

NIGERIAN JOURNAL OF FOOD, HEALTH AND DRUG LAW

VOL. 3 No.1, 2010

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I. INTRODUCTION

Prior the advent of European traders and missionaries in Nigeria in the 18th -19th century, wage earning employment was unknown in Nigeria¹. What existed was the cooperative labour system where members were paid in kind rather than in cash. This is because at that time, money was not known as a means of exchange.

Besides, farming was the main occupation of the people. Also the traditional African culture of polygamy was rampant and this translated into large families to help with the farm work. Meanwhile, the more affluent people relied on slave labour².

However, the emergence of the Europeans introduced foreign currency and investment which required indigenous labour. This laid the foundation for wage earning employment in Nigeria.

Initially, only a small percentage of Nigerians fell under the wage earning employment force, but the last century has witnessed phenomenal changes in the employment sector in Nigeria.

The increase or development in the labour and industrial realm has inevitably brought with it some challenges as dispute is inevitable in human relationships.

The aim of this essay is to attempt an analysis of the challenges of trade disputes settlement in Nigeria.

II. SOURCES OF LABOUR LAWS

The word "source" could mean the origin of something or the source of its legitimacy. The Nigerian labour law can be ascribed four main sources which are considered below.

1. The Received English Law

The Nigerian labour law is greatly influenced by the English legal system. In fact a dominant feature of the Nigerian legal system in general is the influence of the English law on it. The historical link of Nigeria with England has left an indelible mark on its legal system.

By virtue of the Courts Ordinance 1876, the English common law, doctrines of equity and into the Nigerian legal system. For example, the reception enactment of Lagos state³ provides:

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¹ Akintunde Emiola *Nigerian Labour Law*, (University of Ibadan Press, 1982) pgs 1-2

² *ibid*

³ Law (Miscellaneous Provisions) Law Cap 65 Lagos Law 1973

Section 2(1) statutes of general application in force in England as at 1st January, 1900 were received

subject to the provisions of this section and except in so far as other provisions is made by any federal or state enactment, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January 1900 shall be in force in Lagos state.

Similar enactments were made in other parts of the country.

Essentially, English laws regulating employment relationship became incorporated into the Nigerian legal system. In *Western Nigerian Trading Company Limited v. Busari Ajao*⁴, a worker was blinded while working in a factory when a splinter of glass entered his eyes. The employer argued that it provided plastic goggles for the workers. The court held that it was the employer's duty at common law to ensure not only that goggles were provided but also that they were used by strict orders followed by reasonable supervision.

Also in *Lawal v. Yunus*⁵, the federal Supreme Court held that the Fatal Accidents Act 1846 and the Fatal Accidents Act 1864 which were statutes of general application in England were applicable in Nigeria.

Most common law doctrines and equitable remedies have been incorporated into our local legislations.

1. The Nigerian Constitution

Is also an important source of labour law in Nigeria. It is provided in section 17(3) of 1999 constitution thus:

The state shall direct its policy towards ensuring that:

- (a) all citizens without discrimination on any ground whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment.
- (b) conditions of work are just and human, and that there are adequate facilities for leisure and for social, religious and cultural life.
- (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;

It should however be noted that section 17(3) is not justiciable but legislations have been promulgated on some of the specific areas listed in the section⁶.

Another area where the constitution has impacted on labour or trade relations is on its fundamental human rights provisions. For example, section 40 guarantees the right to freedom of association, and specifically that every person has a right to join or form a trade union for the protection of his interest.

⁴ (1965) N.M.L.R 178

⁵ (1961) 1 ALL N.L.R 245 at 255

⁶ For example, The Factories Act (supra)

⁷ See the case of *R.O Bashorun v. Industrial Arbitration Tribunal & Ors* (1971) LD/105/71

(1) Local legislations

The first major enactment was the Labour Decree which had 91 sections dealing with issues of protection of wages, contract of employment, and contract of apprenticeship and administration of labour generally⁸. The then military government in 1976 enacted the Trade Disputes Decree⁹ which established the National Industrial Court and provided the procedure for settling trade disputes. The court was empowered to make awards for settling trade disputes and also determine questions as to interpretation of any collective agreement, any award made by an arbitration tribunal or by the court¹⁰. Currently, the Labour Act Cap L1, LFN 2004, the Trade Union Act Cap....., the Trade Disputes Act Cap T8 LFN 2004, the National Industrial Court Act Cap....., are some of the laws regulating labour law in Nigeria.

