

SETTLEMENT OF INDUSTRIAL DISPUTE IN NIGERIA; A CRITICAL EVALUATION

By

Agwor, Charles I.G. Esq.*

Abstract

This paper seeks to evaluate the concept of settlement of industrial disputes in Nigeria. The study by way of introduction of the subject matter gave definition of the key terms under the subject of research, which includes settlement, industry, dispute and industrial disputes. It attempts to identify and highlight on the mechanisms for settlement of industrial disputes in Nigeria. To wit; collective bargaining, settlement by the grievance procedure, settlement by mediation, by conciliation, Industrial Arbitration Panel (IAP), by the National Industrial Court of Nigeria and by the National Industrial Court Alternative Dispute Resolution (ADR) Centre. In course of analyzing the statutory provisions on the subject of research, it identified some lacunae and weaknesses therein, including parties to industrial disputes. Consequently, the study summarized the subject matter with findings and ends with conclusion and recommendation.

Keywords: Settlement, Industry, Dispute, Industrial Dispute in Nigeria

Introduction

The concept of industrial disputes and its severe negative effects on the Nigerian economy cannot be over emphasized. It has generated several issues arising from disagreements between employers, employees, corporations and their staff, trade unions and government or employer's organization at different times. The consequences of industrial disputes are usually very harmful to all stakeholders, management, employees, the economy and the society inclusive.

No doubt, disputes must arise in the labour and/or industrial sector, but the manner or method in which it is addressed is what matters most. It suffices to assert that without a proper management of dispute resolution mechanisms to promptly settle industrial disputes which occurs in the running of a business. The growth and progress of such business organization will be reiterated and the subsequent failure of the organization is inevitable. Hence, because of the crucial nature of the subject matter to the life of the Nigerian economy, the Trade Disputes Act¹ and the National

* LLB(Hons), BL, LLM. Phone no: 08037951051, Email: charlesagwor@gmail.com

Industrial Court Act² has made statutory provisions for the settlement of industrial or trade disputes in Nigeria. Prominent amongst them is collective bargaining, settlement by the grievance procedures,³ by mediation,⁴ by conciliation,⁵ by Industrial Arbitration Panel (IAP),⁶ National Industrial Court of Nigeria⁷ and the National Industrial Court of Alternative Dispute Resolution Centre.⁸ Statutorily, parties to an industrial dispute or disputants must first attempt to resolve their disputes by agreed means. This they are expected to achieve by gathering their representatives for a discussion with the intent of resolving their conflicts.

Definition of Terms

a. Settlement

The term settlement, no doubt, has been defined by several authors in different terms which includes an agreement ending a dispute or lawsuit.⁹ It is also referred to as the act of settling, to come to a decision, determine to resolve....¹⁰ The foregoing represents the meaning of the term settlement which is synonymous with resolution as the means of resolving a dispute or act of solving a problem or continuous matter. That is finding an answer or solution to a conflict. It can also be referred to the process of identifying the cause of a conflict or controversy and at the time finding a remedy or solution to the controversy.

b. Industry

It is the whole of all economic activities by companies, people, and organizations involved in the production of goods and services for a particular field.¹¹ The Employee's Compensation Act defines 'industry' as; establishment, undertaking, work, trade, business, and any other workplace. It also defines a 'workplace' as; any premises or place where a person performs work or need to be or is required to be in the course of employment.¹² Also the Labour Act¹³ defines industry as a trade. The foregoing provisions implies that an industry is a place of production or manufacturing

¹Trade Disputes Act, 1974.

²National Industrial Court Act, 2006.

³(n 1), s4(1).

⁴*Ibid*, s4(2).

⁵*Ibid*, s8(1).

⁶*Ibid*, s9(1).

⁷*Ibid*, s14(1).

⁸(n 2), s7(3)(4) &(5), NICNCPR 2017,Ord. 24(1) & (2).

⁹B A Garner, *Black's Law Dictionary* (8th edn. Thomson West 2004) 1405.

