

PERMANENT COURT OF ARBITRATION



PRESS RELEASE

IRON RHINE ARBITRAL TRIBUNAL RENDERS AWARD

The Arbitral Tribunal established to decide a dispute between the Kingdom of Belgium and the Kingdom of the Netherlands today rendered its award concerning the reactivation of the Iron Rhine, or “IJzeren Rijn” as it is known in Dutch, which is a railway linking the port of Antwerp, Belgium, to the Rhine basin in Germany, via the Dutch provinces of Noord-Brabant and Limburg.

The Iron Rhine railway dates back to the 19th century. Construction of the track was completed in 1879 and the line was used continuously until World War I. Use of the line then varied in intensity until 1991, when through traffic between Belgium and Germany stopped. Belgium’s plan to make renewed and significantly heavier use of the railway line, which would entail restoration, adaptation, and modernization (referred to in the award as “reactivation”) of the Iron Rhine railway, is not contested as such. The two countries have however differed, *inter alia*, over the entitlement of Belgium, on the one hand, to establish the plan for the reactivation, and the entitlement of the Netherlands, on the other, to insist on conditions specified under Dutch law for such a reactivation. They also differed over the allocation of the related costs.

The Iron Rhine railway traces its legal origins to a right of transit across Dutch territory, which was conferred on Belgium pursuant to the “Treaty between Belgium and the Netherlands relative to the Separation of their Respective Territories,” concluded in 1839 (“the 1839 Treaty of Separation”). This transit right was further varied and elaborated through several treaties concluded in the 19th century, including in particular the 1873 treaty commonly known as the “Iron Rhine treaty”. The Arbitral Tribunal was called upon to interpret these and other treaties, as well as general principles of international law, in order to respond to certain questions posed jointly by Belgium and the Netherlands regarding Belgium’s reactivation plans and the implications thereof.

In its award, which is binding on the Parties and may not be appealed, major findings of the Arbitral Tribunal include the following:

- Article XII of the 1839 Treaty of Separation continues to apply to the present situation.

As to Belgium's entitlement to establish the plan for reactivation and the Netherlands' entitlement to set conditions on it:

- Belgium has the right to establish track specifications for the Iron Rhine railway line in the Netherlands that would allow it to be continued from Belgium to Germany ("functionality"). However, Belgium and the Netherlands must agree upon the works to be carried out to reactivate the line.
- Dutch legislation and the decision-making power based thereon may be applied to the reactivation of the Iron Rhine railway in the same way as they are applied to other railway lines on Dutch territory, provided that the application of Dutch legislation and of the decision-making power based thereon may not amount to a denial of Belgium's right of transit, nor render unreasonably difficult the exercise by Belgium of its right of transit.
- In addition, Dutch legislation and the decision-making power based thereon may not be applied unilaterally to order a deviation from the historic route.

As to allocation of costs:

- The costs of environmental protection measures and other safety measures cannot be severed from the costs otherwise necessary for the reactivation of the Iron Rhine railway. Further, the costs and financial risks associated with the exercise of Belgium's right of transit must reflect the balance between the Parties inherent in Article XII of the 1839 Treaty of Separation, as interpreted by the Arbitral Tribunal. Belgium's obligations to fund investments are therefore not limited to those necessary for the functionality of the railway line.
- Nevertheless, the Netherlands, too, has an obligation to bear certain costs and financial risks.
 - For those parts of the Iron Rhine railway used by Dutch trains, the Netherlands has an obligation to bear the costs and financial risks that would have been required for the autonomous development envisaged for Dutch railway transport by 2020, had the Iron Rhine not been reactivated, as well as an amount representing particular, quantifiable benefits to the Netherlands (other than as regards autonomous development) resulting from reactivation. Certain specific recommendations are made for the establishment of an expert committee to engage in this quantification.
 - To the extent that a deviation from the historic route may be agreed by Belgium and the Netherlands in the Roermond area, the Netherlands has the obligation to bear costs and risks over and above the sum due had the reactivation been in the current location of the historic line.
 - Because of their past actions, the two countries shall share in equal parts the obligation to bear the costs and financial risks associated with any tunnel that may be required to be built for that part of the line running through the Meinweg National Park.

Background

The arbitral proceedings were conducted pursuant to an Arbitration Agreement between Belgium and the Netherlands, whose terms were agreed through an exchange of diplomatic notes dated 22 and 23 July 2003.

The Arbitral Tribunal constituted to decide the dispute is composed of Judge Rosalyn Higgins (President), Professor Guy Schrans, Judge Bruno Simma, Professor Alfred H.A. Soons, and Judge Peter Tomka. Pursuant to the Arbitration Agreement, the Arbitral Tribunal was established under the auspices of the Permanent Court of Arbitration, which also served as Registry for the arbitration.

A copy of the award, as well as other documents related to the arbitration, are being posted on the website of the Permanent Court of Arbitration (www.pca-cpa.org).

THE HAGUE
24 May 2005