

TRADE DISPUTE AND SETTLEMENT MECHANISMS IN NIGERIA, UNDER NIGERIAN LAWS.

By

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Abstract

Just as it is common for conflict to arise in any human relationship, the relationship between an employer and an employee is not left out in this. Conflict is however, inevitable to the extent that refusal of the union to be recognized by their employers, public policies, as well as the failure of collective bargaining are identified as the causes of Industrial conflict. In Nigeria, in spite of the legislative framework for the mechanisms of settling Industrial Conflicts, the situation has consistently been on the increase and the mechanism has not effectively fostered Industrial harmony. Thus, this article examines the industrial Conflict and settlement procedures in the public service of Nigeria, under the Nigerian laws. This article adopted the doctrinal research methodology. This paper found out amongst others that the framework of substantive law established in Nigeria for the resolution of industrial dispute obviously lacks some critical components of industrial conflict resolution in respect of sanction, bearing in mind the Trade Union Act in its Section 25 (1)(2) grants recognition to a registered trade union for the purpose of collective bargaining with a provision of ₦1,000 as fine for non-compliance, such is grossly inadequate to serve as a deterrent and to achieve a sustained industrial harmony. This article recommends amongst others that Section 25 (2) of the Trade Unions Act, should be amended to impose sanction on the employers for their refusal to recognize and give effect to trade unions bargaining processes, and that the sanction will be determined on the financial strength of each organization upon default.

a. Introduction

In every sphere of human endeavor, with exception in the grave, conflict is inevitable. This position is undoubtedly so because in the course of human relationship, personal or corporate, conflict is almost unavoidable. In the corporate organization, conflict is not the presence of physical exchange of weapons but simply a demonstration of interest, either from one party who is desirous of additional wages or the other who is desirous of additional services or better still, it could also be as a result of abandonment of the agreed term of engagement by the parties. The National Industrial Act¹ provides that any dispute between employers and workers, or between workers and workers,

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¹ NICA 2006 (as amended) s 47.

which is connected with employment or non-employment or terms of employment or conditions of work of any person.

Similar provision is also made in the Trade Dispute Act.² In as much as organizations, private or corporate are made up of different categories of humans, it is expected that demands and pressure will often arise from either parties within the organization.

In every Nation of the world, conflicts are inevitable, it is often said to be part of national and industrial processes and its effective management is imperative for national and industrial growth.³ It involves the display of multiple behaviours and attitude that comes in two opposite directions involving the employers on one side and the employees on the other side, precipitated by disagreement due to non-implementation or non-negotiated terms and condition of service.⁴

However, in order to curb the space of conflicts in any organization be it private or corporate, some settlement mechanisms must be put in place.

The Trade Dispute Act⁵ sets out grievance procedure as well as statutory procedure for the settlement of same. The grievance procedure is a voluntary procedure in the settlement of trade dispute which involves the disputing parties making the initial attempt to settle their disagreement through the existing negotiation machinery at a meeting between the parties.⁶ This also referred to as internal machinery procedure.⁷ On the other hand, the statutory procedure in the settlement of trade dispute places upon the Minister of Labour and Productivity such a responsibility in the entire process of mediation, conciliation, Industrial Arbitration Panel (IAP), National Industrial Court, Board of Inquiry as provided in the Trade Dispute Act.⁸

b. Conceptual Reviews

It must be most appropriate to make clarifications of the key concepts of this paper, which are, trade dispute, dispute settlement, and settlement mechanisms.

Dispute

The word dispute is easy to comprehend in its ordinary usage, arising from the fact that it is a process that forms an important part of human existence and thus, a natural part of our daily lives.

² TDA Cap T8, LFN 2004, s 48.

³ C C Obi-Ochiabutor, 'Trade Dispute Resolution under Nigerian Labour Law' [2002-2010] (9) *The Nigerian Judicial Review*, 71.

⁴ L Godon, *Managing Conflict in Today's Organization* (Development Publication 1982) 1.

⁵ TDA Cap T8 LFN 2004, s 4(1).

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*, ss 4,8,9,16,17,18,19,32(1).

It has been described to be a conflict or controversy; a conflict of claims or rights; an assertion of right, claim or demand on one side met by contrary claims or allegations on the other side.⁹

Dispute has also received judicial pronouncement in respect of its definition as “a disagreement on a point of law or fact, a conflict of legal views or interests between two persons.”¹⁰

Settlement

The word settlement is defined to mean an official agreement that ends an argument between two people or groups.¹¹ It is also said to be the action of reaching an agreement: the settlement of dispute.¹² In my personal opinion, settlement could also be said to be a peaceful resolution of disagreement between person or group of persons. It can also be said to be the conclusion of a disagreement process amongst person over an idea or terms of contract.

Industrial Conflict

Industrial conflict has been expressly said to be a difference between labour and management on employment matters.¹³ Industrial conflict is also said to be a disagreement between workers union and management on issues concerning the conditions of work.¹⁴ Industrial conflict is further defined to arise usually from a complaint or a grievance which is left unsettled or unattended to by the authority or management that is charged with the responsibility for settling the grievance at the primary level.¹⁵

Statutorily, Industrial conflict is defined to mean any dispute between employers and employees 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.¹⁶

In my personal opinion, industrial conflict connotes disagreement between the employer on one side and the worker on the other side arising from the breach of the terms and conditions of their services. This is indeed a clear demonstration of a display where the employer desire more profit and better services and the worker on the hand, demand higher wages and other benefits, and both end apparently refuses to meet.

⁹ H Campbell, *Blacks' Law Dictionary* (6th edn, Minnesota: West Publishing Co. St Paul 1990) 472.

¹⁰ *Cameroon v Nigeria* (No 1) 2000 FWLR (Pt 132) r.20. pp. 81-82.

