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Railroading Essential Rights: The Status of Judicial Review of Alleged Due Process Violations in Arbitration Hearings Under the Railway Labor Act

*Shafii v. P.L.C. British Airways*¹

I. INTRODUCTION

In the American judicial system, no litigant may be denied life, liberty or property without due process of the law. The rights to representation, to have a fair hearing, and to have the opportunity to present evidence on one's own behalf are ingrained in our concept of "justice." When one agrees to submit a conflict to an alternative forum of dispute resolution, are those essential rights lost? This Note examines those questions in the context of a congressional act mandating arbitration as the mode of conflict resolution in the transportation industry.

II. FACTS AND HOLDING

Seyed N. Shafii ("Shafii") worked as a reservation sales agent for P.L.C. British Airways until January of 1989 when he was fired for insubordination.² Shafii filed a grievance with his union because of the firing,³ but then agreed to a voluntary binding arbitration hearing as provided by the union's collective bargaining agreement with the airline.⁴ The parties arbitrated the dispute pursuant to the Railway Labor Act ("RLA"). If both sides agree, the RLA allows an arbitrator to take the place of the National Railroad Adjustment Board which must ordinarily handle such disputes.⁵

The arbitrator decided against Shafii in the January 1990 hearing.⁶ Shafii then brought suit in the United States District Court for the Northern District of New York, asking the judge to vacate the arbitrator's award for lack of due

1. *Shafii v. PLC British Airways*, 22 F.3d 59 (2d Cir. 1994).

2. *Id.* at 60.

3. Shafii had been a member of the International Association of Machinists & Aerospace Workers, AFL-CIO, District Lodge 100. His suit was originally also against the union, but that portion of the suit was dropped by stipulation. *Id.*

4. *Id.*

5. *Id.* at 61. The Railway Labor Act created the National Railroad Adjustment Board as a mandatory mechanism to settle disputes within the transportation industry. See Railway Labor Act, § 3, 45 U.S.C. § 153 (1966).

6. *Shafii*, 22 F.3d at 60.

process during the proceeding.⁷ Shafii specifically argued that the arbitrator improperly denied his attorney's request to have a witness testify about both a disciplinary hearing and an investigative hearing which took place before and on his termination date.⁸ The district judge ruled that judicial review is available "when there has been a denial of due process by some act of the board," and then granted British Airways request to transfer the matter to the United States District Court for the Eastern District of New York.⁹

British Airways, in turn, challenged whether the federal courts in the northern and eastern districts of New York even had jurisdiction over this matter.¹⁰ The airline argued that the RLA provides for specific instances allowing judicial review of arbitration awards but that an alleged due process violation does not constitute one of those instances.¹¹ The judges in both courts disagreed, finding that judicial review of the arbitration was proper.¹²

After the northern district court granted the transfer requested by British Airways, the eastern district court ruled against Shafii on his claimed due process violation.¹³ Shafii appealed the eastern district judgment to the United States Court of Appeals for the Second Circuit.¹⁴ Both the lower courts denied Shafii's claim because of an evidentiary issue.¹⁵ Meanwhile, British Airways filed a cross-appeal to the same circuit court contending that both courts lacked jurisdiction over the due process issue.¹⁶ Both of those courts ruled that they indeed had authority to review the arbitrator's decision for possible want of due process.¹⁷

The Second Circuit Court of Appeals upheld the lower courts' decisions on the due process issue holding that when a party to an arbitration hearing conducted under the RLA may have been denied due process, trial courts have jurisdiction to review the arbitrator's decision.¹⁸

7. *Id.*

8. At issue also was whether the conversation, which was "off the record" so far as the proceeding's transcript, was hearsay. Shafii's attorneys also wanted to submit the transcripts of those hearings as evidence. A statement from a witness' affidavit to the arbitration hearing in question showed that the arbitrator, when denying Shafii's request, stated that he "had heard enough and that it was too late to get bogged down in technicalities." *Id.* at 60-61. For this Note's purposes, the hearsay issue is tangential and will not be dealt with further.

