

AN APPRAISAL OF CONTEMPORARY ISSUES IN TRADE DISPUTES RESOLUTION IN NIGERIA

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Abstract

Evidentially, trade dispute generally originates from the interaction within an organized labour market. In recent times, the traditional notion of trade dispute as being a dispute between workers and their employers or between workers and workers may hardly be sustained, considering the fact that in certain instances industrial action may be aimed at government and the government may not be the employer of the workers. The paper adopts doctrinal methodology to examine trade dispute resolution in Nigeria by way of analyzing the concept of trade dispute that will always occur once there exist a working relationship. The paper evaluates, the Industrial Arbitration Panel (IAP) in its present constitution which is seriously handicapped to discharge its function effectively. The body lacks the independence required and expected of an adjudicatory body, more so, with the overbearing influence of the Minister on the duties of the IAP. The paper also recommends that in spite of the enormous challenges facing the I.A.P, the simplicity of procedure at the arbitration is a major advantage it has over litigation in the regular courts particularly as they have a time frame within which to discharge any despite before it.

Keywords: Trade Disputes, Contract of Employment, Strike, Collective Bargaining.

1.0 Introduction

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Contract of Employment is indispensable in economic growth and development of every modern society as it regulates and coordinates the efforts of labor and management (social partners) towards production of goods and services essential to the needs of individuals and society. In Nigeria, these goods and services constitute an important source from where income is generated to sustain the economy and to enhance the citizens' well-being. However, the emergence of free market economy has brought with it complexities in labor management relationship which is being fraught with perennial conflicts of interest and natural suspicion, with each party standing astute to wield its' own weapon to protect its' perceived interest in the relationship. This near hostile relationship usually results in trade disputes culminating in strikes which have almost crippled the economy in the country.¹

Industrial actions involve the interruption of economic process in the workplace as a method of inducing pressure collectively by workers on their employers.² These actions have both cost and benefits to the three social partners (government, labor and management) and the society at large for instance, most trade disputes aim at changing the bargaining position of the workers.

Interestingly, trade unionism all over the world emerged for improving the economic, living and working conditions of workers collective bargaining. To achieve this, workers' rights and interests are legally protected nationally and internationally not just as producer of national wealth but-also as citizens. Such rights are conferred on workers and their organizations taking into consideration their special role and the need to protect them from extreme abuse and exploitation in the hands

¹ Ogbonnaya N.C.S. 'Arbitration as a Means of Settlement of Trade Disputes: The Nigerian Experience in Contemporary issues in the Administration of Justice' (Treasure Hall Kinsult 2012), p. 174

² Audi J.A.M 'Strike as a Labor Union Tool in Nigeria: Reflections on the Trade Union Act, (2005) p. 94

of profit-conscious employees often backed by a collaborative state.³ For instance, Article 23 of the United Nations Universal Declaration of Human Rights⁴ guarantees everybody the right to work, to free choice of employment, to just and favorable conditions of work and for protection against unemployment, as well as, the right to form and join trade unions for the protection of rights. Similarly, Article 4 which provided for the rights to organize collective bargaining⁵ has granted workers the right to adequate protection against acts of entire union discrimination in respect of their employment.

Furthermore, Section 40 (l) of the 1999 Constitution of the Federal Republic of Nigeria⁶ pluralized the word 'interest' to emphasize that a trade union may bargain with the employers on behalf of the workers for variety of interest. For instance, it may be financial interests, political interests, economic interest, the physical conditions of work or national interests.

Again, Section 4 (l) of the Trade Dispute Act⁷ required disputants to always resort to agreed means of settling their dispute whether such agreed means is by virtue of a collective agreement between the parties or any other agreement where the voluntary method fails, the parties are expected to refer the dispute to National Industrial Court (NIC) for adjudication. The statutory mechanism as exemplified by collective bargaining (negotiation), mediation, conciliation, Industrial Arbitration Panel and the National Industrial Court.

It must be noted that in labor relations, a pre-condition to the exercise of the right to collective bargaining is for the employer or his association to recognize the union as a bargaining agent. Section 25 (1) and (2) of the Trade Union Act has obliged employers to recognize registered

³ Adewunmi, 'Protecting Workers Rights in the Export Processing Zones: Challenges for Labor Movement (2007) *Labour Law Review*, NJLL & IR, Vol. 1., No 3, p. 77 41948

⁴ 1948

⁵ Geneva International Labor Organization (1998).

