

21-956

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

SOJOURNER RUDISILL,

*Petitioner,*

v.

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS;  
US AIRWAYS/AMERICAN AIRLINES

*Respondents*

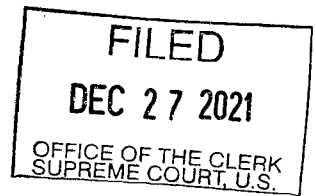
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On Petition for Writ of Certiorari to  
The United States Court of Appeals for the Third Circuit

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**PETITION FOR WRIT OF CERTIORARI**

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ORIGINAL

## **QUESTION PRESENTED**

Whether the Railway Labor Act (“RLA”) permits courts to exercise jurisdiction over due process challenges to decisions rendered by RLA arbitration panels.

## LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

## RELATED CASES

*Rudisill v. International Association of Machinists and Aerospace Workers; US Airways/American Airlines*, No. 18-5435, U.S. District Court for the Eastern District of Pennsylvania. Judgement entered December 18, 2020.

*Rudisill v. International Association of Machinists and Aerospace Workers; US Airways/American Airlines*, No. 21-1093, U.S. Court of Appeals for the Third Circuit. Judgement entered September 27, 2021.

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

On December 17, 2018, Ms. Sojourner Rudisill filed a pro se complaint in the U.S. District Court of the Eastern District of Pennsylvania against IAM and American Airlines.

On February 21, 2020, the District Court issued an order granting IAM and American Airlines motions for dismissal and did so again on December 18, 2020 in response to Rudisill's amended complaint.

The District Court orders are listed under D.C. Civil Action No. 2-18-cv-05435.

The Third Circuit affirmed the District Court's findings in a non-precedential opinion issued on September 27, 2021. This opinion can be found as *Rudisill v. Int'l Ass'n of Machinists & Aerospace Workers*, 21-1093 (3rd Cir. 2021).

This petition for a writ of certiorari now follows.

The two above-referenced orders from the District Court and the Third Circuit's opinion are attached in the Appendix hereto and are listed as numbers 1-3 therein.

## **JURISDICTION**

The date on which the United States Court of Appeals decided my case was September 21, 2021. No petition for rehearing was timely filed in my case.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).



## CONSTITUTIONAL AND STATORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

45 U.S.C. § 153

## STATEMENT OF THE CASE

In 2013, American Airlines terminated Sojourner Rudisill's employment. Rudisill filed a grievance to challenge her termination under the collective bargaining agreement ("CBA") between American Airlines and her union, the International Association of Machinists and Aerospace Workers ("IAM") and hired private counsel to advocate on her behalf. In 2016, three years later, her case went to arbitration before the System Review Board ("Board"). Under the CBA, the Board consisted of three members: one chosen by American, one chosen by IAM, and a neutral member selected by both American and IAM. Rudisill appeared at the July 2016 arbitration hearing with her privately retained attorney, but her union representative and counsel for the airline objected. The union representative indicated that outside counsel had no right to be there and that the neutral board member agreed. Private counsel left the hearing. The Board upheld Rudisill's termination on December 16, 2016.

On December 17, 2018, Ms. Sojourner Rudisill filed a pro se complaint in the U.S. District Court of the Eastern District of Pennsylvania seeking to vacate the arbitration award on the grounds that (1) barring her private counsel from appearing in the arbitration proceedings violated her due process rights, (2) the Board failed to render a timely decision under the collective bargaining agreement ("CBA"), and (3) the System Review Board was guilty of "fraud or corruption" in rendering its decision. Rudisill also alleged a breach of contract claim against her union, IAM, and American Airlines. Both American Airlines and IAM moved to dismiss.

On February 21, 2020, the District Court granted both motions to dismiss, dismissing Rudisill's denial of counsel/due process claim with prejudice, citing the Third Circuit's decision in *United Steelworkers of America Local 1913 v. Union Railroad Co.*, 648 F.2d 905 (3d Cir. 1981), which held that 45 U.S.C. § 153 First (q) of the RLA did not permit courts to hear due process challenges.

Rudisill filed an amended complaint, again alleging fraud or corruption against IAM and American. She also added a claim that IAM breached its duty of fair representation, alleging that it failed in its investigation and handling of her grievance. Both defendants again filed separate motions to dismiss. On December 18, 2020, the District Court found that the amended complaint still did not contain sufficient allegations to plead a "fraud or corruption" claim, noting that Rudisill based her claim on actions of IAM's counsel and the airline's counsel but made no allegations regarding the conduct of the Board. Further, the District Court found that Rudisill's claim against the union for breach of the duty of fair representation was time-barred because that claim was filed beyond the applicable six-month statute of limitations. The District Court granted both motions to dismiss and directed the Clerk of Court to close the case.

