 Unlike other industries where the right to arbitrate grievances is established in the collective bargaining agreement, the source for grievance arbitration in the railroad and airline industries is statutory. Section 3 of the Railway Labor Act (45 USC §153) addresses the railroad industry and Section 204 (45 USC §184) covers the airline industry. The primary difference between the two sections relates to the structure of the arbitral panels. Despite the fact that Section 201 specifically provides that Section 3 does not apply to air carriers, many aspects of railroad arbitration have been applied to the airlines.

Disputes involving the interpretation or application of existing collective bargaining agreements are referred to as “minor disputes.” While the term has nothing to do with the significance of the grievance, it was used by the Supreme Court to distinguish grievances from disputes concerning the making of collective bargaining agreements, which are referred to as “major disputes.” *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 723 (1945). Minor disputes may not be the subject of a strike action and such strikes may be enjoined. *Brotherhood of Railroad Trainmen v. Chicago River & Indiana RR.*, 353 U.S. 30 (1957). Whether the mandatory arbitration provisions of the Act preempt private actions in tort or contract against a carrier depends upon the nature of the action.

A 1934 amendment to the Railway Labor Act, adding what is currently Section 3, First, established the National Railroad Adjustment Board (“NRAB”), headquartered in Chicago and consisting of four Divisions, each handling grievances from specific crafts or classes of employees.
For instance, the First Division hears disputes involving employees in train and engine service while
the Third Division covers maintenance of way employees, signal department employees, clerks and
dispatchers. Each Division is made up of an equal number of carrier and labor organization
representatives, and is empowered to appoint a neutral referee in the event of a deadlock. The
referee is either selected from a list maintained by the National Mediation Board (“NMB”) or
appointed directly by the NMB from that list. The referee is compensated by the NMB. A unique
aspect of the NRAB is that grievances may be filed by individual grievants as well as by labor
organizations. Hearings before the NRAB are appellate in nature and the record is confined to
arguments and evidence presented during the handling of the grievance on the property.

In 1966, Congress found that the case backlog at the NRAB was excessive and established an
alternative arbitration procedure for the railroad industry. Section 3, Second authorizes the
establishment of arbitration boards known as Special Boards of Adjustment or Public Law Boards
between individual carriers and the unions representing their employees. These are also tripartite
boards with neutral referees selected or appointed from the NMB’s roster. The statute provides for
the NMB to compensate the referee, but the parties may elect to pay the referee themselves. As with
the NRAB, the hearings are appellate rather than *de novo* and the record is confined to arguments
and evidence exchanged during the handling of the grievance prior to docketing the case to the
arbitration board.

When the Act was amended in 1936 to cover air carriers, Congress exempted them from
Section 3 but established arbitration mechanisms that are somewhat similar. Although there is a
provision (Section 205) for a National Air Transportation Adjustment Board composed of two
carrier representatives and two union representatives, the NMB has never found it necessary to
create the Board. Instead, the parties utilize System Boards of Adjustment, which are established on
individual carriers with individual unions in the same manner as the railroad arbitration boards under Section 3, Second of the Act. The statute, though, makes no mention of neutral arbitrators, but they are typically made a part of the Board by agreement between the parties in the event of deadlock. Unlike Section 3 arbitration, airline hearings are _de novo_ hearings before the arbitrator.

Awards of the NRAB may be enforced pursuant to Section 3, First (p) by petition by the union or the grievant to the District Court where the union or grievant resides or where the carrier maintains its principal office or operates. In an enforcement action, the findings and order of the NRAB are conclusive on the parties. The petitioner is not liable for court costs and, if successful, may recover reasonable attorney’s fees. Section 3, Second provides that awards of Special Boards of Adjustment and Public Law Boards are enforceable in the same manner. Section 204 makes no reference to enforcement of air carrier awards, but the courts have applied Section 3, First (p) to those cases, as well.

An action may be brought in District Court to review any Adjustment Board award under Section 3, First (q). The Act states, “On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division’s jurisdiction, or for fraud or corruption by a member of the division making the order.” Section 3, Second and Section 204 do not address judicial review of awards, but courts have accepted jurisdiction and have adopted the same standards.

Although judicial review under the Railway Labor Act has been described as “among the narrowest known to the law,” _Union Pacific RR. v. Sheehan_, 439 U.S. 89, 91 (1978); _Diamond v. Terminal Ry. Alabama State Docks_, 421 F.2d228, 233 (5th Cir. 1970), some circuits have made
exceptions for public policy issues. *Union Pacific RR v. United Transportation Union (Madison)*, 3 F.3d 255 (8th Cir. 1993), cert. denied, 510 U.S. 1072 (1994); *Union Pacific RR v. United Transportation Union (Gray)*, 23 F.3d 1397 (8th Cir. 1994); *Delta Air Lines v. Air Line Pilots Assn.*; 861 F.2d 665 (11th Cir. 1988). Public policy was rejected as grounds for review in *BMWE v. Denver & Rio Grande Western Ry.*, 963 F.Supp. 946 (D.Col. 1997); *Lyons v. Norfolk & Western Ry.*, 163 F.3d 466 (7th Cir. 1999); *Atchison, Topeka & Santa Fe Ry. v. United Transportation Union*, 175 F.3d 355 (5th Cir. 1999); *Schlitz v. Burlington Northern RR.*, 864 F.Supp 138 (D.Ore. 1994); and *United Transportation Union v. Union Pacific RR.*, 116 F.3d 430 (9th Cir. 1997).

There is a greater split among the circuits as to whether arbitration decisions may be reviewed on due process grounds other than the three permitted by the Act. Those allowing such review are the Second, *Shafii v. PLC British Airways*, 22 F.3d 59 (2d Cir. 1994), the Fifth, *Atchison, Topeka and Santa Fe Ry. v. United Transportation Union*, 175 F.3d 355 (5th Cir. 1999), the Seventh, *Pokuta v. Trans World Airlines*, 191 F.3d 834 (7th Cir. 1999), the Eighth, *Goff v. Dakota, Minnesota & Eastern RR*, 276 F.3d 992 (8th Cir. 2002) and the Ninth, *English v. Burlington Northern RR*, 18 F.3d 741 (9th Cir. 1994). Those that have held that Sheehan precludes federal courts from reviewing due process claims under the Railway Labor Act are the Third, *United Steelworkers of America Local 1913 v. Union Pacific RR*, 648 F.2d 905 (3d Cir. 1981), the Sixth, *Jones v. Seaboard System RR*, 783 F.2d 639 (6th Cir. 1986), the Tenth, *Kinross v. Utah Ry.*, 362 F.3d 658 (10th Cir. 2004) and the Eleventh, *Henry v. Delta Air Lines*, 759 F.2d 870 (11th Cir. 1985).

Note: The author posts synopses of Circuit Court and Supreme Court decisions related to Railway Labor Act arbitration on the website of the National Association of Railroad Referees, of which he is the President. Go to www.rr-referees.org and click “Library.”