Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNION PACIFIC RAILROAD CO. *v.* BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN GENERAL COMMITTEE OF ADJUSTMENT, CENTRAL REGION

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 08–604. Argued October 7, 2009—Decided December 8, 2009

The Railway Labor Act (RLA or Act) was enacted to promote peaceful and efficient resolution of labor disputes. As amended, the Act mandates arbitration of "minor disputes" before panels composed of two representatives of labor and two of industry, with a neutral referee as tiebreaker. *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 610–613. To supply arbitrators, Congress established the National Railroad Adjustment Board (NRAB or Board), a board of 34 private persons representing labor and industry in equal numbers. 45 U. S. C. §153 First (a). Before resorting to arbitration, employees and carriers must exhaust the grievance procedures in their collective-bargaining agreement (hereinafter CBA), see §153 First (i), a stage known as "on-property" proceedings. As a final prearbitration step, the parties must attempt settlement "in conference" between representatives of the carrier and the grievant-employee. §152 Second, Sixth. The RLA contains instructions concerning the place and time of conferences, but does not "supersede the provisions of any agreement (as to conferences) . . . between the parties," §152 Sixth; in common practice the conference may be as informal as a telephone conversation. If the parties fail to achieve resolution, either may refer the matter to the NRAB. §153 First (i). Submissions to the Board must include "a full statement of the facts and all supporting data bearing upon the disputes." *Ibid.* Parties may seek court review of an NRAB panel order on one or more stated grounds: "failure . . . to comply with the requirements of [the RLA], . . . failure of the order to conform, or con-

fine itself, to matters within the scope of the division's jurisdiction, or . . . fraud or corruption by a member of the division making the order." §153 First (q). Courts of Appeals have divided on whether, in addition to the statutory grounds for judicial review stated in §153 First (q), courts may review NRAB proceedings for due process violations.

After petitioner Union Pacific Railroad Co. (hereinafter Carrier) charged five of its employees with disciplinary violations, their union (hereinafter Union) initiated grievance proceedings pursuant to the CBA. The Union asserts that the parties conferenced all five disputes and the Carrier concedes that they conferenced at least two. Dissatisfied with the outcome of the on-property proceedings, the Union sought arbitration before the NRAB's First Division. Both parties filed submissions in the five cases, but neither mentioned conferencing as a disputed matter. Yet, in each case, both parties necessarily knew whether the Union and the Carrier had conferred; and the Board's governing rule, published in Circular One, which prescribes Board procedures, instructs carriers and employees to "set forth all relevant, argumentative facts," 29 CFR §301.5(d), (e). Just prior to the hearing, one of the arbitration panel's industry representatives objected, *sua sponte*, that the on-property record included no proof of conferencing. The Carrier thereafter embraced that objection. The referee allowed the Union to submit evidence of conferencing. The Union did so, but it maintained that the proof-of-conferencing issue was untimely raised, indeed forfeited, as the Carrier had not objected before the date set for argument. The panel, in five identical decisions, dismissed the petitions for want of jurisdiction. The record could not be supplemented to meet the no-proof-of-conferencing objection, the panel reasoned, for as an appellate tribunal, the panel was not empowered to consider *de novo* evidence and arguments. The Union sought review in the Federal District Court, which affirmed the Board's decision. On appeal, the Seventh Circuit observed that the "single question" at issue was whether written documentation of the conference in the on-property record was a necessary prerequisite to NRAB arbitration, and determined that there was no such prerequisite in the statute or rules. But instead of resting its decision on the Union's primary, statute-based argument—that the panel erred in ruling that it lacked jurisdiction over the cases—it reversed on the ground that the NRAB's proceedings were incompatible with due process.

