

The Adjudication of Trade Disputes Concerning Strikes, Lock-Outs, Termination and Reinstatement of Employment by the National Industrial Court in Nigeria

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Abstract

It cannot be over emphasized that the National Industrial Court (NIC) of Nigeria has contributed immensely in the adjudication of trade disputes in Nigeria. This study will cover adjudication by the court in cases concerning strikes, lock-outs, termination and reinstatement of employment in Nigeria. The aim of this study is to assess the contributions made by the court in the settlement of trade disputes in these areas, towards ensuring industrial harmony in Nigeria. The essence of this research work is deducible from the fact that the economy of every nation depends so much on the stability of its workforce. Thus, the proper treatment of issues relating to strikes, lock-outs and termination of employment would certainly uphold a stable workforce. It shall be argued in this research work that much as the workers may have the right to embark on strike to press home their demands and the right not to be dismissed on the ground of trade union activities, same rights should not be exercised beyond the confines of the law as to impose clogs in the economic flow.

Keywords: Trade disputes, Strikes, Lock-out, Termination, Employment, National Industrial Court.

1.1 INTRODUCTION

In Nigeria, for a matter to suffice for adjudication by the NIC, the following conditions must be met:

1. It must be a dispute in the first place;
2. The dispute must be a labour dispute;
3. It must be between employers and workers or worker and workers or between their respective organizations and federations;
4. It must be connected with,
 - a. the employment or non-employment of any person,
 - b. terms of employment and physical conditions of work of any person,
 - c. the conclusion or variation of a collective agreement, and
 - d. an alleged dispute¹.

A trade dispute may be of interest or right. A trade dispute of interest² is concerned with the conflict of interest in collective bargaining arising out of the making of a new agreement on terms and conditions of work, or the renewal of those, which have expired. On the other hand, right disputes are those, which involve alleged violations of rights already established in employment contracts or agreements. These are regarded as legal rights because the claims are based on the contractual relations between the parties.

Rights stand in sharp contrast with interest in the sense that the later connotes not entitlement but desire. Disagreements about rights are said to be "*justiciable disputes*". In other words, they may be adjudicated. In respect of disputes over interests, they may be settled by "*higgling out the differences or settling them*"³. But because these disputes are non-justiciable, they cannot be disposed of by litigation. Therefore, any discussion of settlement of trade disputes must center on the rights of individuals as opposed to their interests. These rights may be provided to them by statute, by established practice or collective agreement reached by the process of collective bargaining. They are advantages, already achieved to which the individual has definite and guaranteed entitlement⁴. For a dispute to suffice for adjudication by the NIC, it must be a dispute of right and not a mere

¹ See generally sections 7 and 54 (1) of the NIC Act. See also *Attorney General Oyo State v. Nigeria Labour Congress, Oyo State Chapter* (2003) 8 N.W.L.R. (Pt. 821) 1.

² It is often called "*collective disputes*" and involves mostly the settlement of disputes on economic matters resulting from the non-implementation of collective agreement.

³ Higgling devices or collective bargaining has been defined as a negotiating method of settling interest disputes over what shall be the working rules for the future. See Paul, F.B., *Settlement of Disputes Over Grievances in United States*, Industrial Relations Center, University of Hawaii (1965) P.4. See Iwuji, E.C., *Settlement of Trade Disputes*. In Otodo, D. and Omole, M. (eds.) *Readings in Industrial Relations in Nigeria*, Malthouse Press Ltd, Lagos (1987) p. 205.

⁴ Iwuji, E.C., *Settlement of Trade Disputes*. In Otodo, D. and Omole, M. (eds.) *Readings in Industrial Relations in Nigeria*, Malthouse Press Ltd, Lagos (1987) p. 205.

dispute of interest. The NIC summarized this in the following words:

Labour/industrial relations is a function of conflicting interests which may remain mere interest or crystallize into rights depending on what can be agreed on through the process of collective bargaining. So long as an interest has not crystallized into a right, an adjudicative process of the court is hardly useful in the resolution of disputes that may arise in that regard. Until an interest crystallizes into a right, the court is not the ideal forum to go.⁵

1.2 STRIKES AND LOCKOUTS

“Strike” means,

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 person or body of persons employed, or to aid other workers in 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; and in this definition, ‘cessation of work’ includes deliberately working at less than usual speed or with less than usual efficiency; and ‘refusal to continue to work’ includes a refusal to work at usual speed or with usual efficiency.⁶

