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OVERHAULING THE NATIONAL INDUSTRIAL COURT ACT: A PATHWAY TO EFFECTIVE LABOUR DISPUTE SETTLEMENT IN NIGERIA

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ABSTRACT

The National Industrial Court was established in 1976 with the aim of adjudicating on labour matters brought before it by disputants. But the provisions of the Act then establishing it made it extremely difficult for the court to effectively discharge its functions.The initial Act establishing the court placed it (the Court) in a subordinate position to the status of the Federal High Courts in Nigeria. Another difficulty faced by the court before now was the dual control of two separate bodies – the Labour Ministry and the National Judicial Commission. With the new National Industrial Court Act 2006 in place, and the Orders and Rules of 2007. National Industrial Court now has equal status with the Federal High Courts. Important labour matters such as salary, pension, gratuity, annual leave, unlawful termination of appointment, gender discrimination of employment, et cetera will be effectively handled by this court. Having NIC is not just enough. The paper suggests that enabling laws establishing it must make adequate provisions for its operation and efficiency.

KEY WORDS: Industrial Court, Dispute Settlement, Jurisdiction, Trade Dispute Act, Industrial Arbitration.

INTRODUCTION

For more than four (4) decades, labour management conflicts have assumed unimagined proportions. Public policy, well fashioned to deal with conflict situations in employment became more interventionist and revolutionary. These conflicts, often times, arise from inherent opposing interests of employers and employees in work relations. Given that conflict in work organization is inevitable, the actors, especially the government, must evolve ways and means to resolve the resulting grievances. Dispute settlement machinery provides meaningful approach to the accommodation of conflict between employers and their employees (Fashoyin, 2002).

The National Industrial Court (NIC) came in response to yearnings of actors in industrial relations over effective labour dispute settlement machinery to be put in place (Fajana,1995). The court has exclusive jurisdiction to:

a) Make awards in the settlement of trade disputes; and
b) Determine the interpretation of its own award, a collective award of the IAP (Industrial Arbitration Panel) or the terms of settlement of any trade dispute.

The NIC has original jurisdiction on disputes which emanate in an essential service and those referred to it directly by the Minister of Employment.

In the later case, the court performs appellate functions. Even then, the parties to a dispute cannot make direct appeal to it except in cases involving interpretation of an award or the terms of a collective agreement. But unlike the IAP, the National Industrial Court announces its own awards which are final (Fashoyin, 2002).

By and large, the court enjoys much more independence which explains why parties to industrial dispute have confidence in its ability to settle labour matter. But until 1989, the court had no power to enforce its awards. This accounts for the reason that Fashoyin (2002) advances for the inability of the court to give awards in a suit between National Union of Civil Service Typists, Stenographic and Allied Staff Vs Ogun State Government. The union had asked the court to order the respondent (Ogun State Government) to implement its award regarding the payment of new scales of benefits available throughout the civil services of the federation. While the court agreed with the union that the employer violated its award, the court suggested that members of the union were at liberty to file claims, either individually or collectively, in the appropriate High Court or Magistrates Court for the recovery of the sum owed them by the respondent.

THE STATUS OF THE NATIONAL INDUSTRIAL COURT (NIC) BEFORE ITS AMENDMENT

The law (the Trade Dispute Act (TDA) Cap. 432 LPN 1990 that established the National Industrial Court made it difficult for the court to deliver judgement freely. Reviewing the state of the court in its inception, Kanyip (2007) enumerated some of the bottlenecks of the court that hindered its smooth operation to include:

i) The court was not originally listed in the constitution.
ii) The National Industrial Court was the only court of law in the country where litigants could not on

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their own volition, except when activating the interpretation jurisdiction of the court, approach the court to ventilate their grievances, unless referred to the court by the Minister of Labour. The referral and other discretionary powers of the Minister of Labour over matters relating to the National Industrial Court meant that the influence of the Minister of Labour was overbearing, thereby calling to question the constitutional principle of separation of powers and the rule of law.

iii) The requirement of referral, other than interpretation disputes, worked in a manner that also precluded the court from hearing matters directly even when cases were transferred to the National Industrial Court by other courts.

iv) By Section 19 (4) of the Trade Dispute Act (TDA) 1990, the President of the court was expected to preside over all the sittings of the court. The implication of this is that, if for any reason, the president of the court was otherwise engaged, then the court will not be able to sit. For instance, when the court lost its President in 2002 as a result of illness, the court could not sit as no succeeding President was appointed for almost one year.

v) By provisions of Section 19 and 25 of the TDA 1990, the National Industrial Court was the only court of law with a dual system of appointing those who would adjudicate on matters before it.

While the President of the court was appointed by the President of the country on the recommendation of the Federal Judicial Service Commission, the members of the court were appointed by the President of the country on the recommendation of the Minister of Labour. The effect of this appointment and recommendation of members by different bodies is that both the Labour Minister and the National Judicial Council have control over the court.