¹¹ Oxford Advanced Learners Dictionary (International Students edn) 1352.

¹² *Ibid*, 1352.

¹³ E O Babajide, *The Essentials of Industrial Relations* (Ibadan: Enicrownfit Publishers 2001) 9.

¹⁴ E E Okafor and A S Bode-Okunade, *An Introduction to Industrial and Labour Relations* (Ibadan: Mubak Prints 2005) 17.

¹⁵ E Okougbo, *Strategic Issues on the Dynamics of Industrial Relations: Theory and Practice* (Ikotun, Lagos: Wepoapo Enterprises 2004) 2.

¹⁶ NICA 2006 (as amended) s 47.

Trade Dispute Act¹⁷ defined industrial conflict as:

"Any dispute between employers and workers, or between workers and workers, which is connected with employment or non employment or terms of employment or condition of work of any person".

This definition is unequivocally direct and clear in every sense of it and same is replicated in Trade Unions Act¹⁸ defined industrial conflict or trade dispute as

"Any dispute between employers and workers, or between workers and workers, which is connected with the employment or non-employment, or the terms and conditions of employment or conditions or work of any person".

National Industrial Court Act¹⁹ replicated by words the same definition of industrial conflict as provided for in the Trade Dispute Act and Trade Union Act respectively. It is also *imparimateria* with the provision of British Trade Dispute Act.²⁰

In *A.G. Oyo State v NLC*²¹ the court held the same view as 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 person.

The court has also held in the case of *Oshiomole v Federal Government of Nigeria*²² that the definition as provided in the Trade Dispute Act as well as the Trade Unions Act respectively is all encompassing.

Strike

Okene,²³ in his opinion about industrial dispute stated

There's no doubt that workers throughout the world are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, job security, redress of wrongs and good working condition. But often, the employer and the union (representing

¹⁷ TDA 2004, s 48.

¹⁸ TUA 2004, s 54.

¹⁹ NIC Act, 2006 (as amended) s 47.

²⁰ British Trade Dispute Act 1996, s 5(3).

²¹ (2003) 8 NWLR (Pt 821) 23, para B-C, C-D.

²² (2007) 8 NWLR (Pt 1035) 58 at 80 para C-D.

²³ O V C Okene, *Labour Law in Nigeria (Selected Essays)* (Faculty of Law, Rivers State University 2019) 211.

workers) find themselves in sharp disagreement; such friction or disagreement gives rise to trade dispute and strike.

He further opined that a strike is a deliberate stoppage of work by workers in order to put pressure on their employer to accede to their demands.²⁴

K.G.J.C.²⁵ defines a strike as a collective stoppage of work undertaken in order to bring pressure to bear on those who depend on the sale or use of the product of their work. The implication of this opinion is that there exist an employer – employee relationship between the parties in the dispute.

*Train Shipping Corporation v Greenwich Marine Incorporation*²⁶ where the indomitable Lord Denning stated that a strike is

A concerted stoppage of work by men, done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or sympathizing with other workmen in such endeavor. It is distinct from stoppage brought by an external event such as a bomb scare or by apprehension of danger.

In section 47²⁷ strike is said to mean the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.

Hiller²⁸ opined that strike is the simultaneous and coordinated withdrawal of labour by workers. In his opinion, strike is expressly interpreted to represent an agreement reached to put a stop to work at a particular date and time by group of workers.

Trade Dispute

This is any dispute between employers and workers or between workers and workers or workers represented by unions and employers which is connected with employment or non-employment or conditions of work of any person or in a place of work.²⁹

²⁴*Ibid.*

²⁵ IGJC, Knowles, *Strike – A Study of Industrial Dispute* (New York: Philosophical Library 1952) 1.

²⁶ (1975) ICR 261 @ 276.

²⁷ TDA Cap T8 LFN 2004.

²⁸ E T Hiller, *The Strike: A Study in Collective Action* (Chicago Ill: A University of Chicago Press 1982) 12.

²⁹ TUA, Cap T14 LFN 2004, s 51.

c. Mechanism for the Settlement of Trade Dispute under Nigerian Law.

In Nigeria, the mechanisms put in place for the resolution of trade dispute generally is dynamic and has its root in the English adjudicatory process as a result of colonization of Nigeria by the British.³⁰ The evolution of trade dispute laws in Nigeria falls into two categories:

- a. Received English Law
- b. Nigerian Statutes

All of the laws relating to and regulating trade dispute in Nigeria have their origin in English law. As a former British Colony, Nigeria imbibed the English Laws through the medium known as the reception laws enacted at various times by local legislation. Before the First World War (1914 - 1918), the colonialist had no real labour policy since the British were working towards developing a clearly define principle of labour relations for themselves.³¹

The Trade Dispute (Arbitration and Inquiry) (Lagos) Ordinance 1947 and the Trade Dispute (Arbitration and Inquiry) (Federal Applicant) Ordinance, 1957 were the first two Ordinances attempted by the Nigerian government to provide an efficient legal frame-work for settlement of trade disputes. However, these attempts turned out to be unsuccessful because of some inherent defects in it. These are:

- a. Parties were given an option to choose whether or not they wanted to resort to the machinery provided or set up by the government. They had the option to take their cases straight to the courts of law. Thus, not many people went to the conciliator provided and the parties could refuse to cooperate with the conciliator as there was no legal compulsion to co-operate or give the conciliator the chance to settle disputes between them.
- b. There was the total absence of any permanent institution other than the Department of Labour which could be called upon to effect settlement. It was observed that only ad-hoc bodies were set up to handle trade disputes, this had its attendant administrative problems which led to considerable delay in the resolution of trade disputes. These major defects in the legislations made their lifespan short and new legislations were introduced. These are:
 - (a) The Trade Disputes (Emergency Provisions) Decree of 1968
 - (b) The Trade Disputes (Emergency Provisions) (Amendment) (Decree No 2) of 1969

These 1968 and 1969 Decrees attempted to correct the defects in the first two Ordinances. These were effective in banning strikes and lock-outs, among other things, but they were designed to last only for a short time because they are temporary war time measure which had out heed its

³⁰ S Sakkarren, 'The Legal Regime for the Settlement of Investment Disputes in Nigeria: A Legal Periscope' <<http://dspace.unijos.edu.ng>> accessed 6 August 2021.