9. *Id.* at 61.

10. *Id.*

11. *Id.* at 60.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 64. It should be noted that the case was vacated and remanded because of the hearsay issue. This evidence directly impacted the due process issue outcome.

III. LEGAL BACKGROUND

A. Early History of the Railway Labor Act

Congress promulgated the RLA in 1926 to regulate bargaining and dispute resolution between railway management and employee unions.¹⁹ At least one commentator suggested that the RLA and its binding arbitration provisions have served the public as well as the unions and their employers by avoiding "continuous resort to economic warfare or the courts."²⁰

The RLA, as it was written in 1926, provided that it was the duty of all parties involved to "make and maintain agreements concerning rates of pay [and] working conditions" and to attempt to adjust all differences by peaceful means.²¹ Toward this goal, the RLA established a national Board of Mediation as well as an "Emergency Board" to investigate situations with the potential to "substantially . . . interrupt interstate commerce."²² Local "boards of adjustment" resolved minor disputes but these disputes could also be taken to the courts under the original act if they involved contract interpretation.²³

This system of limited authority for the RLA boards eventually proved to be ineffective.²⁴ In 1934, Congress issued a broad grant of authority to the newly created National Railroad Adjustment Board ("NRAB").²⁵ The RLA provides that awards of the NRAB "shall be final and binding upon both parties to the dispute" with limited judicial review.²⁶

A 1936 amendment to the RLA extended its provisions to the airline industry.²⁷ The grievance provisions apply directly, except that the RLA provides that every air carrier and employee union must together establish a "system, group, or regional board of adjustment" with the same jurisdiction as

19. Herbert R. Northrup, *The Railway Labor Act--Time for Repeal?*, 13 HARV. J.L. & PUB. POL'Y, 441, 442 (1990).

20. Leo Kanowitz, *Alternative Dispute Resolution and the Public Interest: The Arbitration Experience*, 38 HASTINGS L. J. 239, 289-90 (1987).

21. Northrup, *supra* note 19, at 442.

22. *Id.*

23. Gary Green, *Grievance Resolution and the System Board of Adjustment: The Labor Organization's Perspective*, 1988 C340 ALI-ABA 343, 346 (1988). If the boards could not reach a majority decision, the minor disputes could be brought to the same voluntary processes of mediation, conciliation or arbitration as were provided in the act for "major disputes", which were defined as disagreements over future rights to be assigned to parties. *Id.* at 346.

24. *Id.* (citing the Supreme Court reference to a "complete breakdown" in the practical workings of the RLA grievance process in *Elgin, Joliet & E. Ry. v. Burley*, 325 U.S. 711 (1945)).

25. *Id.*

26. 45 U.S.C. § 153 (1966). Green notes that the unions were actually quite supportive of this proposition, even though its creation meant basically sacrificing the right to strike over grievances. Green, *supra* note 23, at 346.

27. *Id.* at 347.

provided adjustment boards under the RLA in its application to the railroad industry.²⁸

B. Judicial Interpretation of the RLA

The statutory language defining the NRAB's jurisdiction makes the range of judicial review of decisions "among the narrowest known to the law . . ."²⁹ The RLA provides in pertinent part:

If any employee or group of employees, or any carrier is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award . . . then such employee or group of employees or carrier may file [a petition] in any United States district court On such review, the findings 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.³⁰

Therefore, judicial review of an RLA board's decision can basically occur under three instances. A court may review the decision if it: (1) was inconsistent with the law of the RLA; (2) was outside of the jurisdiction of the board; or (3) involved fraud or corruption.³¹

One way courts have historically tried to clarify the reviewability boundaries of RLA arbitrations has been to classify disputes as "major" or "minor." Many courts hold that "minor" disputes are the exclusive province of adjustment boards and that a board's determination on such issues is thus final and binding.³² The "major" controversies have been held to revolve around the acquisition of rights in the future, such as "the formation of collective [bargaining] agreements or efforts to secure them."³³

The United States Supreme Court has long recognized the congressional intent to give the NRAB broad power to interpret collective bargaining agreements

28. Railway Labor Act Title II § 204, 45 U.S.C. § 184 (1995).

29. *Diamond v. Terminal Ry. Alabama State Docks*, 421 F.2d 228, 233 (5th Cir. 1970).

