Jackson, Etti & Edu

THOUGHT LEADERSHIP

TERMINATION OF EMPLOYMENT

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Introduction

The simple concept of contract of employment is that the employment is governed by agreed terms and conditions upon which the relationship of master and servant or employer and employee exists. The contract is therefore the bedrock upon which the employment relationship rests. As much as an employee requires some assurance of job security, employment law in Nigeria does not generally impose an unwilling employer on an employee an vice versa.

Consequently, the time-honored principle of laissez-faire allows private entities to freely determine the terms which shall guide their contractual relations. An employer is free to employ or hire, as well, free to fire or sack an employee, provided the terms and conditions stipulated in the contract of employment are complied with. Our legal system has however continued to witness increased cases of complaints by employees as to the unlawful manner of their disengagement from their employer. Most of these complaints have moved beyond reliance on the contract of employment and resorted to reliance on international best practices, unfavourable labour practices, and other concepts outside the signed contract.

This article seeks to examine closely, albeit causally, the current legal regime on job security vis-à-vis the power of the

employer to fire at will, without reason. This paper cautions that *ex abundanti cautela* over compliance with extant judicial position, would reduce the anticipated contingencies in not giving the reason for termination.

The Nature of Employment Contract

Employment Law in Nigeria has evolved over the years, from a jurisprudence which gives the employer unfettered powers to "hire and fire at will, with reason or without reason at all" to a now more humane process where the employer is enjoined to be cautious to ensure that his whims and caprices are guided by international best practice in labour relations.[1] It is generally agreed by both the Bar and the Bench that apart from employment savoured with statutory flavour, no court should impose an unwilling employee on an unwilling employer and *vice versa*. Consequently, the ability of an employee to freely walk out of the employment relationship with an employer and seek "greener" pastures elsewhere is directly proportional to the employer's rights to disengage an employee where the best interest of the business dictates.

The judicial template which is always called into question, when issues of termination of employment are called to bear, is the contract of employment which spells out the terms and conditions of service of an employee and guides the relationship between the employer and employee.[2] Human Resources practitioners should therefore ensure that the contract of employment

is robust enough to provide all legal requirements in termination of employment and that the requirements are properly followed when the employer makes the ultimate decision to terminate contractual relations with the employee.

Several lines of judicial decisions such as UJAM v. INSTITUTE OF MANAGEMENT & TECHNOLOGY & ORS (2006) LPELR-7688(CA); OGUEJIOFOR v. ACCESS BANK (2020) LPELR-49583(CA) (PP. 44-45 PARAS. B), agree with the position that an employer can fire at will, with or without any reason for such dismissal. The judges of the common law court recognized that the relationship between the employer and employee is one of master and servant and as such an employer who hires an

[1] Section 254 (C) (1) (f) of the constitution as amended enjoins the National Industrial Court to pronounce unfair labour practices and international best practices in employment and labour relations.

[2] Please, note that for employees whose employment is not written in a document e.g, casual, menial or workers, the Labor Act applies, and such employees are expected to be terminated in line with the Labour Act.

employee, under the common law, has the corresponding right to fire him at any time even without assigning any reasons for so doing[3]. He must, however, fire him within the terms and conditions of the contract between them. Where the employer fires an employee in compliance with the terms and conditions of their contract of employment, there is nothing the Court can do as such a termination is valid in the eye of the law. It is only where the employer, in terminating or dispensing with the services of an employee does so without due regard to the terms and conditions of the contract of employment that problems arise; as such termination is usually not tolerated by the Court and are, without hesitation, usually declared wrongful.[4]

The crucial takeaway from the common law point of view is that a master is entitled to dismiss his servant from his employment for a good or bad reason, or for no reason at all. Consistent with this principle, is the law that the Court will not impose an employee on the employer. Hardly does the Court order for specific performance of the contract of employment. In other words, it is an aberration that is rarely made. Usually, the only remedy the servant has, is to claim for the wrongful act of his master, because the master has the right to hire and fire for good or bad reasons. The Court cannot compel the employer to continue to keep an employee it does not want. On the other hand, no employer can prevent an employee from resigning from his employment to seek "greener" pastures elsewhere.[5]

Recent Judicial Position on Dismissal Without Stating Reason.

Since the Third Alteration Act of 2010, there has been a wave of judicial activism which has resulted in a spark of judgments of the National Industrial Court departing from the common law position above and insisting that it would amount to wrongful termination for an employer to terminate employment

without giving the reason of the termination. The Judicial wisdom expressed in the cases indicates that International best practices disagree with

[3] Note that where an employer gives reason or cause for terminating the appointment of the employee, the law imposes on him a duty to establish the reason to the satisfaction of the Court. See SHELL PETROLEUM CO. LTD v. SUNDAY OLAREWAJU (2008) I8 NWLR (PART 1118) I at 19.

[4] See the cases of SAMUEL ISHENO VS. JULIUS BERGER NIG PLC (2008) 6 NWLR (PART 1084) 582 AT 609 H- 610; PATRICK ZIIDEEH v. R.S.C (2007) 3 NVILR (PT 1022) 554 @ 577

[5] See the judgment of GALADIMA, JCA in UJAM V. INSTITUTE OF MANAGEMENT & TECHNOLOGY & ORS (2006) LPELR-7688(CA) (Pp. 8-9 paras. E).

the common law concept of termination of employment without giving verifiable reason(s) for such termination. It is noted that by the third alteration to the 1999 Constitution of the Federal Republic of Nigeria, the National Industrial Court is enjoined to apply and adopt international best practices, apply any international convention, treaty or protocol relating to Labour and Employment, which Nigeria has ratified[6].