³¹ A Adeogun, 'From Contract to Status in Quest for Security' An Inaugural Lecture Delivered at the University of Lagos on Wednesday 9th April 1986.

usefulness with the cessation of hostilities. The view of the government on the Udoji commission caused considerable agitation on wage claims from both private and public sectors, which led to abandonment of both voluntary and statutory methods of settling trade disputes.³²

All these were to be regulated and resolved in the Trade Dispute Act of 1976 which was amended by the Trade Disputes (Amendment) Decree No 47 of 1992 and further reviewed, amended and updated by the Trade Dispute Act 2004. Therefore, in Nigeria at the moment, the statutory legal frameworks for the settlement of labour dispute are the Trade Disputes Act,³³ the National Industrial Court Act of 2006 and the Federal Republic of Nigeria Constitution (Third Alteration) Act of 2010. Hence, the mechanism long adopted for dispute resolution is mainly through judicial or arbitral processes. These mechanisms accord recognition to both the grievance procedure and the statutory procedure embodied in the Trade Dispute Act 2004.

Collective Bargaining Mechanism in Trade Dispute Settlement

Simply put, collective bargaining involves a process of negotiation and conclusion of collective agreements on terms and conditions of employment between employers and workers. The right to collective bargaining is intimately related to and dependent on the right to freedom of association and the right to strike.³⁴ Workers generally associate with each other's protection for their economic and other interests. Where they have to confront their employer for wage and other negotiations, they have to present a solid front. The only way that they can meet the employer as equal partners is when they come through their trade organizations. Negotiation between the two parties is known as collective bargaining. From the above, it can be concluded that the right to bargain collectively stems from the right of association.

However, in some cases negotiations do not always have a satisfactory outcome. Sometimes the views of the parties are so diametrically opposed that negotiations break down. It is after the breakdown of negotiations that trade unions ballot their members for a mandate to commence strike action. It was accordingly held in *Union Bank of Nigeria Ltd. v Eden*³⁵ that a strike of this kind was functional to collective bargaining. Collective bargaining will thus not be effective without a credible threat of industrial action.³⁶

Without doubt, the stoppage of work initiated by the union will affect both sides.³⁷ The employer's operation may be shut down with the attendant loss of revenue and the employees will suffer

³² M M Akanbi, 'An Appraisal of the Machinery for the Settlement of Trade Dispute in Nigeria: Problems and Challenges' [2001] (1)(1) *JLSS*, 1.

³³ Cap. T8, LFN 2004, s 4(1).

³⁴ R B Israel, *International Labour Standards: The Case of the Freedom to Strike* (Deventer: Kluwer 1988) 27.

³⁵ (1993) 4 NWLR (Pt. 287) 288.

³⁶ K W Wedderburn, *The Worker and the Law* (England: Penguin Books 1965) 245.

³⁷ E Chianu, *Employment Law* (Ondo State: Bemico Publishers Nigeria Ltd 2004) 277.

hardship because they will be out of work and will be deprived of their salaries and wages. Both sides will naturally be hurt economically. The question may therefore arise as to: why do workers choose to bear the economic loss rather than accept the offer of the employer? The answer is that the workers resort to industrial action to force the employer to reach a mutually acceptable agreement about the terms and conditions of employment. The right to strike helps to equalize workers' bargaining power and a chance to resist the economic compulsion inherent to an otherwise unequal wage bargain.³⁸ In this sense the economic purpose of strikes plays an important role in collective bargaining. Thus, industrial action, or the likelihood of its occurrence, is seen as one of the necessary conditions for collective bargaining to exist.³⁹

The strike is the ultimate sanction without which collective bargaining cannot exist.⁴⁰ As Kahn-Freund noted:

Collective bargaining as we understand it is impossible without social sanctions. Collective bargaining cannot work without the ultimate sanction of the strike, no more than the law of, say, the sale of goods could work without the law of bankruptcy.⁴¹

The notion that there is a connection between collective bargaining and the right to strike is widely accepted by labour lawyers and industrial relations experts. Anderman, as previously mentioned, notes that:

The right to strike is understood as a safeguard against the imbalance of power between individual employee and employer and it provides a necessary underpinning to collective bargaining. It has long been recognized that without a credible threat of damaging industrial action there is little assurance that management will be willing to engage in meaningful negotiation with trade union representatives over disputed issues of management decision-making.⁴²

This view was acknowledged by Lord Wright in his famous dictum in 1942.⁴³ Without doubt, the right to strike is not only a logical step in the collective bargaining process, but also a part of the price paid for industrial self-regulation of the conditions of employment. It is a necessary part of

³⁸ S D, Anderman, *Labour Law: Management Decisions and Workers' Rights* (London: Butterworths 2000) 358-359.

³⁹ *Ibid.*

⁴⁰ O K Freund, *Labour Relations: Heritage and Adjustment* (Oxford: Oxford University Press 1979) 77.

⁴¹ O K Freund, 'Legal Framework' in A Flanders and H A Clegg (eds.), *The System of Industrial Relations in Great Britain* (Oxford: Blackwell 1954) 101.

⁴² S D Anderman, *Labour Law: Management Decisions and Workers' Rights* (London: Butterworths 2000) 358-359.