30. 45 U.S.C. § 153 (1995).

31. *See Elgin*, 325 U.S. at 722-28.

32. *See Id.*

33. *Id.* at 723.

made pursuant to the RLA.³⁴ Such disputes have been called "minor" by courts utilizing the distinction.³⁵ However, the Supreme Court and other Article III tribunals have struggled to define precisely the type of conflict between employers and unions or employees which constitutes such an interpretation.³⁶

The due process controversy at issue in the instant case defies simple classification as a "major" or "minor" question or as an issue of contract interpretation. The current split of the federal courts on the issue of whether due process violations are reviewable reflects a line of confusing precedent and largely ambiguous guidance from the Supreme Court on the issue.³⁷

In the past two decades, some circuits have indeed expanded on the "narrow scope" of the RLA reviewability guidelines, "acknowledging the propriety of judicial review where the Board denies the litigant due process and thus acts in an unconstitutional manner."³⁸ Since 1979, the Fifth Circuit requires that in order to base review on such a claim, the action must constitute sufficient denial of due process so as to allow a collateral attack on its jurisdiction.³⁹

What action during a RLA arbitration constitutes a reviewable violation of a party's due process rights? In 1986, an Illinois federal district court vacated an arbitration award due to the lack of the timely investigation required by the parties' contract.⁴⁰ Yet the following year, the Seventh Circuit Court of Appeals found a RLA arbitration plaintiff's due process claim frivolous and that "once the court is satisfied that [the arbitrators] were interpreting the contract, judicial

34. See *Order of Ry. Conductors v. Pitney*, 326 U.S. 561 (1946). The Supreme Court noted that the "intricate and technical" nature of collective bargaining issues in the rail industry meant that the Adjustment Board was in the best position to apply the terms of the collective bargaining agreement. The lower court therefore lacked jurisdiction. *Id.* at 567.

35. *Elgin*, 325 U.S. at 723.

36. See, e.g., *Moore v. Illinois Cent. Ry.*, 312 U.S. 630 (1941) (finding that an employee could properly seek damages for wrongful discharge in a court action, and was not required to seek the opinion of the Adjustment Board first). Cf. *Andrews v. Louisville & Nashville R.R.*, 406 U.S. 320 (1972) (finding that an employee's claim of "wrongful discharge" was an issue involving interpretation of the collective bargaining agreement, and therefore the Adjustment Board had jurisdiction over the matter).

37. See the following cases for holdings against judicial review of arbitrated due process issues: (1) *United States Steelworkers of Am., Local 1913 v. Union R.R.*, 648 F.2d 905, 911 (3rd Cir. 1981); (2) *Jones v. Seaboard Sys. R.R.*, 783 F.2d 639, 642 n.2 (6th Cir. 1986); and (3) *Henry v. Delta Air Lines*, 759 F.2d 870, 873 (11th Cir. 1985).

See the following cases holding that *Sheehan* does not preclude judicial review of arbitrated decisions: (1) *Edleman v. Western Airlines*, 892 F.2d 839 (9th Cir. 1989); (2) *Steffens v. Brhd. of Ry., Airline and S.S. Clerks*, 797 F.2d 442 (7th Cir. 1986); (3) *Hayes v. W. Weighing & Inspection Bureau*, 838 F.2d 1434 (5th Cir. 1988); *Armstrong Lodge No. 762 v. Union Pacific R.R.*, 783 F.2d 131 (8th Cir. 1986); and (4) *Radin v. United States*, 699 F.2d 681 (4th Cir. 1983).

