

The Effect of Extant Labour Laws on Human Resource Management in Nigeria

Nick A. Obodo, (Ph.D)
Department of Business Management
Godfrey Okoye University,
Enugu, Nigeria,

Abstract

Human Resource Management in the past has been conducted by the rule of the thumb without a clear guidance of any specific labour law which governs the employees and the employer. The apparent power of omnipotence ascribed to the employer by some schools of thought is of course only a myth. This study is an expository effort on the effect of extant labour laws on human resource management in Nigeria. The study concludes that the extant Labour Laws have contributed immensely to curbing the arbitrariness of employers of labour, particularly the government and private sector, in handling workers' grievances. The presence of these Laws has emboldened the workers to agitate for their rights in a most civilized and democratic way.

Keywords: Labour laws, Human resource management, Employers, Grievances, Democracy

Introduction

Since the inception of the British system of Public Administration in Nigeria towards the close of the last century, Human Resource Management has been conducted by the rule of the thumb without a clear guidance of any specific labour law, which governs the employees and the employer. By a quaint human resource idea, all employees in Nigeria were deemed to hold office at the pleasure of their employer, without legal right to contract of employment, conditions of work, safety at the workforce, wages and salaries administration, pension, and no right of access to court for redress of grievances for breach by the employers. These human resource ideas were derived from the classical schools of management thought. These schools deal with the anatomy of formal organization which could be traced back to Frederick W. Taylor's interest in functional foremanship. Taylor and his followers were all concerned with the problem of labour, though, to the limited extent that labour was seen as a factor of production. In effect, these classical scholars saw little difference between human resources and other resources (materials, information and financial) of an organization.

The apparent power of omnipotence ascribed to the employer by the classical school of management is, of course only a myth. The neo-classical school redresses some of the deficiencies in the classical doctrine especially the dehumanizing experience of the employees. The Neo-classical scholars notably Elton Mayo introduced series of changes to the working conditions of the workers and argued that the organization is a social system; hence the human side of it should be emphasized. Onah (2003:9) noted that the neo-classical scholars emphasized, "The need for enriching the job of workers through challenging and stimulating responsibility and with commensurate authority to enable them perform".

However, towards the end of the first three decades of twentieth century, Nigeria, witnessed a substantive shift from the classical propositions to the new proposition of Elton Mayo. [From 1938 onward, there were remarkable legislative developments that have relevance to human

resource management. These statutory developments were based on the new proposition of the neo-classical school.

Generally, the goal of the extant labour laws was to redress the agonizing and traumatic experience of the workforce resulting from imbalance in the power of the employer and the employee. Although it has been argued that early labour laws in Nigeria were dictated not by a deliberate concern for the conditions of the workers but by social and political necessities. During the colonial era and after independence labour laws were enacted relating to contract of employment;

- Workers condition of work;
- Safety and health at work place;
- Wage and salary administration;
- Trade unions;
- Trade disputes, conciliation, and arbitration.

These extant laws were designed to improve the welfare and economic condition of Nigerian workers and enhance their contribution to national development.

Definition of Concept

Labour Law: This can be defined as the law that governs the complex relationship between employees, management and government, together with their respective organizations, trade unions, employers association and governmental agencies. The position of government, as the single largest employer of labour in Nigeria, complements its sovereign power and control of industrial relation both of which enable the state to establish rules and norms and a wide range of other matters relating to employment relation through its legislative, adjudicative and administrative function (Fashoyin 1992:86).

Industrial Relations: Onah (2003:324) sees industrial relations as "anything that affects the relationship of the individual worker or group of workers with their employers". He further stated that it involves "anything which affects the employee from the time he is interviewed until he leaves his job". Dunlop (1971:6) sees industrial relations as "an area of relations between three principal actors – workers and their organization, managers and their organization, and governmental agencies concerned with the workplace and work community.

Human Resources Management: For the purpose of this study, Cumming's definition of human resource management was adopted. Cumming (1968:21) in Onah (2003:5) maintained that "human resources management is concerned with obtaining the best possible staff for an organization and, having got them, looking after them so that they will want to stay and give of the best to their jobs. To Onah (2003:5) getting the right caliber of people by the process of recruitment to meet the organisation's need is not just enough. Conditions have to be created which would make them stay on the job, happy on the job, and cope with the demands of the job.