(2) Judicial decisions

There is no doubt that judicial decisions form an important part of our law. This is based on the doctrine of judicial precedent¹¹. The courts have made pronouncements on varying aspects of labour law which has since become binding in subsequent cases.

III. TRADE DISPUTES

Means any dispute between employers and workers or between workers and workers which is connected with the employment or non employment or the terms of employment and physical conditions of work of any person¹².

Terms of employment can be express or implied. Express terms are usually provided in the contract of employment. It is provided in the Labour Act¹³ that not later than three months after commencement of employment, the employer shall give to the worker a written statement containing the terms of employment.

A term will only be implied in a contract of employment if it is reasonable in the circumstances to do so.

Terms of employment are different from conditions of employment. Terms of employment may relate to things like wages or salaries, medical facilities, holidays and nature of the employment generally. While conditions of employment usually bothers on issues like welfare provisions, safety arrangements and other incidental matters.

According to his Lordship, Honourable Justice Niki Tobi JCA (as he then was)¹⁴, for a dispute to be regarded as a trade dispute within the meaning of the provisions of the trade dispute act, the following ingredients must be present:

- a) there must be a dispute
- b) the dispute must involve a trade
- c) the dispute must be between employers and workers or between workers inter se
- d) the dispute must be connected with the employment or non-employment or the terms of employment or physical conditions of work of any person.

⁸ Labour Decree No21 of 1974

⁹ Trade Disputes Decree No7 1976

¹⁰ Section 15 of the Trade Disputes Decree

¹¹ Obilade, *The Nigerian Legal System* (Spectrum Books Ltd, Ibadan 2005) Pg.111

¹² Section 48 Trade Dispute Act Cap T8 LFN 2004

¹³ Section 7 Labour Act CapL1LFN 2004

¹⁴ N.U.R.T.W v. Ogbodo (1998)2NWLR(pt.537)189

A long line of cases has shown that this definition has since been followed as the ingredients were held as inevitable before a dispute can be regarded as a trade dispute.¹⁵

A dominant feature of labour relations anywhere is the collective bargaining process. It has been defined as negotiation of terms as regards working conditions between employers, a group of employers or one or more representative of employers on one hand and one or more workers organization on the other hand. The essence of collective bargaining is to ensure a dispute free atmosphere as both parties are afforded the opportunity to air their grievances and needs in a peaceful environment. Once collective bargaining breaks down, dispute arises and is usually expressed in terms of industrial actions like strike, lock-out, go slow, and work to rule e. t c. although strike is the most prevalent form of industrial action in Nigeria.

IV. DISPUTE SETTLEMENT MECHANISM

What are the machineries provided for the settlement of trade disputes because collective bargaining can not resolve all issues that may arise between management and labour.

The trade Dispute Act is the principal enactment for the settlement of trade disputes in Nigeria.¹⁶ It has provided steps to be followed in settling trade disputes. The steps are as highlighted below:

It provides that where there exists an agreed means for settlement of trade dispute, the parties to the dispute must first attempt to settle it by that means.¹⁷

If the parties fail to settle by the agreed means or if there exists no such agreement between the parties, then a mediator mutually agreed upon by the two parties should be appointed to help settle the dispute amicably¹⁸. If the minister feels that the first two stages have not been sufficiently complied with, he may then appoint a conciliator to effect settlement of the dispute.

If conciliation fails, the minister has the power to refer to the dispute to the Industrial Arbitration Panel. Section 9 (1) provides:

Within fourteen days of the receipt by him of a report under section 6 of this Act, the Minister shall refer the dispute for settlement to the Industrial Arbitration Panel established under this section.

If there is an objection to the award of the tribunal, the minister may then refer the dispute to the National Industrial Court¹⁹

V. CHALLENGES OF TRADE DISPUTE SETTLEMENT IN NIGERIA.

(1) It is provided in the trade disputes Act²⁰ that there shall be a National Industrial Court in Nigeria which shall have jurisdiction with respect to the settlement of trade disputes, interpretation of collective agreements and matters connected therewith.

Section 21(1) further provides:

¹⁵ A.G Oyo State v. N.L.C Oyo (2003) 8 NWLR 1, B.P.E v. N.U.E.E (2003) 13 NWLR (Pt. 837) 382

¹⁶ Section 1 Trade Dispute Act

¹⁷ Section 4 (1)

¹⁸ Section 4 (2)

¹⁹ Section 14

²⁰ Section 20 Trade Disputes Act

The court shall, to the exclusion of any court, have jurisdiction-

- (a) to make award for the purpose of settling trade disputes and;
- (b) to determine questions as to the interpretation of-
 - (i) any collective agreement;
 - (ii) any award made by an arbitration tribunal or by the court under Part 1 of this Act;
 - (iii) the terms of settlement of any trade dispute as recorded in any memorandum under section 8 of this Act...