⁴³ *Crofter Hand Woven Harris Tweed Co. Ltd v Veitch* (1942) A C 435, 463.

the process toward securing the adjustment of expectations of economic realities.⁴⁴ Giving further justification for the crucial role of the right to strike in collective bargaining, Collins et al explain:

The connection between the right to strike and collective bargaining is easy to understand. Collective bargaining would be rather empty of substance, if the employer could say: 'this is my offer-take it or leave it', or if the employer could say: 'I am proposing to change the terms of existing collective agreement - and there is nothing you can do about it, whether you agree or not.' The strike enables workers collectively to put pressure on the employer in pursuit of what they see as a just cause and a way of resisting what they see as unjust action by the employer.⁴⁵

Examples of this link are numerous in Nigerian labour law.⁴⁶ Adeogun, for example, says of the nexus between collective bargaining and the right to strike:

Conceptually, the right to strike can be seen as an essential characteristic of collective bargaining. This is so because the ability of the union to bring direct economic pressure on the employer depends largely on the availability or use of the strike weapon... The presence or threat of a strike induces the parties to engage in continuous dialogue for a search for an agreement. That is to say when workers are certain that they can strike, or employers are conscious of its occurrence, the seriousness of the dispute is intensified and, correspondingly, the bargaining power of the employees is increased.⁴⁷

There is little doubt that the right to strike is a very important instrument in collective bargaining in order to ensure the economic rights of workers. Indeed, if workers could not in the last resort collectively refuse to work, they could not bargain collectively.⁴⁸ In the absence of the right to strike 'collective bargaining' would amount to 'collective begging'.⁴⁹

However, Nigerian law adheres to the principle of free collective bargaining, yet at the same time suppresses the right to strike. This is a significant discrepancy. This paper argues that the Nigerian

⁴⁴ A A Adeogun, 'Industrial Relations and the Law' in T O Elias (ed.), *Law and Development* (Lagos: University of Lagos Press 1972) 122.

⁴⁵ H Collins and other, *Labour Law: Text and Materials* (Oxford and Portland, Oregon: Hart Publishing 2005) 864.

⁴⁶ A Emiola, *Public Servant and the Law* (Ile-Ife: University of Ife Press 1985) 67.

⁴⁷ T Fashoyin, 'Collective Bargaining in the Public Sector: Retrospect and Prospects' in T Fashoyin (ed.), *Collective Bargaining in the Public Sector in Nigeria* (Lagos: Macmillan Nigeria Publishers 1987) 12.

⁴⁸ O K Freund, *Labour and the Law* (London: Stevens and Sons 1983) 292.

⁴⁹ A J M Jacobs, 'The Law of Strikes and Lock-outs' in R Blanpain and C Engels (eds.), *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Deventer: Kluwer 1993) 423; B Perrins, *Trade Union Law* (London: Butterworth 1985) 22.

approach of recognizing collective bargaining and yet, ironically, suppressing the right to strike is anomalous and demonstrates that Nigerian law is deficient. The right to strike must be strengthened to enable collective bargaining to perform the important role envisaged in Nigeria's system of industrial relations.

Collective Agreements in the Public Service of Nigeria

One of the aspects of British industrial relations which Nigeria inherited is the non-binding nature of collective agreement.⁵⁰ At Common Law, collective agreements are not regarded as a legally binding contract for two reasons. First, is the doctrine of the Privity of contract under which a contract of employment is regarded as an affair strictly of the employer and worker, and the trade unions which are the principal negotiators on behalf of the workers cannot enforce such contract because they are not parties to it,⁵¹ consequently, only parties to a collective agreement can benefit or suffer from it.⁵² Therefore, unless this basic element of the general rule of contract can be established, the common law courts regard collective agreements as binding in honour only. The second reason is that the parties to collective agreements do not normally intend to create legal relations.⁵³

What remains confusing however is that, in English Law there is no requirement that an intention to create legal relations must be shown before a contract can be established. Unfortunately, however, in Nigeria, the High Court which hitherto exercises jurisdiction on labour matters in Nigeria had consistently insisted on the strict compliance with the common law position, as shown above. This was exemplified in the case of *Rector Kwara State Poly v Adefila*⁵⁴ and *Nwajagu v BAICO (Nig) Limited*.⁵⁵ It was held these in cases that collective agreement is document totally devoid of sanctions and such agreement cannot be made the basis of an action by an employee unless it is incorporated into the contract of service of such an employee, expressly or impliedly.

However, the National Industrial Court which is conferred with exclusive jurisdiction by section 254 (c) of the Constitution⁵⁶ National Industrial Court Act⁵⁷ on all labour matters including interpretation of collective agreement in Nigeria, seems to adopt the position that the sanctity and binding effect of collective agreements is accepted without more, so that once the court's

⁵⁰A Emiola, *Nigerian Labour Law* (Ibadan: University Press 1979) 187.

⁵¹*Spring v National Amalgamated Stevedores and Dockers Workers* (1956) 2 All E.R 221.

⁵²*National Union of Hotel and Personal Service Workers v Paliso Nigeria Limited & Pellegrini Nigerian Catering Limited* Unreported Suit No. NIC/5/2004.

⁵³*Ford Motor Co. v Amalgamated Union of Engineering and Foundry Workers* (1969) 2 Q.B. 303; *Balfour v Balfour* (1919) 2 Q.B. 571; A Paul, *Principles of Nigerian Business Law* (Kaduna: ARC Publication Ltd 2014) 42; O Kahn-Freund, *Report on the Legal Status of Collective Bargaining and Collective Agreement in Great Britain* (London: Temple Gardens 1965) 25-26.

⁵⁴ (2007) 15 NWLR (Pt 1056) 42.

⁵⁵ (2000) 14 NWLR (Pt 687) 356.

