

International Centre for
Settlement of Investment Disputes

MARVIN FELDMAN

v.

MEXICO

CASE No. ARB(AF)/99/1

CORRECTION AND
INTERPRETATION
OF THE AWARD

President : Prof. Konstantinos D. KERAMEUS

Members of the Tribunal : Mr. Jorge COVARRUBIAS BRAVO
Prof. David A. GANTZ

Secretary of the Tribunal : Ms. Gabriela ALVAREZ AVILA

In Case No. ARB(AF)/99/1,

between

Mr. Marvin Roy Feldman Karpa,
represented by

Mr. Mark B. Feldman, Ms. Mona M. Murphy, Mr. Douglas
R.M. King of Feldman Law Offices, P.C. (formely Feith &
Zell, P.C.), Mr. Nathan Lewin and Ms. Stephanie Martz of
the Law Firm of Miller, Cassidy, Larroca & Lewin, L.L.P.,
and Mr. Fernando Pérez Correa and Mr. Gustavo Carvajal
Isunza of the Law Firm Solorzano, Carvajal, González y
Pérez-Correa, S.C.

and

The United Mexican States,
represented by Lic. Hugo Perezcano Díaz, Consultor
Jurídico, Subsecretaría de Negociaciones Comerciales Interna-
cionales, Ministry of Economy

Date of dispatch to the Parties: **June 13, 2003**

THE TRIBUNAL,
Composed as above,
After deliberation,
Makes the following Decision:

A. Procedural History

1. On December 16, 2002, the ICSID Secretary-General dispatched to the parties certified copies of the Award rendered by the Tribunal in this arbitration (the “Award”).
2. On January 30, 2003, referring to Articles 56, 57 and 58 of the Arbitration (Additional Facility) Rules, Respondent submitted a request that the Tribunal “address certain matters in relation to the Award” (the “Request”).
3. By letter of February 14, 2003, the Secretary of the Tribunal directed the Claimant to file Observations on Respondent’s request by February 26, 2003; the Respondent to file a Reply by March 5, 2003; and the Claimant a Rejoinder by March 12, 2003. The parties complied with the Secretary’s request.
4. In Claimant’s submission of February 26, 2003, Claimant requested that should the Tribunal respond to Respondent’s request for an interpretation, the Tribunal also respond to a series of questions raised by Claimant.

B. The Additional Facility Arbitration Rules

5. Article 56(1) of the Arbitration (Additional Facility) Rules, in accordance with which the Request is made, reads as follows:

Within 45 days after the date of the award either party, with notice to the other party, may request that the Secretary-General obtain from the Tribunal an interpretation of the award.
6. Similarly, Article 57(1) of the Arbitration (Additional Facility) Rules provides the following:

Within 45 days after the date of the award either party, with notice to the other party, may request the Secretary-General to obtain from the Tribunal a correction in the award of any clerical, arithmetical or similar errors. The Tribunal may within the same period make such corrections on its own initiative.

7. Finally, Article 58(1) of the Arbitration (Additional Facility) Rules reads as follows:

Within 45 days after the date of the award either party, with notice to the other party may request the Tribunal, through the Secretary-General, to decide any question which it had omitted to decide in the award.

C. Decision

8. Having reviewed the various filings from the parties, and after deliberation among the members of the Tribunal, the Tribunal unanimously decides that the Respondent's Request for Interpretation must be denied and the Respondent's Request for Correction must be granted, for the reasons explained below. The Tribunal also indicates that the Request for a Supplementary Decision[s] is not applicable, since the relevant part of the award is hereby corrected in the manner indicated below.

1) Interpretation of the Award

9. The Respondent requested the interpretation of the award by asking the Tribunal to consider the application of NAFTA Article 2105 in connection with certain "findings made by the majority of the Tribunal in deciding the claim under Article 1102 (National Treatment) in the Claimant's favor."

10. In view of the Tribunal, this does not concern a question of interpretation under Article 56 of the Arbitration (Additional Facility) Rules. Rather, the Respondent, by asking the Tribunal in its request to explain five different points in connection with the application of NAFTA Article 2105, effectively is seeking a new decision. Therefore the Tribunal denies the Respondent's request for interpretation.

11. The Tribunal wishes to emphasize that it never at any time imposed an obligation on the Respondent to release information covered by NAFTA Article 2105. In any event, to the best of the Tribunal's recollection, the Respondent never invoked NAFTA Article 2105 during the proceedings.

2) Correction of the Award

12. The Respondent's request states that where a claim is made under Article 1117(1), the relevant award which provides damages shall provide that the sum be paid to the enterprise, in this case to CEMSA, in accordance with NAFTA Article 1135. The Respondent's request, as a consequence, seeks either a correction of the award under Article 57 of the Arbitration (Additional Facility) Rules or a supplementary decision[s] under Article 58 of the Arbitration (Additional Facility) Rules.

13. The Respondent and the Claimant agree that the amount granted in the award shall be paid to CEMSA. The Tribunal agrees with the parties and acting under Article 57 of the Arbitration (Additional Facility) Rules, corrects paragraph 211 of the award accordingly. The award is also corrected to include the mandatory language in NAFTA Article 1135(2)(c).

3) Conclusion

14. For the reasons stated above, the Tribunal unanimously decides:

- (a) To grant the request for correction of the Award submitted by the United Mexican States on January 30, 2003, thereby substituting in paragraph 211 of the Award the word "CEMSA" for the word "Claimant."
- (b) To also correct the Award to include the mandatory language in NAFTA Article 1135(2)(c) and adds paragraph 214 which shall read as follows: "The Award is made without prejudice to any right that any person may have in the relief under applicable domestic law."
- (c) To deny all other requests, whether by Respondent or by Claimant, for interpretation of the Award, or for a supplementary decision.

D. Costs and Fees

15. Under Article 59(1) of the Arbitration (Additional Facility) Rules, in the absence of agreement by the parties—as is the case here—it is the responsibility of the Tribunal to apportion the charges. Although the Respondent raised two issues in its submission of January 30, 2003, one issue was non-contentious and disposed of easily. The other required two submissions by each party for proper disposition, and the moving party (Respondent) did not prevail. Accordingly, the Tribunal believes it is reasonable to apportion the expenses and charges of ICSID for this additional stage of the proceeding in the following manner: one-fourth to the Claimant, three-fourths to the Respondent. The Tribunal also believes it is appropriate for each party to continue to bear its own legal fees.

PROF. KONSTANTINOS D. KERAMEUS

Date: [May 30, 2003]

MR. JORGE COVARRUBIAS BRAVO

Date: [May 26, 2003]

PROF. DAVID A. GANTZ

Date: [May 16, 2003]