Lockout on the other hand means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work.⁷

While workers use strikes to express their grievances, the employers make use of lockouts. The employers and workers resort to strikes and lockouts respectively to compel the other party to accede to their own requests or condition. Before 1968, there was a right to strike in Nigeria. This right was abrogated during the Nigerian Civil War of 1967 – 1970⁸, culminating in a ban by the Federal Military Government due to the critical need during the civil war to sustain production and for industrial stability to strengthen the war effort. The idea of restriction on the right to strike by workers or to declare a lockout by employers was first introduced by section 16 of Trade Disputes (Emergency Provisions) Decree No. 21 of 1968, which was amended in 1969⁹ introducing a total ban on strikes.

In 2005, there was an amendment to the Trade Unions Act¹⁰, introducing a new subsection 6 to section 30 of the principal Act¹¹. The said subsection provides that:

No person, trade union or employer shall take part in a strike or lock-out or engage in any conduct in contemplation or furtherance of a strike or lockout unless: the person, trade union or employer is not engaged in the provision of essential services; the strike or lockout concerns a labour dispute that constitutes a dispute of right; the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer; the provisions for arbitration in the Trade Disputes Act, Cap. 432, Laws of the Federation of Nigeria, 1990 have first been complied with; and in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

Subsection 7 makes the contravention of the foregoing provision of subsection 6 an offence and any person, trade union or employer who contravenes it will be liable on conviction to a fine of N10, 000 or six months imprisonment or to both the fine and imprisonment.

Before the foregoing provision, the Trade Disputes Act, had provided in section 18 that,

⁵ *Senior Staff Association of University Teaching Hospitals, Research Institutions and Associated Institutions (SSAUTHRIAI) and 3 Ors v. Federal Ministry of Health and Anor (1978 – 2006) D.J.N.I.C. 542 at 543.*

⁶ Section 48, Trade Disputes Act, Cap T8 Laws of the Federation of Nigeria, 2004. See also *Oshimohole v. Federal Government of Nigeria (2005)*, N.W.L.R. (Pt 09 07) 414.

⁷ *Ibid.*

⁸ Audi, J.A.M., "Strikes and the Law in Nigeria", *Ahmadu Bello University Law Students Journal* (1993) Vol. 2, p. 73.

⁹ Trade Disputes (Emergency Provisions) Decree No. 2 of 1969.

¹⁰ Trade Unions (Amendment) Act, 2005.

¹¹ Trade Unions Act, Cap, T14, Laws of the Federation of Nigeria, 2004.

an employer shall not declare or take part in a lockout and a worker shall not take part in a strike in connection with any trade dispute where- the procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or a conciliator has been appointed under section 8 of this Act for the purpose of affecting a settlement of the dispute, or the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or an award by an arbitration tribunal has become binding under section 13(5) of this Act; or the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or the National Industrial Court has issued an award on the reference.

The Trade Disputes Act further provides that any person who contravenes the above provision shall be guilty of an offence and shall be liable on conviction, in the case of an individual, to a fine of N100 or to imprisonment for a term of six months or in the case of a body corporate, to a fine of N1, 000. It has been observed that attaching criminal sanctions to a lawful withdrawal of labour do not help the development of healthy industrial relations; on the contrary, it will embitter the workers the more¹².

The question has been asked, times without number, whether there is a right to strike in Nigeria? It has been argued that since the Constitution¹³ guarantees the right to form or belong to a trade union, there is an inherent right to strike. The reason is that since one of the devices of a trade union in achieving its objectives is to go on strike, there should be a right to strike. In the leading case of *Crofter Harris Tweed Co. Ltd v. Veitch*¹⁴, Lord Wright said that the right of workmen to strike is the essential element in the principle of collective bargaining. It is, in other words, an essential element not only for the union's bargaining power, which is for the bargaining process itself; it is also a necessary sanction for enforcing agreed rules.

