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RESEARCH ARTICLE

INDUSTRIAL COLLECTIVE BARGAINING AND SETTLEMENT MECHANISMS IN THE WORKPLACE IN NIGERIA

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ABSTRACT

This study examines the emergent general framework for the settlement of trade disputes in Nigeria. The examination of the nature of trade disputes and its attendant need for resolution of same to avoid societal degeneration and chaos, this study focused first on the role of collective agreements upon which trade dispute resolution stands or falls. The study found also that intervention by statutory arbitral bodies as stipulated by the Trade Disputes Act is largely dependent on the wide discretionary ambit of intervention granted to the Minister for Labour. The study further found that the National Industrial Court as the constitutionally ordained exclusive arbiter in respect of labour matters, falls short of international labour standards by its limitation of the right to appeal on civil matters as opposed to the unlimited right to appeal granted in criminal matters. The study goes further to recommend positive judicial activism on the enforceability of collective agreements, a legislative fettering of ministerial discretion via an amendment of the Trade Disputes Act and a constitutional amendment reflecting an unlimited right of appeal in civil matters from the decisions taken by the National Industrial Court.

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INTRODUCTION

Employment dynamics, industrial harmony and cohesive working relationship between employers on the one hand and employees on the other hand are the collective goals of the different stakeholders in industrial relations. The crippling effects of trade disputes and the resultant industrial disharmony is not only injurious to employees and employees but to the society at large. It is in deference to the need to protect the competing interests of the employers and the employees and the larger society as well as the need for the government to regulate employment relationships in the interest of the larger society, that tools have been evolved to identify and balance the competing interests of the stakeholders in industrial relations. Beyond the foregoing, the recognition of the fact that sometimes the breakdown of industrial relations are inevitable as a result of failure of parties to abide by fair and equitable practices, has led to the evolution of statutory and non statutory devices to attenuate and resolve industrial conflict. The twin dimensions of collective bargaining and trade dispute settlement mechanisms are the focus of this study.

Nature of Trade Disputes: Trade Dispute is defined as any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person.[1] Section 54 (1) of the National Industrial Court Act (2006) defines a trade dispute as any dispute between employer and employees including disputes between their respective organisations and federations which is connected with the employment or non-employment of any person, terms of employment and physical conditions of work of any person, or the conclusion or variation of a collective agreement and an alleged dispute. From the foregoing definitions, it is clear that where a dispute in an employment relationship is not predicated upon the status or conditions of employment as its primary purpose it does not qualify as a trade dispute in the eye of the law. Indeed in *National Union of Electricity Employees v Bureau of Public Enterprises*,[2] the Supreme Court of Nigeria held that in the discharge of the

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[1] Section 47 (1) of the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004.

[2] (2010) 7 NWLR (Pt 1194) p 538 at 575

statutory duty of privatisation of the National Electric Power Authority, the actions taken by the Bureau of Public Enterprise; which triggered industrial action by the National Union of Electricity Employees, did not constitute a trade dispute as contemplated under Section 47(1) of the Trade Disputes Act. A trade dispute therefore arises when there is a breakdown or a contemplated breakdown in the industrial relationship between employers and employees inter se within a particular employment relationship. Any action therefore taken by the trade union where there is a breakdown of the collective bargaining process or in anticipation of the breakdown of the collective bargaining process is known as industrial action and binds the members of the trade union.[3] Trade disputes are manifestations of the unequal bargaining power dynamics existing between employers and employees where the employers have dominion over all the other factors of production except for labour and the employees possess labour alone as a factor of production. This tilted power dynamics favour the employers and concerted group actions by the employees as trade unions serve to adjust the balance of power to a more favourable position for the benefit of employees. Manifestations of trade disputes include strikes, lockouts, picketing, work to rule, etc. Indeed in *Union Bank of Nigeria v Edet*,[4] the court held that strikes and other forms of industrial actions were functional to the collective bargaining process between employers and employees.

