

Justice Powell also stated that

The factfinding process in arbitration usually is not equivalent to judicial factfinding. The record of the

arbitration proceedings is not as complete; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable.

Id. at 57-58, 94 S.Ct. at 1024. He also noted that arbitrators are under no obligation to give reasons for their award. Id. at 58, 94 S.Ct. at 1024. Moreover, in the collective bargaining process, the manner and extent to which an individual grievance is presented and the interests of the individual employee may be subordinated to the collective interests of all employees in the bargaining unit. Id. at 58 n. 19, 94 S.Ct. at 1024 n. 19.

Kulavic, 1 F.3d at 514-515.

The Kulavic reviewing court found that arbitration under the RLA procedures lacked the same protections that Justice Powell identified in Gardner-Denver. As arbitration procedures lack sufficient protection for an employee's Title VII rights, so do arbitration procedures lack sufficient protection for an employee's FELA rights.

For these reasons, we do not believe that the PLB's review could protect adequately the statutory rights set forth in the FELA.

While the informality of an investigative hearing and circumscribed PLB review were intended to provide an expeditious alternative to lengthy court litigation for day-to-day minor labor disputes, these same procedures **do not provide sufficient guarantees for reliable factfinding under the FELA.**

Kulavic, 1 F.3d at 517.