Theoretical Approach to the Study

There are many approaches to the study of industrial relations. For the purpose of this study, the systems approach has been favoured. According to Dunlop (1971:5) the systems approach presents a general theory, providing "tools of analysis to interpret and to gain understanding of the widest possible range of industrial relations facts and practices". Dunlop (1971:5) sees industrial relations as an area of relations between three principal actors

– workers and their organizations, managers and their organizations, and governmental agencies concerned with the workplace and work community. He further stated that these actors develop a web rules governing their relations in the workplace and work community in an industrial relations system.

In this respect, industrial relation is viewed as a sub-system in a larger industrial society. This larger society according to Fashoyin (1992:4) provides the external environment which influences industrial relation actors and institutions. Furthermore, Dunlop posits that apart from the actors, an ideology which binds the industrial relations system together and a body of laws created to govern the actors at the workplace and work community.

Due recognition of these imperatives provides, perhaps, the realistic way to understand and accurately synthesize the complex laws that regulate relation at work places in Nigeria with particular reference to human resource management.

The Effect of Labour Laws on Human Resources Management

The part which extant labour laws play in the regulation of human resource activities in Nigeria cannot be underestimated. As stated earlier, the goals of extant labour law was to redress the agonizing and traumatic experience of the workforce resulting from imbalance in the power of the employer and the employee.

However, during the colonial era and after independence, important labour laws were enacted to correct gross defects on human resource activities which include: Contract of employment in Nigeria, conditions of work; safety of workers at workplace, right to wage, hours of work, settlement of disputes, termination of contract and pension.

Contract of Employment

The contract of employment in Nigeria is subject to the general law of contract. The agreement could be oral, in writing or by implication. The Nigeria Labour Act provides that "a contract consists of an offer and acceptance which must be definite and made directly by the offeror to the offeree or to his accredited agent. An acceptance must also be signified in the mode required by the terms of the offer. In other words, the mode of an offer determines the mode of acceptance.

The effect of the Labour Act on human resource management is on the issue of employer/employee relationship or the terms of employment. Section 7⁽¹⁾ of the Act provides that "not later than three months after the beginning of a worker's period of employment with an employer, the employer shall give to the works a written statement" specifying the terms of his/her employment.

A distinction will be drawn between a contract of employment which places most emphasis on the power of the employer to control the work of the employee and a contract for service in which an independent contractor is involved. In the former case, the traditional distinction is that whereas the principal can merely direct what work is to be done by his agent (or his independent contractor), the master may also direct how the work is to be done.

Section 72⁽¹⁾ of the Labour Act prohibits forced labour, and made it a criminal offence for any person to exert forced labour or cause forced labour to be exerted from another.

Employment of Young Persons

Section 58^{(1)(a)} of the Act provides that an infant under twelve years of age cannot be employed other than by a member of his family, and even then, he may only be so employed on light agricultural, horticultural or domestic work approved by the minister of labour. In the

same vein, a non-adult person whose apparent age exceeds sixteen years but is less than eighteen years is restricted to contract of employment in occupations approved by a minister provided such employment is "not injurious" to the moral and physical development of the youth.

Employment of Women

Under the Labour Act, a woman like an infant, may also not enter into any contract to work underground in the mines and may generally not be employed to work at night in an industrial undertaking. But in both cases the provisions with regard to night and underground work are made specifically inapplicable to nurses or women holding managerial positions who do not ordinarily perform manual labour.

Condition of Service

We have noticed that in a contract of employment, the conditions of service are usually spelt out. The contents of these conditions will most likely include the amount of wages, the working hours, holidays, security at work and of employment; they will also include the method by which the contract is to be brought to an end.

Remuneration

Akin (1982:47) noted that "the most important item in a contract of employment is the remuneration attached to the job". Remuneration comprises, salaries wages and allowances or commission which form part of the terms of contract of employment.

Section 14 of Nigeria Labour Act provides that "wages shall become due and payable at the end of each period for which the contract is expressed to subsist, that is to say, daily, weekly or at such other period as may be agreed upon: provided that, where the period is more than one month, the wages shall become due and payable at intervals not exceeding one month". Also section 15 of the Act provides for a right to wages, during "temporary illness," that does not exceed twelve working days of absence in any one calendar year.

Mode of Payment

The Nigerian Labour Act 1974, which re-enacts some of the provisions of the Payment of Wages Act 1960 provides that "the wages of a worker shall in all contracts be made payable in legal tender," and "except where otherwise expressly permitted" by the Act, "wages payable in money shall be paid only in legal tender or, with the prior consent in writing of the worker concerned, by cheque or postal order". Any "payment or purported payment in any other form shall be illegal, null and void".