38. *Arroyo v. Crown Air/Dorado Wings*, 672 F.Supp. 50, 52 (D.P.R. 1987).

39. See, e.g., *Clayton v. Missouri Pac. Ry.*, 452 F. Supp. 107 (N.D. La. 1979).

40. *Miller v. Chicago & N.W. Transp. Co.*, 647 F. Supp. 1432 (N.D. Ill. 1986).

review is at an end . . ."⁴¹ The decision was to stand regardless of whether the arbitrators were correct in their interpretation.⁴²

The Seventh Circuit is not alone in its confusion on the issue. As the *Shafii* court points out, the Supreme Court's 1978 decision on a due process claim in *Sheehan v. Union Pacific Railroad* has become a source of confusion rather than guidance.⁴³ There the Court considered the case of a plaintiff who had been fired and took his case to state court only to have that right extinguished by the *Andrews v. Louisville & Nashville R.R.* decision.⁴⁴ When Sheehan then tried to utilize the Adjustment Board procedures, the statute of limitations on this procedure had long passed and his claim was dismissed.⁴⁵ The Tenth Circuit Court of Appeals found that Sheehan's due process rights were violated because there should have been an equitable tolling of the Adjustment Board's deadline.⁴⁶

The Supreme Court reversed the decision and held that the "statutory language [of the RLA] means just what it says," in allowing review of Adjustment Board decisions only when the party's objections "fall within any of the three limited categories of review provided . . ." in the RLA.⁴⁷ The Court urged an "evenhanded application" of the finality principle, pointing out that it often benefitted employees.⁴⁸

The extent of that finality principle as it applies to due process claims has not been refined by the Supreme Court. As noted, federal circuit rulings on the issue are inconsistent even within circuits.⁴⁹ Several courts have interpreted *Sheehan* to prohibit review of alleged violations of due process altogether.⁵⁰ The Sixth Circuit Court of Appeals went so far as to note a 1986 case where the plaintiff had "wisely abandoned his due process argument" since *Sheehan* held that alleged denial of due process did not provide an additional basis for review of RLA arbitration cases.⁵¹

Yet another circuit has interpreted *Sheehan* in the alternative, finding no preclusion to the reviewability of the issue since "the [Supreme] Court found that the NRAB had considered [Sheehan's due process] claim and rejected it," but did not actually disapprove of due process as a basis for review.⁵²

41. Hill v. Norfolk & W. Ry., 814 F.2d 1192, 1195 (7th Cir. 1987).

42. *Id.*

43. *Shafii*, 22 F.3d at 62. See *Union Pacific Railroad v. Sheehan*, 439 U.S. 89 (1978).

44. *Andrews*, 406 U.S. 320 (1972) (extinguishing the right to make a wrongful discharge claim in state court because NRAB was tribunal with final jurisdiction).

45. *Sheehan*, 439 U.S. at 89.

46. *Id.* at 91-92.

47. *Id.* at 93.

48. *Id.* at 94.

49. See *supra* notes 38-39 and accompanying text.

50. See *Jones v. Seaboard Sys. R.R.*, 783 F.2d 639 (6th Cir. 1986); *Henry v. Delta Air Lines*, 759 F.2d 870 (11th Cir. 1985).

51. *Jones*, 783 F.2d at 642 n.2.

52. *Steffens v. Brotherhood of Ry., Airline & S.S. Clerks*, 797 F.2d 442, 448-49 (7th Cir. 1986).

In the Second Circuit Court of Appeals, where *Shafii* was decided, case law dating back to 1964, including *D'Elia v. New York, New Haven & Hartford Railroad*⁵³ has favored judicial review of RLA arbitrated matters when due process claims are at stake. The *Shafii* decision cites numerous decisions from the district courts within the second circuit which have "at least assumed that due process challenges are cognizable."⁵⁴ However, the eastern district court in New York held in 1983 that *Sheehan* barred due process review of RLA arbitrated decisions.⁵⁵ The Second Circuit Court of Appeals has not yet made a clear statement as to *Sheehan's* effect on the sufficiency of the due process violation claim as grounds for judicial review of RLA arbitration awards.