¹⁰A W Read, *The New International Webster Comprehensive Dictionary of the English Language* (Encyclopedic edn. Typhoon International USA 2002))1151.

¹¹N Sharma, 'Definition of Industry as per Section 2(j) of the Industrial Disputes Act, 1947 (14 of 1947)' [2011]

TaxGuru complete Tax Solution< <https://www.taxguru.in>> accessed 12 October 2021.

¹²ECA 2010.

¹³LA 1974, s91.

and distribution of goods and services where workers are employed or trade is acquired. Industry therefore is synonymous with a workplace.

c. Dispute

Dispute means controversy. Legal dispute: Disagreement over the existence of a legal duty or right, or over the extent and kind of compensation that may be claimed by the injured party for a breach of such duty or right. Legal definition for dispute is when there is no agreement and there is a disagreement that results in a lawsuit, mediation or arbitration.¹⁴

The implications of the forgoing definitions are that for any situation, issue or scenario to qualify as a dispute there must exist an opposing or contrary opinion or claim against a particular position from either parties involved, whether organizations, group, communities or individuals. It is noteworthy that there must be in existence a strong disagreement relating to denial of a legal right or assertion of excessive right, which in the opinion of the other parties does not exist to the extent it is being claimed.

d. Industrial Disputes

Industrial disputes are disputes that arise between an employer or an employer organization on one side and the workman or trade unions of workmen on the other side, on matters relating to employer-employee relationship. That is, on the formulation and enforcement of standard of wages and other conditions of employment.¹⁵ The term entails any form of work disconnect which show up in several ways such as absenteeism, go-slow, loss of man-labour, high rate of sickness, lockout, suspension and/or high incidence of query issuance.¹⁶

Similarly, Per Chukwuma – Eneh JSC. defined trade/ industrial dispute in accordance with the provision of section 47 of the Trade Disputes Act to mean:

any dispute between employers and workers or between workers and workers, which is connected with employment or non-employment, or the terms of employment and physical conditions of work of any person “For emphasis. The foregoing provision has been judicially construed in the case of *NATIONAL UNION OF ROAD TRANSPORT WORKERS V. OGBODO AND*

¹⁴T Reuters, 'The Meaning of Dispute' *Practical Law Construction Blog* [2011]

<<https://www.constructionblog.practicallaw.com/themeaning-of-dispute>> accessed 6 October 2020.

¹⁵N V Suresh, 'A Critical Study of Adjudication of Industrial Disputes with Reference to Working of Labour Courts and Industrial Tribunals at Habi' (2006) 83 *Shodhganga: A Reservoir of Indian Theses* <[https://www.hdl...handle.net/10603/95289](https://www.hdl.handle.net/10603/95289)> accessed 10 September 2002.

¹⁶C I Tongo and E S C Osabuohien, 'Emergent and recurrent Issues in contemporary Industrial Relation: Pathway for Converging Employment Relationship'[2007](4)(2) *Journal of Management and Enterprise Development* 1-50. <<https://www.eprints.conermantmieersity.edu.nglid/eprint/133>>. Accessed 10 September/ 2020.

OTHERS (1998) 2 NWLR (pt. 537) 189 per Tobi JSC (as he then was) as follows: “from the wordings of Section 47, it is clear that the following ingredients are not only necessary but inevitable: (a) there must be a dispute (b) the dispute must involve a Trade (c) The dispute must be between (i) employers and workers; or (ii) workers and workers (d) The dispute must be connected with (i) the employment or non-employment ; or (ii) The terms of employment and physical condition of workers of any person. His Lordship then proceeded to analyze the above factors thus: “The third classification concerns the parties in the trade dispute must either be between employers and workers or workers and workers, although the former is much more regular in terms of commencement of actions in courts....¹⁷

Industrial dispute is therefore, any disagreement, conflicts or crisis between workers and their employers or trade unions and employer’s organization, bordering on terms and/or conditions of employment of workers.