In India, Britain and America their laws did not tell their trade unions not to go on strike, rather the law has been used to cut down the extent of the trade union's immunity¹⁵. In England, in the exercise of such rights to put limitations, the House of Lords cut down the trade union immunity in the case of *Heaton Transport (St. Helens) Ltd v. Transport and General Workers Union*¹⁶, by re-establishing that the trade union as distinct from individuals could be held liable for their actions which were termed "*unfair industrial practice*". Likewise in most European countries, the right to strike is enshrined and protected by a Written Constitution¹⁷. In England, the contract of employment of those who embarked on strike is considered suspended for the duration of the strike. It is not considered to have been broken; the contract of employment is revived again when the strike is over¹⁸. In Nigeria, the sanction provided in section 43 of Trade Disputes Act is loss of wages for the period of strike as follows:

Notwithstanding anything contained in this Act or in any other law, where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike, and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly¹⁹.

The same section goes on to state that locked-out workers shall also be paid during the period of lockout²⁰.

Today, the NIC has the exclusive jurisdiction to deal with any matter relating to the grant of any order to restrain any person or body from taking part in any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lockout or any industrial action²¹. Besides, under section 254C (5) of the 1999 Constitution (as amended), the court can now entertain criminal causes and matters arising from any strike, lockout or any industrial action, or any conduct in contemplation or in furtherance of a strike, lockout or

¹² Emiola, A., "Nigeria Labour Law", University Press, Ibadan (1982) p. 272.

¹³ Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that: "Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests...."

¹⁴ (1942) 1 All E.R. 142 at 157.

¹⁵ Audi, J.A.M, Master of Laws (LL.M..) Lecture Note for First Semester (2007/2008) p. 5.

¹⁶ (1973) A. C. 15; (1972) 3 W.L.R. 431.

¹⁷ Atilola, B. (ed.) "Annotated Nigerian Labour Legislation", Hybrid Consult, Lagos, Nigeria (2008) p. 300

¹⁸ Lord Denning in *Morgan v. Fry* (1968) 2 Q.B.710 at 728. Davies, L.J., agreed with Lord Denning, saying that a strike meant, "*that the obligations under the contract would be mutually suspended*".

¹⁹ Section 43(1) (a), Trade Disputes Act.

²⁰ *Ibid*, section 43 (1) (b).

²¹ Section 7 (1) (b), NIC Act.

any industrial action. It also, has the power to grant injunctive relief against any industrial action²². Thus, in the case of *Oyo State Government of Nigeria & Anor v. Committee of Industrial Unions in the Public Service of Oyo State & 2 Ors*²³, the NIC ruled that it is in the interest of justice that it exercised its power under section 7 (1) (b) of NICA in granting the prayer of the applicants that the respondents be restrained from threatening and embarking on a strike.

Having made these points on the law relating to strikes and lockouts, it is considered pertinent to study the attitude of the court in issues relating to strikes and lockouts.

In the case of *Oyo State Government v. Alhaji Bashir Apapa and 3 Ors*²⁴, the matter arose due to disagreement between the parties over salaries, incomes and wages increase. It all started when the Federal Government approved a new salary structure for the Federal Public Service. Consequently, their state counterpart in Oyo State agitated for the same. The respondents succeeded in their agitation through negotiation, giving rise to an agreement reached with the government on October 2, 2007. The Labour Union had embarked on strike during the agitation, which was called-off after the agreement. Part of the agreement was that the workers would be paid the wage increase and the arrears of their remuneration during strike. The applicant, among other things, sought for:

- a. A declaration that the strike action by the workers under the Trade Disputes Act is illegal.
- b. A declaration that the public officers in the employment of Oyo State Government are not entitled to wages and remuneration during the period of their strike.
- c. A declaration that the strike action called by the NLC, Oyo State branch on behalf of the public servants in Oyo State is *ultra vires*.

While arguing the legality or otherwise of strike action embarked upon by the workers, the applicant cited the provision of section 6(a) of the Trade Unions (Amendment) Act, 2005 which states that, no person, trade union or employer shall take part in a strike or lock-out or engage in any conduct in contemplation or furtherance of a strike or lock-out unless, the person, trade union or employer is not engaged in the provision of essential services.

The applicant therefore, argued that by virtue of the foregoing provision, the law has placed a ban on strike and lock-out for people engaged in 'essential services' and since the public service of a state is included in the definition of essential service, the strike action by the respondent is illegal and bound by section 43 of the Trade Disputes Act, the workers should forfeit their remuneration. The applicant further argued that there cannot be wages increase except in accordance with section 19 of the Trade Disputes Act, on the ground that the court does not have the power to grant or approve any general or percentage wage increase, except with the approval of the Minister of Labour.

