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The Jurisprudential Position of Strike in Nigeria: Interrogating the Principle of No Work No pay

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ABSTRACT

Strike as a means by which employees exert pressure on their employers to accede to their demands is undertaken where there is a breakdown of negotiations between employers and employees. This implies that strike is a by-product of human existence, especially on matters in which there is disagreement or for which some people are dissatisfied. The issue is that in our statute books strike is less legal, than the power of the unions to express themselves. The labour laws provide the legal framework for declaring a strike. Thus, this study, attempts to examine the statutory and regulatory framework for declaring strike, especially the conditions under which the government can invoke the doctrine of NO Work, No Pay rule. The paper posits that while there exists no law which guarantees the right of a Nigerian worker to proceed on industrial strike action, the law recognizes the existence of strikes in trade disputes which section 3 to 14 of Trade Disputes Act generally provides the conditions. Finally, the paper frowns at the way and manner government representatives invoke the principle of NO Work, No Pay policy without recourse to the relevant agreements collectively signed by labour and management abi initio. It recommends a better industrial labour education for government representatives.

Introduction

Trade union plays a major role in shaping events in modern society. In the context of third world countries, the role is often accentuated as a result of the absence of general weakness of democratic institutions and structures. This has been the case in Nigeria where trade unions were involved not only in the struggle for independence from British colonial rule but, especially in the neo-colonial period, in the struggle for development, social justice and democracy. For these and other reasons, a large number of discussions have focused on trade union organization.

These discussions have examined the development of trade unions in terms of origins, growth and functions (Fashoyin, 2002, Tokunboh, 1985, Ubeku, (1983, Iyayi, 1989, Ozor, 2003); patterns of relationship with other parties in the industrial system (Otobo, 1987), Yesufu, 1984, Iyayi, 2002); models of organization, leadership and organizational problems that are peculiar to them Momoh, 1999), the specific problems and challenge that they have had to deal with over the period (Iyayi, 2002), and the characteristic orientations and attitudes of their leaders and members (Iyayi, 2001, Momoh, 1999).

A summary of these studies is that trade unions exhibit the following:

i, have a much longer history than employers; organization in Nigeria.

ii had to engage in long struggle to obtain official recognition;

iii have had a long history of splits and division;

iv have been actively involved in fighting for political, economic and social justice in Nigeria;

v Have generally grown in strength and influence over this period, and;

vi have been plagued by several problems including those of internal democracy; labour politics, opportunistic leadership and increasing membership aparty (Iyayi, 2003).

One fact is clear and that is: none of these discussions dwelt on the legal and constitutionality of strikes vis-a vis the federal government policy of *No Work No Pay*. Discussions have been on the working conditions of Nigerian workers that usually lead to industrial disputes. They all agree that the Nigeria workers have always lived under very harsh conditions (Nnoli, 1989; Otobo, 1983). This paper attempts to analyze the Nigerian legal and constitutional provisions on strikes. It tries to identify the motive forces that have led to the government policy of *No Work No pay*.

Conceptualizing Strike

Sidney and Beatrice Webb, who emerged and supported the British Fabian Society, "which was a socialist political movement, devoted to peaceful rather than violent change in society" (Ozor, 2003: 43), are considered as the parents of the British industrial relations. The Webbs defined a trade union as "a continuous association of wage earners for the purpose of maintaining or improving the conditions of the working lives". Equally, Flippo (1982: 378), sees a trade union or labour union as ''an organization of workers formed to provide, protect and improve, through collective action, the social, economic and political interests of members". He added that the "dominant interest with which the union is concerned is economic. In this area, desires and demands for improved wages, hours, working conditions are foremost".

Drawing from the above definition is that trade unions should seek as their objectives, to protect their member against threats and insecurity of their jobs, interference with their legitimate personal and professional freedom of action either by their employers or the government, victimization, discrimination, as well as wrongful termination of appointments, and other injustices in their places of work. It is therefore the failure of employers (private and government) to stick to the contract of employment that usually lead to industrial disputes, which in extreme cases, results to strikes, which if the contending issues are not amicably resolved on time, could result to protracted strikes.

As noted by Otobo (2002: 273), A strike is a temporary stoppage of work in the pursuance of a grievance or demand" , and strike as a means by which employees exert pressure on their employers to accede to their demands has a long history. In Nigeria, the first was recorded on June 21st, 1945, after failure of protracted presentations of the demand for salary increase. Then, about 150,000 clerical and non-clerical workers in the Nigerian civil service come together in a general strike of all government departments.

Right from its origin, trade unionism the world over has always been with controversy as they had to

fight in order to exist as attested by Cole (1953, 206) thus:

> *Trade unionisms have developed in a hostile environment. They have had to fight for every step in their advance. They have been, through most of their history in opposition, seeking to establish themselves in the face of strong reluctance by the rulers of the society to admit even their bare right to exist.*

Here in Nigeria, the above experience represents the true position of trade unionism. From the days of colonialism, Nigerian governments never took kindly to workers formation of trade unions or embarking on strike actions. This has been the government policy on strikes since governor McCallum of Lagos made his famous threat to the striking PWD artisan workers.