It is also provided in section 20(2) of the trade disputes Act that it shall be a superior court of record.

By these provisions of the trade disputes act, it should naturally follow that no other court in Nigeria will have jurisdiction on trade disputes but this is not the case as the unlimited civil and criminal jurisdiction granted the State High Court in the Constitution erode on the exclusive jurisdiction of the National Industrial Court. It is provided in section 272 of 1999 constitution as follows:

(1) subject to the provisions of section 251 and any other provisions of the constitution, the High court of a state shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

A long line of cases will show that judicial attitude support the systematic 'trespass' on the jurisdiction of the National Industrial Court. For example, in the case of Savannah Bank of Nigeria Limited v. Pan Atlantic Shipping and Transport Agencies Limited²¹, Coker JSC as he then was said the jurisdiction of the state high court is unlimited and no Act of the National Assembly can oust or cut it down.

The effect is that State High Courts have concurrent jurisdictions with the National Industrial Court. This according to Kanyip²² is not the ideal situation because State High Courts have limited geographical jurisdictions compared with the National Industrial Court; and labour or trade disputes usually have widespread national geographical implications. This can be seen by the decision of the Court of Appeal when it held that the Federal High Court and not the High Court of the Federal Capital Territory was better suited to entertain a dispute involving the Nigerian Labour Congress²³. Besides, the proceedings at the National Industrial Court are more flexible and less informal than proceedings at the state high court, sharing jurisdictions will create a form of double standards or lack of uniformity of process as regards trade disputes.

(2.) The failure of the 1999 constitution to list the national industrial court as a superior court of record is another area of great challenge to the dispute settlement process in Nigeria. The constitution provides²⁴ that the courts listed shall be the only superior courts of records in Nigeria. The courts listed includes: the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, a High

²¹ (1987) 1 N.W.L.R. (Pt.49) 212 at 227

²² Benedict B. Kanyip *Labour Law Manual* (Rocheba's Publications) Lagos 2007 pg.81

²³ Federal Government of Nigeria v. Adams Oshiomole (2004) 1NLLR(pt2)339

²⁴ Section 6(3) (5) 1999 constitution

Court of a State, the Sharia Court of Appeal of the Federal Capital Territory, a Sharia Court of Appeal of a State, the Customary Court of Appeal of the Federal Capital Territory, a Customary Court of Appeal of a state.

Evidently in that provision the National Industrial Court is omitted and the implication is that it is not a superior court of record recognized by the constitution in Nigeria.

What therefore is the source of the legitimacy of the National Industrial Court?

In answering this question, it is imperative to understand the history of the court. The National Industrial Court was established by the Trade Disputes Decree no 7 of 1976 now the Trade Dispute Act Cap T8 LFN 2004. Prior 1968, industrial relations in Nigeria was modeled on the non-interventionist and voluntary model of British approach²⁵. After the civil war, this approach was abandoned for the interventionist approach; it was at this time that the indigenization policy was introduced. At inception, the drafters of decree no 7 of 1976 intended that the NIC should be ranked as one of the courts in the country. Consequently, amendments were made in section 22 of the 1963 constitution to include the National Industrial Court as one of the courts in the country.

However, when the 1979 constitution was promulgated and superior courts of record were listed, the National Industrial Court was left out. In 1992, decree 47 of that year once again made the National Industrial Court a superior court of record. Since 1999, when the current constitution came into being, the country is once again faced with the problem of the status of the national industrial court.

Comparing the provisions of the section 6 of 1999 constitution and that of decree no 47 of 1992 shows inconsistencies and it is trite that any law inconsistent with any constitutional provisions is to the extent of such inconsistency void²⁶. Therefore, although decree 47 of 1992 is an existing law under section 315 of the constitution, it is inferior to the constitution and therefore the provisions of section 6 supercedes any of its provisions. To this extent therefore the National Industrial Court is not a superior court of record in Nigeria.²⁷

It has been argued however that²⁸ by virtue of the provisions of section 316 of 1999 Constitution which preserves existing offices, the National Industrial Court is a superior court of record.