The court, however, declined to comment on the legality or otherwise of the strike action, observing that it will be academic to remark on the legality or otherwise of the strike since the parties have partly settled and the strike was called-off before judgment in this matter. Meanwhile, the court went further to say that, whether or not the respondents who went on strike are entitled to salaries for the period of the strike remains the question. In deciding on this question, the court alluded to Annexure 1 (agreement between the parties) specific to the fact that payment of arrears will be made. On the construction of section 43 of the Trade Disputes Act, the court referred to its case of *Senior Staff Association of Nigeria Universities (SSAN) v. Federal Government of Nigeria*²⁵, where it had held that it is not out of place nor unlawful for an employer to choose to dispense with the "no work, no pay rule" under section 43(1) (a) of the Trade Disputes Act. In the same vein, it is lawful for workers to agree with their employer that wages will be paid and no other detriment suffered even when strike action is embarked on. Applying this principle to this case, the court therefore, held that it is lawful for the applicant to agree to pay the respondents salaries even for the period when they were on strike. The court had cause to hold as follows:

...Section 42(1)(a) of the TDA is self- executory. Its implementation, without more, does not depend on a further enquiry in the manner that the appellant canvasses. A strike, whether legal or not, falls squarely within the ambit of the said section and for which the strikers are disentitled from wages and other benefits envisaged by the section. This statement of principle accords with the International Labour Organization (ILO) jurisprudence on the matter where at Para. 588 of the freedom of Association: Digest of Decisions and Principles of the Freedom of

²² *Kalango v. Dokubo* (2003) 15 W.R.N. 32, applying *Western Steel Works Ltd v. Iron & Steel Workers Union of Nigeria* (1987) N.W.L.R. (Pt.49) 284.

²³ (Unreported) Suit No. NIC/10/2007, the ruling of which was delivered on March 8, 2007.

²⁴ (Unreported) Suit No. NIC/36/2007, the judgment of which was delivered on July 15, 2008.

²⁵ (Unreported) Suit No. NIC/8/2004, delivered on May 8, 2007

Association Committee of the Governing Body of the ILO, Fourth (revised) edition, Geneva, the norm is that salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles. And to the learned authors, Bernard Gernigon, Alberto Odero and Horacio Guido – ILO Principles Concerning the Right to Strikes (1998) International Labour Review Vol.137 No. 4 at P.471, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has refrained from criticizing the legislation of member states which provide for wage deductions in the event of strike action and has indicated that, as regards strike pay in general the parties should be free to determine the scope of negotiable issues. It is in this light and given the self-executory nature of the said section 42(1)(a) that it is perfectly lawful for an employer to choose to dispense with the ‘no work, no pay rule’. In other words, strike pay is lawful if an employer chooses to pay same and not to penalize the strikers in any other way for the strike. In the same vein, it is lawful for workers to agree with their employer that wages will be paid and no other detriment suffered even when strike actions are embarked on.

The court while arriving at the above decision emphasized that the application of section 43(1)(a) is self-executory and does not require court order to take effect, otherwise it will defeat the principle of harmonious labour relations upon which the International Labour Organization principle on the matter is hinged.

In *SGS Inspection Services (Nigeria) Limited v. Petroleum Natural Gas Senior Association of Nigeria*²⁶, the court held that locked-out employees shall be entitled to wages and any other applicable remuneration for the period of lock-out by section 43(1)(b) of the Trade Disputes Act and the court may not be inclined to order reinstatement of locked-out workers. Where there is a lock-out of workers by management and later the management writes to the workers to return to work not later than a particular date, all the workers who fail to resume work on the set date would be deemed to have left the service of the company with effect from that date. Such workers would, however, be entitled to be paid their full salaries up to and including that date, as well as payment of end-of service benefits in accordance with collective agreement made between the management and workers union²⁷.

In another case of *Oyo State Government of Nigeria and Anor v. Committee of Industrial Unions in the Public Service of Oyo State*²⁸, the court exercised its powers under sections 7(1)(b), 14,16 and 19(a) of NICA in granting the prayer of the applicant that the respondent be restrained from threatening or embarking on a strike.