⁵⁶ CFRN 1999, s 254(c).

⁵⁷ National Industrial Court Act, 2006 (as amended) s 7(1).

jurisdiction to interpret a collective agreement is activated under section 16 & 20 Trade Disputes Act, there is often no question as to it being binding in honour only. It is deemed to be legally binding for all intents and purposes.⁵⁸ What is however obvious from the decisions of the court is that in enforcing collective agreement, emphasis is often placed on some structural requirement for validity. For instance, in *Association of Senior Staff of Banks, Insurance and Financial Institutions v Nigerian Employers Association of Banks, Insurance and Allied Institutions*,⁵⁹ it was held that before a collective agreement can be enforced at the NIC, the terms of the agreement must be clear, precise, unambiguous and signed by the parties. Similarly, in *Lasisi Gbadegesin v WEMA Bank Plc*,⁶⁰ in resolving whether the two versions of collective agreements submitted before the court were valid and enforceable, the court held that none of the version was valid and enforceable, because the first is unsigned and is incomplete with several pages missing. And that, the second agreement ends at page 54, but it again has another signature at page 41 and that passage of the second document from page 19 – 54 is hand written.

The position adopted by the NIC regarding the status of collective agreement in Nigeria is commendable considering that the process of arriving at such agreement usually entails great financial cost, time and energy, this is in addition to the fact that, most collective agreements are usually entered into on matter relating to legitimate expectations of the workers and their families. Thus, to suggest that such agreements are binding in honour, is an outright invitation of industrial unrest at workplace. Unfortunately, however, the current legislations on Trade Disputes in Nigeria have not taken a definite stand in line with the position of the NIC, regarding the legal status of collective agreements in Nigeria.

Collective Agreement under the Trade Dispute Act

Trade Dispute Act⁶¹ requires that, where there exist a collective agreement for the settlement of trade dispute, at least three copies of the said agreement be deposited by the parties thereto with the Minister within fourteen days of its execution upon the receipt of which the Minister may declare the term of the said agreement or any part thereof as binding on the employer and workers to whom they relate and thereafter, any party in default will be guilty for an offence and liable on conviction to a fine of N100, or six month imprisonment. The effect of this is that either party may take legal action to enforce the agreement once it is confirmed by the Minister. However, in Nigeria, government is both the regulator of the economy and the largest employer of labour. Thus, the fact that Minister of Labour is an agent of the government has cast doubt on the possibility of

⁵⁸ B B Kanyip, 'Reforming the Labour Laws: A Peep through Honourable Justice Uwais' <www.nicn.gov/k8.phb> accessed 7th October, 2014.

⁵⁹ Unreported suit No.NIC/15/1989/1990.

⁶⁰ (2012) 28 N.L.L.R. (Pt. 80) 274.

⁶¹ TDA 2004, s 3(1)(1).

the Minister confirming agreements which may not serve the interest of the government. Secondly, the Act has not shown a genuine willingness to compel the parties to comply with the term(s) of collective agreement as confirmed by the Minister of Labour because the fine of N100 as a sanction is too small to command compliance. Again, it is not clear whether the N100 fine is to apply for each day the default continues or it should apply once for the entire period of the default lasted.

Collective agreement, being an important mechanism in regulating labour relations, the Constitution and the National Industrial Court Act contained statutory provisions which seem to be of the effect that its legal effect is statutorily guaranteed and it is intended to be applied in the settlement of labour dispute. For instance, section 245 (1) of the Constitution⁶² has elevated the NIC to the status of a Superior Court of Record. The CFRN and National Industrial Court Act⁶³ further confer on the court exclusive jurisdiction on any matter relating to the interpretation of collective agreement in Nigeria. These provisions go to show that both collective agreements on terms and conditions of employment and collective agreement for the settlement of trade disputes could be subject of litigation before the NIC. This argument is supported by the fact that the jurisdiction of the court has been expanded to include all labour matters. Furthermore, given the expanded jurisdiction conferred on the court in the Trade Union Act⁶⁴ which prohibits the court from entertaining any suit instituted for the purpose of enforcing any collective agreement made by a trade union, federation of trade unions or central labour organization will be of no effect.

Trade Dispute Settlement Mechanisms.

i. Settlement by the Grievance Procedures

Trade Disputes Act⁶⁵ provides for the role of voluntary grievance procedures in the settlement of trade disputes and accordingly requires the disputing parties to first attempt settling their disagreement by the existing negotiation machinery at a meeting between both parties. It is a kind of charter, a self-imposed bilateral treaty between union and management whereby the parties undertake to resolve all grievances through the stated procedure.⁶⁶

This can be referred to as self-help as the parties are to settle dispute by means fashioned out by themselves and it is expected that the result of such a process would establish lasting industrial peace and harmony. An important aspect of the settlement process is that, when a dispute is being dealt with or negotiations are underway, the parties must not resort to industrial action. To do so would be contrary to law. Furthermore, although the internal dispute procedure is traditionally

⁶² CFRN 1999, s 254(c).

⁶³ NICA 2006 (as amended) s 7(1).

⁶⁴ TUA 2004, s 23 (2) (b).

⁶⁵ *Ibid.*, s 23 (2) (b).

⁶⁶ Okene (n 43).

established by collective agreements, there are instances where, some employees unilaterally lay down a dispute procedure as part of the management's work rules.

ii. Settlement by Mediation

Where the parties fail to resolve the dispute after the exhaustion of the voluntary grievance procedure, or in the absence of such means of settlement, they are required, within seven days to meet to resolve the dispute amicably under the presidency of a mediator mutually agreed upon and appointed by the parties. The parties are entitled to be represented at the mediation by themselves or their representatives.⁶⁷

Mediation is a voluntary private dispute resolution process in which an impartial third party assists parties to reach a negotiated settlement. The process and the outcome are non-binding. The mediator is actively involved in the negotiation process but unlike a judge or arbitrator, he has no power to impose a settlement, rather he assists in shaping solutions to meet the parties' mutual interests and achieve reconciliation.