Parties to Industrial Disputes

Usually, the Nigerian labour sector has tripartite actors that operate within the employment relations context. In other words, these actors often form the parties in most trade/industrial disputes. They include, the trade unions or workers’ union, employers’ association and the Nigerian state, represented by Ministry of Labour. It has been argued that for any dispute to qualify as a proper dispute within the meaning of the Act,¹⁸ there must be proper parties. It presupposes that the parties to a trade dispute must be clearly defined in order to fully understand what kind of dispute constitutes a trade dispute.

From the positions of section 4,¹⁹ and section 54(1),²⁰ the dispute may involve “employers and workers” or “Workers and worker” and/or their respective organizations, that is, either employers’ association or trade unions (workers’ unions). It is therefore, trite to observe that any of this two set of people named above may constitute the required parties to a trade/industrial dispute. In effect, the above statutory analysis establishes the fact that, disputes between either an employer and another employer cannot suffice as a trade dispute, whether or not it is connected to the terms and conditions of employment. In the same vein, dispute between an employee and another employee cannot constitute as a trade or industrial dispute as it were.

¹⁷*NUEE & Anor v BPE* (2010) LPELR 1966 SC, 28,31.

¹⁸ TDA (n 1).

¹⁹(n 1).

²⁰(n 2).

In *Onumalobi v NNPC*,²¹ it was held that, a dispute between an employer and another employer is not a trade dispute. It is further observed that in reality, a trade/industrial disputes can involve employers and trade unions rather than the individual workers as contemplated by the Act.²² Lord Wright in *N.A.L.G.O v Balton Corporation*,²³ stated thus: it would be strangely out of place to hold that a trade union cannot act on behalf of its members in a trade dispute or that a difference between trade union acting for its members and their employer cannot be a trade dispute. Similarly in *National Union of Road Transport Workers v Ogbodo*,²⁴ The Court of Appeal held, inter alia... that the dispute must be between:

- i. Employers and workers: or
- ii. Workers and workers; or

(d) The dispute must be connected with

- i. The employment or non-employment, or
- ii. The terms of employment, or
- iii. Physical conditions of work of any person.

It has been observed that Trade Disputes Act has identified parties to a trade/industrial dispute as employers and workers or workers and workers.²⁵ In broader view, the National Industrial Court Act²⁶ has sufficiently outlined parties to trade/industrial dispute to include, employers and employees and/or their respective organization.²⁷

The implication of the foregoing provisions of the Act is that industrial disputes are usually contention or conflicts between employers and works or workers and workers, including their respective unions. It is important to note that, the term worker or employee is inter changeably used under the Law of Labour Relations, as they both represent the same thing.

Mechanisms for Settlement of Industrial Disputes in Nigeria

A trade dispute can be in the form of dispute on agreements previously made between the parties, as to its terms or their interpretation, or even a fresh matter on which the parties or one of them has given notice of a dispute or even a breakdown of the process of collective bargaining.²⁸ Be that as it may, there is well established procedure laid down by law, which when observed can foster

²¹(1999) 12 NWLR (pt. 633) 628.

²²(n 1).

²³(1943) AC 166 at 169.

²⁴(1998) 2 NWLR (pt 537) 189.

²⁵(n 1), s48, TUA s54.

²⁶(n 2).

²⁷(n 2) 54(1).

²⁸O A Orifowomo and M O A Ashiru, 'Settlement of Trade Disputes: Nigeria's Labour Court in Perspective' [2015] (37) (2224-3240) *Journal of Law, Policy and Globalization* <<https://www.iiste.org>> accessed 3 February 2021.

quick resolution of such a trade dispute. They include, settlement by agreed procedure between the parties: resort to mediation, conciliation and arbitration before the Industrial Arbitration Panel (IAP): and full adjudication by the National Industrial Court (NIC).