Section 316 provides:

Any office, court of law or authority which immediately before the date when this section comes into force was established and charged with any function by virtue of any other constitution or law shall be deemed to have been duly established and shall continue to be charged with such function until other provisions are made, as if the

²⁵ Agomø, Chioma Kanu "Nigeria" in *Labour Law and Industrial Relations in the International Encyclopaedia of Law* (Prof. Dr. Blanpain ed) 2000 at pg.38-39

²⁶ Section 1(3) 1999 Constitution.

²⁷ See *Kalango v. Dokubo* (2003) 12 NWLR 32 and *B.P.E v. N.U.E.E* (supra)

²⁸ Prince Adetokunboh Kayode *The role and place of the National Industrial Court in the Nigeria legal system*. A paper presented at a conference on "Nigerian Industrial Disputes Resolution System: Challenges and Prospects for the National Industrial Court" 5th-7th November, 2003. Abuja

efficiency of the law as authority was established and changed with the function by means of this constitution as is evidenced with the provisions of a law made thereunder.

The attitude of courts however shows that the argument that section 116 provides for National Industrial Court as a superior court is not strong.²⁹ Until this issue is decided, the court is not clear on the appropriate court to channel their dispute and this has led to a multiplication of labour cases in various courts.

A greater area of challenge to trade dispute settlement process in Nigeria is evident in some provisions of the trade dispute act itself. The minister of labour by virtue of the act has an overpowering influence on trade disputes as high emphasis is placed on the minister's decision. Most times only the minister has the power to activate the jurisdiction of the National Industrial Court. It is provided in section 5 of the act that the minister may withdraw a trade dispute at any stage and he has the power to take further steps on it which may be by appointing a conciliator³⁰, referring the dispute to the Industrial Arbitration Panel³¹ or referring the dispute to a board of inquiry.³²

Besides at the stages of mediation and conciliation enumerated above, reports of the outcome of negotiation are given the minister. Section 6 (1) provides:

If within seven days of the date on which a mediator is appointed in accordance with section 4(2) of this Act the dispute is not settled, the dispute shall be reported to the minister by or on behalf of either of the parties within three days of the end of seven days.

It is provided in Section 13(1) b that if the industrial arbitration panel makes an award, the award must be communicated to the minister and not the parties to the dispute. Also, the minister on the receipt of an award may if he considers it desirable to do so, refer the award back to the tribunal for reconsideration.³³ Worthy of note on the high influence of the minister on trade disputes is the fact that it is the minister that appoints all the members of the arbitration panel. Section 9(2) provides:

The Industrial Arbitration Panel (in this section referred to in this section as "the Panel") shall consist of a chairman, a vice chairman and not less than ten other members all of whom shall be appointed by the minister

The effect of this provision is that the members of the industrial arbitration panel are likely to be loyal and indebted to the minister and by extension the government and this brings to question their impartiality.

The reason for the high premium on the powers of the minister can be traced to the origin of the court as a product of the era of indigenization policy which placed key economic activities in the hands of government. However, the effect of this is that the right to fair hearing of the parties is threatened as most times government is a party to a trade dispute and giving the minister who is a representative of government such enormous

²⁹ See *Kalango v. Dokuboh* (supra) and *B.P.E v. N.U.E.E* (supra)

³⁰ Section 8 Trade Dispute Act

³¹ Section 9 Trade Dispute Act

³² Section 33 Trade Dispute Act

³³ Section 13(3) Trade Dispute Act

powers and discretion may not give room for fairness. Overall, parties are bound to be reluctant and not have confidence in the system.

VI. CONCLUSION

From the above, it is clear that there are challenges facing the administration of justice in trade disputes. There is no doubt that there is need for an overhaul of some of the provisions of the trade dispute act. Essentially the trade disputes act is a military creation and therefore do not provide the framework needed.

VII. RECOMMENDATIONS

The high discretion and powers granted the minister should be reduced so as to enhance confidence in the process. This is because in Nigeria, the government is usually a party to a dispute. So there will not be a violation of a basic rule of natural justice "*Nemo iudex in causa sua*" .

Secondly, the issue of jurisdiction of the National Industrial Court should be settled vis a vis the jurisdiction of the State High Court especially as the National Industrial Court is a specialized court which operates by international labour standards which ordinary judges are not exposed to. The practice and procedure of the NIC should be taught to lawyers at training and re-training sessions / seminars as a good number of lawyers are not versed in the law and practice of the court.

The Trade Dispute Act should be reviewed to reflect the trends of some conventions of the international labour organization of which Nigeria is part of.

Most importantly, the National Industrial Court should be listed in the constitution as a superior court of record to settle the question of its constitutionality.