⁶ Federal Republic of Nigeria, Cap C23, I-FN, 2004 (as amended)

⁷ cap T8, LFN 2004

Trade Unions. Recognition connotes the willingness of an employer to bargain with a union. Therefore, the first part of the paper an overview of trade disputes

2.0 An Overview of the Historical Background of Trade Dispute in Nigeria

Trade dispute generally originates from the interaction within an organized labor market.⁸ From the historical perspective, the origin of trade dispute in Nigeria can be traced to a number of factors; first, the emergence of wage employment and second, the rise of trade unionism. The arrival of the European in the early part of 17th century actually marked the beginning of the real wage employment as foreign currencies and investments began to be introduced into Nigeria. The growth of these investments gradually gave rise to the need for employment of labor and this in turn laid the foundation of modern industrial structure.⁹ The emergence of the modern industrial structure necessitated the influx of men into the paid employment. But the problem of the rising cost of living and the inadequacy of wages to keep pace with the rise in price as well as the inequality in bargaining power of an individual employee who cannot influence the amount of wage payable or resist if his employer demands of him on excessive number of working hours, or to force his employer demands of him on excessive number of working hours, or to force his employer to install safety devices and other protection against industrial hazards or accidents, made collective action by workers inevitable. Consequently, this has and subsequently, prepared the ground and basis for the rise of modern trade unionism.¹⁰

Though, the origin of trade union movement in Nigeria could be traced to pre-colonial period. At this time, there existed guilds, mutual aids group and professional or occupational craft union. However, these were not, in modern sense of it, fully fledged trade unions. Rather, most

⁸ Andrew, OO., *The National Industrial Court: Regulating Dispute Resolution in Labour Relations in Nigeria* (2012), p. 18

⁹ *ibid*

¹⁰ *Ibid.*

of them were mainly workers' associations. Consequently, the first set of trade unions in Nigeria were modeled after British Unions. At the earliest period of colonialism, Nigerians were discouraged from belonging to unions, as union membership was regarded as anti-colonial attitude.¹¹ The first trade union in Nigeria was found in 1912; when the government employees formed a civil service union. At this period, trade union could not take the pattern of radical organization because of the paternalistic nature of colonial governments which was the largest employer of Public labour. In 1914, the organization became the Nigerian Union of Civil Servants after the amalgamation of the Northern and Southern Protectorates. In 1931, two other major unions were founded- the Nigerian Railway Workers Union and the Nigerian Union of Teachers (which included private schools).¹²

Legislation of unions in 1938 was followed by rapid labor organization during World War II as a result of passage by British government of the Colonial Development and Welfare Act of 1940, which encouraged the establishment of unions in the colonies. The Defense Regulation of October 1942 made strike and lock-out illegal for the duration of the war, and denied African workers the Cost of Living Allowances (COLA) that European civil servants received. In addition, the colonial government increased the wages, only modestly, although the cost of living rose to 74% from September 1939 to October 1943. In June and July of 1945, 43,000 workers most of them were performing services indispensable to the country's economic and administrative life, went on strike that lasted more than forty days. In large part, as a result of the strike's success, the labour movement grew steadily and by 1950, there were 144 unions with more than 144,000 members.¹³

Although, the labour movement was federated in 1941, the period from the end of World War II to 1964 was characterized by numerous splits,

¹¹ Yusuf N. "Trade Union Movement and Workers Emancipation within the Context of Contrasting Political Climate in Nigeria, Department of Sociological, <Unillorin.edu.ng/publications/union.html>. accessed on 18 January 2020

¹² History of Trade Unionism in Nigeria, available at <www./Q/history-of-trade-unionism-in-nigeria> accessed on 18 January 2020.

¹³ Ibid.

regroupings and further fragmentation. Factionalism was rampant, engendered by the reluctance of the colonial office to strengthen union rights, dependence on foreign financial support, the thwarting of labour's political objectives by nationalist leaders, and ideological differences. The most visible manifestation of labour problem was the dispute over whether to affiliate with the East European Socialist Oriented World Federation of Trade Unions based in Prague or the more capitalist oriented international consideration of free trade union, headquartered in Brussels.¹⁴

In 1963, union members numbered 300,000 or 1.6 percent of the labor force. Despite this low level of organization, labor discontent worsened as the gap between supervisors and daily wage earners widened. For instance, in 1964, supervisors were paid thirty-three times as much as daily wage workers and semi-skilled workers in public service. After independence, many workers had begun to feel that the political leadership was making no effort to reduce the inequalities of colonial wage and benefit structure. Corruption and suspicious consumption were perceived to be widespread among politicians. On April 1963, pay rise for Minister and Member of Parliament further fueled labor resentment, because rank and file civil servants had been working without wage increase since 1960. The five super ordinate central labor organization consequently, formed the Joint Action Committee (JAC) to pressurize the government to raise wages. Numerous delays in the publication of a government commission reports on wages and salaries provided partial impetus for a JAC to mobilize general strike of 800,000 supporters, most of them non-unionist which lasted twelve days in June 1964. Although, 'the strike demonstrated its victory into a permanent political strength, labor unity disintegrated in the face of overtures by political parties to segment of organized labor as the federal elections of December 1964 neared.¹⁵

As a result of the irrational structure of trade unions in Nigeria, the government decided to follow the policy of guided democracy in labour

¹⁴ Yusuf, N. Op. Cot P.23

¹⁵ *ibid*

relations. One of the measures to remedy the situation was the reorganization of trade unions on 'industrial line'. The idea behind this effort was to reduce the number of trade unions and do away with the problem of trade union rivalry. Accordingly, the federal government by virtue of the powers conferred on it by the Trade Union (Central Organization Special Provision Decree 1976) appointed an administrator of Trade Union affairs, assisted by four other experts, with the following terms of reference:

- i. Take all steps to effect the formation of a single central labor organization to which shall be affiliated all trade unions in Nigeria.
- ii. Take all steps as administrators may consider necessary to encourage and effect the formation, whether by amalgamation or federation of existing trade union or otherwise of strong and effective trade unions.