IV. INSTANT DECISION

In *Shafii*, the Second Circuit Court of Appeals examined the history of how other circuits have imposed judicial review upon arbitration awards in the face of a possible due process violation.⁵⁶ The court noted that despite the narrow language of the RLA grounds for judicial review, courts have historically expanded those restrictions to include review when participants claim denial of their due process rights.⁵⁷

The *Shafii* court gave great deference to the importance of the Supreme Court's 1978 decision in *Sheehan* citing a split among circuits on the due process issue following that holding.⁵⁸ The court examined the opinion closely, calling the Court's language "ambiguous" regarding its guidance of RLA arbitration reviewability by Article III courts.⁵⁹ The *Shafii* court noted that some courts have decided *Sheehan* precludes judicial review of RLA arbitrations, while others have reached the opposite conclusion.⁶⁰

The court then explained its own interpretation of *Sheehan*, noting that the language of the Supreme Court's decision was somewhat ambiguous. This was due to a lack of clarity in the Tenth Circuit's prior holding in the case.⁶¹ The *Shafii* court looked to the Supreme Court's decision and found that while the Court did overturn the Tenth Circuit's holding that the arbitrator in the case violated *Sheehan's* due process rights, that reversal did not mean the Tenth Circuit's due process review itself was improper.⁶²

53. 338 F.2d 701 (2d Cir. 1964) (court not even questioning the issue of jurisdiction over the matter in affirming a district court's finding that due process was satisfied in an RLA arbitration).

54. *Shafii*, 22 F.3d at 63.

55. See *Valentino v. Am. Airlines*, 1983 WL 2091 (E.D. N.Y. 1983).

56. *Shafii*, 22 F.3d at 62.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 62-63.

61. *Id.* at 62.

62. *Id.*

The Second Circuit Court of Appeals closely examined the Supreme Court's opinion and found that the Court was looking to the case's facts when it held improper a reversal on due process grounds.⁶³ In addition, the *Shafii* court interpreted *Sheehan* as ruling in the alternative that the lower court in that case would have exceeded its jurisdiction had it overturned an RLA arbitrator's decision based on a disagreement over either the legal reasoning or the final result.⁶⁴

The *Shafii* court concluded that neither of these grounds constituted a preclusion of due process review and that courts interpreting *Sheehan* this way had failed to conduct an "independent analysis of the language and structure of the Supreme Court opinion."⁶⁵ The court then referenced several other jurisdictions that have analyzed *Sheehan* and held the decision does not preclude due process review.⁶⁶ The court also pointed to several district courts within the Second Circuit that have found due process review at least "cognizable."⁶⁷

In the instant decision, the *Shafii* court held British Airways incorrectly attempted to apply *Sheehan* to preclude due process review.⁶⁸ The Second Circuit argued that the Supreme Court itself assumed jurisdiction over the due process issue when it found the Tenth Circuit mistaken in its ruling that a due process violation had occurred in arbitration.⁶⁹

The *Shafii* court then referenced a case involving a challenge to a ruling by the Board of Indian Appeals, a non-judicial review board whose decisions are supposed to be "final and conclusive" according to the statute.⁷⁰ However, there was no evidence that congressional efforts intended to create finality included the preclusion of due process rights.⁷¹ The Ninth Circuit carved out an exception to this finality rule in the event of possible constitutional rights violations.⁷²

The court used similar reasoning in the instant case, finding that there was no clear evidence of congressional intent to remove the right of due process protection from RLA governed proceedings.⁷³ The *Shafii* court concluded it was, therefore, unwilling to "leave unprotected a plaintiff's legitimate constitutional right to be treated in accord with due process" by denying judicial review of

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 63.