Rudisill appealed the ruling to the Third Circuit, challenging only the District Court's February 21, 2020 dismissal of her claim that she was deprived of due process when her attorney was barred from the arbitration hearing. Rudisill argued that other courts of appeal have found that courts could review due process challenges under the RLA. On September 27, 2021, the Third Circuit affirmed the District Court's dismissal of

Rudisill's due process claim declining to overturn their precedent.

## REASONS FOR GRANTING THE WRIT

The Third Circuit is in the minority of Circuits who have interpreted *Union Pacific Railroad v. Sheehan*, 439 U.S. 89 (1978) as precluding due process review of decisions issued by RLA arbitration panels. The Circuits which have examined the question with the most care have held that due process jurisdiction is still available, and that *Sheehan* stands for the limited proposition that an RLA arbitrator's interpretation of the time limits under the CBA is not grounds for a due process challenge. *Shafii v. PLC British Airways*, 22 F.3d 59, 62 (2d Cir. 1994) ("Upon examination of these decisions, it appears that these courts simply assumed that *Sheehan* prohibited due process review without independent analysis of the language and structure of the Supreme Court's opinion."); *Bhd. of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment v. Union Pac. R.R. Co.*, 522 F.3d 746, 751 (7th Cir. 2008) ("we have continuously held that we will review due process claims arising from NRAB arbitration."); *Edelman v. Western Airlines*, 892 F.2d 839, 846-848 (9th Cir. 1989); *Hayes v. Western Weighing & Inspection Bureau*, 838 F.2d 1434, 1436 (5th Cir. 1988); *Armstrong Lodge No. 762 v. Union Pacific R.R.*, 783 F.2d 131, 135 (8th Cir. 1986); *Radin v. United States*, 699 F.2d 681, 684 (4th Cir. 1983) ("procedural deprivation by the arbitrators is ground for relief in the district court"). The Second, Fourth, Fifth, Eighth, Ninth and Seventh Circuits all agree.

The Third Circuit's contrary holding in *United Steelworkers of America Local 1913 v. Union Railroad Co.*, 648 F.2d 905 (3d Cir. 1981), was incorrectly decided. Relying on *Sheehan*, the Third Circuit noted that the RLA provided for statutory review of arbitration boards' decisions on three grounds: "[1] for failure of the

division to comply with the requirements of this chapter, [2] for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or [3] for fraud or corruption by a member of the division making the order.” *Id.* at 910 (quoting 45 U.S.C. § 153 First (q)). The Third Circuit then concluded that the aforementioned three grounds were the exclusive avenues for review and that due process challenges to arbitration boards’ decisions were not permissible. *Id.* at 911.

*United Steelworkers* was wrongly decided. Prior to the 1966 amendments to the RLA that codified the current version of 45 U.S.C. § 153 First (q), federal courts had routinely exercised jurisdiction over due process challenges brought under the RLA. The availability of due process review was explicitly acknowledged by the Supreme Court in *Union Pacific R.R. Co. v. Price*, 360 U.S. 601 (1959), a mere seven years before the passage of § 153 First (q).

The Supreme Court has never overturned *Price* nor has it ever explicitly stated that due process review is categorically prohibited under § 153 First (q). In concluding that due process review was no longer available, the Third Circuit violated a well-established principle of statutory construction: namely, the strong presumption against reading jurisdiction stripping into a statute. That presumption is particularly strong where, as here, courts had previously exercised such jurisdiction and stronger yet where the claims are constitutional in nature. For that reason, the courts will only impute an intent to strip jurisdiction where Congress has spoken explicitly and unambiguously. In the 1966 amendments, however, there is neither express language nor any statement from a member of Congress showing any

intent, much less the “clear and convincing” intent required by law, to nullify the courts’ prior claim to jurisdiction over due process claims. See *Webster v. Doe*, 486 U.S. 592, 603 (1988).

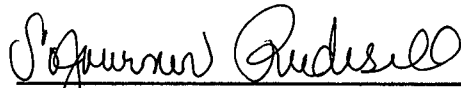
Nor did the Supreme Court foreclose judicial review of RLA arbitration board decisions on due process grounds in *Sheehan*. The availability of due process review was not before the Court in *Sheehan*: The issue was neither raised in the petition for certiorari, nor was it briefed by the parties. At most, that decision stands for the narrow proposition that one cannot raise a due process challenge to an RLA arbitration board’s refusal to toll a CBA’s statute of limitations.

Petitioner respectfully requests that the Court resolves the split among the Circuits as to whether due process review of arbitration board decisions is permissible under the RLA.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, reading "Sojourner Rudisill", written in dark ink.

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December 27, 2021