Industrial Collective Bargaining and Collective Bargaining Agreements in Nigeria: Section 91 of the Labour Act[5] defines a collective bargaining agreement as 'an agreement in writing regarding the working conditions and terms of employment concluded between an organisation of workers or an organisation representing workers (or an association of such organisations) of the one part and an organisation representing employers (or an association of such organisations) of the other part. That same section of the Act defines collective bargaining as a process of arriving or attempting to arrive at a collective agreement. Collective bargaining is a crucial way through which employers and their organisations on the one hand and employees and their trade unions on the other hand negotiate for fair wages and working conditions. Essential issues which give rise to collective bargaining include; wages, working time, training, occupational health and safety, and equality of treatment.[6] These negotiations or collective bargaining endeavours typically aim at arriving at collective agreements which regulate the terms and conditions of employment.[7] Collective bargaining is regarded as a fundamental right in the constitution of the International Labour Organisation and is viewed as the counterpart of freedom of association. It is seen as a means by which non State actors can effectively participate in and shape social policy in the interest of not just industrial relations, but of governance policies and economic structures across governmental paradigms.[8] The international conventional foundations of collective bargaining in the International Labour Organisation are laid by the Freedom of Association and The Right to Organise Convention (No. 87) (1948) and the Right to Organise and Collective Bargaining Convention (No. 98) (1949). In Nigeria, judicial opinions are varied as to the legal status of collective agreements and their enforceability. While the courts have acknowledged the rights of employers and employees to collectively bargain and reach agreements arising from such bargains,[9] the prevalent view of the Nigerian courts is that in order to formalise a collective agreement, it has to be in writing, signed by the parties thereto and incorporated into the individual contracts of employment of the employees.[10] The courts have further described collective bargaining agreements as 'at best a gentleman's agreement, an extra-legal document totally devoid of sanctions... it is a product of trade unionist's pressure'.[11] In *Union Bank PLC v Edet*,[12] Uwaifo JCA justified this judicial posturing of the Nigerian courts by stating that collective bargaining and the agreements arising there from except when they are adopted to form parts of contracts of employment do not give rise to employee rights to litigate for their enforcement as they are not meant to supplant the terms and conditions of the contracts of employment. Nigerian courts have therefore consistently tilted towards regarding collective agreements as merely 'aspirational' documents lacking the requisite legal enforceability where they are not subsumed by reference into individual contracts of employment.[13] In *African Continental Bank v Nwodika,*[14] the court stated that for a collective bargaining agreement to be binding, it has to be incorporated into the contract of employment, the state of the pleadings of the parties must be examined, the court has to assess the evidence before it and the conduct of the parties must be scrutinised. Therefore the enforcement of collective bargaining agreements in Nigeria, have been left outside the parameters of the courts and confined to political pressure and industrial action by the employees.

This judicial disposition is to a large extent influenced by the opinions that the contractual ingredients necessary to enforce agreements are absent and to that extent, the courts lack the necessary judicial audacity to enforce such agreement. Clark G de N posits that the majority of the terms of collective agreements are 'aspirational' and therefore devoid of contractual obligations which the courts can enforce.[15] Chianu, on the other hand has proffered a solution to what appears to be judicial intractability on the enforcement of collective bargains.[16] He opines that rather than raise questions of incorporation by reference into contracts of employment by parties to the contract,[17] the courts should rather concern themselves with the conduct of the parties *inter se* as regards the collective agreements. He further states that where evidence is available to show that parties to the collective agreement have acted on it, the courts should go ahead to infer an intention to be bound by the terms of such agreements.