67. *Id.*

68. *Id.* at 63-64. The *Shafii* court goes on to cite another district court, within the Second Circuit, that argues *Sheehan* was meant to narrow the Tenth Circuit's incorrect assumption that a wide range of RLA arbitration reviewability was permissible, but not to the extent of precluding due process review when necessary. *Shafii*, 22 F.3d at 64 (citing *Bhd. of Maintenance of Way Employees v. St. Johnsbury & L.C. R.R.*, 512 F. Supp. 1079 (D.Vt. 1981)).

69. *Shafii*, 22 F.3d at 63.

70. *Id.* at 64.

71. *Id.*

72. *Id.*

73. *Id.*

decisions by public entities such as RLA review boards.⁷⁴ Therefore, the Second Circuit position on reviewability was unaffected by the *Sheehan* decision.⁷⁵ Based upon this interpretation of *Sheehan* and through analogy to other cases, the court upheld the lower court's jurisdiction to review alleged due process violations during RLA arbitrations.⁷⁶

IV. COMMENT

Shafii clarified the Second Circuit Court of Appeals position and presented an interpretation of the leading Supreme Court case of *Sheehan* on the due process reviewability issue. The instant case may provide guidance to other circuits in their examination of *Sheehan*.

The Supreme Court had the opportunity to provide important direction for lower courts on the controversial and then relatively new issue on the propriety of court intervention into potentially unconstitutional arbitration hearings. Instead, the Court noted, "We have time and again emphasized that this statutory language means just what it says."⁷⁷ The Court failed to explain exactly what this phrase means for courts attempting to follow the statutory language in limiting their interference with the finality of RLA arbitrations. Consequently, while the Supreme Court denied *Sheehan*'s due process cause of action because the lower court had simply stepped in to disagree with the legal reasoning of the arbitrator, the imprecise language of the decision left some courts with the impression that possible due process violations within arbitrations are never proper domain for court intervention.⁷⁸

From the 1978 *Sheehan* decision to the instant Second Circuit case, courts have struggled to reconcile the importance of recognizing arbitration decisions' finality with the responsibility to enforce the participants' constitutional guarantee of due process.

According to traditional arbitration theory, constitutional rights have little or no bearing on disputes resolved in this alternative forum.⁷⁹ The parties have theoretically agreed to a speedy resolution outside of court, there is no state action involved and the parties enter arbitration having made a voluntary contract to resolve conflicts without the traditional court system (and its inherent constitutional protections).⁸⁰ Respect for the finality of an arbitrator's decision benefits not only the victor in a case, but in a larger sense preserves the integrity of the process by giving the arbitrator and the participants the knowledge that the decision cannot be second guessed.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Sheehan*, 439 U.S. at 93.

78. *See, e.g., Jones*, 783 F.2d at 642.

79. Edward Brunet, *Arbitration and Constitutional Rights*, 71 N.C. L. REV. 81, 81 (1992).

80. *Id.* at 82.

Yet the traditional reasoning for respecting finality has become less persuasive as alternative dispute resolution is used more frequently. The expansion of arbitration in the 1980's brought a corresponding contraction to the amount of judicial review interpreted to be allowed by the Federal Arbitration Act.⁸¹ Increased use of arbitration has brought renewed concern about the notion of parties willingly "waiving" their due process rights, since many participants are "novices" who sign boilerplate agreements in arbitration clauses.⁸² Consequently, the long term success of arbitration agreements between labor unions and employers has evolved along with a doctrine that arbitrators will adhere to an ideal of "procedural fairness" designed to assure (but perhaps not guarantee) due process.⁸³

The possible waiver of constitutional rights by arbitrating parties is secondary to the issue of state-mandated action in *Shaffii*. The *Shaffii* court properly held that statutorily mandated RLA arbitration indeed constituted state action and, therefore, found that a waiver of constitutional rights would be inherently inappropriate.⁸⁴ While the arbitration duty within the RLA is designed to virtually eliminate the authority of courts in deciding employment contract conflicts,⁸⁵ *Shaffii* and other courts have properly recognized that the arbitrators' decisions under the statute "are acts of government, and must not deprive anyone of life, liberty, or property without due process of law."⁸⁶ To decline jurisdiction over due process would eventually provide individuals a disincentive to agree to a generally beneficial scheme as they would risk having no recourse in the face of blatant unfairness.⁸⁷