Deduction from Wages

Section 5(2) of the Labour Act provides that an employer may, of course, deduct from his worker's wages any contributions to any provident or pension fund provided the worker consents. An employer is also permitted to deduct an overpayment of wages to a worker provided such deduction is made in at least three equal monthly installments and does not exceed one-third of the worker's monthly wages at a time.

Working Hours and Holidays

The working hours of an employee and his holidays with pay are normally expressly stated in the contract of employment. Section 2(1)(a) stipulates that working hours of work may be agreed by the parties or by collective bargaining. Under the Act, "no young person under the age of sixteen years shall be required to work for a longer period than four consecutive hours or permitted to work for more than eight working hours in one day. Section 17 of the Act

confers a right to annual holidays with pay on a worker.

Safety of Workers

The duty of the employer for the safety of his worker does not end with his common law responsibility. In the emerging industrial society in Nigeria, statutes have been used to regulate some industrial activities and these statutes have had the effect of imposing additional liability on the employer for the sake of his worker's safety and health.

The Nigerian Factories Act 1956 is the law that governed the safety and health of workers at the work place. The main and relevant provisions are contained in parts IV, V and VI of the Act. Companies are required to provide clean and sanitary environment, good ventilation, lighting and spacious rooms. The provisions on safety are concerned mainly on possible ways of securing all machinery used in the factory that have some dangerous parts. Thus prime movers, fly-wheels and transmission machinery are expected to be fenced in such a way as not to constitute danger to those who work in the premises.

Overcrowding

Section 14⁽¹⁰⁾ of the Factories Act provides that "a factory shall not, while work is carried on, be so overcrowded as to cause risk of injury to the health of the persons employed therein.

Training and Supervision of Inexperienced Employees

With regard to the training and supervision of inexperienced employees, section 28 of the Factories Act provides as follows: "no person shall be employed at any machine or in any process, being a machine or process liable to cause bodily injury, unless he has been fully instructed as to the dangers likely to arise in connection therewith and the precautions to be observed, and

- (a) has received a sufficient training in work at the machine or in the process; or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process".

Part XII of the Act provides for offences, penalties and legal proceedings – "in the event of any contravention in or in connection with or in relation to a factory of the provisions of the Act..."

Trade Union

The Trade Union Ordinance of 1938, conferred legal status on trade union. The Ordinance formally recognized workers organization and also empowered employers to form organizations to represent their interests in labour relations matters. The Ordinance recognizes any union of five workers, whose main purpose was to deal with matters of economic interests to its members, as they affect their employment relationship with employers.

As a general rule, every Nigerian between the ages of sixteen and twenty-one and over is eligible to become a member of a trade union. Yet, it shall be unlawful for persons in the police, prison and armed forces as well as those in the customs preventive services to combine, organize themselves, or to be members of trade union in Nigeria.

Trade Unions Act 1973

The Act, which came into effect on 23rd July, 1973, was divided into five parts, as follows:

- Part I - Trade Union – Registration of trade combinations as Trade Unions. Section 1 of the Act gave the meaning of "trade union" as "any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the

- terms and conditions of employment of workers, whether the combinations in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members".
- Section 2⁽¹⁾ of Trade Unions Act prohibits any unregistered trade union from functioning, while section 3⁽¹⁾ of the Act prescribes the procedure for registration of trade union.
- Part II - of the Act provides for Federations of Trade Unions.
- Part III - of the Act provides for Central Labour Organisation – its formation, powers and mode of admission of further bodies to its membership.
- Part IV - of the Act provides for the accounts and Returns of Registered Bodies, while
- Part V - of the Act cover miscellaneous and General Provisions. Section 47 of the Act provides that the then "Companies Act 1968 shall not apply to any trade union or any federation of trade unions or central labour organization; and the registration of any such body under that Act shall be void".

Trade Disputes Act 1976

This Act came into effect on 7th February 1976, and has a total of six parts.

- Part I - provides for Procedure for Settling Trade Disputes.
- Part II - provides for the Establishment of National Industrial Court; its membership and Jurisdiction.
- Part III - deals with Power to Appoint Board of Inquiry and its Reports.
- Part IV - contains Supplementary Provisions, which covers the National Industrial Court; Arbitration Tribunals, and Boards of Inquiry.
- Part V - of the Act provides for Supplementary Provisions, in relation to the Application of the Act to State Trade Disputes.
- Part VI - contains Miscellaneous and General Provisions in Relation to the Act.

Trade Disputes (Essential Services) Act 1976 section 1⁽¹⁾ of the Act provides for the power to proscribe trade unions or associations in certain cases. Section 1A⁽¹⁾ prescribes penalties for acts calculated to disrupt the economy.