1. Settlement through Collective Bargaining

It has been argued that collective bargaining is another legally recognized means of settling trade or labour dispute in Nigeria. Zailani,²⁹ observed thus: “To this end, legal science has considered it imperative to devise various mechanisms for dispute settlement. In Nigeria, the mechanisms put in place for the resolution of labour disputes accord recognition to collective bargaining.”³⁰ The term collective bargaining has been defined as to “mean the process of arriving or attempting to arrive at a collective agreement.”³¹

According to Okene,³² “the principal purpose of collective bargaining is to settle and determine terms and conditions of employment.”³³ Improvements in the terms and condition of workers employment is the chief task of trade unions and collective bargaining is the major means whereby trade unions can ensure that the terms....³⁴ The major interest of trade union is in winning wage concession from employers through collective action. Where the employer fails to concede to the demands of the workers, this could lead to strike action. This collective bargaining provides the mechanisms for dispute settlement by negotiation of working conditions and terms of employment.³⁵

2. Settlement by the Grievance Procedures

This is a type of conflict resolution by means of a pre-determined or agreed procedure between the parties. Parties to an industrial dispute are advised to seek the resolution of the dispute among them by means of any existing agreed procedure, apart from the provisions of the Act.³⁶ The grievance procedure is a kind of charter, a self-imposed bilateral treaty between union and management whereby the parties undertake to resolve all grievance through the stated procedure.³⁷ A crucial aspect of this settlement process is that, when parties adopt to deal with the dispute by this means

²⁹B Zailani, ‘An Appraisal of Trade Disputes Settlement Mechanisms in Nigeria’(Unpublished Dissertation, Ahamadu Bello University 2016)

<https://www.kubanni.abu.edu.ng/jspui/bitstream/123456789/9328/1/an/appraisal/of/trade/dispute/settlement/in/nigeria> accessed 25 July 2021.

³⁰*Ibid*, 57.

³¹LA 2004, s9(1).

³²O V C Okene, *Labour Law in Nigeria: Selected Essays* (1st edn, Faculty of Law, RSU Port Harcourt) 165.

³³*Ibid*.

³⁴*Ibid*, 163.

³⁵(n 32) 166.

³⁶(n 1), s4(1).

³⁷(n 32) 409.

and negotiations are underway, the parties must not resort to industrial action.³⁸ The question that arises is, does this provision have any imperative or compelling force on the parties, in the face of the common law position that collective agreements, in general, cannot be termed as contracts in law as the parties do not intend to be legally bound by it?³⁹ Such collective agreements have been described as a gentleman's agreement, a manifesto for labour relations, and an extra-legal document devoid of sanctions.⁴⁰

The foregoing presupposes that when parties have adopted this process, they cannot turn back again to indulge in any industrial action, pending when this procedure is completed or exhausted. It does not matter whether the dispute is resolved by this means or not.

3. Settlement by Mediation

The Trade Dispute Act,⁴¹ has sufficiently provided for the settlement of industrial dispute through the means referred to above to wit: If the attempt by the parties to settle their dispute by either agreed means, that is voluntary grievance procedure, if it fails, they are required to meet to settle the dispute amicably under a mediator mutually agreed upon and appointed by disputants....⁴²

It has been argued that "if the dispute is not settled within seven days of the date on which a mediator is appointed, the dispute shall be reported to the Minister⁴³ within three days of the end of the seven days."⁴⁴ The report shall be in writing disclosing the points of disagreement and the steps already taken by the parties to reach a settlement.⁴⁵ Okene,⁴⁶ highlighting on section 7 stated thus: "upon receipt of the report, the Minister is empowered to review action already taken by the parties, if he confirms that there is non-compliance with the procedures laid down in sections 3 and 5, he may refer the matter back to the parties for such further steps necessary to achieve amicable settlement."⁴⁷

4. Settlement by Conciliation

This method of settling industrial dispute have been statutorily provided for under the Trade Disputes Act,⁴⁸ to wit; "The Minister may for the purpose of section 7 of this Act appoint a fit

³⁸*Ibid.*

³⁹(n 28) 153

⁴⁰*Ibid.*

⁴¹ (n 1).

⁴²*Ibid*, s4(2).

⁴³(n 1) s48(1).

⁴⁴(n 1) s6(1).

⁴⁵*Ibid*, s6(2).