At the end of the administrator's assignment, forty union of workers and twenty-eight associations of employees emerged. At the apex of the pyramid, is a new central labor organization. The Nigerian Labor Congress; inaugurated by the consensus of the union of workers on 28th February, 1978. Since the coming into effect of the Trade union (Amendment) Act and until the enactment of the Trade Union (Amendment) Act 2005, the Nigerian Labor Congress has continued to be the only central labor organization in Nigeria unions.¹⁶

The development of Trade Unionism in Nigeria was triggered by constant struggle for the improvement of terms and condition of work. This led to many industrial disputes generally manifested by strikes. Notwithstanding, the prohibition and restriction placed on strike, Nigerians suffer more strikes since 1968, during 1976 and after. In fact, the promulgation of the Trade Dispute Decree 1975, made teachers throughout the federation to go on strike all the resident medical doctors, Academic Staff Union of Universities, the Central Bank employees as well as the Nigerian Labor Congress went on strike. Similarly, numerous strikes occurred in 1980-1982, and in May, 1981,

¹⁶ *ibid*

Nigerian Labor Congress (NLC) mobilized 700,000 of 1 million unionized Nigerian workers for a two-day strike. This trend continued unabated even after the return of democratic rule in Nigeria. It is on record that six months after Nigeria's return to democracy in 1999, the Nigerian Union of Teachers, the National Union of Teachers, the National Union of Banks; Insurance and Financial Institutions Employees and the Nigerian Labor Congress went on strike to press for improved conditions of employment.¹⁷ In fact, in 2012 the Nigerian Labor Congress, Trade Union Congress, as well as some civil society organizations embarked on a one-week general strike to protest the petroleum subsidy removed by the Federal Government.

3.0 Anatomy of the Forms of Trade Disputes in Nigeria

Forms of trade disputes are those action or methods taken by employers or employees compelling the employers or employee to accept or not to accept terms or conditions of or affecting employment. Trade dispute may take any form like lock out, strike, pickets. It may be violent or often times leading to loss of life and property. It disturbs the public life also. There are losses of man-hours and production which enterprise has to suffer.

3.1 Lock Out

A lockout is a work stoppage or denial of employment initiated by the management of a company during a labour dispute.¹⁸ Lock out is initiated by employers. Lockouts are usually implemented by simply refusing to admit employees onto company premises, and may include changing locks or hiring security guards for the premises.

Other implementations include a fine for showing up, or a simple refusal of clocking in on the time clock. For these reasons, lock outs are referred to as the antithesis of strike. Lockout is 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

¹⁷ Audi I.A., *Strikes and the Law in Nigeria* (Law in Society Journal of Law Student Society Ahmadu Bello University Zaria, 1993) vol.2 p. 77-78.

¹⁸ Work Stoppages Frequently Asked Question “available online at www.bls.gov

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 condition of work.¹⁹ It is extreme measures where employers physically prevent their employees from working by locking the gates to the work premises. Thus, while workers use strikes to express their grievances, the employers make use of lockouts. The employers resort lock outs to compel the workers to accede to their own requests or condition. By denying access to the building, managers effectively cut off the worker's source of income and thereby force them to accept a management decision, negotiate or face a drawn-out dispute and financial difficulties.

Lock-out has been defined in Section 2 (l) of Trade Dispute Act to mean 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.²⁰ India witnessed lock-out, twenty-five years after the 'lock-out-, it was known and used in the arena of labour management relations in industrially advanced countries. The first known lock-out was declared in 1895 in Budge Budge Jule Mills.²¹

There are four ingredients of Lock-Out:

1. (i) Temporary closing of a place of employment by the employer, or
(ii) Suspension of work by the employer, or
(iii) Refusal by an employer to continue to employ any number of persons employed by him.
2. The above mentioned acts of the employer should be motivated by coercion
3. An industry as defined in the Act and
4. A dispute in such industry

¹⁹ S. 18, Trade Disputes Act, Cap T8 LFN, 2004. See also *Oshiomole v. Federal Government of Nigeria* (2005), N.W.L.R (Pt. 0907) 414.

²⁰ S. 2 (1) Trade Disputes Act, cap T8 LFN, 2004.

²¹ Available online at <http://www.legalserviceindia.com>.

In *Shri Ramchandra Spinning Mills v. State of Madras*,²² it was held that if the employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking when his act is what may be called an act of belligerency there would be lock-out.

