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Labor Law -- Employee's Rights Under Union-Employer Agreements

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In the United States agreements between unions and employers are very generally held as between the parties to be valid contracts, and decrees in equity have been handed down at the request of the other party enjoining a breach by the union[1] or by the employer.[2] In one instance damages were recovered by the employer against the union.[3] It appears by a dictum in a recent case, however, that such agreements are unenforceable in England and in Canada.[4]

Where it is held that a union-employer agreement is not enforceable by the parties thereto, it naturally follows that it is unenforceable by any third party,[5] unless it be held that the union was the agent of the individual employee. This contention of agency has been expressly repudiated.[6] Two cases in the United States have been found which, while holding the contract valid as between the union and the employer, refuse to an individual employee any right of action based thereon.[7] It is to be observed, however, that the Mississippi Court reversed this holding in a later decision;[8] and that the other decision comes from a federal district court in North Dakota,[9] and may, perhaps, be reversed on appeal.

The great weight of authority in the United States is to the effect that the individual employee does have enforceable rights under a union-employer agreement. This conclusion is reached by either of

[1] Burgess v. Georgia F. & A. Ry Co., 148 Ga. 415, 96 S. E. 864 (1918); Gilchrist Co. v. Metal Polishers, etc. Union, 113 Atl. 320 (N. J. Eq. 1919); Meltzer v. Kaminer, 227 N. Y. Supp. 459, 131 Misc. 813 (1927).

[2] Schlesinger v. Quinto, 194 N. Y. Supp. 401, 201 App. Div. 487 (1922); Goldman v. Cohen, 227 N. Y. Supp. 311, 222 App. Div. 631 (1928); Weber v. Nasser, 286 Pac. 1047 (Cal. 1930).

[3] Nederlandsch Amerikaansche Stoomvaart Maatschappy v. Stevedores' & Longshoremens' Benevolent Assoc., 265 Fed. 397 (E. D. La. 1920).

[4] Young v. Canadian Northern Ry. Co., (1931) App. Cas. 83, in which, in contrast to the prevalent liberal view of industrial relations existing in England, Lord Russell of the Privy Council says, "if an employer refused to observe the rule, the effective sequel would be, not an action by any employee, not even an action by Division No. 4 (the union) against the employer for specific performance or damages, but the calling of a strike until the grievance was remedied." Commented upon, Note (1932) 26 ILL. L. REV. 922.

[5] See Young v. Canadian Northern Ry. Co., *supra* note 4, at 89 ("By itself it constitutes no contract between any individual employee and the company which employs him").

[6] Burnetta v. Marceline Coal Co., 180 Mo. 241, 79 S. W. 136 (1904); Piercy v. Louisville & N. Ry. Co., 198 Ky. 477, 248 S. W. 1042 (1923).

[7] Chambers v Davis, 128 Miss. 613, 91 So. 346 (1922); Kessell v. Great Northern Ry. Co., 51 F. (2d) 304 (W. D. N. D. 1931).

[8] Yazoo & M. V. Ry. Co. v. Sideboard, 133 So. 667 (Miss. 1931).

[9] Kessell v. Great Northern Ry. Co., *supra* note 7.

two theories,[10] viz., (1) that the union-employer agreement establishes a usage which automatically becomes a part of every employee's individual contract of employment,[11] and (2) that the individual employee is a third party beneficiary.[12] The same rule of law applies whether the employee is seeking damages for injuries caused by a breach of the agreement,[13] or is seeking specific performance of some particular stipulation of the agreement.[14]

The earlier cases refused the employee a recovery on the ground that, since he had not bound himself for any specific time, but rather could quit at will, there was no mutuality of obligation, and consequently no binding contract as to him.[15] All but a few of the cases found that have been reported since 1914,[16] however, permit the employee to recover. The contention of no mutuality is either

[10] One case was found which was decided on the basis that the employee acquired no enforceable rights unless he had ratified the agreement. West v. B. & O. Ry. Co., 103 W. Va. 422, 137 S. E. 654 (1927).

