Award in Case 941 (528-941-3) of 6 March 1992

Arbitrators: Gaetano Arangio-Ruiz (Chairman), Richard C. Allison, Parviz Ansari Moin (concurring in part, dissenting in part)

Parties: Claimant: W. Jack Buckamier; Respondent: The Islamic Republic of Iran, Tehran Redevelopment Corporation, Bank Mellat, Hejrat Branch

Subject matters:
- admissibility of amended claim (Art. 20 Tribunal Rules)
- ownership of claim by partner in partnership
- expropriation
- probative value of declarations
- rights of subcontractor against principal
- unjust enrichment
- breach of contract due to denial of access to work site

Facts

The Claimant, W. Jack Buckamier, claimed the sum of $18,477,370 plus interest and costs against Respondents Iran, Isiran/Army (Isiran), Tehran Redevelopment Corporation (TRC) and Bank Mellat (the Bank). The Claimant alleged expropriation of his interests in the Non-Commercial Firm of HNB Industrial and Educational Consultants (HNB) due to Respondents preventing HNB from completing performance of its contractual obligations. Alternatively, he asserted a claim based on breach of contracts. The Claimant further alleged claims for (i) monies lent by him to HNB and never recovered as a result of Iran's actions, (ii) damages caused by the Customs Agency's retention of equipment that Mr. Buckamier attempted to import, (iii) funds allegedly deposited by him for a transfer that the Bank failed to execute and (iv) lost profits under prospective contracts that did not materialize due to the alleged interference by Iran.

The Respondent denied any expropriation or breach of contract and asserted counterclaims in the amount of 987,139,491 rials representing Mr. Buckamier's share of an advance payment made to HNB along with damages for delay in performance by HNB of its contractual obligations.

Excerpt

[...]
IV. THE MERITS

[...]

Page: 304

[...]

(c) Contractual Claims

[...]

Page: 305

[...]

(ii) The TRC Contract

95. "The Tribunal first addresses Mr. Buckamier's claims for lost profits. The basis for these claims is his contention that TRC breached the Contract and thus prevented him from earning these amounts. The Tribunal notes that the record contains little direct evidence of any fundamental breach, however. [footnote omitted] Where Mr. Buckamier speaks of political upheaval, disruption, difficulties, delays and mismanagement, his pleadings convey the impression that what he actually describes is the adverse influence of the Iranian revolution on the parties' performance of the TRC Contract. The Claimant has not evidenced any specific instance in which that influence does not qualify as force majeure within the parties' contractual relationship. [footnote omitted] Consequently, the Tribunal dismisses Mr. Buckamier's claims for lost profits under the TRC Contract ....

96. "Mr. Buckamier's claim for modification fees for twenty-nine compactors raises the question which party bore responsibility for the incorrect specification of the systems. Although the Contract states that HNB was to install the compactors according to the descriptive plan and technical specifications suggested by HNB, the Claimant maintains that the specification error was made by TRC engineers. In response to a question by the Tribunal, Mr. Buckamier explained that he gave a copy of the compactor data to TRC's engineers, who then sent their own specifications directly to Multi-Pak in the United States. At the Hearing the Respondent acknowledged Mr. Buckamier's account of the event, which appears further confirmed by a letter from HNB to TRC dated 17 March 1979 stating that '[t]he TRC/Ekbatan specification 11B-2 was sent to Multi-Pak Corporation.' The Tribunal is satisfied, therefore, that the specification error is attributable to TRC.

97. "The second issue is whether the modification work was undertaken as a result of an agreement to that effect between HNB and TRC. Mr. Fakhiami has testified that '[i]t was impossible to get the TRC Management approvals to issue a new Contract to HNB to do the Modification Work, so I asked HNB if they would do the Work and that TRC would pay HNB later when Management approval could be obtained.' Although Mr. Fakhiami's explanation suggests that management approval was a mere formality and later testimony provided by him suggests that he was in a position to authorize payment, this statement compels the conclusion that the modification request made by Mr. Fakhiami did not create a contract between TRC and HNB.

98. "In view of the foregoing, the question arises whether the Claimant can recover on the alternative basis of unjust enrichment. As the Tribunal has stated in Sea-Land Service, Inc. and The Government of the Islamic Republic of Iran, et al., Award No. 135-33-1, p. 28 (22 June 1984), reprinted in 6 Iran-U.S. C.T.R. 149, 169 ('Sea-Land'), to have recourse to this principle,

'[t]here must have been an enrichment of one party to the detriment of the other, and both must arise as a consequence of the same act or event. There must be no justification for the enrichment, and no contractual or other remedy available to the injured party whereby he might seek compensation from the party enriched.'
100. "The Tribunal notes that in Lockheed, the claimant, in the hope that its contract would be renewed, continued to perform work even though the contract pursuant to which it had previously assisted the respondent had expired. By contrast, in the present Case it appears that HNB undertook the extra work because the specification errors otherwise would have prevented it from fulfilling its obligations under the TRC Contract, which at that point was still in force. Had the Contract already ceased to exist, HNB would have had to face the adverse consequences of a risk it took Voluntarily. In the present circumstances, however, considering TRC's expectations within its contractual relationship with HNB, the Tribunal finds it reasonable that HNB is paid for its modification work in respect of the first twenty-nine compactors.

102. "With respect to Mr. Buckaimier's Claim for repair Tees, the Tribunal notes that the parties disagree as to whose responsibility it was to store and protect the compactors after they had been delivered to the site.

104. "As was the case with respect to the modifications, the repairs performed by HNB were a precondition to HNB's fulfillment of its obligations under the TRC Contract. It is appropriate, therefore, that HNB be compensated for the work it has done for the benefit of TRC...."

105. "HNB's invoices for modifications and repairs and the explanations provided therein constitute contemporaneous evidence that, as claimed by Mr. Buckamier, HNB did complete the installation of the first twenty-nine systems. TRC contends, however, that it had awarded the job of installing the compactors not to HNB but to Chutco. [footnote omitted] The Tribunal notes that HNB's initial proposal letter to TRC of 5 December 1976 identifies Claredj Co. Ltd. of Iran, Chutco's predecessor, as the company responsible for installation. The agreement between TRC and Chutco submitted by the Respondent is somewhat ambiguous in its description of Chutco's responsibilities. By contrast, the TRC Contract explicitly makes HNB 'responsible for the operation of installing 282 compactors.' The Contract's payment terms also make reference to the installation of the systems. It appears unlikely that HNB would have performed that work if that had been TRC's obligation....

106. "Weighing these considerations, the Tribunal is satisfied that HNB performed its work pursuant to the TRC Contract. Noting the references in HNB's invoices to the acceptance of the systems by the TRC representative, the absence of evidence of complaints by TRC, and Mr. Fakhami's confirmation that the systems were fully operational, the Tribunal determines, therefore, that the Claimant is entitled to payment in accordance with the Contract...."

[...]

**Referring Principles:**

IX.1 - Basic rule