The implication of these provisions in determination of cases brought before the court had far-reaching negative effect. For instance, in a suit filed by the Oyo State Chapter of the Nigeria Labour Congress (NLC) against the Oyo State Government before the new status of the NIC, the contending labour issues brought before it could not be resolved speedily because the period for the determination of the case coincided with the time of the Court President's ill-health and no other judge of the court could preside over the matter. Another case in point was an intra-union matter between factions of the National Union of Road Transport Workers (NURTW), Enugu Branch in 2001. In a suit filed in by one of the factions to settle a grievance in the court, the court had to advice the parties to apply to the minister of labour who would now refer the matter to the court to be handled. After some bureaucratic procedures, when the matter finally returned to NIC, there was a serious breakdown of law and order by the disputants.

OBSTACLES OF THE COURT THAT NECESSITATED THE CHANGES

Before its present state, the National Industrial Court was faced with many challenges that hindered its smooth operation as a competent court to handle trade dispute matters. Adejumo (2007) highlighted some of these obstacles to include:

i) The court was not specifically listed in Section 6 of the 1999 constitution. The situation called to question the status of the National Industrial Court as a superior court of record as was pointed at the conference of All Nigeria Judges in 2007;

ii) The effect of Section 7 (3) of National Industrial Court Act 2006 implied that the mediation, conciliation and arbitration provisions under part I of the Trade Dispute Act (TDA) 1990 was still in operation;

iii) It was only the powers of the Minister of Labour to refer matters to the National Industrial Court under Section 13 and 16 of the TDA;

iv) There was the continuing debate as to the scope of the jurisdiction of the National Industrial Court especially within the context of exclusivity;

v) There existed in the country (Nigeria) a dual jurisprudence in the resolution of labour disputes.

THE NATIONAL INDUSTRIAL COURT ACT (2006) AND ITS PROVISIONS

The new National Industrial Court (NIC) Act came into existence on the 14th day of June, 2006. This was the day the Act received approval and assent by the immediate past President of Nigeria, Chief Olusegun Obasanjo. Adejumo (2007) in an explanatory note was of the view that the National Industrial Court Act establishes the National Industrial Court as a superior Court of record and confers jurisdiction on the court with respect to labour and industrial relations matters. The Act reestablishes the National Industrial Court to give it pre-eminence in the resolution of labour disputes.

By the provisions of the Act, the National Industrial Court is taken out of the Trade Dispute Act (TDA) and given a separate enabling law of its own. In this regard, it has resolved some of the shortcomings identified earlier with the court under the TDA era. With the new arrangement, appointment of the President and Judges of the Court has been streamlined under one system to be in line with what obtains in the Federal High Court or the High Court of the Federal Capital Territory, where the National Judicial Commission remains the recommending authority. With the provisions of the 2006 National Industrial Court Act, what obtains in the High Courts in respect of discipline, tenure, salaries and allowances, pension rights, status and powers equally obtains in the National Industrial Court (Sections 1-5 and 16-19 of the new National Industrial Court Act). Also, the court is no more tied

down with the problem that goes with sitting. Prior to the enactment of the new Act, the President of the Court must preside over all the sittings of the court. But now, any of the Judges who is a legal practitioner can preside over the sittings of the court (Section 21(4) of the National Industrial Court Act). Under the new dispensation, the plethora of cases which held that the National Industrial Court cannot grant injunctive and declaratory orders is no longer applicable in the new law as contained in Section 16-19 of the National Industrial Court Act.

THE NATIONAL INDUSTRIAL COURT RULES 2007

Before August 2007, rules governing the National Industrial Court were made without Orders. In contrast, the 2007 rules were made under 31 Orders with two forms and two appendices and were the products of intense deliberations and consultations.

Upon the enactment of the 2006 National Industrial Court Act, the President of the court inaugurated a committee of eleven (11) eminent persons under the distinguished chairmanship of Justice Olajide Olatawura, JSC (rtd.) to consider and draft the Rules of Court for the National Industrial Court.

By Order 1 Rule 1 (3), the Rules shall apply to all proceedings including part-heard cases and matters in respect of steps to be further taken in such cases and matters for the attainment of a just, efficient and speedy dispensation of justice. Order 5 permits the court to discount any infractions of the Rules or direct a departure from them where the interest of justice so requires. Where the Rules are silent or inadequate on an issue or course of action to be taken, Order 15 of the Rules says that the court may adopt such procedure as will in its view do substantial justice to the parties.

Commencement of an action by Order 3 of the Rules is by complaint which shall conform to form 1 with such modifications or variations as circumstances may require.

The complaint shall be accompanied by a statement of facts establishing the cause of action, copies of every document to be relied on at the trial, and a list of witnesses to be called. Where the complaint is one against an award or decision by an arbitral tribunal, board of inquiry, decision of the Registrar of Trade Unions or any other authority in respect of matters within the jurisdiction of the court, the complainant shall be accompanied by a "Record of Appeal", which shall comprise the certified true copies of all the processes exchanged by the parties at, or the representations made to the lower tribunal; the certified true copies of the record of proceedings before the lower tribunal (where applicable); the certified true copy of the award or decision of the lower tribunal; and the appellants brief of argument.