3.2 Strike

Strike is the commonest and most popular form of industrial action and for that is almost synonymous with the apparently wider term. Strike can simply be described as a deliberate and concerted withdrawal of labour usually done in furtherance or prosecution of a trade dispute.²³ Strike is a work stoppage, caused by the mass refusal of employees to work. A strike involves the withdrawal from work of a group of employees to disrupt business operations as a means of expressing dissatisfaction with some aspect of employment relations.²⁴

Section 48 (1) of the Trade Disputes Act,²⁵ defines a strike as 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 person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work. According to Lord Denning in *Tramp Shipping Corporation v. Greenwich Marine Inc.*,²⁶ 'strike' is:

a concerted stoppage of work by men... with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protesta about something or other or supporting or sympathizing with other workmen in such endeavor.

²² (1956) ALR SC Mad 241

²³ Erugo S., Introduction to Nigerian Labour Law, (1998)

²⁴ Available online at <https://en.m.wikipedia.org>

²⁵ Cap. T8 LFN 2010

²⁶ (1975) 2 ALL ER 989 (Pt. 990)

Strike is distinct from a stoppage of work, which is brought about by an external event such as a bomb scare or by apprehension of danger. In broad sense, a strike is a deliberate concerted work stoppage. To constitute a strike in this sense, there must be a common cessation of work and work stoppage must be deliberate. It follows that a cessation of work by a single worker cannot be a strike, nor does it amount to a strike if a group of employees stopped working due to an external event, such as a bomb scare or apprehension of danger.

Non-acceptance of employees' demand leads them to stop the work and proceed on strike. Strike is the last and important weapon with the employee which is used when all hopes of fulfilment of their demand are shattered and there is no way left to them but to resort to strike. Strike is initiated and supported by the employee union. It is stopping of work by the employees or a group of employees undertaken to pressurize the management to accept their demands. It can continue for any number of days. It is a complete cessation of work by the employees.

Strikes can be of the following types:

- a) **Economic Strike:** it is one which is undertaken by the members of the trade union for fulfilment of their economic demands such as rise in wages, bonus, and other facilities such as health, education, feed at concessional rates etc. and other conditions of work.
- b) **General Strike:** it is one which is undertaken by all the employees belonging to all unions and in regions in the entire industry. General strike is resorted to by the employees for fulfilment of common demands. It can be an extension of sympathetic strike.
- c) **Sympathetic strike:** it is the strike undertaken by the members of one union to support the demands of striking employees of the other union. This is undertaken to express sympathy with the striking employees and their demands. If this sympathy strike is extended further it can take the term of general strike. This is also known as taken strike.

- d) Sit down Strike: It is the strike when employees stop working but do not leave the place of work. They sit at the place of work. This form of strike is also known as pen down or tools down strike. They do not interfere in the work but they themselves do not work at all.
- e) Go Slow Strike: The strike where employees do not stop work but do not work with enthusiasm. The speed of their work is very slow which results in low output. They are doing this in an organized way. This puts employers under pressure which is the object of strike. Three elements in the definition of a strike are deemed to be essential. One is the element of concerted action. The second is the stoppage of work. The third is that the purpose of the cessation must be in connection with a dispute involving the terms of employment and physical conditions of work.

The sanction motive is the primary motive behind strike actions and this motive is aptly captured by the statutory definition in its use of the expressions “...as a means of compelling...” and “...in compelling.” Individual worker in most cases look helpless at the level of his contract of employment and collective labour relations and collective bargaining has become a child of necessity as a way the employees sought collectively to ameliorate their hardships or helplessness, and to what extent they succeeded depended much on the virility of their trade unions. However, the collective agreements reached were not justifiable and neither could they compel bargaining through legal sanctions. Strike has been an extra-legal sanction which exist to compel bargaining and to enforce agreed rules. Industrial action and particularly strikes has developed as a tool of compulsion.²⁷ For that reason, the freedom to strike is generally seen as fundamental to labour law.

In *Union Bank of Nigeria Ltd. v. Edet*,²⁸ Uwaifo, JCA stated that:
it appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer,

²⁷ Eruga, S., Introduction to Nigerian Labour Law Op. Cit.

²⁸ (1993) 4 N.W.L.R (Pt. 287)

and ultimately to a strike action should the need arise and it be appropriate.

3.2 Pickets

Ordinarily a picket is not a term capable of exhaustive and exact definition. The dictionary²⁹ defines a picket as “one or more person stationed by strikers outside place of work to dissuade others from entering”³⁰

Picket is defined as an action involving “some form of gathering or congregation of employee who would see their primary task as:

- i. Communicating information about the strike to the unaware;
- ii. To persuade non-strikers to join the strike; and
- iii. To prevent, by moral pressure or physical obstruction, scabs from operating the plants³¹

Generally, picketing is an aspect of strike and consists in placing a 'picket', which may consist of a single individual or more, at or near the place where workmen are employed for the purpose of communicating with them on the subject of the strike.⁹⁴ The object usually is to put further pressure on the employer by evoking the sympathy of other persons not ordinarily directly involved in the action. The style of achieving this purpose varies. It may involve public demonstration carrying placards or peaceful and quite negotiation with the others. Sometimes the striking workers could congregate close to the business premises, if any in particular, they are striking workers could congregate close to the business premises, if any in particular, they are striking against to make their protest noticed or felt, increase workers' involvement or participation, and also to dissuade strike breakers from going into the office. This form of actions is usually restricted by

²⁹ The Pocket Oxford Dictionary 7th Edition Oxford University Press.

