

IRAN-UNITED STATES CLAIMS TRIBUNAL

دیوان داری دعاوی ایران - ایالات متحدہ

IN THE NAME OF GOD

CASE NOS. B/59 and B/69

CHAMBER ONE

AWARD NO. 247-B59/B69-1

THE MINISTRY OF NATIONAL DEFENCE
OF THE ISLAMIC REPUBLIC OF IRAN,
Claimant,

and

THE GOVERNMENT OF THE UNITED STATES
OF AMERICA AND BOWEN MCLAUGHLING
YORK CO., a division of Harsco Inc.,
Respondents.

IRAN UNITED STATES CLAIMS TRIBUNAL	دادگاه داری دعاوی ایران - ایالات متحدہ
ثبت شد - FILED	
Date	15 AUG 1986 ۱۳۶۵/۵/۲۴
No.	B69



DISSENTING OPINION OF MOHSEN MOSTAFAVI

While on principle I am not in agreement with this Tribunal's imposing costs of arbitration, in connection with which position I have set forth my opinion with respect to Award No. 216-53-1 (Blount Brothers Corporation, and the Government of the Islamic Republic of Iran, Bank Tejarat, Bank Saderat, and Bank Refah Kargarán), my dissent to imposition of costs of arbitration in the present case is based, not only upon the reasons therein set forth, but also on certain other considerations which would have required that there be no award of costs of arbitration in the present case, irrespective of whether or not one agreed with the arguments made in my opinion in Award No. 226-53-1. In cases where the Tribunal awards costs of arbitration, it bases its decision on Article 40 of the Tribunal Rules, in awarding against the "unsuccessful party" for payment of costs of arbitration. The terms "successful party" and "unsuccessful party"

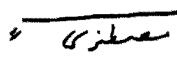
refer to that time when the Tribunal has heard the merits of the claim and rendered a decision in favor of either of the two parties, as a result of which one party is considered to be "successful" and the other "unsuccessful." In the present case, the Tribunal has not entered into the merits but has rather announced its lack of jurisdiction; and thus, while the parties have brought claim against one another, there is no "successful party" or "unsuccessful" party such that the latter might be required to bear the costs of arbitration.

This decision is in conflict with the whole body of Tribunal precedent, as well as that of this Chamber itself and of this same panel of arbitrators. In Award No. 165-341-1 (Western Dynamics Corporation, and the Government of the Islamic Republic of Iran and ETKA Organization). and in Award No. 243-112-1 (Continental Grain Export Corporation, and the Union of Consumers' Co-operatives for Iranian Workers), in both of which instances the claim by a United States claimant against an Iranian respondent was dismissed owing to lack of jurisdiction, no costs of arbitration were imposed and each party was obliged to bear its own costs of arbitration. Therefore, in this case too, in keeping with the rule set forth in Article 40 of the Tribunal Rules, which has always been invoked where costs of arbitration have been awarded, and in particular in accordance with the Tribunal's precedent in this regard, costs of arbitration should not have been awarded.

The Hague,

Dated 24 Mordad 1365/ 15 August 1986




Mohsen Mostafavi