⁴⁶(n 32).

⁴⁷(n 32) 410.

⁴⁸(n 1).

person to act as conciliator for the purpose of effecting a settlement of the dispute.”⁴⁹ The emphasis in the provision above is a “fit person”. Although the Act did not make express provision on the description or qualities that can qualify a person to be fit for such settlement, but one can observe that, the fit person in this context means that the draftsman is referring to a person who is knowledgeable in matters of labour relations. It must be noted, that the conciliator has a sole duty to inquire into the causes and circumstances of the dispute between the disputing parties and apply negotiation with them to bring about a settlement.⁵⁰

It has been argued that;” where the Minister is of the opinion that the provisions of the Act⁵¹ relating to settlement of trade dispute by a previously agreed means or by a mediator have not been complied with substantially, he shall issue to the parties a notice in writing directing steps they should take and the time within which to take such actions.”⁵² It should be noted that the provision for both mediation and conciliation may cause undue delay in the process of dispute settlement. It is submitted that, in order to effect speedy machinery for settlement of trade disputes, the parties should be free to choose either mediation or conciliation,⁵³ where there is a failure to reach a settlement by either method the dispute goes straight to the Industrial Arbitration Panel (IAP). Besides, the movement from mediation to conciliation and back to conciliation in some cases seems to undermine the nature and seriousness of some disputes.⁵⁴

5. Settlement by the Industrial Arbitration Panel

Section 9 of the Act,⁵⁵ provides that the Minister refers the dispute for settlement to the Industrial Arbitration Panel, established under this section within fourteen days of his receipt of the report under section 6 of this Act.⁵⁶ Section 13, requires that the tribunal, “shall make its award within 21 days of its being constituted, or such longer period as the Minister may allow in any particular case.”⁵⁷ It has been observed that:

The IAP consists of a Chairman and vice chairman and ten other members all of whom are appointed by the Minister. Of the ten members, at least five must represent the interests of employers, while at least two must represent the workers interest. For the purpose of each dispute referred to IAP, the chairman, having regard to the subject matter of the dispute and the means already

⁴⁹(n 1) s8(1).

⁵⁰(n 1) s8(2).

⁵¹(n 1).

⁵²(n 32) 154.

⁵³(n 32) 144.

⁵⁴(n 32) 144.

⁵⁵(n 1).

⁵⁶(n 1) s9(1).

⁵⁷(n 1), s13(1).

adopted to settle it, constitutes an arbitration tribunal drawn from the members of the IAP which may consist of a sole arbitrator, or a single arbitrator assisted by assessors⁵⁸

Similarly, it has been argued that, the award shall only be communicated to the Minister, he shall send a copy of the award to the parties. If he receives no notice of objection from either party, he shall then publish in the Federal Gazette a notice confirming the award.⁵⁹ The award becomes binding on the disputants as from the date of the award (or such earlier or later date as may be specified in the award). In the event that the Minister receives a valid notice of objection, section 14 directs that he refer the dispute to the National Industrial Court.⁶⁰

6. Settlement by the National Industrial Court of Nigeria

Okene,⁶¹ reiterates that “the NICN is the highest labour court in Nigeria for the settlement of trade disputes. The NIC was first established under the Trade Disputes Act. The provision in part II of the Act which gave birth to the NIC has been repealed and replaced by the National Industrial Court Act, 2006.”⁶² If in the case of any trade dispute of which he has received a report under section 6 of this Act it appears to the Minister – (a) that the dispute is one to which workers employed in any essential service are party; or (b) that in the circumstances of the case reference of the dispute to an arbitration tribunal would not be appropriate. Then, within seven days of the receipt by him of a report under section 8(5) of this Act.⁶³ The Minister shall refer the dispute directly to the National Industrial Court.⁶⁴ Similarly, the Act,⁶⁵ provides thus; if notice of objection to the award of an arbitration tribunal appointed under section a of this Act is given to the Minister within the time and in the manner specified in the notice under section 13 (2) of this Act, the Minister shall forthwith refer the dispute to the National Industrial Court established by this Act.⁶⁶

The foregoing reveals two circumstances where matter can be referred to the National Industrial Court by the Minister, firstly where the report of an amicable settlement under section 6 (1) reveals that disputes concerns workers employed in any essential service and to this end referring it to an arbitration tribunal will be inappropriate or cause delay. The Minister is obliged by law to refer the dispute directly to National Industrial Court for settlement, within seven days of the receipt of the report. Secondly, where there is a notice of objection to the award of an arbitration tribunal

⁵⁸(n 32) 412.