³⁰ The Pocket Oxford Dictionary 7th Edition, Oxford University Press also gives the word 'picket' a military connotation by defining it as 'small body of troops acting as patrol'

³¹ Professor D. Davis, (Picketing) (1998) Vol 9 No. 1 Industrial Law Journal at Page 26.

general law restricting demonstrations, and may be restrained by injunction obtained against particular pickets.

The manners of execution by the pickets determine the legality. However, the nature of picketing entails that all non-peaceful picketing definitely and even some peaceful picketing may result in the commission of certain offences. Recognizing the right of pickets and the usefulness in prosecuting industrial actions, statutory immunity is extended to pickets.

4.0 Causes and Effects of Trade Dispute in Nigeria

Fashina³² attributes the causes of industrial crisis in the Nigerian workplace to policy inconsistencies and wrong placement in organizational priorities on the part of the management. When employers place higher premium on capital input for above the workers without appreciating that the latter makes the former productive, would breed industrial rancour. This connotes the poor remuneration may be a strong cause of industrial crisis. Low level of workers' motivations with respect to remuneration (both promptness and total package) has been a bone of contention between the workers and employers.³³

The wave of globalization (trade liberalization amongst various economies of the world in global trade relations) had been said to have created in equality in bargaining power between corporations and workers.³⁴ It could have the potency of intensifying different forms of competition, resulting in stronger responses from labour by stimulating quest for information.³⁵ This portrays that increased international

³² Fashina, D (2001) 'Nigerian Tertiary Education; what future' in S. Jegede, A Ale and E. Akinola (eds) Nigeria's Tertiary Institution and Human Rights, Ikeja; Committee for Defence of Human Rights (CHDR), pp 18-24

³³ However, there have been enhancements in wages via minimum wage policy in recent times. More has to be done in this respect to boost workers' morale and instil industrial peace in the workplace.

³⁴ Aremu, J.A "Ethical Dimensions of Globalizations Developing Countries' Perspective", (2006) Globalization Review, Vol 2 Nos 1 &2 pp 1-29

³⁵ Kanfam, B., The Case of the Company Union History, (2000) Vol, 41 pp 321-350

competition resulting from increased interdependence between different economies of the world would exert pressure that would result in increased labour market flexibility and dampened labour protection. This is because when employers tend to have strong bargaining power, they may become authoritative which will affect the management style and work rule.

The above had been corroborated by the high level of unemployment in the country, which makes employers to believe that they can always replace workers that do not comply with their domineering initiative.³⁶ Then workers are provoked to join force to resist such propensities of the employer, thereby straining the strand of industrial tranquility that hitherto existed. This is because it intensifies the strategies of workers as well, thereby prompting them to rely on the tool of trade unionism to push forth their rights and privileges that are been dampened.³⁷

Even if there is the existence of 'Yello dog contract' (where workers are not allowed to unionise), industrial crisis may still occur. Though the workers may not be able to stop work, their attitude towards their work will be negatively affected leading to other forms of grievance expressions such as lateness, absenteeism, high rate of turnover, sabotage, among others, which will ultimately affect productivity.

Trade dispute could also result from conflict of opinions when there is asymmetric information between the workers and employers. This arises from clash of interests during the process of negotiation and incompatibility resulting from incomplete means in the pursuance of their respective goals. The government (especially the military regimes) have profound impacts on the trade unions, which manifested in the alteration of the rules of engagement between the state the unions in

³⁶ Mas, A, 'Labour Unrest and the Quality of Production Evidence from the Construction Equipment Resale Market', Industrial Relations/ Labour Economics Seminar, Berkeley; Princeton University.

³⁷ Kim. D and Kim S., Globalization, Financial Crisis and Industrial Relations.

Nigeria.³⁸ This could be as a result of insensitivity and insincerity in handling union demands by the government and management.³⁹

Another source of the crisis is the breach of collective agreement that has being reached (CHDR).⁴⁰ Ideally, once decisions are reached via the process of collective agreement (or by other means) each party is supposed to adhere strictly to the terms and conditions. Employers (and government) have in most cases been guilty of this, due to their seemingly stronger force. The University of Ilorin crisis is a very clear instance, which has lingered on for some years were the management refused to reinstate the sacked lecturers as directed by the court.⁴¹

In addition, the use of contingent workers (temporal workers that are not usually entitled to some employment benefits besides wages) is another issue. The Nigerian Labour Congress (NLC) has frowned at and fought against the use of casual workers. The use of contingent workers makes the employers not to compensate satisfactorily their regular staff in as much as there are other cheaper ways of using labour resource. The economic situation especially the inflationary trend in the country has not equally helped matters. The inflationary trend has always been worsened as a result of fluctuations (increases) in the prices of petroleum products which translate to increased transportation cost and higher cost of living. This devalues of the workers' income, which is capable of increasing their agitations that could lead to trade disputes.