[3] *Rookes v Barnard* (1964) 1 AER 347
[4] (1993) 4 NWLR (Pt 287) at 288
[5] Cap L1 Laws of the Federation of Nigeria 2004, See also Section 47 of the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004.
[6] ILO Decent Work for Sustainable Development Platform, Freedom of Association and Collective Bargaiining, available at https://www.ilo.org/global/topicsdwsd/themes/freedom-of-association/lang--enindex.htm last accessed on 28th August 2022
[7] *ibid*
[8] *ibid*
[9] *Osoh v Unity Bank* (2013) 1 SCM 149
[10] *ibid*
[11] *Nigerian Arab Bank v Shuiabu* (1999) 4 NWLR (Pt186) 450 at 469 per Ndoma-Egba JCA
[12] (2001) 6 NWLR (pt 708) p224
[13] *Cooperative and Commerce Bank Limited v Okonkwo* (2001) 15 NWLR (pt 735) 114
[14] (1996) 4 NWLR (Pt 443) p470, see also E Chianu, Employment Law, (Akure, Bemicov Publishers, 2004) p89
[15] Clark G de N, "Collective Agreements and the Law", in *Modern Law Review* (1969) vol. 32 p377
[16] *ibid* n10
[17] As was the case in *Adegboyega v Barclays Bank* (1977) 3 CCNCJ 497, 502 where Akibo Saavage J held that incorporation of collective agreements into individual contracts of employment was acceptable in law.

Chianu has criticised this position of the courts as tantamount to increasing the weakness of the employees and the strengths of employers and further deepening the gulf between the parties as regards freedom of contract and therefore making freedom of contract a mere illusion as the premise of collective bargaining is that the parties to the contract have equal bargaining power, which premise is illusory. He concludes that the solution to this judicial conundrum is the enactment of legislation making collective agreements enforceable with statutorily rights and obligations arising there from.

Dispute Settlement Mechanisms in the Workplace in Nigeria: Section 47 (1) of the Trade Disputes Act[18] defines trade dispute as 'any dispute between employers and workers or between workers and workers which is connected to the employment and non employment or the form of employment or physical conditions of work of any person'. It is therefore safe to surmise that whenever a dispute arises between parties to a contract of employment where there is an inability to agree on the terms and conditions of employment, a trade dispute falling under the purview of the Trade Disputes Act, has arisen. Flowing from the forgoing, intra union or inter union dispute while a subject matter of the jurisdiction via the National Industrial Court of Nigeria, do not qualify as trade disputes falling under the statutory auspices of the Trade Disputes Act. Examples of such intra and inter union disputes in the opinion of Amadi, would include disputes as to the objects of trade unions and the contents of rule books.[19] However in deference to the posturing of the Trade Disputes (Amendment) Act which extended the meaning of trade disputes to include intra and inter union disputes in certain circumstances and grants jurisdiction to the National Industrial Court over them, disputes on contracts in restraint of trade for example; which are essentially inter union matters, could be classified as trade disputes within the contemplation of the law.[20]

The statutory dissembling notwithstanding, where the dispute under consideration is unconnected with the terms and conditions of employment and not between the parties to a contract of employment, it does not come under the categorisation of a trade dispute and therefore falls outside the statutory ambit of the Trade Disputes Act. Therefore for a dispute to qualify as a trade dispute the courts have set a three dimensional for determining whether a dispute is *ipso facto* a trade dispute in the eyes of the law. For a dispute to qualify as a trade dispute, the purpose of the trade dispute has to be legitimate, it has to further the interests of the workers and it is to be a present dispute not a future dispute or a contemplated dispute.[21] Industrial dispute settlement mechanisms in Nigerian starts with collective bargaining as the foundation, in the event of failure of collective bargaining, the settlement procedure moves through various stages of mediation and conciliation. When attempts at mediation and conciliation fail, the dispute resolution mechanism is shifted to the Industrial Arbitration Panel and the court, viz; the National Industrial Court. It is Anyim's view that in Nigeria, the Minister of Labour and Productivity is vested with the power to refer trade disputes after duly accessing the dispute under consideration, for conciliation, arbitration and adjudication. The Minister may take further steps and refer the matter under consideration to an appointed Board of Inquiry.[22] In the main, workplace dispute settlement mechanisms are; resolution by the parties to the industrial dispute, resolution by a conciliator, resolution by arbitration and resolution by the court.[23] These modes of settlement of workplace disputes shall be examined in the preceding parts of this study.