The Mediator has seven days to assist the parties to reach a settlement. Where the mediator is unable to settle the dispute within seven days of his appointment, a written report should be sent to the Minister within three days of the end of mediation either by the parties or by another person on their behalf.⁶⁸ The report should be in writing and points of conflict and steps taken to resolve it must be stated.⁶⁹

If the dispute still remains unresolved after all the necessary steps have been taken, or the parties refuse to take such steps, the Minister must then set in motion the appropriate machinery prescribed by law by exercising his powers under sections 8, 9 17 and 33 of the Trades Dispute Act. The exercise of this power gives the following options to the Minister, the appointment of a conciliator, or reference of the dispute to a board of inquiry or the Industrial Arbitration Panel (IAP) or the National Industrial Court (NIC).

iii. Settlement by Conciliation

By the provision of Section 8 of the TDA, the Minister may appoint a fit person to act as a conciliator for the purpose of effecting settlement of the dispute. The Act does not define "a fit person", but it presumably means somebody who is knowledgeable in industrial relations.⁷⁰

⁶⁷ Trade Dispute Act 2004, s 4(2); Okene (n 43).

⁶⁸ *Ibid*, s 6(1).

⁶⁹ *Ibid*, s 6(2).

⁷⁰ Okene (n 43).

Generally, conciliation is a process by which one or more independent person(s) is selected by the disputing parties to facilitate a settlement of their dispute through a particular procedure. The conciliator is to enquire into the causes and circumstances of the dispute and by negotiating with the parties to endeavor to bring about a settlement and to achieve this objective: a guide was given to all professional officers in the Labour Division of the Ministry limiting them to the role of a conciliator.⁷¹

Essentially, the role of the conciliator is facilitative. The process and outcome are also non-binding. Like mediation, agreements reached in conciliation amounts, at best, to gentleman's agreement. Where the dispute is settled within seven days of his appointment, the conciliator is expected to submit to the Minister a memorandum setting out the terms of the settlement signed by the representatives of the parties.

However, where a settlement of the dispute is not reached within seven days or if after attempting negotiation with the parties, the conciliator is satisfied that he would not be able to bring about a settlement, he must forthwith report this fact to the Minister of Labour who is obliged to refer the dispute to the Industrial Arbitration Panel within fourteen days of the receipt of the report.

iv. Settlement by Industrial Arbitration Panel (IAP)

Arbitration is a dispute resolution process, usually regulated by statute, whereby the parties to the arbitration agreement agree to be bound by the decision, called an “award” of the arbitration. The award is generally final and legally binding on the parties to the arbitration agreement. According to Akinbuwa,

Alternative Dispute Resolution refers to a range of mechanisms designed to assist disputing parties in resolving their disputes without the need for formal judicial proceedings. They are those mechanisms that are used to resolve disputes faster, fairer, and without destroying ongoing relationships.⁷²

Historically, prior to 1976, trade disputes in Nigeria were treated as part of the common law of contract and were accordingly dealt with in the ordinary civil law courts. However, due to the oil boom and the consequent rapid growth in commercial and industrial activities, labour problems became more complex than the ordinary courts which could satisfactorily cope with and consequently, government decided to set up separate machinery for settling labour disputes. The Trade Disputes Act deals with internal resolution of conflicts among parties while the external machinery is covered by legal provisions in the Act, however, the external disputes procedures are

⁷¹ E E Uvieghara, *Trade Union Law in Nigeria* (Benin: Ethiope Publishing House 1976) 172.

⁷² A A Akinbuwa, ‘Citizens Mediation Centre and Multi-Door Courthouse in Lagos State’ in *Law, Policies and Development* (Ikeja: NBA 2010) 327.

expected to be voluntarily pre-agreed and self-imposed undertaking by the parties to resolve grievances through specified machinery without resort to any form of industrial action at the commencement of the disputes.⁷³ To this end, Section 18 of the TDA in strong terms prohibits strike or lock-out during labour dispute.

Where a conciliator has failed to effect a settlement of the dispute, he is required to report that fact to the Minister. The Minister is required to refer the dispute for settlement to the Industrial Arbitration Panel within fourteen days of receipt of the report of conciliation.⁷⁴ Although, IAP is not expected to adopt formal proceedings like Ordinary courts, however its proceedings are patterned along the lines of courts. For instance, the parties are allowed to be represented by persons of their choice to present their case. At the end, the panel arrives at decisions called “award”. The award is therefore forwarded to the Minister who will thereafter release it to the parties.

The Panel is charged by Section 9(1) of the TDA with the responsibility of arbitrating on industrial dispute between employers and employees inter and intra union disputes upon referral by the Honorable Minister of Labour and Productivity. The Minister of Labour and Productivity acts as a supervising body to the Panel. This means that the Panel can only adjudicate on matters referred to it by the Hon. Minister of Labour and Productivity.

The IAP consists of a chairman and a vice-chairman and ten other members all of whom are appointed by the Minister. Of the ten members, at least two must represent the interests of employers while at least two must represent the interests of workers. For the purpose of each dispute referred to the IAP, the chairman, having regard to the subject matter of the dispute and the means already 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 assessors, or one or more arbitrators nominated by the employers concerned and an equal number of arbitrators nominated by the workers concerned, presided over by the chairman or vice-chairman.⁷⁵ Where an arbitrator is assisted by assessors, he makes the award. In other cases, the award is arrived at by the majority of the members.⁷⁶

It is pertinent to note that most disputes which can be resolved by litigation can be settled by arbitration, the exception being matters where injunctions are required and other matters which may result in imposition of a fine or terms of imprisonment and matrimonial matters like divorce, custody, et cetera. Furthermore, an arbitrator's award is a private matter and cannot therefore, be

⁷³ S A Fagbemi, ‘An Overview of the Institutional Mechanisms for the Settlement of Labour Dispute in Nigeria’ [2014] (11) *Us-China Law Review*, 1325.