⁵⁹(n 28) 154.

⁶⁰(n 28) 154.

⁶¹(n 32).

⁶²(n 32) 413.

⁶³(n 1) s17.

⁶⁴(n 1).

⁶⁵*Ibid*.

⁶⁶*Ibid*, s14(1).

appointed by the Minister under section 9 of Trade Disputes Act, in compliance with the provisions of section 13 (2) of the Act,⁶⁷ the Minister shall refer such dispute to the National Industrial Court of Nigeria.

On the jurisdiction of the National Industrial Court of Nigeria, section 7 of the Act,⁶⁸ reiterated that; the court shall have and exercise exclusive jurisdiction in civil cause and matters relating to labour, environment and condition of work...granting order to restrain people from taking part in strike, lock-out or any industrial action....⁶⁹ The Court may hear appeal from the decision of an arbitral tribunal as of right in matters of disputes specified in subsection 1(a) of this section.⁷⁰

The implication of the foregoing is that parties to any trade dispute has legal right to approach the NICN for adjudication or interpretations of awards or agreements. Okene,⁷¹ observed that “The Court also exercises similar jurisdiction in matters relating to the grant of any Order to restrain any person or body from taking part in any strike, lock-out or any industrial action, or any question as to the interpretation of any collective agreement, any award made by an arbitral tribunal in respect of a labour dispute⁷²

7. National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre

Article 2 of the National Industrial Court of Nigeria Alternative Dispute Resolution Centre Instrument,⁷³ provides thus: “There is hereby established an Alternative Dispute Resolution Centre in the premises of the NICN. The Centre shall be:

- (a) responsible for the resolution of disputes by applying mediation and/or conciliation mechanisms of alternative dispute resolution;
- (b) under the overall supervision and control of the president of the court who shall;
 - (i). assign and designate or direct the assignment and designation of a director and other staffers to the Centre;
 - (ii). receive regular updates on the overall activities of the Centre; and
 - (iii). Take any action or give any direction which he or she may consider appropriate or necessary for the overall

⁶⁷(n 1).

⁶⁸(n 2).

⁶⁹(n 2) s7(1).

⁷⁰*Ibid*, s7(4).

⁷¹(n 32).

⁷²(n 32) 414.

⁷³NICN ADRCI 2015.

effectiveness and growth of the Centre to enhance fast and effective justice delivery.⁷⁴

The foregoing provisions reiterated above points to the establishment of an ADR Centre in the premises of the National Industrial Court of Nigeria. Their responsibilities amongst others are to resolve disputes by application of alternative dispute resolution mechanisms. It is further observed that the Centre has its headquarters at the premises of the National Industrial Court of Nigeria Abuja and other Zonal Offices in Gombe, Kano, Enugu, Warri and Ibadan respectively.

Note: Article 3 provides thus; “for records purposes, the Director of the Centre shall notify the President of the court of; (a) any matter referred to the Centre for mediation and conciliation by a judge of the court (b) the outcome of any mediation and/or conciliation process, whether settled or remitted back to the court.”⁷⁵ The Article made further provisions for who becomes an ADR Officer of the Centre to wit; an employee of the court whose elementary obligations may or may not be related to legal profession, but shall be referred to as “ADR Officer” because of the official duties assigned to him as a member of a mediation or conciliation panel.⁷⁶ No legal practitioner less than seven years post call with considerable knowledge and experience in law of labour relations is eligible to serve as ADR Officer⁷⁷

