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Charles Kellogg Burdick

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The Adamson Law Decision

BY CHARLES KELLOGG BURDICK¹

The decision of the Supreme Court of the United States in supporting the Adamson Law² is of vast importance, not only because of what the court actually decide, but also because of what the opinions suggest. In the first place the court, although unfortunately divided five to four, uphold the law viewed both as a regulation of hours of work and as a regulation of wages. This is not the first time that statutes regulating hours of work have been upheld, but there is a difference here. State statutes regulating hours of work have been upheld in the past under the police power of the state on the ground that the character of certain employments, such as mining, makes long hours a particular menace to the health and safety of the employees,³ or that certain classes of persons, such as women and children, are particularly injured by long hours of work,⁴ or on the

¹Professor of Law in the Cornell University College of Law.

²*Wilson v. New*, 37 Sup. Ct. Rep. 298 (1917).

The important parts of the law are as follows:

"An Act to establish an eight-hour day for employees of carriers engaged in interstate or foreign commerce, and for other purposes.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That beginning January first, nineteen hundred and seventeen, eight hours shall, in contracts for labor or service, be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning the compensation for services of all employees who are now or may hereafter be employed by any common carrier by railroad, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads, which is subject to the provision of the Act of February fourth, eighteen hundred and eighty seven, entitled, 'An Act to Regulate Commerce', as amended, and who are now or may hereafter be actually engaged in any capacity in the operation of trains used for the transportation of persons or property on railroads, except railroads independently owned and operated not exceeding one hundred miles in length, electric street railroads, and electric interurban railroads * * * *

"Sec. 2. That the President shall appoint a commission of three, which shall observe the operation and effects of the institution of the eight-hour standard work-day as above defined and the facts and conditions affecting the relations between such common carriers and employees during a period of not less than six months nor more than nine months, in the discretion of the commission, and within thirty days thereafter such commission shall report its findings to the President and Congress; * * * *

"Sec. 3. That pending the report of the commission herein provided for and for a period of thirty days thereafter the compensation of railway employees subject to this Act for a standard eight-hour workday shall not be reduced below the present standard day's wages, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the pro rata rate for such standard eight-hour workday.

"Sec. 4. That any person violating any provision of the Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than \$100 and not more than \$1,000, or imprisoned not to exceed one year, or both."

³*Holden v. Hardy*, 169 U. S. 366 (1898).

⁴*Muller v. Oregon*, 208 U. S. 412 (1908); *Sturges Mfg. Co. v. Beauchamp*, 231 U. S. 320 (1913); *People v. Schweinler* Press, 214 N. Y. 395 (1915).

ground that all excessive work is injurious to the worker and so to the community.⁵ And federal statutes regulating hours of work have been heretofore upheld under the commerce clause on the ground that they tended to make transportation more safe.⁶ In all of these cases the hours of work were limited to protect some class of society or society as a whole from the injurious results of overwork.

But in the present case the regulation of hours is not upheld as a method of preventing the injurious effects of overwork. Its whole justification is found in the fact that it is a reasonable means of preventing the interruption of interstate commerce. Under this theory the test is not the reasonableness of the hours fixed, but the reasonableness of hour-fixing as a means of protecting interstate commerce from interruption. It is interesting to note that the majority of the court found no difficulty in reaching the conclusion that the statute is constitutional as a regulation of hours of work. Mr. Chief Justice White dismissed the question with this curt remark: "We put the question as to the eight hour standard entirely out of view on the ground that the authority to permanently establish it is so clearly sustained as to render the subject not disputable."⁷ Mr. Justice McKenna, concurring, disposes of this branch of the case with equal ease. Mr. Justice Day in his dissenting opinion asserts with regard to the statute that "it is not an act limiting the hours of service," and with this Mr. Justice Pitney (with whom concurred Mr. Justice Van Devanter) agrees, but both concede, apparently, that if it did fix an eight-hour day it would be constitutional. Mr. Justice McReynolds in his dissenting opinion does not touch upon this phase of the case. The ease with which this aspect of the case was disposed of is a little surprising in view of the court's illiberal attitude towards hours-of-work legislation in *Lochner v. New York*,⁸ where they declared that a ten-hour law was unconstitutional. Mr. Chief Justice White in the present case in delivering the opinion of the court on this point thought it sufficient to rely upon the two cases upholding the Sixteen Hour Act of March 4, 1907.⁹ Perhaps we have already foreshadowed in this part of the decision on the Adamson Law the liberalized attitude of the court towards hours-of-