Settlement by the Parties to the Industrial Dispute: The Trade Dispute Act makes provisions for the trade unions; as the representatives of the employees, and the employer to settle their disputes by themselves.[24] This first method of resolution of industrial disputes grants parties the leeway to arrive at in their collective agreement, the means by which they wish to arrive at dispute resolution. Additionally, the Act further stipulates that once a collective agreement is arrived at, a copy should be deposited with the Minister of Labour and Productivity and failure to do so attracts a fine upon conviction.[25] Arising from the presence of a settlement clause in the collective agreement arrived at by the parties, it is deemed that there exists a statutory encouragement for parties to a contract of employment to attempt to settle their disputes themselves. Where the settlement clause is absent in the collective agreement or the parties fail to arrive at settlement themselves, the Act further stipulates that the disputants or their representatives should meet under the supervision of a mutually appointed mediator and attempt to settle the disputes themselves.[26] The Minister is at this juncture empowered to inform the disputants or their representatives that he has observed that an industrial dispute has arisen between the parties and the steps he intends to take to resolve the dispute.[27] The Minister may at this juncture refer the dispute to a conciliator or forward the particulars of the dispute to the Industrial Arbitration Panel.[28]

Resolution by a Conciliator or Conciliators: The Act grants the minister for Labour and Productivity wide discretionary power in the area of the appointment of a conciliator or conciliators. He is permitted by the Act to appoint a conciliator *suo moto* without giving the disputants an opportunity to settle the dispute by themselves. Conversely, he is also granted the discretion to appoint a conciliator where the parties have attempted to settle the matter by themselves but have failed to arrive at a settlement.[29] The conciliator is required by law to be a person fit to perform the duties of a conciliator and whose sole duty shall be effecting a settlement of the dispute between the parties.[30] Upon the acceptance of the disputants to submit their dispute to conciliation, the conciliation can either be done by a body of three conciliators or one single conciliator. In the latter case, the conciliator is jointly appointed by the parties while in the former case, one conciliator is appointed by each of the parties and a third conciliator is jointly appointed by the parties.[31]

[18] Cap T8 Laws of the Federation of Nigeria 2004
[19] G.O.S Amadi, Legal Guide to Trade Unions, (Nsukka, Afro-Orbis Publishing Limited, 1999) p.44
[20] *ibid*
[21] See *Udoh and Ors v Orthopaedic Hospitals Management Board and Anor* (1990) 4 NWLR (pt 142) p52.
[22] C F Anyim and O Christopher, Trade Disputes and Settlement Mechanisms in Nigeria; in *Interdisciplinary Journal of Research and Business*, vol. 2 (2012) p20
[23] C.C Obi-Ochiabutor, Trade Disputes Resolution Under Nigerian Labour Law, in *The Nigerian Juridical Review*, vol.9 (2002-2010) p71
[24] Section 2
[25] Section 3 (1) and (2)
[26] Section 4 (1)
[27] Section 4(2) (a)
[28] Section 7 (2) and section 4 (2) (b)
[29] Section 7(1)
[30] *ibid*
[31] Section 40

The conciliator or conciliators shall acquaint themselves with the facts of the dispute, hear the disputants and having heard and examined the case, shall submit terms of settlement to the disputants. Where the disputants accept the terms of settlement, the conciliator or the conciliation body is mandated to draw up and sign a record of settlement which shall be forwarded to the minister after the disputants have signed the terms of settlement. The terms of settlement bind the disputants from the date of their signing it.[32] Where however either or both of the disputants or the representatives reject the terms of settlement, the Minister is empowered either to forward the dispute to the Industrial Arbitration Panel or upon receipt of any objection to the terms of settlement, forward the dispute to the National Industrial Court.[33]

