



**CONTRACT STAFF AS A MEANS OF REDUCING
EMPLOYER'S STAFFING COST: A MISCONCEPTION OR
A REALITY?**



Introduction

There is a growing usage of the word "Contract Staff" in the Nigerian employment space. This is highly attributed to an understanding that contract staffing is a means of resolving budgetary concerns of employers. The word has also been used interchangeably with "Casual Staff". We shall examine the concept of contract staff, the statutory obligations of employers, limitations of contract staffing, and the alternative(s) to contract staffing.

Who is a Contract Staff?

There are three categorisations of employment relations recognized by various legislation in Nigeria. These categories are express and implied employment; employment under a contract of service and a contract for service; and employment as a permanent staff & a temporary staff.

The first category relates to the mode of engagement. It is express when the terms of the contract are set forth either orally or in writing. It is implied where the terms and conditions are not expressly stated but can be inferred from the conduct of the parties, circumstances surrounding the employment, as well as statutory provisions.¹

For the second category, an employment under a contract of service is a master-servant relationship, in which the employer exercises control over the way and manner the employee carries out the terms of the employment. Other defining factors include payment of wages and salaries, ownership of equipment, hours of work, place of work, etc. A contract for service on the other hand, is an employment with an independent contractor, who undertakes to produce a given result with little or no control from the employer, and exercises discretion over the mode of executing the work. Another feature of a contract for service is the freedom available to the independent contractor to work for others.²

The third category relates to the duration of employment. A person employed as a permanent staff is a person whose contract of employment is for an indefinite period subject to retirement, termination by either parties, or based on the continuous observance of the terms of employment. Contrarily, an employment for a temporary period is an employment with a fixed term. As such, the employment ordinarily terminates automatically upon effluxion of the period agreed. This temporary arrangement delineates the concept of a contract staff. Generally, contract staff do not get most of the benefits given to permanent staff. This is because a contract staff is assumed not to be a regular addition to the staff of an employer. Whilst this appears reasonable, the laws that make provisions for most of these traditional employment benefits and obligations of an employer, makes no distinction between a permanent and a contract staff to warrant the exclusion of contract staff from these benefits.

¹ Mr. Casmir Onuchukwu V. Petroleum Products Pricing Regulatory Agency Unreported in Suit No: NICN/ABJ/373/2017 delivered on the 2nd of May 2019 by Honourable Justice Sanusi Kado. http://nicn.gov.ng/judgment/pdf.php?case_id=1835.

² Shena Security Company Ltd V. Afropak Nigeria Ltd & Ors (2018) LPELR-3052 (SC).



The status of a contract staff is recognized in the jurisprudence of labour relations in Nigeria. The Supreme Court as far back as 1965 in its decision in the case of ***Thomas V Local Government Service Board***³ justified temporary employment in Nigeria under the umbrella powers of an employer to make an appointment which includes the power to appoint for a fixed period. The apex court gave the example that a schoolteacher might be appointed for one term, or an engineer for the duration of a particular piece of work. This recognition of contract staff in labour law jurisprudence in Nigeria has been reiterated by statute as well as the National Industrial Court in its recent case of ***Mr. Casmir Onuchukwu V. Petroleum Products Pricing Regulatory Agency*** (*Supra*). The said statutory recognition can be found in the Labour Act vide Section 7(1)⁴ which provides what a contract of employment should contain, and this includes the contractual period of the employment, whether it is for a fixed period or otherwise.

What are the Statutory Provisions for Contract Staff?

It may appear that there is no law regulating the relationship between an employer and its contract staff, thus leaving the determination of the entitlements of the contract staff to the whims of the employer. This is however not the case, as there are provisions for contract staff embedded in the different statutes that deal with employment relations in Nigeria. They include, the Labour Act, the Industrial Training Fund Act, the Employees Compensation Act, the Trade Union (Amendment) Act, the Trade Dispute Act, the National Industrial Court Act, the Nigeria Social Insurance Trust Fund Act, the Pension Reform Act of Nigeria, and the National Health Insurance Scheme Act. What is common with these laws is that they define an employee/worker to include a contract staff expressly and impliedly. The implication is that the rights and obligations arising from these statutes equally apply to a contract staff.

The question is, if the employer is statutorily mandated to pay pension for its employees which includes its contract staff, is required to provide health insurance to all employees including its contract staff, is required to include its contract staff in the computation of its contribution to the Industrial Training Fund, and the Nigerian Social Insurance Trust Fund, can it truly be said that contract staffing is a means of reducing the financial obligation of an employer? If the law is strictly adhered to, the answer to this question might to an extent be in the negative.

It follows therefore, that an employer may struggle to reduce staffing cost from statutory obligations. This notwithstanding, employment relations are contractual. Contract staffing may be deployed to reduce staffing through contractual and discretionary benefits such as the provision of car, lunch, accommodation, transportation, bonus, etc.

Limitations of Contract Staffing

An employer can utilize the contractual and discretionary work benefits to reduce its staffing cost. Contract staffing should however be properly managed to ensure that operations remain within its scope and not used as a shield to deprive employees of their benefits. Where contract staffing

³ (1965) LPELR-25204(SC).

⁴ Labour Act CAP LI LFN 2004.



is used to disguise the true relationship, the veil of such relationship will be lifted by the court when called upon to do so, to determine the substance of the relationship, and the principle of primacy of facts will be invoked in determining the entitlements of the contract staff. This principle is to the effect that the determination of an employment relationship should be guided by the facts of what was agreed and performed by the parties, and not by the name they have given the contract.⁵

The two major considerations of contract staffing are termination and renewal of employment of a contract staff. On the mode of termination, the employment of the contract staff terminates either automatically by effluxion of time, or in accordance with the provisions of the contract on notice period. Intrinsic in automatic termination by effluxion of time is the issue of consistent renewal of the employment of a contract staff or maintaining employment relations after termination by effluxion of time. The Court has and can catapult a contract staff to a permanent staff for the purpose of determining the liabilities of the employer due to consistent renewal.