The foremost cases which awakened the jurisprudence of inclusion of reason for termination of employment, were the cases of Petroleum and Natural Gas Senior Staff Association of Nigeria [PENGASSAN] v. Schlumberger Anadrill Nigeria Limited[7], Mr. Ebere Onyekachi Aloysius v. Diamond Bank Plc[8] and Bello Ibrahim v. Eco Bank Plc[9].

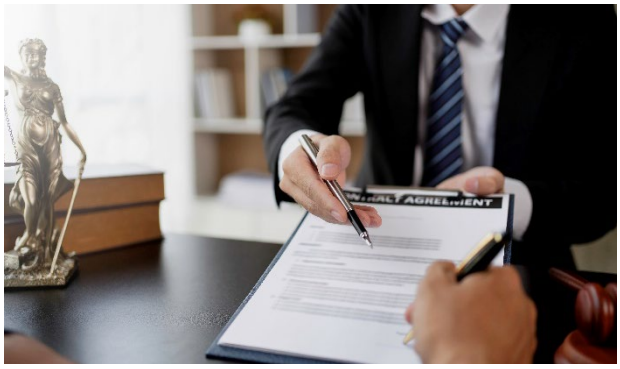
In Imuwahen Egbe v Gokada Rides Limited (Unreported) NICN/LA/561/2019, the National Industrial Court stated as follows:
"So, notwithstanding the prescription in the contract of employment, it is no longer fashionable in the employment relationship for an employer to determine the employment of its employee without a valid reason connected with the employee's capacity, conduct or based on the operational requirements of the company. Consequently, the practice of terminating employment for "services no longer required", as was done in this case is no longer tenable in law. Accordingly, I hold that the termination of the Claimant's employment less than two months after her assumption of duty without any valid reason connected with her capacity or conduct or based on the operational requirements of the Defendant constitutes an unfair labour practice and renders the termination of her employment wrongful."

From the above judicial decisions, it may no longer be prudent for letters of termination of an employee's employment to be merely based on "your service is no longer required". The employer is enjoined to state the verifiable reason(s) for the termination which is tied to the employee's roles in the organization.

Despite the position of the National Industrial Court above, certain conflicting decisions continue to emerge from the National Industrial Court which relies on the common law position that the employer needs not give the reason for the termination of an employee's contract. The Judgment of the National

[6] See section 254C of the 1999 Constitution as amended.
[7] (2008) 11 Nigeria Labour Law Report Pt 29 Pg 164
[8] (2015) 58 Nigeria Labour Law Report Pt 199 Pg 92
[9] unreported judgment delivered in Suit No. NICN/ABJ/144/2018

Industrial Court on Sunday Attah vs. FBN Ltd[10] and Agboola Abdulrazaaq vs FBN Ltd[11] demonstrate the tendency of the National Industrial Court to depart from the new norm and therefore conflict with the almost re-established principle of employment termination.



In the cases referred to above, the Claimants relied on the ILO Convention No. 158 on Termination of Employment (1982) to urge the court to declare the Defendant's termination of the Claimants' employment as unlawful as it was unfair labour practice not to provide a reason for termination of the employees' employment.

The court refused the claim and held that the termination of employment based on "service no longer required" is valid provided that the termination is carried out following the terms of the contract between the parties. The court further refused to apply the ILO Convention No. 158 on Termination of Employment (1982) on the ground that the same is not applicable in Nigeria it is yet to be ratified by Nigeria neither has it been domesticated under section 12 of the Constitution.

The conflicting decisions of the court have created uncertainties in the law on employment as far as termination of employment is concerned. Human Resource practitioners and labour and employment lawyers are thus left in a dilemma as to which side of the divide to follow.

Interestingly, the case of Bello Ibrahim vs. Eco Bank (supra) is currently on appeal to the Court of Appeal. It is hoped that the Court of Appeal's decision, when delivered, will settle the law in this direction and resolve the conflicting decisions of the National Industrial Court.

Conclusion

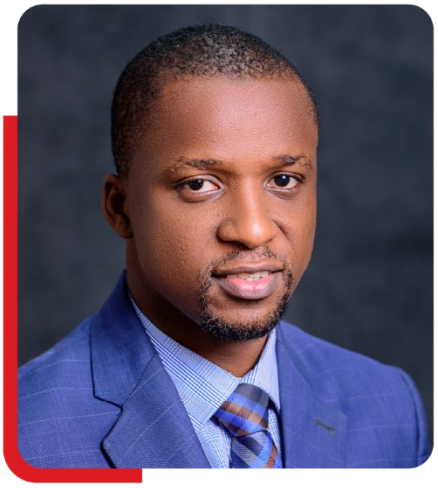
The 2010 Alteration Act has positively impacted Human Resource issues and enables the National Industrial Court to determine whether an employer has acted unfairly or in a manner adverse to international best practices. It has been urged that the common law position which enables an employer to fire at will without reason, should be cushioned by the more humane position which requires a reason for termination.

[10] Unreported Suit No. NICN/ABJ/233/2019 delivered on January 19, 2022
[11] Unreported Suit No: NICN/ABJ/232/2019 delivered on January 19, 2022

This article has demonstrated the tendency of the National Industrial Court to issue a conflicting decision concerning the issue of termination at will. It is therefore the author's opinion that Corporates and Human Resource practitioners should, in the interim, adopt the option which requires the employer to give reasons for termination. Given the multitude of benefits of compliance, no court will penalize an employer for giving the reason for termination. In addition, the ILO Termination of Employment Convention, 1982 which is the current International Treaty on the issue, supports such a practice as international best practice.

In addition, when giving a reason for termination, an employer should ensure that the reason is verifiable and factual.

Author



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