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## **U. S. Supreme Court Rules Arbitration Awards Subject to Judicial Review Under Express Grounds in Railway Labor Act But Declines to Recognize Due Process Objections**

Arbitration of employment disputes continues to be a hot topic as the lower federal courts generally widen the latitude given to employers who implement pre-dispute arbitration agreements to govern employment disputes.

On December 8, 2009, the U. S. Supreme Court issued its opinion in a long-awaited case involving the scope of judicial review accorded to arbitration awards under the Railway Labor Act (“RLA”), the federal statute governing employment in the railroads and airlines. Union Pacific Railroad Co. v. Brotherhood of Locomotive Eng’rs and Trainmen Gen. Comm. of Adjustment, Central Region, Docket No. 08-604, 130 S. Ct. 584 (December 8, 2009). The issue before the Court was whether a non-statutory due process objection provides a sufficient basis to overturn an arbitration award. While not definitively limiting the scope of judicial review of arbitration awards with a rejection of generalized due process objections – a result that many employers had hoped for, the U. S. Supreme Court signaled, once again, resistance to expanding the very limited statutory grounds for overturning an arbitration award in the employment context.

The Court in Union Pacific declined to reach the issue of whether courts have the power to review arbitration awards for alleged due process violations under the RLA. Instead, the unanimous Court held that the lower court should have reviewed the arbitration awards in question based on the specific statutory grounds for review set forth in the RLA, which were sufficient.\* Thus, while not definitively rejecting court-recognized due process objections, the Court found that the express grounds for judicial review set forth in the RLA sufficed, holding as follows:

Given this statutory ground for relief, there is no due process issue alive in this case, and no warrant to answer a question that may be consequential in another case. Id. at 596.

### **Key Facts and Summary of Law**

The U. S. District Court for the Northern District of Illinois found that it was proper for an arbitration panel not to process five claims for arbitration filed on behalf of railroad employees because the union failed to submit evidence that a settlement conference had occurred prior to submission of the claims to arbitration.

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\* Under the RLA, courts may review an arbitration panel’s award based upon the following specific grounds: (i) failure to comply with the requirements of the RLA; (ii) failure to conform or confine itself to matters within the scope of its jurisdiction; or (iii) fraud or corruption by a member of the arbitration panel granting the award. 45 U.S.C. § 153.

The Seventh Circuit Court of Appeals reversed, holding that the union had been deprived of due process by the arbitration panel. The Seventh Circuit found that a new obligation had been created, evidence of a settlement conference as a prerequisite to arbitration, that did not previously exist in the collective bargaining agreement.

The U. S. Supreme Court affirmed the Seventh Circuit's decision to set aside the dismissal order – but based on statutory grounds in the RLA, not any alleged due process violation. The Court held that the Seventh Circuit “asked the right question, but inappropriately placed its answer under a constitutional, rather than a statutory, headline.” *Id.* at 595. Where nothing in the parties' collective bargaining agreement required evidence of a settlement conference as a jurisdictional prerequisite to arbitration, the arbitration panel failed “to conform, or confine itself, to matters within the scope of [its] jurisdiction,” an express statutory ground for vacating or modifying an arbitration award that made creation of a due process objection unnecessary. *Id.* at 596.

### **Implications for Employers**

- Conflict among the circuits remains after the U. S. Supreme Court's decision. Courts in the Second, Fifth, Seventh, Eighth and Ninth Circuits may still review final arbitration awards on the grounds enumerated in the RLA and where there is an alleged due process violation. Courts in the Third, Sixth, Tenth and Eleventh Circuits remain limited to the grounds set forth expressly in the RLA.
- The U. S. Supreme Court declined to take the opportunity to bolster the finality of arbitration. Many employers had hoped the Court would definitively reject the argument that arbitration awards are subject to judicial review based on due process objections. However, the Court did emphasize that limited statutory grounds are normally sufficient to provide adequate safeguards in arbitration. As a result, the due process objection may still be alive, but in most instances judicial review will be limited to express statutory grounds.
- Congress may impact the role of arbitration for more employers with the proposed Arbitration Fairness Act of 2009 (“AFA”) which, if enacted, would limit the scope of the Federal Arbitration Act of 1925. Under the proposed legislation, pre-dispute arbitration agreements in employment, consumer or franchise disputes, or any dispute arising under any statute intended to protect civil rights, would not be enforceable. The AFA was reintroduced in 2009 and is pending in Congress. See, “Congress Considers Restricting Arbitration of Discrimination Claims in Response to Recent U. S. Supreme Court Decision,” June 5, 2009, at [www.socw.com](http://www.socw.com).

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