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DEPARTMENT: LAW

 TEST

1 Collective agreement is a written contract between the employer and a union that outlines many of the terms and conditions of employment for employees in a bargaining unit. The terms and conditions are reached through collective bargaining between the employer and the union.

SECTION 91 OF THE LABOR ACT: “Collective agreement” means an agreement in writing regarding working conditions and terms of employment concluded between

(a) An organization of workers or an organization representing workers (or an association of such organizations) of the one part; and

(b) An organization of employers or an organization representing employers (or an association of such organizations) of the other part.

I would advise Mrs Aja to negotiate with her employer in order to resolve the dispute. But if they fail to resolve the dispute, the parties shall within 7 days of the failure to arrive at an agreement or where no such means exists, within seven days of the date on which the dispute arises or is apprehended, meet together by themselves or their representatives under the presidency of a mediator mutually agreed upon and appointed and appointed by or on behalf of the parties with a view to the amicable settlement of the dispute.

Being a common law country, Nigerian courts have consistently followed the common law principle that, due to the absence of privity, collective agreements are not enforceable by the courts. Nigerian courts have, accordingly, in a retinue of cases declined to enforce them as a matter of course which relied upon by individual employees.

 In the recent case of Osoh & Ors V Unity Bank Plc. 15, the appellants, employments were terminated by the respondents, on the ground that the appellant’s services were no longer needed. The appellants contended that the termination of their employment was wrong because under a collective agreement between the appellants’ trade union and the Nigerian Employers Association of Banks, insurance and allied institutions (of which the respondent was a member), the respondent could only determine the appellants’ employment on the ground of redundancy.

The Appellants also argued that under the same agreement, the respondent had wrongly computed their terminal benefits. The Supreme Court held that there is want of private between the appellants and the respondents and as such the appellants could not enforce the collective agreement against the respondent. The apex court proceeded further to distinguish a collective agreement from a contract in the following ways:

Even though the forgoing provisions of subsection 1 of section 47 of the Trade disputes Act are plain and unambiguous and have talked of “any agreements “nonetheless these provisions have nowhere referred to the phrase “any agreements” as used In the act as coterminous with “contracts” in the strict sense of the word. The reason is quite simple and obvious as collective agreements are known to cover many different kinds of agreements on topics and matters that are not really amenable to be described as contracts as they are not legally binding not having created legal relations. So that the phrase “collective agreement” is not in every case synonymous with the word “contract”.

Both Nigerian case law and statute appear however, to recognize certain limited circumstances under which collective agreement will be enforceable by the courts. These circumstances are where the collective agreements is incorporated into an individual employees’ contract of employment; where under the trade disputes act the minister orders that a collective agreement or any part thereof be enforceable between employers and employees and where a party to the collective agreement has already relied on and claimed a right under it.

2. Vicarious liability is a form of a strict secondary liability that arises under the common law doctrine of agency, respondent superior, the responsibility of the superior for the acts of their subordinate or, in a broader sense, the responsibility of any third party that had the right, ability, or duty of control” the activities of a violator.

Ade went on a frolic of his own and Esso will not be responsible for his reckless action.

Ade will be liable to Eunice whether or not the accident was intended.

Olabanjo can sue and get damages only from Ade.