

Lpb204 continuous assessment test

LABOUR LAW

NAME; DIDEN IYE STEPHANIE

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NUMBER 1 answers

Enforceability of Collective agreement in a labour law has sparked a lot of arguments on whether or not collective agreement is enforceable.

According to section 48 of the Trade Disputes Act collective agreement is any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between 1. an employer, a group or organisations representing workers or the duly appointed representative of any body of workers, on the one hand; and 2. one or more trade unions or organisations representing workers, or duly appointed representative of any body of workers, on the other hand

The question of the validity of collective agreement in the court of law has been raised in so many cases. However at common law they are not binding. Some statutes however regard collective agreement which can make them somewhat enforceable. In section 3 of the Trades Disputes ACT, makes it an obligation for collective agreement to be deposited to him where a trade dispute arises and anyone who fail to deposit 3 copies shall be guilty of an offence and the terms of the collective agreement are binding on the parties and if a party does not comply with the terms is also guilty of another offence (section 4). This means that the provisions of a collective agreement is binding on parties especially in settlement of trade disputes.

Also the National industrial court has the jurisdiction to interpret collective agreements in section 21(1) of the trades disputes act. Section 7(1) (c) of the NIC Act and Section 254C of the Constitution FRN provides that the interpretation made by the court becomes binding on the parties. This also means that the national industrial court recognizes the document and it can be regarded in court but only by the parties involved.

Collective agreement faces some problems in contract law due to privity of contract which says that a non party of a contract cannot sue or get involved in the contract. In the case of *Union Bank of Nigeria Ltd v. Edet* Plaintiff was employed by the first defendant as a clerk in its branch office, over the years got to the position of grade A signatory which entitled her to use her signatures on drafts. The respondent displayed alertness to thwart an attempt to fraudulently withdraw an amount of 3,300 from a savings account. The respondent was however queried for being involved in an irregular foreign exchange transaction. Appellants relied on the

conditions in booklets admit Exh.13 titled Recognition and Procedural agreement and main agreement between the Nigerian employers association of banks, insurance and allied institution and the association of senior staff of banks insurance and financial institution as that which governed and regulated her condition of service with the first appellant. The court held that generally a contract cannot be enforced by a person who is not a party to it even if it was made for his/her benefit. And basically it is the service agreement and the condition of service that regulates the relationship between employer and employee. This case shows that in contract, sometimes doctrine of privity can beat the validity of a collective agreement.

It can be argued in defense that the trade union served as an agent of the employees which cannot make the court consider the intention of the employer to be binding into the contract. In **Batisen v. John Holt & Co** BATISEN who was an employee of John Holt & Co Ltd was dismissed based on the provisions of a collective agreement which was operative as to one of written documents regulating the contract of employment between the employer and employee, during trial BATISEN relied on a section of the agreement which entitles him to remedies and damages, the employer (John Holt & Co) objected to this section of the collective agreement. The court held that if parties in an employment contract work in accordance to a collective agreement the worker is entitled to remedies under such collective agreement. This is to say that collective agreement can be enforceable if it regards to necessary benefits to the employee. This shows that in a long run collective agreement can be enforceable in the court as seen in **Batisen v. John Holt & Co**

In the question case of TUWOIN and Association of Oil companies in Nigeria that provided that all workers be provided security allowance in the view of the rampant kidnapping of oil workers. This is a beneficial agreement because it provides for safety of the employees which is the duty of the employer.

Madam Aja can validly sue Ogunpa oil company on the basis of collective agreement because it is backed by statutes and it is the employers duty to provide protective measures for his workers and with the rampant kidnapping which endangers the worker. The trade union serves as an agent of the worker and the law backs up unions to be able to regulate and negotiate working conditions (section 2 of trade union act) which makes it legal for the union to step in to protect its member by agreeing to a more protective working condition which is the security allowance. Also as seen in **Batisen v. John Holt & Co** the court recognizes and regards the collective agreement because it was for the benefit of the worker and in this case, Madam Aja needs the Security allowance for her safety benefits which leads to my answer: madam Aja can produce a solid agreement in the court of law on the validity of this collective agreement.

In conclusion, collective agreements are valid documents that are recognized by courts and backed by statutes so they can be enforceable. I advise that in the future or in any rise

of collective agreement Collective agreements or terms should be incorporated by reference or expressly in the contract of employment of the employees.

