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THE CONCEPT OF UNFAIR LABOUR PRACTICE AND ITS APPLICABILITY IN NIGERIA

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INTRODUCTION

Since the inception of the Trade Unions in the 17th Century in Britain, efforts have progressively been made to protect the workers from certain activities of the employers who are perceived to have stronger bargaining power in employment relations. Practices and customs over the years, as well as legislations, Conventions, Recommendations and Protocols have been made to legally protect the workers from the might and capitalist tendencies of the employer. These laws provide for fairness and equity in employment relations in the workplace. A derogation from them would automatically result in unfair practice and therefore be considered detrimental to the worker.

UNFAIR LABOUR PRACTICE

Unfair Labour Practices have been defined to mean practices that do not conform with best practice in labour circles as may be stipulated by domestic or international legislations and practices. It can also be described as all dispute that relate to remuneration, job security, health and safety, social security and working hours amongst others. This write up sees to examine one of such unfair labour practice which is unfair dismissal.

Unfair dismissal is an employment situation wherein an employee is dismissed from his/her role, and this dismissal is unfair when the reason given not being a sufficient one, or if the employer did not follow the correct process for dismissing the employee (for instance where the company disciplinary procedure was not followed). It also applies to cases where the dismissal is due to discrimination or victimisation.[1]

The concept of unfair labor practice is not expressly provided for in the Nigeria Labour Law or in any other local legislative enactment. However, the concept has gained recognition through the Nigeria labour courts. In some other jurisdictions such as England and some European States, the labour doctrines and remedies are more invasive of the supposed 'property' rights of employers in respect of unfair dismissals and these are applied by the judges, on the whole, in a manner consistent with the purposes of the legislations.[2] This can be seen in the standard of substantive unfair dismissal test that invariably allows the courts, often the labour courts, to apply a test of

[1] https://lawpadi.com/unfair-dismissal-by-an-employer-your-legal-rights/
[2] The Future of Labour Law: Liber Amicorum Bob Hepple QC By B. A. Hepple

proportionality to the employer's decision to dismiss.[3] The principle of proportionality prescribes that all statutes that affect human rights should be proportionate or reasonable.

While employees are subject to the control of employers and are thus "told what to do," the common law also states that employees are under no obligation to submit to a significant change in position or duties. Employers may only reassign work or reorganize the activities of workers if such changes are "reasonable." That is, employees are required to accept work "reasonably incidental" to their position, but they are not obligated to accept assignments of a materially different nature.[4] In **Cooper v. Stronge & W. Co.**[5] the court held that an employer violated an employment contract by reducing the status of an employed manager to sales clerk.

The National Industrial Court of Nigeria (NICN) is the court saddled with the jurisdiction to determine all employment related claims. The NICN on several occasions adopted the concept of unfair labour practice in reaching some of its decision. The NICN by virtue of section 254C of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is enjoined to adopt international best practices and ratified Labour Conventions in determining labour disputes. For instance, Article 4 of the International Labour Organisation Convention on Termination of Employment Convention, 1982 (No. 158) (ILO) provides as follows:

> *"The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service."*

Articles 5 and 6 of the ILO listed what shall not constitute a valid reason for termination of employment. The provisions of articles 4, 5 and 6 of the ILO Convention is a clear departure from the general common law position that an employer has the power to terminate an employee with or without reason even though the termination constitutes a breach of contract.