Resolution By Industrial Arbitration Panel: The Act grants the Minister power to refer the trade dispute to the Industrial Arbitration Panel which is a statutory arbitration panel established under it by the Minister of Labour and Productivity to hear disputes where it is directly referred to it by the Minister when bypassing conciliation where disputants fail to settle by themselves or referred to it by the minister as a fallout from a failed attempt at conciliation.[34] The Panel is composed of the chairman, the vice chairman, and not less than ten other members who should all be appointed by the minister.[35] However, parties to a dispute may each appoint a single arbitrator to represent their interests in the arbitration proceedings. The Panel may require from parties information, require evidence to be given on oath, compel the production before it of books, papers and other necessary materials, proceed in the absence of invited parties who have been given notice to appear before it, admit or exclude the public from its deliberations and generally do such other things that will expedite hearing on matters referred to it.[36]

Hearing in the Panel is subject to the rules of natural justice and the absence of fair hearing may render null the proceedings and decisions of the Panel.[37] The decisions of the Panel are called awards and the Panel is expected to consider and make awards within on matters within twenty one days or such further elongated period as the Minister may permit.[38] The Panel is expected to send its decision to the Minister and not to the disputants themselves. Where the Minister upon perusal of the award is dissatisfied with the decision of the Panel, he is permitted by the Act to resend the decision back to the Panel for reconsideration.[39] It is submitted that the ministerial discretions and importunities granted the Minister under the Act are too wide and are ripe for legislative intervention and curtailing. Where there are however no objections to the making of the award and the Minster is satisfied with the award, it shall be published in a Federal Gazette and shall be binding on the disputants.[40] A breach of the terms of the award is punishable as an offence upon its publication in a Federal Gazette.[41] If notice of objection to the award is however given to the Minister, the matter is referred to the National Industrial Court for adjudication.

[32] Section 42 (1) and (2)
[33] Section 13 (1)
[34] Section 9
[35] Section 9(7)
[36] Section 9 (4) (b)
[37] Section 12
[38] Section 9 (b)
[39] Section 12 (c)
[40] Section 13
[41] Section 14 (4)

The Settlement of Trade Disputes By The National Industrial Court: This Court was first established as a court for the settlement of trade disputes under the Trade Disputes Act.[42] It was the court had the status of a court of inferior jurisdiction to which appeals from the Industrial Arbitration Panel would lie. The court was the apex court for the settlement of trade disputes. However, with the enactment of the National Industrial Court Act (2004) a separate law was enacted for the court and by the provisions of the National Industrial Court (Amendment) Act (2006) the court was recognised not only as an appellate arm of the Industrial Arbitration Panel but as a court to of first instance with respect to trade disputes.[43] However, the 2010 constitutional amendment which led to the Constitution of the Federal Republic of Nigeria Third Alteration Act (2010) saw significant changes to the hitherto inferior status of the National Industrial Court. By Section 254(c), the court was elevated to a superior court of record with unlimited and exclusive jurisdiction over labour and industrial relations matters. The court is vested with extensive powers on labour matters; it can make appropriate orders and arrive at decisions as well as enforce its judgements as a superior court of record in Nigeria, as well as such other powers that will enhance the performance of its duties.[44] By the enactment of the Third Alteration Act, that part of the Trade Disputes Act relating to the National Industrial Court has been repealed as it is void to the extent of the apparent inconsistency with the Constitution as the *grund norm.*

The court is conferred with wide civil jurisdiction including the power to determine any question as to the registration, interpretation and application of any collective agreement. Section 6 of the CFRN Third Alteration Act confers on the National Industrial Court of Nigeria, the exclusive jurisdiction to entertain any question relating to the regulation of any collective agreement. Since trade disputes usually arise as to the non implementation of collective agreements, this section would have been properly couched with clarity as to where the registration of such collective agreements should be effected. Ekanem and Daniel posit that the NIC Act should be further amended to include compulsory deposition of collective agreements in the registry of the National Industrial Courts to ensure their enforcement.[45] It is submitted with respect that this reasoning is sound and would represent some level of innovativeness and control of the deposition of these agreements. The foregoing notwithstanding, the National Industrial Court of Nigeria remains a veritable avenue of settlement of industrial disputes in Nigeria.