The effects of trade dispute that normally result when the workers and employers are unable to reach a resolution are not usually beneficial to the economy. The effects have both micro and macro implications. At the microeconomic level, the workers of the unions involved lose their

³⁸ Adesina, J.O, Labour Policies of a Neo-Fuhrer State: The Nigerian Case', *Annals of the Social Science Academy*, Nos 14 & 15, Jan-Dec., pp. 49-66

³⁹ Otober, D., Strike in Nigeria: Some Considerations, *The Nigerian Journal of Economic and Social Studies*, Vol. 25; No 3, pp. 301-318

⁴⁰ Committee for Defence of Human Rights (CDHR) (2002) 2001 Annual Reports on the Human Right situation in Nigeria, Ikeja: CDHR

⁴¹ Ojiabor, O and Falaseyi, M., NLC Writes Obasanjo Over 49 sacked Lecturers', *Punch*, Vol 17, No. 1941, August 24, p. 8

immediate pay and hence their market purchasing powers that result to reduction in welfare. On the other hand, the employer whose workers are on strike loses the union services and as a result becomes unable to meet their customers' orders' this invariably affects their returns and profits margin. While at the macro-economic level, it results to loss of output of goods and services.⁴²

From linkage effects, other firms that use their products as inputs are affected and their production slow down or come to a halt. At the long-run the society are part of those that bear the brunt. This is usually captured by man-days-lost for the purpose of empirical evidence. for instance, in 2002 it was estimated at over 5.5 million naira (CBN).⁴³

The effects of Industrial Crisis are usually more severe when it affects higher institutions. This is because when they suffer protracted Industrial crisis, students are tempted to study mainly to pass as against the tradition of studying for knowledge acquisitions. This affects academic performance and standard of education in the country. Therefore, it may not be surprising to see students forget the title of the courses offered when they come for their transcripts after graduation. This could also be one of the reasons why most employers of labour insist on second-class upper division and above for their application. In some cases, the higher institutions lose a whole academic year as a result of the unresolved industrial crisis. For instance, the Industrial action between the Federal Government and Academic Staff Union of Universities (ASUU) lasted for six full months in 2003, which made most universities lose 2002/2003 Academic session.⁴⁴ This is in addition to the 1993/1994 academic session that was earlier lost as a result of 'June 12 Strike' for virtually all Nigeria higher Institution.⁴⁵ This is a great loss for the students as they spend more both in terms of direct

⁴² Mas, A, 'Labour Unrest and the Quality of Production Evidence from the Construction Equipment Resale Market', Industrial Relations/ Labour Economics Seminar, Berkeley; Princeton University.

⁴³ Central Bank of Nigeria (2004) Annual Reports and Statements of Accounts.

⁴⁴ 115 op Cit. 24

⁴⁵ Nyong, M.O, June 12 Strike Activity and Economic Development in Nigeria", The Nigerian Journal of Economic and Social Studies Vol. 40, No 3., pp 351-369

costs and the opportunity cost of being in school. Their parents and guardians are not left out in the pains as they suffer some dashed aspiration of their children/wards' graduation. Above all, the society loses with respect to the quality of human capital formation.

Other macroeconomic effect of industrial crisis is the exodus of trained personnel to other nations of the world where it is believed that their services would be better rewarded,⁴⁶ thus resulting to brain drain. The brain drain syndrome portends a great adverse effect to the Nigerian economy because the nation requires quality human capital for her advancement. In addition, frequent occurrence of industrial crisis portends a great risk as it tends to increase cost of investment which will ripple off on the pace of economic growth of the country.⁴⁷

5.0 Trade Dispute Resolution in Nigeria

Labour and employment disputes are peculiar species of dispute, and unavoidably common in every developed or developing society. Two forms of labour and employment disputes are common. The first form comprises employment disputes between the parties to the primary contract of employment. The second strand consists of trade disputes involving parties to the secondary aspect of industrial relations, particularly trade unions and organization of employers, or workers and workers, when involved in a trade dispute.⁴⁸

There are distinct procedures for resolution of the two strands of labour and employment disputes. The resolution of employment disputes. The resolution of employment disputes between the parties to the primary contract of employment has always been patterned along formal dispute resolution processes with litigation in courts playing the central role,

⁴⁶ Christensen B.J. Lentz, R, Mortensen, D, T, Neumann, G, R and Werwatz, A (2005) 'On the Job Search and the Wage Distribution, 'Journal of Labour Economics, Vol 23, No 1, pp 31-38

⁴⁷ Fajana, S, Industrial Relations in Nigeria, Theory and Features 2 ed. Lagos; Labofin & Co.