[11] Moody v. Model Window Glass Co., 145 Ark. 197, 224 S. W. 436 (1920); Cross Mountain Coal Co. v. Ault, 157 Tenn. 461, 9 S. W. (2d) 692 (1928); St. Louis, B. & M. Ry. Co. v. Booker, 287 S. W. 130 (Tex. 1926); Gregg v. Starks, 188 Ky. 834, 224 S. W. 459 (1920). Several of the decisions found say nothing about the basis of the employee's right, but take for granted that there exists a valid contract as to the individual employee containing the terms of the union-employer agreement, thus implying the incorporation by usage. Mostell v. Salo, 140 Ark. 408, 215 S. W. 583 (1919); Gary v. Central of Georgia Ry. Co. 37 Ga. App. 744, 141 S. E. 819 (1928); Hall v. St. Louis & San Francisco Ry. Co., 28 S. W. (2d) 687 (Mo. 1930); Piercy v. Louisville & N. Ry. Co., *supra* note 6.

[12] Gulla v. Barton, 149 N. Y. 952, 164 App. Div. 293 (1914); Yazoo & M. V. Ry. Co., *supra* note 8; H. Blum & Co. v. Landau, 23 Ohio App. 426, 155 N. E. 154 (1926); Marshall v. Charleston & W. C. Ry. Co., 162 S. E. 348 (S. C. 1931); Johnson v. Am. Ry. Express Co., 161 S. E. 473 (S. C. 1931).

[13] Judgments have been returned in favor of the employee in actions for damages for wrongful discharge. Marshall v. Charleston W. C. Ry. Co., *supra* note 12; Johnson v. Am. Ry. Express Co., *supra* note 12; Gary v. Central of Georgia Ry. Co., *supra* note 11; H. Blum & Co. v. Landau, *supra* note 12; Hall v. St. Louis & San Francisco Ry. Co., *supra* note 11; Cross Mountain Coal Co. v. Ault, *supra* note 11. And in actions for payment of less than the agreed union wage. Mostell v. Salo, *supra* note 11; United States Daily Publishing Corp. v. Nichols, 32 F. (2d) 834 (D. C. C. A. 1929); Moody v. Model Window Glass Co., *supra* note 11; Gula v. Barton, *supra* note 12; Yazoo & M. V. Ry. Co. v. Sideboard, *supra* note 8.

[14] Judgments have been recovered enforcing specific performance of the contract as to seniority rights. Piercy v. Louisville & N. Ry. Co., *supra* note 6; Gregg v. Starks, *supra* note 11.

[15] St. Louis, I. M. & S. Ry. Co. v. Matthews, 64 Ark. 398, 42 S. W. 902, 36 L. R. A. 467 (1897); Hudson v. Cincinnati, N. O. & T. P. Ry. Co., 52 Ky. 711, 154 S. W. 47, 45 L. R. A. (N. S.) 184, Ann. Cas. 1915B, 98 (1913).

[16] 1914 seems to mark a definite turn-about, as all the cases found decided up to Hudson v. Cincinnati N. O. & T. P. Ry. Co., *supra* note 15, refuse recovery to the employee; whereas, with the exception of Kessell v. Great Northern Ry. Co., *supra* note 7, West v. B. & O. Ry. Co., *supra* note 10; and Chambers v. Davis, *supra* note 7, all the cases found since Gulla v. Barton, *supra* note 12, give judgment for the employee.

ignored[17] or expressly repudiated.[18] One early case held that the mere fact that the parties knew the terms of the agreement could not be construed as a contract to work under those terms, even though the employee was a member of the union.[19] The later cases, however, carry the implied incorporation of the union-employer agreement to the extent of permitting a recovery of union wages by the employee where there existed no contract between the particular employer and the union, because the parties knew of the existing wage rate as established by the union-employer agreement obtaining in that trade, and because no other wage was specified.[20]

Only a few courts have based the employee's right of action on the theory that he is a third party beneficiary. The objection that the employee's name does not appear on the face of the agreement is held not to affect this right.[21] This theory of third party beneficiary has been carried so far as to permit the employee to recover the union rate of wages, even though he, not knowing of the agreement, had subsequently entered into a separate contract with the employer at a lesser wage.[22]

Under both the theory of incorporation by usage[23] and the theory of third party beneficiary,[24] the courts have reached the seemingly anomalous result that a "non-union" employee can recover under the union-employer agreement as well as a "union" employee. The opinion in *Yazoo & M. V. R. Co. v. Sideboard*[25] shows that the basis for this apparent strain on the intention of the parties is a desire on

[17] Mostell v. Salo, *supra* note 11; H. Blum & Co. v. Landau, *supra* note 12; Hall v. St. Louis & San Francisco Ry. Co., *supra* note 11.