In ***Mr. Casmir Onuchukwu V. Petroleum Products Pricing Regulatory Agency***,⁶ the claimant was employed as a temporary staff by the defendant for a period of six months and renewed for another period of six months. At the expiration of the renewed period of engagement in March 2012, no letter was issued to the claimant terminating or renewing the contract of employment. The claimant continued to work for the defendant and the defendant continued to pay the Claimant his monthly salaries for five years until September 2017, when the defendant terminated the appointment of the claimant. The Court held thus:

“The evidence before the court clearly shows that the claimant served the defendants for over three years, this has made his contract of employment permanent and entitled him to all the rights and privileges of a permanent worker under the Labour Act.”

The Court further held that the keeping of the claimant in the employ of the defendant amounted to creation of a fresh contract of service between the claimant and the defendant by conduct of the parties governed by the common law and the labour law. Thus, employers should consider making valuable contract staff, permanent staff, rather than renew consistently.

A Casual Staff and a Contract Staff Distinguished

A casual staff is a person who is engaged seasonally or intermittently, and not for a continuous period.⁷ A casual staff does not have regular work hours and is not guaranteed to get regular work. For instance, a person engaged during an agricultural season, a person engaged as a bricklayer, a lesson teacher, a live-out chef, and invariably all types of engagement that terminates at the execution of the instruction are examples of casual employment. A driver employed in an

⁵ Diamond Bank Plc v. National Union of Banks, Insurance and Financial Institutions Employees (NUBIFIE) unreported in Suit No: NICN/ABJ/130/2013, delivered on the 6th of February 2019 by Hon. Justice B. B. Kanyip; PENGASSAN v. Mobil Producing Nigeria Unlimited [2013] 32 NLLR (Pt. 92) 243.

⁶ Unreported in Suit No: NICN/ABJ/373/2017 delivered on the 2nd of May 2019 by Honourable Justice Sanusi Kado. http://nicn.gov.ng/judgment/pdf.php?case_id=1835.

⁷ Olabode Ogunyale & Ors Versus Globacom Nigeria Ltd. (2013) 30 N.L.L.R (Pt. 85) 49 NIC.



organisation on a fixed term is thus not a casual staff, a sales officer in an organisation, whose employment is temporary is not a casual staff, but a sales officer engaged for an auction is a casual staff. No doubt, both concepts are similar due to their temporary nature. The difference is, a contract staff is fixed for a definite period, and a casual staff is fixed for a definite engagement. There will therefore be no basis to provide traditional employment benefits to a casual staff because of the brief and informal mode of engagement. This may be the attraction to refer to a contract staff as a casual staff.

What is the Alternative to Contract Staffing?

There is another model of employment gaining traction in the employment space in Nigeria and judicially recognized,⁸ that can resolve the budgetary concerns of employers if properly managed. This model is called outsourcing, also known as Triangular Employment. Triangular Employment holds the potential to reduce a company's costs substantially. This model is however dicey and could become counter-productive if not properly managed. Training of HR Personnel and management of companies cannot be overemphasized if this model is being adopted by an employer. It is thus imperative to understand the concept of Triangular Employment before an employer embarks on the same.

Triangular Employment is an employment model in which a company hires another company (a service provider) to perform tasks, handle operations or provide services. Under this arrangement, the service provider arranges for its own workers to perform the tasks or services either at the hiring company's own facilities or at external locations. An employer can outsource an entire department or unit such as the information technology department, human resources, account department, sales or customer service unit.

The nature of this arrangement is thus one, where the contract between the company and the service provider should be carefully worded. Prudence is advised as the contract between the company and the service provider should not be one where the service provider provides staff to the company, but one in which the service provider provides service or labour to the company through its staff in the premises of the company or any other location agreed to by the parties. This takes the form of a contract for service/independent contractor, together with all its features earlier identified.

Exhibiting employment relations with the staff of the service provider is a recipe for co-employment, such as participating in recruitment of the staff of the service provider, payment of wages and allowances to the staff of the service provider, controlling the staff of the service provider, discipline of the staff of the service provider, and termination of the employment of the staff of the service provider.

A co-employment in this context arises where due to the employment relations exhibited by the

⁸ Onumalobi v. NNPC and Warri Refining and Petrochemical Company [2004] 1 NLLR (Pt. 2) 304. PENGASSAN v. Mobil Producing Nigeria Unlimited [2013] 32 NLLR (Pt. 92) 243; Diamond Bank Plc v. National Union of Banks, Insurance and Financial Institutions Employees (NUBIFIE). unreported in Suit No: NICN/ABJ/130/2013, delivered on the 6th of February 2019 by Hon. Justice B. B. Kanyip.



company to the staff of the service provider, the company becomes a co-employer to the staff of the service provider. When this happens, the staff of the service provider is at liberty to decide whether to go after the company or the service provider or both the company and service provider in ventilating any grievance arising from the employment.

In conclusion, triangular employment if properly managed, is the best alternative to contract staffing, as the laws pertaining to pension, health insurance, industrial training fund, employees' compensation; provision on redundancy, leave, and all other traditional employment benefits are not applicable to outsourced staff. This is simply because, they are not employees of the company in whose favour the services are rendered but employees of the service provider.

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