⁷⁴ TDA 2004, s 9(1).

⁷⁵ TDA 2004, s 9(3).

⁷⁶ *Ibid*, s 9(6).

effective against third parties who are not parties to the arbitration. This means that arbitration cannot be used in a dispute which necessarily involves parties outside the agreement.

The Industrial Arbitration Panel has a mission to maintain industrial relations and harmony between workers and employers from both public and private sectors to enhance the political and socio-economic development of workers and employers in various working environments in the Nation. The panel as a quasi-judicial agency is to service the need of stakeholders in both the private and public sector of the Nigeria Economy and maintain peaceful atmosphere in all sectors of Nigeria.

An arbitration tribunal is expected to make its award within 21 days unless the period is extended by the Minister.⁷⁷ The award shall be communicated to the Minister as soon as it is made. Upon its receipt, the Minister may, if he considers it desirable to do so, refer the award back to the tribunal for reconsideration. Where the Minister chooses not to refer the matter back for reconsideration, he shall subsequently serve a notice on the parties setting out the award and informing them of their right of objection to the award within seven days, failing which the award is to be confirmed by the Minister. If he receives no notice of objection from either party within seven days, the Minister shall confirm the award which becomes binding on the employers and the workers to whom it relates.

However, if a valid notice of objection is received by the Minister, he must refer the dispute to the NIC, whose award shall be final and binding on the parties to whom it relates from the date of the award.⁷⁸

Settlement by the National Industrial Court (NIC)

Section 1 (1) of the National Industrial Act, 2006 (hereinafter referred to as the "NIC Act") established the National Industrial Court. By virtue of Section 1(3) (a) NIC ACT, the Court is a Superior Court of Record. The National Industrial Court (NIC) is the highest labour court in Nigeria for the settlement of trade disputes. The NIC was first established under the Trade Disputes Act 1990. However, this has been replaced by the National Industrial Court Act 2006. The NIC Act, which came into force on 15th June 2006, repealed Part II of the Trade Disputes Act, provided for the establishment and jurisdiction of the NIC under the Trade Disputes Act.

Section 1 of the NIC' Act 2006 re-establishes the NIC, while Section 7 of the NIC Act provides for its jurisdiction. The NIC has exclusive jurisdiction in civil matters and cases relating to labour, including trade unions and industrial relations, environment and conditions of work, health, safety

⁷⁷ *Ibid*, s 13(1).

⁷⁸ Okene (n 43) 150.

and welfare of the workforce and matters of industrial relations.⁷⁹ 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 b) an arbitral tribunal in respect of a labour dispute or an organization dispute. In addition, the NIC Act confers power on the court to grant: injunctive relief, as well as to make orders of mandamus, prohibition or certiorari; to appoint a public trustee for the management of the affairs and finances of a trade union or employers' organization; and award of compensation or damages.⁸⁰ The NIC Act provided that where the award of an Arbitration Tribunal is objected to and notice of this has been given to the Minister within the stipulated time, as provided for in the TDA, the Minister is to refer the disputes to the NIC whose award will be final and binding on the parties, as from the date of the award.

The composition of the members of the Court shall consist of a president and 4 other members all of whom shall be persons of good standing to the knowledge of the Minister and well acquainted with employment conditions in Nigeria. For the purpose of dealing with any matter which may be referred to it, the court shall, at the discretion of the President be constituted of either all 5 members or the President and 2 ordinary members.

The Board of Inquiry

Where a trade dispute exists or is apprehended, the Minister of Labour may cause inquiry to be made into the causes and circumstances of the dispute by a board of inquiry which shall inquire into the matter referred to it and report thereon to the Minister. The Minister is further empowered, at his discretion, to refer any other matter connected with industrial conditions in Nigeria to a board of inquiry, which shall inquire into a matter referred to it and report thereon to the Minister. Upon receipt of these reports, the Minister may cause to be published in any manner he deems fit any information obtained or conclusions reached by such board of inquiry in the course of or as result of the inquiry.⁸¹ The aspect of inquiry relating to industrial conditions in Nigeria the board of inquiry could be of great assistance in making recommendations to improve the conditions of nonunionized and public sector workers. The board of inquiry could also be used to resolve ad hoc disputes. This mechanism has, however, been rarely used.⁸²

Settlement through Alternative Dispute Resolution Mechanism (ADR)

Trade disputes can also be resolved through ADR process. There is no gain saying that ADR is a compound word used to describe various ranges of mechanisms designed to assist disputing parties

⁷⁹ National Industrial Court Act 2006 (as amended), s 7.

⁸⁰ *ibid*, ss 16-19.

⁸¹ TDA 2004, ss 32-33.

⁸² Okene (n 43) 150.

in the resolution of their dispute without the need for formal judicial proceedings. In the word of Aina, ADR are those mechanisms which are used in resolving disputes- faster and fairer without destroying on-going relationships.⁸³ It offers more acceptable options for dispute resolution. This is so because the statutory procedures either prescribes more grievance or unsatisfactory outcomes.⁸⁴

The most common forms of ADR are negotiation, mediation and arbitration: however, there have been several hybrid forms and these include Med-Arb, Mini-Trials, and Summary Jury Trials and so on. The advantages of the mechanism over the traditional litigation system have greatly contributed to its adoption by countries world over in recent times. For instance, litigation in the court of law is concerned primarily with applying “public policy” and adhering strictly to the law of the land laid down to the finest detail. Unlike with many non-court dispute resolution methods, a judge normally has little time for flexibility to consider what might be “fair treatment” between the parties.⁸⁵

It is worthy of note that The Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 made some far-reaching provisions on the jurisdiction and structure of the NIC, notable among which is the provision in Section 254(3) of the 1999 Constitution (as amended) permits NIC to establish, within its premises, an Alternative Dispute Resolution (ADR) Centre to aid in the speedy disposition of cases that come to the court.