SUMMARY

CONCLUSION AND RECOMMENDATIONS

This study has attempted to highlight the role of collective bargaining and collective agreements in industrial disputes as well as the dispute settlement mechanisms available in industrial relations in Nigeria.

[42] Section 24
[43] Section 7(1) of the National Industrial Court (Amendment) Act (2006)
[44] Section 254 (c) and (d) of the Constitution of the Federal Republic of Nigeria as amended by the CFRN Third Alteration Act (2010)
[45] E Ekanem and E Daniel, A Critique of the Legal Framework of the National Industrial Court of Nigeria and its Impact on the Nigerian Worker, in *Journal of Law, Policy and Globalization*, vol. 58, (2017) p1.

This study explored the nature, functions and enforceability of collective agreements and posited that Nigerian courts should look at the conduct of the parties to the collective agreements rather than their incorporation into the respective contracts of employment of employees as a yardstick for enforcement. The study went further to establish that collective agreements are the veritable tools for the minimisation of industrial conflicts and the continuous refusal of the courts to enforce these agreements amounts to a negation of international best practices in industrial relations. This study further undertook a cursory examination of the role of trade unions in employment relationships as the vehicle through which improved conditions of employment are achievable in favour of employees as a colloquium as opposed to individual employer/employee negotiations for improved conditions of service. Further to the forgoing, an examination of the dispute settlement mechanisms apart from the settlement of disputes in the National Industrial Court of Nigeria, shows a legislative discretionary latitude granted the Minister of Labour and Productivity to interfere in the due process of dispute resolution where in his subjective opinion, it appears reasonable in the interest of the dispute and the disputants to so do. It is submitted that a legislative fettering of this ministerial discretion is imperative in view of the aptitude for abuse unfettered discretion is capable of giving rise to. This study additionally recommends that The National Industrial Court should be given a firmer stance as the judicial arbiter for the settlement of trade disputes by the putting to rest of the nagging question of the status of collective agreements via a further amendment of the National Industrial Court Act or the procedural rules of the court. By so doing, it is believed that industrial disputes will be minimised as parties will *ab initio* be clear on the need to abide by employment paradigms arrived at by collective bargaining in light with the minimum benchmarks of International labour Standards and the constitution of the International Labour Organisation.

It is further recommended that the Trade Dispute Act should be granted an additional amendment by the National Assembly with a view to fettering the wide discretionary latitude granted the Minister for Labour in order to curtail abuse of the power to wade unsolicited into anticipated or actual trade disputes and refer same to statutory arbiters of his discretionary choosing.

This power as granted by the combined effects of sections 2,3,5 and 8 of the Trade Disputes Act was to ward off the degeneration of the society into chaos where the immediacy of trade disputes could be checkmated by ministerial intervention. Contemporary times have however seen the descent of the Minister of Labour into arenas of trade dispute in a manner unforeseen and not prescribed for by the Act. It therefore goes without saying that the discretion of the Minister for Labour to intermeddle in trade disputes should be statutorily curtailed. The statutory curtailment should also be worded to include an exclusion of the discretionary power of the Minister for Labour to suo moto transfer matters to the Industrial Arbitration Panel where in his opinion decisions of the conciliators are unsatisfactory. The requirement that disputants before the National Industrial Court, seek for and obtain leave for to appeal on civil matters decided by the National Industrial Court except with respect of fundamental human rights infringement;[46] is in this opinion of this study, tantamount to a constitutional curtailment of the automatic right to fair hearing which constitutes a pillar of natural justice. It is therefore further recommended that subsequent amendments of the Constitution of the Federal Republic of Nigeria expunge this limitation from the constituted powers of the National Industrial Court. This study therefore submits that the right of appeal in civil matters should be *parri passu* the right of appeal in criminal matters which augurs as of right.

[46] See Section 9 (1), 243 (1) , (2), (3) and (4) 254 (D), (E) and (F) CFRN 1999 (as amended)

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