1.3 TERMINATION AND REINSTATEMENT OF EMPLOYMENT

Termination means the act of ending something²⁹. In the same token, reinstatement means the act of registering or placing again in a former state or position³⁰. In labour law and industrial relations, termination of employment is the complete severance of an employer-employee relationship³¹. Reinstatement means the placing of a worker whose contract of employment was determined to the former status and the period of the termination not considered to be prejudicially affected on any rights of the worker being rights dependent on the continuity of period of employment. The law makes provision for the various circumstances under which a contract of employment may be terminated. A contract of employment may also provide for the same, provided it is in accordance with the law. When termination departs from the established norm of carrying it out, reinstatement may be a probable remedy.

Section 9(7) of the Labour Act provides that, a contract shall be terminated:

- a. by the expiry of the period for which it was made; or
- b. by the death of the worker before the expiry of that period; or
- c. by notice in accordance with section 11 of this Act or in any other way in which a contract is legally terminable or held to be terminated.

Under paragraph (c) above, a contract of employment may be terminated with or without notice or by payment in lieu of notice³².

²⁶ (1978 – 2006) D.J.N.I.C. 428 at 430.

²⁷ *Management of Metal Construction (WA) Limited v. Metal Products Workers' Union of Nigeria* (1978 – 2006) D.J.N.I.C. 152 at 155.

²⁸ (Unreported) Suit No. NIC/10/2007, the ruling of which was delivered on March 8, 2007.

²⁹ Garner, B.A.; et al (eds.) Black's Law Dictionary, 7th ed., p. 14802.

³⁰ *Ibid*, p. 1290.

³¹ *Ibid*, p. 1482.

³² See section 11(6) of the Labour Act, 2004.

Under the common law³³, where the termination of a contract of employment is unlawful or wrongful, it only entitles the employee to damages. It would be wrong for a court to declare such a wrongful termination of contract of employment null and void, and to hold that the contract is still subsisting on the ground that the termination was done in breach of the terms of the contract between the employer and the employee. This is because a court of law has no power to impose an employee on an unwilling employer³⁴.

However, an employment which is protected by statute can only be terminated in the way and manner prescribed by the statute and any other manner of termination which is inconsistent with the statute will be null and void and of no effect³⁵. Hence, where a contract of employment is regulated by statute and there is a breach of the contract of employment, the court is empowered to order specific performance or reinstatement of the employee unlawfully terminated³⁶. This type of contract of employment is said to be one with statutory flavour³⁷.

As will be seen later in the course of this work, the NIC apart from reinstating a worker whose contract is with statutory regulation; the court is always disposed to reinstate a worker whose employment was terminated on the ground of trade union activities³⁸. In Britain, whenever a tribunal finds that an employee has been unfairly dismissed, it must ask him whether or not he wishes a reinstatement order to be made. The tribunal has discretion as to whether or not to make such an order³⁹. The wishes of the complainant in regard to reinstatement are likely to be particularly relevant if the employer was dismissed because he was a union member or engaged in union activities⁴⁰.

In the case of *Management of Dangote Industries Limited, Pasta Plant, Ebute Ikorodu, Lagos V. Nigeria Union of Food, Beverage and Tobacco Employees*⁴¹, the facts of the case was that the respondent unionized workers in the appellant company (plant). Prior to the unionization, some officers of the respondent had discussed with some management officers of the appellant's plant of their intention to unionize the appellant's workers, which the latter agreed to in principle but advised the respondent's representative to take some further steps. Eventually, the workers were unionized and the respondent fixed a date to formally introduce the new branch union and its officer in the appellant's plant to the management. A letter was written to that effect dated March 12, 2004 by an officer of the respondent and addressed to the Personnel/Administrative Manager of the appellant plant. In that letter, the respondent indicated that the branch union would be inaugurated and that the elected officers for the branch union whose names and posts were also stated in the letter, would be introduced formally to the management on March 18, 2004. But on March 17, 2004, the appointment of all the elected officers of the branch union was terminated by the appellant who denied any knowledge of the existence of any union in the plant as at March 17, 2004, when these officers' appointments were terminated.

After several attempts failed to settle the matter amicably between the parties, a trade dispute was declared and referred to the Industrial Arbitration Panel to handle. At the end of both parties' presentations before it, the panel made the following awards:

1. that the termination letters issued to the affected employees be withdrawn and letter of redundancy issued,
2. that the affected staff be treated in line with the industry's agreement on redundancy,
3. management to create enabling environment for already existing union to function.

