RailwayAge

Thursday, July 05, 2012

Railroad Development Corp. wins legal battle

Written by Douglas John Bowen

Pittsburgh-based Railroad Development Corp. Thursday said it "has prevailed in its five-year international arbitration against the Republic of Guatemala brought under the Dominican Republic-Central America Free Trade Agreement (CAFTA)."

RDC said that on June 29, "a Tribunal of the International Centre for Settlement of Investment Disputes (ICSID) unanimously ruled that Guatemala had violated the minimum standard of treatment set forth in Article 10.5 of CAFTA by engaging in conduct that was 'arbitrary, grossly unfair, [and] unjust' and awarded RDC full reparations."

RDC said its Guatemalan affiliate, Ferrovías Guatemala (FVG), was awarded a 50-year concession by the Government of Guatemala in 1997 to revive, operate, and develop the assets of FEGUA, the national railway of Guatemala, which had been closed by the government in 1996. The requirements of the concession "were considered unprecedented since it involved the revival of a completely abandoned national railway by the private sector."

But RDC noted that after it revived and operated the railway for seven years, "the Government of Guatemala issued a Presidential decree in August, 2006 which declared the rolling stock contract of FVG's concession 'lesivo' or 'harmful to the interests of the State.' The decree was issued by the Government after RDC refused to give into the Government's extortionate demands to renegotiate and surrender its key economic rights under the concession contracts. The lesivo decree caused FVG's railway business to collapse due to the environment of commercial uncertainty and political maneuvering.

"Ultimately, RDC was forced to shut down FVG's operations in Guatemala: the last train ran in September 2007. RDC's ICSID claim was the first to use the investor-state dispute resolution mechanism under Chapter 10 of CAFTA," the company said.

RDC says it defeated two sets of jurisdictional objections offered by Guatemala, "and following a hearing on the merits, the Tribunal issued its finding that Guatemala violated the CAFTA minimum standard of treatment which requires each state party to provide fair and equitable treatment and full protection and security to investors of the other parties.

As compensation for Guatemala's breach, RDC was awarded full reparations, including more than $14 million in damages and compound interest; Guatemala also must pay for certain administrative expenses of the Tribunal in the amount of almost $200,000.

Upon full payment of the award by Guatemala, RDC must surrender its entire 82% interest in FVG to Guatemala or its nominee, thereby relinquishing any rights RDC might have under the railway concession. Under CAFTA, Guatemala is obligated to comply with the final award "without delay."

Said RDC and FVG Chairman Henry Posner III, "The Tribunal's ruling is a victory for both the rule of law in Guatemala and recovery of RDC's investment. But this victory has come at a heavy cost, ranging from the cost to FVG and RDC of prosecuting the case before ICSID to the cost to Guatemala of losing its railway for the second time."

Posner added, "It is ironic that while railways worldwide are enjoying unprecedented levels of traffic and investment, Guatemala's stands not only abandoned but literally destroyed thanks to the unending theft inflicted upon the railway assets after the lesivo declaration: For example, entire steel bridges have disappeared in broad daylight."

http://www.railwayage.com/index.php/regulatory/railroad-development-corp-wins-legal-battle.html?channel=40