In **Mix & Blake v. NUFBTE (2004) 1 NLLR (Pt. 2)** 247, the NICN in its attempt to define what might constitute an unfair labour practice held that:

> *"…To be unfair, it must be established that the practice does not conform with best practice in labour circles, as may be enjoined by local and international experience."*

Recent decisions of the NICN have shown that the Labour Courts in Nigeria have moved past the strict and rigid common law position in labour practice. For instance the NICN adopted the principle of unfair labour practice in reaching its decision in **Petroleum and Natural Gas Senior**

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[3] Ibid
[4] A Legal Basis for Workers as Agents: Employment Contracts, Common Law, and the Theory of the Firm by Harvey S. James, Jr
[5] (126 N.W. 541, 111 Minn. 177)

Staff Association of Nigeria v Schlumberger Anadrill Nigeria Ltd.[6] The Court in the instant suit applied the provision of Article 4 of ILO Convention on termination of employment and held that the common law principle that gives an employer the right to terminate a contract of employment without reason is unfair labour practice. The Court per Adejumo J held:

> *"The respondent also argued that it has the right to terminate the employment of any of its employees for reasons or no reason at all. While we do not have any problem with this at all, the point may be made that globally it is no longer fashionable in industrial relations and practice to terminate an employment without adducing any reason for such a termination."*

A careful reading of the pronouncement by Adejumo J. clearly shows that termination of employment at will is still the law, but a warning that it is no longer in line with global best practices. This case is a pointer to the fact that NICN is upholding what it considers the global best practice. From the provisions of Art. 4 of the ILO Convention, the courts can question any determination of a contract of employment triggered by motive that is outside the recognized reasons in Article 4 of the Convention on termination of employment.

In **Godwin Okosi Omoudu v. Prof Aize Obayan & Anor,**[7] the Court per Adejumo J. stated that it can never be just where an employer of labour, without just and established cause, impugned the integrity of an employee and based on this impugnation, goes ahead to peremptorily terminate his employment. The court went further to hold that the law has moved from the narrow confines of common law in master/servant relationship to a more proactive approach that secures the rights of both parties to an employment contract. Thus, the attention has shifted to protection of employees in cases of unfair labour practices, in tandem with what obtains in the comity of nations. In the instant case, the court relied on its inherent powers and awarded five months' salary as general damages in addition to one month salary in lieu of notice to the Claimant. See also **Mariam v. University of Ilorin Teaching Hospital Management Board.**[8]

Another trending concept of unfair labour practice is sexual harassment in the workplace. The NICN in the case of **Ejieke Maduka v. Microsoft Nigeria Ltd & 3 Ors**[9]**,** was called upon for the first time to decide on the issue of sexual harassment at workplace, which is not provided by any law in Nigeria. Though sexual harassment in itself is not an unfair labour practice in any jurisdiction, the consequence of the harassment which led to the loss of employment was termed an unfair practice by the Court.

In deciding this matter the court adopted the international best practice and procedure and held that the termination of the applicant's employment, simply because she refused to succumb to

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[6] (2008)11 NLLR (pt. 29) 164.
[7] (Unreported suit No: NICN/AB/03/2012)
[8] [Unreported] Suit No. NICN/LA/359/2012)
[9] (Unreported Suit No. NICN/LA/492/2012)

sexual harassment from the Country Manager constituted a violation of her human dignity and freedom from discrimination as protected by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. The Court also found the company to be in breach of its duty of care and protection to the applicant and held it vicariously liable for the acts of sexual harassment carried out by the 3rd respondent within the apparent scope of authority they entrusted to him.

CONCLUSION

A look at the various decisions of the NICN ex-rayed above have shown that the NICN has departed from the traditional or common law position in employment relation practice. Therefore, it is no longer acceptable in labour law to terminate a contract of employment without stating the reason upon which such termination is based as doing so will amount to unfair dismissal which is an unfair labour practice as was held in Petroleum and Natural Gas Senior Staff Association of Nigeria's case. Also as seen in Godwin's case, it is not enough to make payment in lieu of notice where an employer terminates a contract of employment without a justifiable cause. That is where such an employer is found to act in bad faith; unfairness, vindictiveness and victimization, then the equitable jurisdiction of the Court sets in. The Court awarded general damages and specific damages against such a vindictive employer.

Finally, an employer owes a duty of care to protect its employee against all form of harassment at workplace. A breach of the duty of care by an employer will lead to award of general damages against the employer as seen in the case of Ejieke Maduka's case.