The appellant appealed against the awards to the NIC while the respondent cross-appealed against the first and second awards. The court dismissed the appeal but held in favour of the respondent's cross appeal, noting that redundancy is not the appropriate remedy since it was not prayed for by the respondent/cross appellant at the Industrial Arbitration Panel and so; the panel should not have made that an issue.

What then is the remedy for the termination of an employment where this is found to be for union activities? On this, the court held that the provisions of sections 9(6)(b) of the Labour Act and 42(1)(b) of the Trade Disputes Act come in handy. The combined effect of these provisions is that an employee is entitled to be reinstated where his/her employment has been terminated because of union activities. The court found that the

³³ See generally Audi J.A.M., "Unfair Dismissal of Employees in Nigeria", *Ahmadu Bello University Law Students Journal* (1998) vol. 5 Pp. 47 - 53.

³⁴ *Ekpeogu v. Ashaka Cement Co. PLC* (1997) 6 N.W.L.R. (Pt.508) 280.

³⁵ *Ibama v. Shell Petroleum Development Company (Nig.) Ltd* (2005) 17 N.W.L.R. (Pt.954) 364.

³⁶ *Kabel Metal Nig. Ltd v. Ativie* (2002) 10 N.W.L.R. (Pt.775) 250.

³⁷ See generally, Ogwuche, A.S. (ed.) "Compendium of Employment and Labour Law in Nigeria", Maiyati Chambers, Lagos, First Edition (2006) Pp. 65 - 70; See also Nwazuoke, A.N., "Introduction to Nigerian Labour Law", the Department of Public Law and Jurisprudence, Faculty of Law Olabisi Onabanjo University, Ondo State (2001) Pp. 75 - 80.

³⁸ *Management of Dangote Industries Limited, Pasta Plant, Ebute Ikorodu, Lagos v. Nigeria Union of Food, Beverage and Tobacco Employees* (Unreported) Suit No. NIC/2/2008, delivered on January 2009.

³⁹ Section 112(3), Employment Rights Act, 1996 of Britain.

⁴⁰ Section 152, Trade Unions and Labour Relations (Consolidation) Act, 1992 of Britain.

⁴¹ (Unreported) Suit No. NIC/9/2003, delivered on January 23, 2008.

appellant, therefore, acted in contravention of section 9(6)(b) of the Labour Act and so the termination was wrongful and unlawful, therefore, null and void. It then ordered reinstatement of the sacked officers without loss of benefits and salaries. The court also recognized the fact that time factor may affect the decision to reinstate. In this regard, it held as follows:

The termination... in the Trans International Bank Plc case was effected on 17th May, 1996 and that judgment was delivered in May, 2007. If this court did not think that eleven years' time lag between termination and judgment was too long to have adversely affected the order of reinstatement... we see no reason to depart from that position regarding the present dispute since the length of time between the termination and now is only four years. We, therefore, hereby order the reinstatement of the workers whose employment were terminated ... on 17th March, 2004 on account of union activities in contravention of section 9(6)(b)(ii) of the Labour Act.⁴²

The case of *Trans International Bank PLC v. National Union of Banks, Insurance and Financial Institutions Employees (NUBIFIE)*⁴³, centered on the complaint of the respondent that various attempts at having a branch union of the respondent's union in the appellant's company were rebuffed by the appellant. In fact, those eligible members of the respondent union in the forefront of forming the branch union within the structure of the appellant company had their services terminated by the appellant on the basis of the said union activities. The court observed that the evidence before it shows that on May 16, 1996, the day the domestic unit of the union was being inaugurated, the appellant issued queries to absenting staff that were at the inauguration ceremony. On May 17, 1996, the very following day, letter of termination were issued to all those queried the previous day without any recourse whatsoever to the provisions of the conditions of service. The NIC held thus:

The appellant did not abide by the process in which termination may be effected as provided by its conditions of service. We are convinced that the appellant caused the termination of, and hence prejudiced, workers in its employment by reason of the workers trade union membership and activities, thus bringing this matter squarely under the ambit of section 9(6)(b)(i) of the Labour Act. The termination is, therefore, wrong, unlawful and hence null and void. For the reasons adduced ... the six executive members of the Domestic Unit of NUBIFIE ... should be reinstated without loss of benefits and salaries.