> *I have been brought up in a different school, from my procedures and have been accustomed to seeing the paramount authority of government maintained pretty severally against a riotous mob, and I an prepared for a row here, which one sees must come (Ananaba, 1986; 174)*

The cold-blooded massacre of twenty one striking miners in Enugu in 1949 by the colonial authorities shows the application of the above threat

Incidentally, various administrations in Nigeria, both military and civilian had banned or proscribed trade unions and harassed their leaders. Yet, the incidence of strike in Nigeria has been on the increase and unabated with far reaching effects on economy and other critical sectors. Some of the unions in perspective are the Academic Staff Union of Universities (ASSU), the Nigeria Medical Association (NMA), among others. Of all the unions that regularly embark on prolonged strikes that of the Academic Staff Union of Universities (ASSU) are the most outstanding. But Nigeria is not alone in this experience. In Ghana, the university system was shut down for one academic session in 1990 by the authorities as a result of the persistent, strike actions by the university teachers" (Ozor, 2003, 7)

Constitutional and legal position of strike in Nigeria

Most strikes are undertaken by labour unions when there is a breakdown or dead-lock of negotiations or collective bargaining between employers and employees. The main features of collective bargaining are:

(a) With collective bargaining, the right of workers to organize to protect and promote their interests in recognized;
(b) Flowing from this, the night of workers and their representatives to challenge some management decisions and actions would also be recognized; and
(c) Workers and their representatives can actually be involved in negotiations to determine remuneration and other condition of employment (Otobo, 2000)

The main purpose of collective bargaining is to obtain a binding contract, an agreement, which may include a no strike clause which prevents strike or penalizes the union and/or worker if they walk out while the negotiation is on and the contract is still in force.

In Union Bank of Nigeria Plc, v. Edet (1993), Uwaifo (JCA), as he was, had this to say as regards to the right to go on strike and ensuring that collective agreements are enforced:

> *Collective agreements except where they have been adopted as forming part of the terms of employment, are not intended to give or capable of giving individual employees a right to litigate over an alleged breach of the terms as may be conceived by them to have affected their interest nor a meant to supplant or even supplement their contract of service.*

Similarly, in cooperative and Commerce Bank (Nig). Ltd. V. Okonkwo (2001) 15NWLR (Pt. 235), 114, the employer's appointment was terminated based on the provision of a collective bargaining agreement (CBA).

In challenging the termination of appointment in court, the employee relied on the provision of the collective bargaining agreement (CBA). The employer objected to it, contending that the CBA is not enforceable in law.

But Akpabio, (JCA), in discountenancing the objection, held that the employer is estopped

from objecting to the enforceability of the collective agreement.

Having examined the above court pronouncements on strikes, it is pertinent we look at the Nigerian jurisprudence on industrial strikes. Simply stated, Nigeria follows the orthodox English law principle that a strike action amounts to a breach of employment by the party embarking on strike. Lord Denning in Tram Shipping Corporation V. Greenwich Marine Inc. (1975) 2 All ER. 989 define strike:

> *As a concrete stoppage of work by workers 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 other, or supporting or sympathizing with other workers in such endeavour. It is distinct from a stoppage which is brought about by an external event such as bomb scare or by apprehension of danger (See Tram shipping Corporation v. Greenwich Marine Inc. (1075) 2 All ER989.*

In line with the above, strike in sec 47 (1) of the Trade Disputes Act Cap. 432, Laws of the Federation of Nigeria, 1990 (now T-8, Laws of the Federation of Nigeria, 2004), is defined as:

> *... the cessation of work by a body of persons employed acting in combination or a concerted 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 or body of persons employed, to accept or not accept terms of employment and physical condition of work.*

This section explains that 'cessation of work" includes deliberately working at less than usual speed or with less than usual efficiency and "refusal to work" includes refusal to work at usual speed or with usual efficiency.

From the above cited case by Denning and the above definition, strike amounts to suspension of obligations on the parties for the duration of the strike. This judicial definition is consistent with the statutory definition and has brought out the main objectives of a strike. It is an integral part of the right to protect and defend their economic and social interests and well-being, which long been recognized both by common law and other previous provisions, including the constitution of the federal republic of Nigeria 1999 (as amended).

While there exists no law which guarantees the right of a Nigerian worker to proceed on industrial strike, the law recognizes the existence of strikes in trade disputes but, however, curtails or delimited worker's freedom to participate in such industrial strike. Sections 3 to 14 of the trade disputes Act, generally provides the conditions that must be complied with before a strike may be deemed lawful:

First, there must be an attempt to amicably resolve the dispute. If it fails, a mediator must be appointed with a view to settle the dispute and where mediation fails, the dispute must be reported to the minister of labour who may then appoint a conciliator. If however, unsuccessful, the dispute is then referred to the industrial arbitration panel.