Section 254(3) of the 1999 Constitution (as amended) provides thus:

The National Industrial Court may establish an Alternative Dispute Resolution Centre within the Court premises on matters -which jurisdiction is conferred on the Court by this. Constitution or any Act or Law;

Provided that nothing in this sub-section shall preclude the National Industrial Court from entertaining and exercising appellate and supervisory jurisdiction over an arbitral tribunal or commission, administrative body, or board of inquiry in respect of any matter that the National industrial Court has jurisdiction to entertain or any other matter as may be prescribed by any Act of the National Assembly or any Law in force in any part of the Federation.

These forms of Alternative Dispute Resolution need to be understood by simple explanation to reflect how they aid in trade dispute resolution:

⁸³ K Aina, ‘Alternative Dispute Resolution’ [1998] (2)(1) *Nigeria Law and Practice Journal*, 169.

⁸⁴Fagbemi (n 85) 1322.

⁸⁵Fagbemi (n 85) 1322.

a. Mediation

It is a voluntary private dispute resolution process in which an impartial third party assists parties to reach a negotiated settlement. The process and the outcome are non-binding. The mediator is actively involved in the negotiation process but, unlike a judge or arbitrator, he has no power to impose a settlement, rather he assists in shaping solutions to meet the parties' mutual interests and achieve reconciliation.

b. Conciliation

It is a process by which one or more independent person(s) is selected by the disputing parties to facilitate a settlement of their dispute through a particular procedure. Essentially, the role of the conciliator is facilitative. The process and outcome are also non-binding. Like mediation, agreements reached in conciliation amounts, at best, to a gentleman's agreement.

c. Arbitration

Arbitration is more aligned in many respects to litigation and for this reason, it is argued by scholars that arbitration should not be categorized as ADR. While the debate remains on-going within the academic circle, we shall, for the purpose of this paper, view arbitration as an alternative to litigation. In *MISR Nigeria Ltd v Oyedele*⁸⁶ the court adopted the definition in Halsbury's Laws of England thus:

An Arbitration is the reference of dispute or difference between not less than two parties, for determination after hearing both parties in a judicial manner by a person or persons other than a court of competent jurisdiction.

In other words, 'arbitration' is a term applied to an arrangement for taking and abiding by the judgment of a selected person in some disputed matter rather than taking it to an established court of justice. The arbitrator can thus be regarded as a private judge; who determines controversies between two or more disputing parties.

d. Conclusion

The practice of trade dispute settlement under the Nigeria Jurisprudence is not entirely new. It is long established as a great move towards achieving prompt and amicable resolution of conflicts amongst disputants especially, causes relating to or arising from general contracts, torts, employment or labour relations and other commercial transactions. No doubt, the study reveals that the application of ADR as a mechanism for the settlement of industrial or trade related disputes is an innovation introduced into our labour conflict resolution process in this twenty first century.

⁸⁶ (1966) NCLR 191, 194.

It is observed that prior to embracing of these new realities, introduced for amicable and/or friendly dispute resolution process in the labour/industrial sector, there existed other mechanisms or processes for resolution of such conflicts. Prominent amongst them was collective bargaining, it is a process of labour related dispute resolution, wherein, the representative of both the employees (Trade Unions) and their employers or employers' unions to address and/or determine conflicting issue boarding on working condition and terms of employment to settlement.

Suffice it to say that, were the disputants are unable to resolve their conflicts through collective bargaining process; parties can adopt other procedures provided for under the Trade Dispute Act Cap. T8 LFN, 2010. Sections 4, 5, 6, 7 and 8 of the Act referred to above provided for a number of steps to explore, where collective bargaining fails. They include; settlement of their dispute by grievance procedure under section 4. The process is a predetermined or agreed procedure, which parties have previously agreed and adopted to be binding on them in case there arise any future conflict for resolution. At this stage parties adopts the mediation process, where a neutral third party is appointed by them to mediate over the subject of the dispute between them. The Minister may become apprehensive of the matter or the matter be reported to the Minister by the parties. The Minister may exercise his powers by appointing a conciliator under section 8 of TDA, or refer the dispute to Industrial Arbitration Panel under section 9 of the Act referred to above or refer the dispute to a Board of Inquiry under section 33 of the Act.

Recommendations

In view of the above, I make the following recommendations:

1. That section 25(2) of the Trade Union Act should be amended to require that the sanction for the refusal by employers to recognize and give effect to trade unions for bargaining purposes, be determined based on the financial strength of each organization upon default as sanction.
- ii) That an independent agency to monitor whether or not the employers (government) are really granting employees due recognition for bargaining purposes and to have a unilateral power to issue sanction against a non-complying employer.
- iii) That section 24 of the Trade Union (Amendment) Act should be amended further to provide for guidelines for the constitution of electoral college for bargaining purposes. This way, the possibility of preventing strife among the employees for manipulating the process by the employer would be avoided.
- iv) That there is need for the employers to respect the process and outcome of negotiated settlements in order to achieve peace in the organization as the workers would very hardly rely on adjudication through the National Industrial Court, because apart from it's adversarial character, and its winner takes it all syndrome, the workers may be wrong, but they seem not have confidence in the National Industrial Court based on the fact that they see it as an agency of the government, manned by the appointees of the government, who are their employers.