

## Sec. 8—Powers of Congress

## Cl. 3—Power to Regulate Commerce

sively in producing a commodity. And the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result. Such effect as they may have upon commerce, however extensive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character.<sup>909</sup>

***Railroad Retirement Act.***—Still pursuing the idea of protecting commerce and the labor engaged in it, Congress passed the Railroad Retirement Act of June 27, 1934<sup>910</sup> which provided for the compulsory retirement of superannuated employees of interstate carriers, and provided that they be paid pensions out of a fund consisting of compulsory contributions from the carriers and their present and future employees. In *Railroad Retirement Bd. v. Alton R.R.*,<sup>911</sup> however, a closely divided Court held this legislation to be in excess of Congress' power to regulate commerce and contrary to the Due Process Clause of the Fifth Amendment. Justice Roberts wrote for the majority: "We feel bound to hold that a pension plan thus imposed is in no proper sense a regulation of the activity of interstate transportation. It is an attempt for social ends to impose by sheer fiat noncontractual incidents upon the relation of employer and employee, not as a rule or regulation of commerce and transportation between the States, but as a means of assuring a particular class of employees against old age dependency. This is neither a necessary nor an appropriate rule or regulation affecting the due fulfillment of the railroads' duty to serve the public in interstate transportation."<sup>912</sup>

Chief Justice Hughes, speaking for the dissenters, contended, on the contrary, that "the morale of the employees [had] an important bearing upon the efficiency of the transportation service." He added: "The fundamental consideration which supports this type of legislation is that industry should take care of its human wastage, whether that is due to accident or age. That view cannot be dismissed as arbitrary or capricious. It is a reasoned conviction based upon abundant experience. The expression of that conviction in law is regulation. When expressed in the government of interstate carriers, with respect to their employees likewise engaged in interstate commerce, it is a regulation of that commerce. As such, so far as the subject matter is concerned, the commerce clause should be held applicable."<sup>913</sup>

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<sup>909</sup> 298 U.S. at 308–09.

<sup>910</sup> 48 Stat. 1283.

<sup>911</sup> 295 U.S. 330 (1935).

<sup>912</sup> 295 U.S. at 374.

<sup>913</sup> 295 U.S. at 379, 384.