Article 4 of this Instrument⁷⁸ Provides *inter alia*: That the mandates and functions of the ADR Centre includes, application of mediation or conciliation technique in resolving dispute among disputants, enhance and facilitate quick efficient settlement of labour and industrial relation conflicts, assist disputants to amicably settle their disputes without bitterness or acrimony.⁷⁹

Similarly, Rule 4 of the Article referred to above reiterated that: The Centre shall perform its obligations on the matters hereinafter provided in paragraph 5 (a-d) of this article on referral of matter to the Centre by the President of the court or the judge who did the referral....⁸⁰ Subject matter listed in paragraph 5(a-d) of this article is qualified for referral...interpretation or challenge as to jurisdiction of the court....⁸¹

The provision of the Article as reiterated above implies that either the President of the National Industrial Court of Nigeria or any judge of the court or parties may opt that their matter upon filing be referred to the ADR Centre for quick and prompt resolution of the disputes. This can be done even after issues have been joined by parties or their counsel. Matters that may be referred upon

⁷⁴(n 73) Art.2(4) (a) & (b).

⁷⁵(n 73) Art.3(8)(a) & (3).

⁷⁶*Ibid*, Art. 3(17)

⁷⁷(n 73) Art.3(18).

⁷⁸*Ibid*.

⁷⁹*Ibid*, At.4(1) (2) & (3).

⁸⁰*Ibid*, Art.4(4)(a) & (b).

⁸¹(n 73) Art.4(4)(c).

application by the parties after joining issues does not include causes challenging the jurisdiction of the court, interpretation or on monetary claims.

Subject matters that the Centre can adjudicate upon by way of mediation or conciliation are those ones provided for in the third alteration of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in 2010. Specifically, Section 254 C (i) (a), (c), (g) and (k).

Finally, on this point, Article 5 and 6 of NICNADRCI,⁸² made ample provisions on the role of both the counsel and the parties, to wit: It shall be the responsibility of counsel to the parties in dispute for ADR to: (a) Assist the ADR officer(s) in constructive dialogue or negotiation towards an amicable resolution of the matter: (b) Prepare their clients prior to mediation by explaining the procedure to be followed and particularly what the roles of both counsel and parties are;⁸³(c) Serve as advocates for their client's interest, (d) Make brief opening summaries of the issues; (e) Allow the parties to engage and participate in the mediation or conciliation process.⁸⁴ Counsel shall: (a) accord due consideration and support to suggestions, orders and directives from the court towards amicable settlement of the referral of on-going matter to the Centre (b) accord regard and ensure that their clients accord respect to notices,...; Encourage the use of ADR and accord effect to the overriding objectives of the Centre.⁸⁵ Similarly, parties are among others to corporate and work together with the ADR officer(s) of the Centre in the administration and handling of their matters.⁸⁶

Summary of Findings

Industrial dispute and its settlement has been a very pivotal and reoccurring subject under the Nigeria labour jurisprudence. Apart from the traditional court system of litigation, many other mechanisms for the resolution of industrial disputes amongst disputants have been put in place statutorily. This paper reveals the following:

1. Delay in the justice delivery system. It has been found that the procedures in arriving at justice in matters of labour relations under the TDA and NICA are as cumbersome as what is obtainable in litigation in the regular courts. This is due to the *lacunae* in the legal instruments which failed to provide for a holistic and prompt measures for intervention and quick resolution of dispute.
2. Lack of independence of dispute settlement institutions, amongst the national legal instruments, none made any provision for the independence of other existing mechanisms for settlement of industrial disputes. Just as the President of the NICN superintends over the

⁸²(n 73).

⁸³*Ibid*, Art.5(1)(a) & (b)

⁸⁴(n 56), (c)-(e).

⁸⁵(n 73) (2)(a) - (c).

⁸⁶*Ibid*, Art.6(1).

affairs of the ADR Centre, the Minister of labour and employment under the TDA has overall control of all processes relating to settlement of industrial disputes.