Secondly, any objection to the award of the panel shall, thereafter, be referred by the minister to the National Industrial Court Section 18 specifically prohibits workers from proceeding on stroke where the procedure for amicable settlement has not been complied with; where a conciliator has been appointed and where the dispute has been referred to the Industrial Arbitration Panel and the award has become binding and/or where the dispute has been referred to the National Industrial Court and the court has issued an award on the reference. It follows, therefore, that any strike being contemplated in defiance of the above procedures is unlawful.

For workers on essential services, the Act states that such services include anyone employed by the Federal State on Local governments or private enterprise in connection with the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or for sanitation, road cleansing and the disposal of night soil, and rubbish. Section 41 of the trade disputes Act provides that workers in any essential services shall not, cease to perform the work for which they are employed without giving 15 days notice of their intention to do so. The Act prescribes a fine of N10,000.00 or six months imprisonment or both, for failures to comply.

Entitlement to salary and the Principle of No Work No Pay During strike As pointed out earlier, the Nigerian jurisprudence on industrial strike is fashioned after the English law principles. Thus, in Morgan V. Fry (1968) 2 QB710 at 729, it was held that; "to a layman, the position is quite clear: in a strike, the men do not work, and the employers pay no wages". Equally, section 43 of the Act provides that "where any work takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike".

The court of Appeal, in Abdetraheem v. Olufeagba 17NWLR (Pt.1008) 280, interpreted section 43 of the Act and held that *" the respondents are not entitled to payment of salaries and allowances for the period stated. It was inconsiderate for the lower court to award them such salaries and allowances, infact, it is illegal, infact, it is inequitable for the lower court to have ordered for the payment of the respondent after with holding their services from the appellant".*

Aguin, in Oshiomhole and Ano. V. FGN and Anor. (2004) LPELR-5188 (CA), the court of appeal, in interpreting the provisions of the law, held that: "I fail to see where strike actions are authorized… Strikes are more of actions than those mere expressions which, more often than not, connote making known an opinion by words".

In other words, the provision of section 42 (1) (a) of the Trade Disputes Act, popularly known as the "No work, No pay" provision is in accord and quite, consistent with the suspension theory. In other words, when workers are on strike, the obligations and responsibilities of both the workers and employers are suspended. Section 42(1) (a) of the Trade Disputes Act Vol. 15 Cap. 78 laws of the federation of Nigeria, 2004 provides that:

…. Notwithstanding anything contained in the Act. Or 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 such period shall not count for the purpose of reckoning the period of employment and all rights dependent on continuity of employment shall be juristically affected accordingly.

We should remember that in contract of employment, strike or lockout are usually disputes arising from a collective and fundamental breach of contract of employment or collective agreement on the part of employee, trade union or employer. The most common example of a breach of contract of employment in Nigeria is non –payment of salaries and entitlements of employers. Examples include strikes by resident doctors and that of academic staff union of universities (ASUU). It is, therefore unconscionable to seek to restrict the rights of workers to embark on strike when the employer (in the case of the above the government) on its part, consistently breaches the contract of employment by non-payment of salaries and entitlements.

Where section 43 of the trade disputes Act provides that workers are not entitled to salaries for the period of the strike, it may be well argued such workers are not precluded from their salaries and entitlements prior to the strike, after all it is nonpayment of salaries (National Association of Resident Doctors) and ASUU- Federal Government 2009 agreement (ASUU), which constitute breaches of contract and collective agreements, that necessitated the strikes by both unions.

Conclusion

Industrial disputes arise due to conflict or disagreement in industrial relations. It involves various aspects of interactions between employers and the employees. In this relationship, wherever there is a collusion of interest, it usually results in dissatisfaction of the parties involved and hence, lead to industrial disputes or conflicts. There are several reasons for industrial disputes or conflicts. Some of the reasons are related to the work environment, while others are basically outside the work environment. It is because of this that the International Labour Organization's Committee on freedom of association argues that the right to strike is one of the promotion, protection and presentation of their economic and social interests within and outside the workforce.

From this study, we can appreciate that the first duty under the contract of employment is for the parties to ensure due performance of its terms. For it is a matter of public policy that persons who enter into contract arrangement are made by law to observe the terms.

Where an employee refuses to work, due to absence or dispute with the employer, the employer has no obligation, unless specially stated otherwise by the contract terms, to provide compensation. The doctrine of No Work, No Pay, which is a fundamental axiom in Labour and industrial Rations, is anchored on the principle that when a person is employed that the work will be carried out. It is the reasoning behind compensation policy without contribution, there is no compensation in

return. It is a covenant between two parties that provide for equal and reciprocal responsibility. But its application is not as it is involved in Nigeria where governments usually fail in its contract of employment but always quick to invoke the principle.

The government and its representatives fail to understand that the doctrine is not punitive but a basic principle of equity and natural justice. In all contracts of employment, the three elements of promise, agreement and bargain must be present. Nigerian leaders had always failed to appreciate this fact and in the interest of industrial peace, it is high time the tenets of labour relations are made known to government representatives.

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