Termination of Contract of Employment

A contract shall be terminated at the expiry of the period for which it was made or by the death of the worker before the expiry of the period, or by notice by either party. The termination of a contract by death of the worker shall be without prejudice to the legal claim of his personal representatives.

Nothing shall prevent either party to a contract to waive his right of notice or from accepting a payment in lieu of notice. All wages payable in money shall be paid on or before the expiry of any period of notice

Transfer to Other Employment

The transfer of any contract of employment from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by an authorized labour officer. The law provides that the officer in question shall ascertain that the

worker's consent has been freely obtained and not by coercion before he (the officer) endorses the transfer.

Suggested Reforms

The object of this title is to examine what appears to the writer as some of the shortcomings and lapses in the existing labour laws in Nigeria. This exercise is desirable if the best possible talents are to be attracted and enhanced for national development.

Minimum Terms of Employment

One of the areas of human resource management which deserves the most urgent attention is that relating to the terms of contract. In Nigeria workers do enter into contracts not accessing the terms, which are not readily available to them. It is, therefore, suggested that:

- a. The letter of appointment of every worker should expressly incorporate the conditions of service, or relevant sections of the Civil Service Rule and regulations pertaining to the service;
- b. Every letter of appointment should expressly stipulate the duration of the contract;
- c. The letter of appointment of an officer should state under what circumstances the officer, irrespective of his rank, may be dismissed or have his appointment terminated.

Welfare of Workers

Nigeria is still some distance away from the realization of the free medical care and universal pension for workers who for the best part of their lives had contributed to national development.

This problem can be effectively tackled by legislation Provisions can be made for the care of workers both in the public and private sectors after their retirement at the age of 60, 65 or even 70, as granted to the university lecturers of professional rank. Under this suggested legislation, it should be made mandatory for employee to contribute certain amount to the scheme on monthly basis. This will enable the worker to receive his gratuity on retirement and his monthly pension, uninterrupted.

Structure of Trade Union

The present structure of the Nigerian Trade Union Movement is irrationally proliferated and out-dated. The government should therefore adopt conscious and positive measures to restructure trade unions preferably along industrial line, in order to accelerate the formation of amalgamation and federations of registered trade unions into bigger and more viable organizations. However, the various unions should make their involvement in strike actions democratic. In other words, their involvement in strike actions should be put to vote and majority opinion followed.

Labour Inspection and Enforcement of Labour Laws

The Government through the inspection functions of the Ministry of Labour should:

- a. secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work.
- b. supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions.

Government should rigorously enforce the provisions of the existing labour laws prescribing minimum conditions of employment and processes of collective bargaining. In this connection, the provisions of the labour laws relating to the protection of wages, contracts of employment, and terms and conditions of employment should be enforced in order to ensure

that workers are not exploited by unscrupulous employers of labour.

Conclusion

The extant Labour Laws have contributed immensely to curbing the arbitrariness of employers of labour, particularly the government, in handling workers' grievances. Prior to the enactment of such Laws as Workmen's Compensation Act 1942; Factories Act 1956; Wages Boards and Industrial Council Act 1973; Trade Unions Act 1973; Labour Act 1974 and Trade Disputes Act 1976, contracts of employment and issues related thereto were not favourable to the interest of the workers, as they were unilaterally handled by the employer. It should, however, be noted that the foregoing Acts, most of which were promulgated as decrees, during the military regime, were revalidated by the National Assembly and variously placed in Chapters and volumes and cited as Cap..... of the Laws of the Federation 1990. The presence of these Laws has emboldened the workers to agitate for their rights in a most civilized and democratic way just as the recently called off Association of Staff Union of Universities (ASUU) strike.

References

- Abel Ubeku (1983): "Industrial Relation in Developing Countries, the case of Nigeria", Macmillan, London.
- Emioka Akin (1985): "Public Servant and the Law", University of Ife Press, Limited.
- Emioka Akin (1982): "Nigerian Labour Law", Ibadan University Press, Ibadan.
- Federal Ministry of Employment, Labour and Productivity (1991), Sahel Publishing Co., Lagos.
- Onah F.O. (2003): "Human Resource Management", Fulladu Publishing Company, Enugu
- Tayo Fashoyin (1991): "Industrial Relation in Nigeria". Longman, London and Lagos.
- Tayo Fashoyin (1981): "Industrial Relations and the Political Process in Nigeria", International Institute for Labour Studies, Research Series No. 69.
- Ukandi GD (1975): "Social Change and Economic Development in Nigeria, Praeger, New York.