3. In reality and practice, it has been found that There is no Industrial Arbitration Panel on ground as provided under the TDA, no chairman or vice chairman of the said panel exists, neither conciliators, nor single arbitrators and assessors appointed or constituted by the Minister are in place. What are rather operational in the states in Nigeria are labour offices, headed by a Director of Labour, although Rivers State has a zonal Director of Labour. The practical aspect of dispute resolution is quite different from what the TDA provides
4. The Minister of labour and employment exhibits supremacy over the procedure of settlement of all labour related disputes as provided for under the TDA. It is observed that every step to be taken in settlement of labour dispute under the Act is centered around the Minister.

Conclusion

This paper dealt on settlement of industrial dispute in Nigeria. It examined the respective meaning of key terms, which included settlement, industry, dispute, industrial dispute. The views of other erudite scholars on the subject matter were reviewed. It analyzed the Trade Disputes Act 1976, cap T8 LFN, 2004, National Industrial Court Act, 2006, National Industrial Court of Nigeria (Civil Procedure Rules), 2017, National Industrial Court of Nigeria Alternative Dispute Resolution Centre Instrument, 2015.

Drawing up conclusion from the research findings, it is established that amidst several steps taken to resolve/settle industrial disputes in Nigeria, industrial disputes has rather grown worse. Every efforts aimed at getting disputants to bury the hatchet and still be in good industrial relationship, most have proved abortive as there is still acrimony and grudge after adopting some settlement procedures.

Recommendations

The paper offers some suggested recommendations arising from the summary of findings and seeks that law makers, government authorities, educators, pressure groups, investors, employment organizations and worker's union should embark on or introduce by way of amendment to existing legal instruments or policies to ensure efficient and peaceful industrial atmosphere and its attendant economic impacts.

- a. Revision of the Trade Disputes Act is necessary to allow for prompt and quick procedure to deliver substantial justice in the matters of trade disputes through the application of ADR mechanisms. The current processes and procedures are as cumbersome as adjudication in litigation and even more slow. Several steps are to be taken and at last the matter in most cases still lands at the National Industrial Court of Nigeria for adjudication or one pronouncement or the other.

- b. Sections 8,9,17 and 33 Trade Disputes Act, should be amended to relief the Minister in charge of labour and employment from superintending over the application of ADR techniques provided for under the Act. This is because the continues superintendence of the process by the Minister pre-supposes that the practice and procedures is still attached to and/or controlled by the executive arm of government, who are also employers of labour and by extension major party to industrial disputes in Nigeria. That, being the case, achieving substantial justice in such atmosphere without compromise is arguable unrealistic.
- c. A new law should be enacted to repeal the existing National Industrial Court of Nigeria Alternative Dispute Resolution (ADR) Centre Instrument, 2015. This is to ensure an independent body, devoid of total control by any arm of the government, especially, the judiciary or a reverse of Article 2 Rules (4), (5) and (6) which vested power and privilege on the President of the National Industrial Court of Nigeria to direct and control the activities of the NICN ADR Centre, up to the appointment and posting of staffers and designate who becomes the director of the Centre, makes rules from time to time. Upholding the existing norms will mean that the Centre is not independent and barely do substantial justice as required by the principle of equity upon which the ADR mechanisms are found, without interference, especially in any dispute where the government is involved.
- d. All the institutions established by law *inter alia* Industrial Arbitration Panel (IAP), Arbitrators, Conciliators and Accessors should be made functional to allow disputants have access and resolve the conflicts amongst them
- e. The National Industrial Court of Nigeria Alternative Dispute Resolution Centre should be established in every city and all legal geographical jurisdiction to enable more disputants have access to utilize the process and reduce work load for the few existing Centres.

Finally, it must be emphasized that the Trade Dispute Act ought to be amended to ensure that the procedure for settlement of labour related disputes/conflicts is centered on or around any ministerial function or become solely the affairs of government. The emphasis is predicated upon the fact that the governments in some cases are parties to the disputes. Secondly, the Minister is surrounded by many diehard bureaucrats without whose advice he may not function or act.