⁴⁸ See Section 48 of the Trade Disputes Act; Section 54 of Trade Unions Act;...any dispute between employers and workers, or between workers and workers, which is connected with the employment..."

allowing little role for other dispute involving parties to the secondary aspect of industrial relations, a statutory framework of collective bargaining has been enabled by the Trade Disputes Act⁴⁹ to peaceably and expeditiously resolve specific industrial conflicts defined as trade disputes. It is indisputable that another quasi-dispute resolution mechanism, industrial action, exists within the regime of collective bargaining.

5.1 Collective Bargaining

The term 'collective bargaining' is reported to have been coined by the British academic, Beatrice Webb. She was reported to have used it in 1891 in cooperative movement, aiming to characterise a process alternative to that of the individual bargaining between an employer and individual employees.⁵⁰

According to the Nigerian Labour act,⁵¹ collective bargaining is a procedure looking toward making of agreements between employers and accredited representatives of employees, concerning wages, hours and other conditions of employment. The Act defines it as "the process of arriving or attempting to arrive at collective agreement. In *Karol Leather Karamchari Sangathan v. Liberty Footwear Company*,⁵² the Supreme Court of India observed that collective bargaining is a technique by which dispute as to condition of employment is resolved amicably by agreement rather than coercion.

Collective bargaining in labour relations, refer to negotiations between employers and employees (who are usually represented by a trade union) about terms and conditions of employment. The bargaining

⁴⁹ CF Section 6 (5) (cc) of the Constitution, as altered by the Constitution of the Federal Republic of Nigeria. (Third Alteration) Act 2010 (hereinafter: Third Alteration Act), which established the National Industrial Court as Court of first instance and with exclusive jurisdiction to entertain all matters relating to labour. See, particularly Section 254C of the Constitution, as altered on the wide jurisdiction.

⁵⁰ www.reference.com/browse/collective+bargaining. Retrieved on 3/610

⁵¹ Section 91, Labour act, Cap LI I-FN 2004

⁵² (1990) SC 247 AIR

process is concerned with wages, working hours and other matters relating to working conditions. Besides representatives of management and unions, private mediators and government officials sometimes participate, especially when a major or vital industry is involved.

Collective bargaining having resulted from an effort by individual employees to equal their bargaining powers with that of their employers, has its objects to be the creation of equality of bargaining power, adjustment of the terms of employment, unification of labour relations and the production of industrial peace.

Collective bargaining fulfils several functions in industrial relations. Besides providing procedure for settlement of disputes and other conditions of employment, it brings matters within the joint regulation of management and trade unions, which otherwise fall within the prerogative powers of the management.⁵³

5.2 Conciliation

Conciliation is an Alternative Dispute Resolution process where an independent third party, the conciliator helps people in a dispute to identify the disputed issues, develop options, consider alternatives and try to reach an agreement.⁵⁴ A conciliator may have professional expertise in the subject matter in dispute and will generally provide advice about the issues and options for resolution. However, a conciliator will not make a judgment or decision about the dispute.

The conciliator is an impartial person that assists the parties by driving their negotiations and directing them towards a satisfactory agreement. It is unlike arbitration in that conciliation is a much less adversarial proceeding; it seeks to identify a right that has been violated and searches to find the optimal solution.

5.3 Arbitration

⁵³ O.V.C. Okene 'Collective Bargaining, Strikes and the Quest for Industrial Peace in Nigeria', *University of Benin Law Journal* 2007 Vol 10 (1)

⁵⁴ Available on at www.localcourt.justice.nsw.gov.au

One of the ways and the most civilised method of settling dispute is arbitration whereby those concerned agree to submit the dispute to a third party in whom both have confidence and undertake to abide by the decision of the said party. 141 Arbitration practice is as old as the history of human civilisation. It is as old as mankind himself. It has a history that goes as far back as the medieval ages. In many parts of the world, forms of arbitration are known to have existed in much earlier times.

In fact, in classical Roman times, all settlements of disputes were by private arbitration with the approval and assistance of a magistrate the pretor, elected annually for the purpose.¹⁴² So, what is arbitration? Ordinarily, arbitration is the use of an arbitrator to settle a dispute. An arbitrator is an independent persons or body officially appointed to settle dispute that is to say that arbitration is different from going to court and asking the court to enforce a legal claim against someone or against some company or against the state itself.