In *Petroleum and Natural Gas Senior Staff Association v. Schlumberger Anadrill Nigeria Limited*⁴⁴, the dispute was referred to the court to inquire into the trade dispute existing between the parties over the following points.

- a. transfer of five members of staff from Schlumberger Anadrill Nigeria Limited (SNL),
- b. redundancy decision affecting one Mrs. Uche Anyanwu, and
- c. proposed termination of Emeka Chiekezie.

The court observed that the transfer of five members of staff, redundancy decision affecting Mrs. Uche Anyanwu and termination of Emeka Chiekezie were all carried out without proper recourse to the collective agreement, Minister of Petroleum Resources Directive and contract of service guiding the parties. The court therefore, ordered that all the members of the appellant affected should be reinstated, noting that:

... not only was the respondent preemptive in its actions, but it conducted itself as if it was a lord unto itself...The action of the respondent in terminating the employment of staff without recourse to the Minister of Petroleum means that due process was not followed. We cannot permit this subversion of the rule of law.

The NIC, however, refused to order reinstatement in the case of *Nigeria Breweries PLC v. Nigeria Union of Food, Beverage and Tobacco Employees*⁴⁵, which was referred to the court over, among others, the issue of premature retirement of Mr. Joseph Shittu owing to union activities. The facts of the case were that Mr. Shittu was slated to contest for National Treasurer of the respondent's union. The respondent got wind of the proposed retirement of Mr. Shittu and preempted it with an advance written protest dated November 17, 2003. At the Industrial Arbitration Panel, the Panel had held at page 37 of its award that the evaluation of the negative

⁴² *Management of Dangote Industries Limited, Pasta Plant, Ebute Ikorodu, Lagos v. Nigeria Union of Food, Beverage and Tobacco Employees* (Unreported) Suit No. NIC/2/2008, delivered on January 2009.

⁴³ (Unreported) Suit No. NIC/17/2000, delivered on May 3, 2007.

⁴⁴ (Unreported) Suit No. NIC/9/2004, delivered on September 18, 2007.

⁴⁵ (Unreported) Suit No. NIC/1/2006, delivered on June 24, 2008.

consequences that the respondent would suffer as a result of the early retirement of Mr. Shittu and his vacation of the post of National Treasurer of the respondent compelled the tribunal to classify the appellant's action as anti-union activity. The tribunal thereby ordered for reinstatement of Mr. Shittu.

The court stated that this order by the Industrial Arbitration Panel that Mr. Shittu should be reinstated is not only too sweeping but begs further questions and sets quite a dangerous precedent. Are we to assume, as the appellant posits, that an official of a trade union cannot be relieved of his employment without the risk of the employer being cited for wrongful termination of employment? Alternatively put, would membership of the executive council of a trade union not then translate an employment to one in perpetuity? The court further observed that neither at the tribunal nor before it was any case made as to the termination of Mr. Shittu coming within the context of sections 43 of the Trade Disputes Act and 9(6) of the Labour Act to warrant his reinstatement. The court therefore, set-aside the reinstatement order made by the Tribunal.

What this means is that a party does not succeed in an action for reinstatement of his employment by merely bringing it under the umbrella of dismissal or termination of employment on the ground of trade union activities. The party must go further to make sure that such allegation is brought under any of such trade union activities as enumerated under section 9(6) of the Labour Act. The court itself in making reinstatement order brings in section 43(1)(b) of the Trade Disputes Act to make sure that the beneficiary of the reinstatement order does not lose his or her rights that have accrued by continuity of employment.

1.4 CONCLUSION

Trade disputes are bound to occur between employees and employers, the problem which then arises is as to the settlement of such disputes. Failure of settlement efforts often aggravates the disputes, resulting in issues concerning strikes, lock-outs, termination and reinstatement of employment or other industrial or labour related issues, which sometimes further degenerate into chaos and anarchy. When this happens, it does so at the expense of the socio-economic stability of the state. There is no gain saying that from history, none of the developed economics have been able to grow without a stable industrial relationship through settlement and resolution of labour disputes. One of the best, if not the very best way of settling these disputes is the option of settlement through the adjudicatory process of the National Industrial Court. The right to strike and the idea of reinstatement of employees sacked on the ground of union activities by the National Industrial Court is well made out but the court should be wary not to give union members license to evade their work schedules or violate collective agreements because of the thinking that they will be protected by the court at the end of the day.

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