⁵State v. Lumber Co., 102 Miss. 802 (1912), aff'd on rehearing, 103 Miss. 263 (1912); State v. Bunting, 71 Ore. 259 (1914), aff'd, by Supreme Court of United States *sub nom.* Bunting v. Oregon, not yet reported; People v. Klinck Packing Co., 214 N. Y. 121 (1915).

⁶Baltimore & Ohio R. R. Co. v. Int. Com. Com., 221 U. S. 612 (1911); Missouri, Kansas & Texas Ry. Co. v. United States, 231 U. S. 112 (1913).

⁷Citing Baltimore & Ohio R. R. Co. v. Int. Com. Com., and Missouri, Kansas & Texas Ry. Co. v. United States, *supra*, note 6.

⁸198 U. S. 45 (1905).

⁹C. 2939, 34 Stats. at Large, 1415. See note 6, *supra*.

work legislation, actually made effective in their more recent decision in the case of *Bunting v. Oregon*,¹⁰ where a statute establishing a ten-hour day for all mills and manufacturing establishments was sustained.

The more troublesome question in the case, and the one which called forth a more radical pronouncement on the part of the court, was whether the statute was constitutional when viewed as a regulation of wages. The court had to answer the question, "Can Congress legislate as to the amount of wages to be received by railroad employees?"

It is true that in the past pilot's fees have been fixed by legislation,¹¹ and the methods of paying wages in certain businesses have also been regulated.¹² But the regulation of pilot's fees stands upon long established practice going back almost to the time of the settlement of this country, and is justified as a measure to protect ship owners who are by statute compelled to take pilots; and the statutes regulating methods of paying wages have been upheld on the ground that the employees need this kind of protection.¹³ While the cases above referred to take from the decision upholding the Adamson Law as a regulation of wages the shock of absolute novelty, they do not supply the principle upon which the law as a wage regulation was upheld. It was not upheld as a protection of the wage-earner or of the employer, but as a protection of interstate commerce. It is declared by the majority of the court that Congress has complete power to protect interstate commerce, and if such commerce is threatened with interruption by the inability of railroads and their employees to agree as to wages, Congress may impose terms which both parties must accept. Four judges dissented strongly from the decision of the court upholding the law as a wage regulation. Mr. Justice Pitney, Mr. Justice Van Devanter and Mr. Justice McReynolds declared that the fixing of wages of interstate railroad employees is not a regulation of commerce, but of the internal affairs of commerce carriers. The answer of the majority is, in effect, that Congress was given power over interstate commerce to preserve it, and that any act necessary to preserve it is necessarily a constitutional regulation.

¹⁰Not yet reported. See note 5, *supra*.

¹¹*Ex parte McNeil*, 13 Wall. (U. S.) 236 (1871); *Nickerson v. Mason*, 13 Wend. (N. Y.) 64 (1834).

¹²*Patterson v. The Bark Eudora*, 190 U. S. 169 (1903); *Erie R. R. Co. v. Williams*, 233 U. S. 685 (1914).

¹³An Oregon statute authorizing a commission to fix minimum wages for women and minor workers was upheld in *Stettler v. O'Hara*, 69 Ore. 519 (1914), just affirmed by the Supreme Court of the United States but not yet reported. The Supreme Court was divided four to four, Mr. Justice Brandeis not voting. He, however, of course, believes in the constitutionality of the statute.