6.0 Establishment of the National Industrial Court of Nigeria

An elaborate general framework for the resolution of labour and employment disputes is currently enabled by the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.⁵⁵ The Third Alteration established the National Industrial Court⁵⁶ as a superior court of record⁵⁷ and a court of first instance, with exclusive jurisdiction to entertain all matters related to or connected with labour and employment in Nigeria.⁵⁸ In *Coca-cola Nig. Ltd. & Ors. v Mrs. Titilayo Akinsanya*,⁵⁹ the Supreme Court upheld this position that by virtue of

⁵⁵ Third Alteration Act came into effect on March 4, 2011

⁵⁶ The National Industrial Court act 2006 fine-tuned the establishment, composition, jurisdiction and power of the court. See 7 of the National Industrial Court Act provides that the Court shall have and exercise jurisdiction to the exclusion of any other court in several causes and matters relating to labour.

⁵⁷ Section 2 of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 inserted a new Section 6 (5) 9c) to the Constitution, adding the National Industrial Court as one of the Superior Courts of records in Nigeria.

⁵⁸ See Section 254 C of the Constitution, as altered for a rather expansive jurisdictional scope.

⁵⁹ (Unrep.) SC. 542/2013, judgment delivered 30th June 2017

Section 254C of the 1999 Constitution as amended, the National Industrial Court of Nigeria has exclusive jurisdiction over disputes arising from master/servant relationships.

Section 254C of the Constitution⁶⁰ provides that to National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil clauses and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith.

Section 6 of the Constitution (Third Alteration) Act⁶¹ amends the provisions of the 1999 Constitution by introducing a new Section 254 A-F. It provides that there shall be a National Industrial Court of Nigeria⁶² consisting of a President and such number of judges of the Court as may be prescribed by an Act of the National Assembly.⁶³ The relevant Act of the National Assembly as of date is the NICA (National Industrial Court Act). A person to be appointed as President or a judge of the Court must have qualified to practice as a legal practitioner in Nigeria for at least ten years and must have considerable knowledge and experience in the law and practice of Industrial relations and employment conditions in Nigeria.⁶⁴

The Trade Dispute Act does not specifically provide that an aggrieved party can appeal against an award either as made by the Tribunal or as considered by the Minister. By Section 14⁶⁵ of the Trade Dispute Act, if notice of objection to the award of an arbitration tribunal appointed under Section 13 (2)⁶⁶ of the Act, the Minister shall forthwith refer the

⁶⁰ Inserted by Section 6 of the Third Alteration

⁶¹ Act No 3 of 2010, also referred to as 'the Alteration Act'

⁶² It would seem that this is a brand new court different from the existing National Industrial Court under S. 1 of NICA 2006

⁶³ S. 254 A (1) & (2) 1999 Constitution (as amended)

⁶⁴ Ibid. S. 254 B (3) & (4) 1999 Constitution (as amended)

⁶⁵ Trade Dispute Act, S (14)

⁶⁶ Ibid. S. 13 (2)

dispute to the National Industrial Court. Similarly, the Minister may make direct reference of a dispute from the conciliator to the National Industrial Court in certain circumstances specified in Section 17⁶⁷ of the Trade Dispute Act, without reference to the Industrial Arbitration Panel. The Court is the final arbiter of matters within its exclusive jurisdiction, but this is subject to the Constitution of the Federal Republic of Nigeria 1999⁶⁸ as amended. However, appeal shall lie as of right of the Court of Appeal only on question of fundamental right as contained in Chapter IV of the Constitution.⁶⁹

In other words, once a party, apparently, alleges a breach of his fundamental right in the hearing of his matter, then that is the ground of appeal against the decision of the court. In this regard, the Court of Appeal is the final arbiter of the trade dispute.⁷⁰

7.0 Conclusion and Recommendation

Trade dispute will always occur. The Industrial arbitration panel (IAP) in its present constitution is seriously handicapped to discharge its function effectively. The body lacks the independence required and expected of an adjudicatory body more so with the overbearing influence of the Minister on the duties of the Industrial Arbitration Panel. However, it should be noted that though the IAP is bedevilled with enormous challenges, it should be noted that the simplicity of procedure at the arbitration is one of the major advantages which arbitration has over litigation in the regular courts particularly as they have a time frame within which to discharge any dispute before it.

The procedure in the regular courts is governed by established standards which must be followed and this, in most cases, leads to unnecessary bureaucracy; speed is usually 'crucified by unnecessary long standard procedure.' Again the parties under arbitration have a wider choice of

⁶⁷ *ibid* S. 17

⁶⁸ *ibid* S. 9 (1)

⁶⁹ *ibid* S. 9 (2)

⁷⁰ G.O.S Amadi, *Legal Guide to Trade Unions* (Nsukka. Agro-Orbis Publishing Ltd, 1999) p.45

procedure than in litigation, and each, can represent himself or be represented by anyone of his choice who is not even a lawyer. The only snag in the discharge of their duty has basically in the enforcement of award as earlier stated.

In any case, the expansion of the powers of the National Industrial Court is quite apt at this point in time and a landmark under the Nigerian Labour law. This would help prevent Industrial anarchy, as the court would impact positively on the nation's security, socio-economic development, growth and stability the National Industrial Court of Nigeria has been put in place to effectively enhance the Nigerian dispute resolution mechanism and it is so far doing well.