Accordingly, the party served with the complaint is obliged by Order 8 to enter appearance by filing a Memorandum of Appearance. After this, and by the provisions of Order 9, if the party intends to defend and/or counter claim in the action, to file a statement of defence and/or counter – claim (if any); list of witnesses; and copies of documents to be relied on at the trial. Order 9 provides further that where a party served with a Notice of Appeal or a Notice of Cross Appeal together with the Record of Appeal and other accompanying documents as contained in Order 3 of these rules intends to contest the Appeal or Cross-Appeal, such party shall file a respondent brief of argument as the case may be.

Provision for service of processes is taken care of by Order 7. Under this, any notice or other document required or authorized by these rules to be served on that person personally or sent by registered post or courier or left at that person's address for service or, where no address for service is given, the registered office, principal place of business or last known address, and any notice or other document required or authorized to be served on, or delivered to the court may be sent by registered post or courier or delivered to the Chief Registrar.

The Rules also made provisions for a number of subjects such as summary judgement (as contained in Order 10), motions and other interlocutory applications (found in Order 11), reference to referees or arbitrators (Order 18), proceedings at trial (Order 19), filing of written addresses (Order 20), judgement and Orders (Order 21), Costs (Order 29), stay of execution and stay of proceedings pending appeal (Order 30). The essence of these rules is to make them applicative to the National Industrial Court to enable it handle labour matters more effectively.

SIGNIFICANCE OF THE NEW NATIONAL INDUSTRIAL COURT ACT

Ezeilo (2007) enumerated some of the significance that would accompany the new National Industrial Court Act as follows: the new National Industrial Court Act would reawaken the consciousness of our people on the existence of the National Industrial Court and its strategic role that promotes peaceful industrial relations, stability, and economic growth thereby contributing to the overall development of the economy.

The National Industrial Court Act 2006 would have very positive effect on our economy, industrial relations, safety and welfare of workers/employees. To be precise, it will result in the following: speedy adjudication of labour and industrial related disputes; competencies and expertise as a specialized court will be built; developing labour jurisprudence that will entrench certainty, reliability and consistency as against the confusing situation resulting from conflicting decisions from various courts all claiming coordinate jurisdiction on the National Industrial Court. It will develop international best practice that will encourage foreign investment; re-position the National Industrial Court to assume strongly the mediation and reconciliatory role it should play in trade disputes and industrial relations cases as opposed to the adversarial nature of disputes in regular courts. The National Industrial Court will also be better placed to assess technical support and trainings from the international community, such as the International Labour Organization (ILO). The Act will equally re-align Nigeria with the global trend to have specialized court that deals with specialized matters.

Speaking on the significance of the new National Industrial Court Act, Aluwe (2007:3) opined that:

The present position of the court gives it the status of a court of law, court of equity, and a specialized superior court of record with multiple doors for the

resolution of labour and related disputes. Disputants can now approach the court through litigation, arbitration, mediation, conciliation, reconciliation, settlement and more.

The current unique status of the court would enable it to settle labour and industrial relations disputes expeditiously without being bogged down with legal technicalities. A peaceful society will ensure improved national productivity, technological and industrial development; and it will also attract foreign investments and earn for the country the respect of the international community. Achieving these tasks is the primary responsibility of the court as spelt out under the provisions of National Industrial Court Act 2006, the Rules of Court, 2007 and all enabling laws passed by the National Assembly in that regard. The court also entertains cases associated with employment such as pension, salary, discrimination against employees' HIV status, gender discrimination in work place and any other related matter (Adejumo, 2007).

However, it is one thing having the National Industrial Court attaining this status and another to ensure its smooth running. Therefore, the necessary laws establishing it must make enough provisions to enhance its operation and efficiency.

CONCLUSION

The presence of NIC in any country is very significant for labour dispute settlement and industrial peace and harmony. Its absence or/and inadequate provisions of the Act establishing it will spell doom for the industrial relations practice of that country.

The most important reason for enacting the National Industrial Court Act in 2006 was as a result of the glaring inadequacies experienced in the implementation of the Trade Disputes Act of the 1976 and the Trade Dispute (Amendment) Act of 1992. These Acts governed the operation of National Industrial Court prior to June, 2006. The 1976 Act glaringly fused the functions of the Industrial Arbitration Panel (IAP) with that of the National Industrial Court.

The provisions of Section 19 (4) of the Trade Dispute Act (TDA) 1990 where the President of the court was expected to preside over all the sittings of the court was very injurious to the dispensation of justice by the court. Presently, following the new National Industrial Court Act 2006, any judge of the National Industrial Court can preside over a case in the absence of the court's president. This has removed the bottleneck in the smooth running of the court.

No doubt, the new National Industrial Court Act (2006) with its provisions will enable the court to dispense justice speedily on labour and employment matters brought before it. The equal status which the National Industrial Court Act now confers on the court with Federal High Courts would encourage a sense of belonging in judges and other employees of the National Industrial Court as well as motivate them to higher productivity. With its present position, the NIC can compete favourably with any International Court that performs similar functions. Above all, workers can now be rest assured that any work-related dispute concerning their welfare brought before the court will be effectively handled in a manner that will bring satisfaction to them.

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