[18] Cross Mountain Coal Co. v. Ault, *supra* note 11; St. Louis B. & M. Ry. Co. v. Booker, *supra* note 11, at 859 ("We cannot agree with appellant that the agreement is unenforceable for lack of mutuality or want of consideration. This promise of the employer is a part of the consideration inducing employees to enter and remain in the service, and the continuous performance of the duties of their employment is a valuable consideration to the railway.")

[19] Burnetta v. Marceline Coal Co., *supra* note 6.

[20] United Daily Publishing Corp v. Nichols, *supra* note 13; Model Window Glass Co. v. Moody, 150 Ark. 142, 233 S. W. 1092 (1921).

[21] Yazoo & M. V. Ry. Co. v. Sideboard, *supra* note 8; Gulla v. Barton, *supra* note 12. See H. Blum & Co. v. Landau, *supra* note 12, at 157 ("Where the name of the third person does not appear to the contract, if the terms are made for the benefit of such person the provisions of the contract are enforceable").

[22] Gulla v. Barton, *supra* note 12.

[23] Gregg v. Starks, *supra* note 11.

[24] Yazoo M. V. Ry. Co. V. Sideboard, *supra* note 8.

[25] *Supra* note 8, which holds that the union meant to include the non-union employees as third party beneficiaries, on the grounds that since the agreement does not call for a "closed shop," if the railroads were permitted to pay non-union men a less wage, the union would gradually disappear from the service, and the entire object of the collective agreement defeated.

the part of the courts to construe the contract so as to strengthen rather than weaken the accomplishment of the union's objectives in collective bargaining.

The two recent South Carolina cases of *Johnson v. American Railway Express Co.*,[26] and *Marshall v. Charleston & W. C. Ry. Co.*,[27] which hold that an employee injured by the employer's breach of the union-employer agreement respecting due process in the method of discharge, are, therefore, not only in accord with the trend of American law[28] in this field, but they constitute hopeful indications of a sympathetic attitude upon the part of the southern judiciary toward the significance of the unionization of southern industry.

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Landlord and Tenant—Liability for Personal Injuries Caused By Breach of Landlord's Agreement to Repair.

Plaintiff, an infant of a tenant, was injured by the falling of a door due to defective hinges. In the lease, the lessors (defendants) had agreed to keep the premises in good repair at all times during the tenancy. On demurrer, *held* the action was *ex contractu;* only such damages are recoverable as were reasonably within the contemplation of the parties when the contract was made; and damages for personal injuries are too remote. Defendant's demurrer upheld.[1]

In the absence of statute,[2] or of a valid covenant or stipulation in the lease,[3] the lessor is not bound to make ordinary repairs to the leased premises,[4] nor is he bound to pay for such repairs made by the

[26] *Supra* note 12.

[27] *Supra* note 12.

[28] Rice, *Collective Labor Agreements In American Law,* (1932) 44 HARV. L. REV. 572; Fuchs, *Collective Labor Agreements in American Law* (1925) 10 ST. LOUIS L. REV. 1; WITTE, THE GOVERNMENT IN LABOR DISPUTES (1932).

[1] Timmons v. Williams Wood Products Corporation, 162 S. E. 329 (S. C. 1932).

[2] Annis v. Britton, 232 Mich. 291, 205 N. W. 128 (1925); Smithfield Improvement Co. v. Coley-Bardin, 156 N. C. 255, 72 S. E. 312 (1911); see Bushman v. Bushman, 311 Mo. 551, 279 S. W. 122, 126 (1925).

Some jurisdictions have by statute imposed an obligation to repair and made the lessor liable in tort. Klein v. Young, 163 La. 59, 111 So. 495 (1927); Jarchin v. Rubin, 128 Misc. 437, 218 N. Y. Supp. 269 (1926).

[3] Lesser v. Kline, 101 Conn. 740, 127 Atl. 279 (1925); Cox v. Walter M. Lawney Co., 35 Ga. 51, 132 S. E. 257 (1926); Fields v. Ogburn, 178 N. C. 407, 100 S. E. 583 (1919); Hudson v. Anson Real Estate & Insurance Co., 185 N. C. 342, 117 S. E. 165 (1923).

[4] Farber v. Greenberg, 98 Cal. App. 675, 277 Pac. 534 (1929); Newman v. Golden, 108 Conn. 676, 144 Atl. 467 (1929); Richmond v. Standard Elkhorn Coal Co., 222 Ky. 150, 300 S. W. 359, 58 A. L. R. 1423 (1927); Duffy v. Hartsfield, 180 N. C. 151, 104 S. E. 139 (1920) (especially where the defects are apparent when the lease is made).