152848	10 Sept. 1977	920.06
152854	10 Sept. 1977	8.50
152855	10 Sept. 1977	17.00
142908	-- Sept. 1977	117.92
152814	11 Oct. 1977	577.51
152817	11 Oct. 1977	212.59
152818	11 Oct. 1977	577.51
149762	08 Nov. 1977	51.00
149769	08 Nov. 1977	207.80
149781	09 Nov. 1977	577.51
149783	12 Nov. 1977	212.07
149784	12 Nov. 1977	145.17
149785	12 Nov. 1977	577.51

149786	12 Nov.	1977	577.51
149892	25 Dec.	1977	577.51
149893	25 Dec.	1977	212.59
149902	01 Jan.	1978	53.82
149905	01 Jan.	1978	33.99
149985	10 Jan.	1978	25.50
149991	26 Jan.	1978	145.17
149995	26 Jan.	1978	577.51
154139	01 Apr.	1978	70.00
153100	14 May	1978	135.99
153927	14 May	1978	648.34
153932	14 May	1978	8.50
153936	14 May	1978	17.00
153941	14 May	1978	159.72
153944	14 May	1978	648.34
153946	14 May	1978	648.34
154092	14 May	1978	8.50
154096	14 May	1978	8.50
154190	26 June	1978	271.69
153912	15 Aug.	1978	100.00
152777	16 Aug.	1978	500.00
153328	05 Sept.	1978	95.00
153331	05 Sept.	1978	1,313.50
153347	05 Sept.	1978	792.12
153350	05 Sept.	1978	386.75
153301	10 Sept.	1978	678.82
153342	10 Sept.	1978	623.26
153343	10 Sept.	1978	648.34
152469	25 Nov.	1978	769.12
153294	25 Nov.	1978	250.85
153470	25 Nov.	1978	209.86
154205	25 Nov.	1978	159.69
154206	25 Nov.	1978	37,332.68
154207	25 Nov.	1978	35,260.51
154208	25 Nov.	1978	767.54
154223	25 Nov.	1978	159.69
154224	25 Nov.	1978	159.69
154225	25 Nov.	1978	159.69
153444	26 Nov.	1978	40.00
153473	26 Nov.	1978	22.66
144352	06 Mar.	1979	83.00
144354	06 Mar.	1979	773.26
144356	06 Mar.	1979	451.02

Total

\$106,467.13

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V. INTEREST

26. 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, or if no day is indicated, the first day of the second month following the month indicated on each invoice awarded, up to and including the date the Respondent effects payment to the Claimant.

VI. COSTS

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

VII. AWARD

28. 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 One Hundred Six Thousand Four Hundred Sixty-Seven United States Dollars and Thirteen Cents (U.S.\$106,467.13), 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, or if no day is indicated, the first day of the second month following the month indicated on 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.

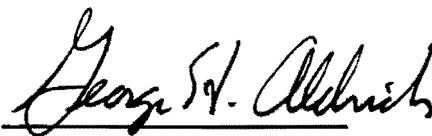
(c) All other claims arising from this Case are dismissed.

Dated, The Hague
30 November 1987

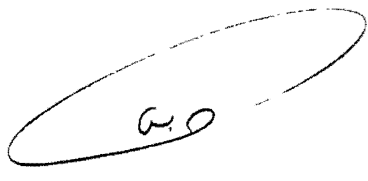


Robert Briner
Chairman
Chamber Two

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.