## ANSWER 2

Vicarious liability is a complex issue in industrial disputes. It is good to know that vicarious liability is not a trades dispute. Vicarious liability in labour law, is a doctrine that imposes strict liability on employers for the wrongdoings of their employees it also means that an employer will be held liable for any tort committed while an employee is conducting their duties. the Supreme Court held that ***iyere V Bendel Feed and Flour Mill Limited (2008)*** the general principle is that an employer is liable for the wrongful acts of his employee authorised by him or for wrongful modes of doing authorised acts, if the act is one which if lawful will fall within the scope of the employee's employment as being reasonably necessary for the discharge of his duties or the preservation of the employers interests or property.

Whether or not an employee can be liable for the act can be determined by some factors and some of which include; An employer-employee relationship, the employer's liability is derivative of the primary liability of the worker. Hence the liability of the worker must first be established the act must have been authorised by the employer, the act is necessary for the discharge of employees duties, so that even if done in a wrongful manner, it would have fallen within the scope of authority of the worker and the act even though done in a wrongful manner, is capable of being ratified or was ratified by the employer. The level of control and the level of economic reality are two tests taken to consider whether the employer is liable. The test of control is to check whether the employer can control the behaviour of the employee, this test can lead to some complexities in cases where the worker has two employers as seen in ***Hawley v Luminar Leisure Ltd [2006] CA***, a door steward hired to keep the order at a nightclub, he was assaulted which caused serious brain damage. The Club did not hire their door staff directly but contracted with ASE Security services. The question for the Court was whether the door steward was the employee of the night club for whom he worked daily or ASE with whom he and the night club contracted directly. The court then used the control test by considering who was entitled and able to control the door steward's act which could have prevented the assault. it was held that the owner of the night club was which made him vicariously liable.

The economic test was introduced in the English case; ***Market Investigations v Minister of Social Security*** there are factors which can be important e.g whether the man performing the services provides his own equipment, whether he hires his own helpers, degree of financial risk he takes, degree of responsibility for investment and management he has, and whether and how far he has an opportunity of profiting from sound management in the performance of his task. This proves that for an employer to be liable these questions must be answered and if he is economically reliable he is liable

In cases relating to crime, it is important to note that a person cannot be made liable for the crime of another and A master is not liable for the crime of his worker except the servant

committed the crime in the execution of orders of his master, or that the master knows that his servant is committing a crime in the course of his employment and he fails to restrain him. A master cannot be liable unless the master gives evidence on how he discouraged the commission of the crime and the act does not benefit him.

In cases of tortious act, in Iyere case, he employed as silo attendant and was assigned to operate a truck of fish mill. He noticed stoppage in the machine and reported this to the operator who was aware of the problem and then sent him to clear the conveyor or running machine to check the constant stoppage. He left the switch operator at the switch room and went down the mill below to clear the stoppage, his right arm was caught in the machine and damaged hence. The Supreme Court held the employer was liable

where a servant departs from his general class of duties, the master will be relieved of vicarious liability and the servant remains primarily liable.

**Joel v. Morison (1834)** 6 Carrington & Payne said The master is only liable where the servant is acting in the course of his employment but if he was going on a frolic of his own, without being at all on his master's business, the master will not be liable

In the question case Mr. Ade committed a crime by physically assaulting a customer which led to injuries, as seen in **Hawley v Luminar Leisure Ltd** the employers (Esso petroleum) are liable because they could have prevented the act, also because Ade was carrying out his services before it happened which makes the employers liable

Mr Obabanjo can bring an action against Esso petroleum because they are responsible for the actions of their employees, however he can't directly bring an action against Ade because he is covered by vicarious liability.

Eunice can bring a tortious action against Esso petroleum because she was injured in the carriage of her service as seen in the case

ADVISE TO MR OBABANJO

He can bring an action against Esso petroleum because he was assaulted by their worker which makes the employer liable

ADVISE TO ESSO Petroleum

They are liable for the action of their workers because the act was taken in the carriage of his work and they have both economic and control benefits over the workers and the liability is justified because they enjoy both the benefits and fault of their workers

ADVISE TO EUNICE

She can bring an action against the employer, although she was not paying attention to the job it was as a result of the party taking place in the company.

In conclusion, Esso petroleum is liable for both Eunice and Mr Obabanjo