Held:

1. The Seventh Circuit erred in resolving the Union's appeal under a constitutional, rather than a statutory, headline. This Court granted certiorari to address whether NRAB orders may be set aside

for failure to comply with due process notwithstanding §153 First (q)'s limited grounds for review. But so long as a respondent does not "seek to modify the judgment below," true here, the respondent may "rely upon any matter appearing in the record in support of the judgment." *Blum* v. *Bacon*, 457 U. S. 132, 137, n. 5. The Seventh Circuit understood that the Union had pressed "statutory and constitutional" arguments, but observed that both arguments homed in on a "single question": is written documentation of the conference in the on-property record a necessary prerequisite to NRAB arbitration? Answering this "single question" in the negative, the Seventh Circuit effectively resolved the Union's core complaint. Because nothing in the Act elevates to jurisdictional status the obligation to conference minor disputes or to prove conferencing, a negative answer to the "single question" leaves no doubt about the Union's entitlement, in accord with §153 First (q), to vacation of the Board's orders. 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. Nevertheless, the grant of certiorari here enables this Court to reduce confusion, clouding court as well as Board decisions, over matters properly typed "jurisdictional." Pp. 10–12.

2. Congress authorized the Board to prescribe rules for presenting and processing claims, §153 First (v), but Congress alone controls the Board's jurisdiction. By refusing to adjudicate the instant cases on the false premise that it lacked "jurisdiction" to hear them, the NRAB panel failed "to conform, or confine itself, to matters [Congress placed] within the scope of [NRAB] jurisdiction," §153 First (q). Pp. 12–17.

(a) Not all mandatory "prescriptions, however emphatic, 'are . . . properly typed "jurisdictional."'" *Arbaugh* v. *Y & H Corp.*, 546 U. S. 500, 510. Subject-matter jurisdiction properly comprehended refers to a tribunal's "'power to hear a case,'" and "'can never be forfeited or waived.'" *Id.*, at 514. In contrast, a "claim-processing rule" does not reduce a tribunal's adjudicatory domain and is ordinarily "forfeited if the party asserting the rule waits too long to raise the point." *Kontrick* v. *Ryan*, 540 U. S. 443, 456. For example, this Court has held nonjurisdictional and forfeitable the provision in Title VII of the Civil Rights Act of 1964 requiring complainants to file a timely discrimination charge with the Equal Employment Opportunity Commission (EEOC) before proceeding to court, *Zipes* v. *Trans World Airlines, Inc.*, 455 U. S. 385, 393. In contrast, the Court has reaffirmed the jurisdictional character of 28 U. S. C. §2107(a)'s time limitation for filing a notice of appeal. *Bowles* v. *Russell*, 551 U. S. 205, 209–211. Here, the requirement that parties to minor disputes, as a last

chance prearbitration, attempt settlement "in conference," is imposed on carriers and grievants alike, but satisfaction of that obligation does not condition the Board's adjudicatory authority, which extends to "all disputes between carriers and their employees 'growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions . . . ,'" *Slocum* v. *Delaware, L. & W. R. Co.*, 339 U. S. 239, 240 (quoting §153 First (i)). When a CBA's grievance procedure has not been followed, resort to the Board would ordinarily be objectionable as premature, but the conference requirement is independent of the CBA process. Rooted in §152, the RLA's "[g]eneral duties" section, and not moored to the NRAB's "[e]stablishment[,] . . . powers[,] and duties" set out in §153 First, conferencing is often informal in practice, and is no more "jurisdictional" than is the presuit resort to the EEOC held nonjurisdictional and forfeitable in *Zipes*. And if the conference requirement is not "jurisdictional," then failure initially to submit proof of conferencing cannot be of that genre. And although the Carrier alleges that NRAB decisions support characterizing conferencing as jurisdictional, if the NRAB lacks authority to define its panels' jurisdiction, surely the panels themselves lack that authority. Furthermore, NRAB panels have variously addressed the matter. Pp. 12–15.

(b) Neither the RLA nor Circular One could plausibly be read to require, as a prerequisite to the NRAB's exercise of jurisdiction, submission of proof of conferencing. Instructions on party submissions are claim-processing, not jurisdictional, rules. The Board itself has recognized that conferencing may not be a "question in dispute," and when that is so, proof thereof need not accompany party submissions. It makes sense to exclude at the arbitration stage newly presented "data" supporting the employee's grievance, 29 CFR §301(d)—evidence the carrier had no opportunity to consider prearbitration. But conferencing is not a fact bearing on the merits of a grievance. Moreover, the RLA respects the parties' right to order for themselves the conference procedures they will follow. See 45 U. S. C. §152 Sixth. Pp. 16–17.

522 F. 3d 746, affirmed.

GINSBURG, J., delivered the opinion for a unanimous Court.