Mr. Justice Day agrees that "Congress has the power to fix the amount of compensation necessary to secure a proper service and to insure reasonable rates to the public upon the part of the railroads engaged in such traffic," but insists that this must be done by due process and not arbitrarily, and that Congress in increasing wages first, throwing the burden of such increase on the railroads, and investigating afterwards, acted arbitrarily, and so unconstitutionally.

Although the court held that Congress can fix wages of interstate railroad employees when a wage dispute threatens to interrupt interstate commerce, the Chief Justice in expressing the opinion of the court says: "It is also equally true that as the right to fix by agreement between the carrier and its employees a standard of wages to control their relation is primarily private, the establishment and giving effect to such an agreed-on standard is not subject to be controlled or prevented by public authority." This would seem to mean that an attempt on the part of Congress to authorize the Interstate Commerce Commission generally to fix wages would be unconstitutional, and yet this might be the most satisfactory way to prevent repeated wage disputes. The opinion seems to restrict the power of Congress to the fixing of wages only when there is dispute.

In the opinion of the court the Chief Justice says that the passage by Congress of the Adamson Law amounts in substance and effect "to an exertion of its authority * * * to compulsorily arbitrate the dispute between the parties * * * a power none the less efficaciously exerted because exercised by direct legislative act instead of enactment of other and appropriate means providing for the bringing about of such result." And again at the end of the opinion he says that the statute may be viewed "as the exertion by Congress of the power which it undoubtedly possessed to provide by appropriate legislation for compulsory arbitration * * * a power which inevitably resulted from its authority to protect interstate commerce in dealing with a situation like that which was before it." These are most important declarations. Clearly Mr. Justice Pitney, Mr. Justice Van Devanter and Mr. Justice McReynolds do not accede to them, and Mr. Justice Day insists that this point did not have to be decided, and that its decision should not have been anticipated.

At another point in the court's opinion the Chief Justice says that "whatever would be the right of an employee engaged in a private business to demand such wages as he desires, to leave the employment if he does not get them and by concert of action to agree with others to leave upon the same condition, such rights are necessarily

subject to limitation when employment is accepted in a business charged with a public interest." Since the court declares that compulsory arbitration is constitutional, it seems necessarily to follow that Congress can by statute prohibit a strike pending or after arbitration. But does the court mean that it is illegal for employees to agree to quit in unison, though there be no statutory prohibition, and further is it illegal for them to do so individually and may parties so quitting be enjoined from doing so? A Circuit Court¹⁴ once held that employees of a railroad who threatened to quit their employment without giving reasonable notice might be enjoined, but the Circuit Court of Appeals reversed this decision.¹⁵

Two suggestions in the dissenting opinions deserve serious consideration as forecasting the legislation which may flow from the court's decision in upholding the right of Congress to settle the price which railroads are to pay for labor. The first is found in this sentence in Mr. Justice Pitney's opinion: "If it [Congress] may impose its arbitral award upon the parties in a dispute about wages it may do the same in the event of a dispute between the railroads and the coal-miners, the car-builders, or the producers of any other commodity essential to the proper movement of traffic." This sentence shows with almost startling frankness what the decision of the court involves, but does not seem to overstate the possible results of that decision. The other suggestion referred to is in Mr. Justice McReynold's opinion, where he says: "But considering the doctrine now affirmed by a majority of the Court as established, it follows as of course that Congress has power * * * * to take measures effectively to protect the free flow of such commerce against any combination whether of operatives, owners, or strangers." Does this suggest the possibility of federal legislation, for instance, fixing wages in case of dispute in businesses whose products are shipped in interstate commerce? We have here a wide field for speculation, but it is at least obvious that the decision upholding the Adamson Law is of great importance, and will be far reaching in its results.

¹⁴Farmer's L. & T. Co. v. Northern Pacific Co., 60 Fed. 803 (1894).

¹⁵Arthur v. Oakes, 63 Fed. 310 (1894).