The *Shaffii* court properly couches its argument in terms of recognizing the competing policies at issue in the case. The court declines to find a bright-line rule in the *Sheehan* decision, instead looking to similar applications of statutory law in which due process review has been justified and noting that it does not seem to be Congress' intent to preclude such review.⁸⁸ The *Shaffii* court also carefully considers how other courts have looked to precedent in dealing with the due process issue, concluding that no justification in case law or otherwise exists

81. *Id.* at 110-11.

82. *Id.* at 105-106.

83. *Id.* at 91. Brunet notes that labor arbitrators do not as a rule completely ignore constitutional considerations, mostly because this would be devastating to long-term relations between employees and employers. He notes that "[e]xamination of labor arbitration decisions demonstrates that some measure of civil liberties protection is present in the arbitral process by virtue of labor arbitrators' use of their unique brand of 'due process of arbitration.'" *Id.* at 92. Brunet labels this brand as "industrial due process." *Id.* at 93.

84. *Shaffii*, 22 F.3d at 64.

85. Green, *supra* note 23, at 345.

86. *Shaffii*, 22 F.3d at 64 (citing *Elmore v. Chicago & I.M. Ry.*, 782 F.2d 94, 96 (7th Cir.1986)).

87. Brunet, *supra* note 79, at 85-88. Brunet writes that the "weight of authority permits an arbitrator to 'do justice as he sees it,'" and therefore the concept of finality also means that there is often no formal evidence or explanation to back up the "fairness" of a decision to which the courts and the parties must theoretically pay complete deference. *Id.*

88. *Shaffii*, 22 F.3d at 64.

to "leave unprotected a plaintiff's legitimate constitutional right to be treated in accord with due process"⁸⁹

Following *Shafii*, the Second Circuit is left with a clear statement of the propriety of due process review from RLA arbitration hearings. Other circuits can look to this interpretation of the Supreme Court's *Sheehan* opinion to bolster their own justification for taking jurisdiction over such matters. In a broader sense, the opinion may provide a leading example of a "backlash" against absolute finality of arbitration hearings when that finality may overlook a due process violation. The *Sheehan* court held that a central congressional purpose for the RLA mandatory arbitration provision was "to keep . . . so called 'minor' disputes within the Adjustment Board and out of the courts."⁹⁰ But, the *Shafii* court properly concluded that while the RLA allowed judicial review on three grounds, the absence of a due process violation in this express list of reviewable issues is not indicative of congressional intent to completely foreclose judicial review of constitutional claims.⁹¹ The essential right of due process cannot be classified as a "minor" issue that must stay outside of the courthouse simply to preserve the finality of an arbitrator's decision. *Shafii* demonstrates that the integrity of the arbitration process is actually better served by permitting the safeguard of judicial reviewability when personal rights are at stake.

V. CONCLUSION

While the *Shafii* case essentially solidifies the direction the Second Circuit seems to be headed on the due process issue, the decision is a deliberate step towards unifying the various federal circuits on the status of RLA arbitration reviewability. By criticizing the conflicting opinions of the Sixth, Third and Eleventh Circuits as lacking "independent analysis of the language and structure of the Supreme Court's opinion [in *Sheehan*],"⁹² the Second Circuit seems to be challenging those courts to reconsider their reasoning on the issue in the future. Perhaps after *Shafii*, those courts will refuse to read *Sheehan* as precluding judicial review and will instead consider the review of possible due process violations as matters both within their duty and their jurisdiction.

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89. *Id.*

90. *Sheehan*, 439 U.S. at 94.

91. *Shafii*, 22 F.3d at 64 (citing *Edelman*, 892 F.2d at 847).

92. *Id.* at 62.

