



EVALUATION OF THE RIGHT OF REFERRAL PROCEEDINGS UNDER THE TRADE DISPUTE ACT, 2004

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Abstract

Trade disputes have become common and frequent occurrence in both private and public sector organizations, world- wide, and Nigeria particularly. Other countries of the world (especially the western, advanced and well-to do nations) have ever since identified with the immediate solution to curbing the industrial unrest. In Nigeria, for instance, the public universities, among other public institutions, have been engaging in various forms of strike actions. Recently, the public universities were on industrial action, while their private counterparts carry on their full academic activities. It is against this background that this study makes a comparative analysis concerning trade dispute settlement in public and private universities in Nigeria. The major findings in the paper revealed that, the objective of trade union is to protect the interests of their members. This includes all employment related matters such as wages and salaries etc. We therefore, draw our conclusion and recommended among other things that, a flexible organizational structure should be instituted to improve the relationship between management and staff.

Introduction

Trade dispute is a common occurrence in both private and public sectors owing to the fact that the goals and objectives of staff and management in any given organization differs. For instance, the employees tend to seek for improved welfare while the management may desire high turn-over and improved Employment. The continuous desire of each party (employee and employer) to achieve individual or collective objectives may end up in trade dispute. Therefore, there are laid down laws meant for trade dispute settlement in any organized society where there are developments in commerce and communication.

According to Eweluka², the regulatory effect of law on human conduct, in present day society cannot be over emphasized. It is the availability of law that makes man's behaviour in any given situation controllable. He maintained that law in a society means order, peace, stability

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² Eweluka, U. U., "African Women and the Law: Historical and Contemporary Perspectives." *Journal of African Law*, (2004), 48(2), 207-224.

and progress. Also, Mbanefo³ opined that laws relating to industrial relations have to do with collective relations namely, trade unions, collective bargaining, wage fixing machinery, industrial disputes settlement, joint consultations, grievance resolutions, arbitration, conciliation and industrial Court system⁴.

The University worldwide is regarded as the citadel of knowledge, the fountain of intellectualism and the most appropriate ground for the incubation of leaders of tomorrow. According to Okene,⁵ a university fulfills, one major function, it is a knowledge and value provider, it stands or fails in its ability or inability to deliver on these criteria. According to Magna Carta universitatum, "the university is an autonomous institution at the heart of societies is differently organized because of geographically and historical heritage; it produces, examines, appraises and hands down culture by research and is an enterprise that serves multidisciplinary purposes. This according to Nwankwo⁶ explains why merit has been the watchword in the university system – a system a student must first be certified worthy in character and learning before being admitted into the Honours Degree Hall.

However, over the last thirty years, most State and Federal institutions of higher learning in Nigeria have witnessed an unprecedented industrial unrest due to incessant strike action by labour unions. In his own contribution, Nwankwo⁷ opined that Nigeria educational institutions, characterized by military intervention in governance have witnessed untold negative political interference and a seeming calculated moves to submerge it in the river of irrelevances. He further argued that those in authorities see universities as a burden and as institutions to be exploited and left desolate. The manifestations are in form of cultism, brain drain, under funding by government, erosion of academic freedom, general insecurity, dilapidated structures, and non-payment of university staff salaries. These are indications that all is not well with the Nigeria university system. It is against the above background that this study intends to carry a comparative analysis of trade disputes settlement mechanism between the public and private sectors in Nigeria.

Conceptual Clarifications And His Historical Development

1. Trade Dispute

Trade Dispute means any dispute or difference between employers and workmen, or between workmen and workmen, connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, of any person; trade dispute means any dispute

³ Mbanefo, L. N., "The Role of Alternative Dispute Resolution in the Settlement of Commercial Disputes." *Nigerian Journal of International Affairs*, (2001)27(1-2), 119-131.

⁴ Uvieghara, E. E. *Labour Law in Nigeria*. (Malthouse Press, 2001).

⁵ Okene, O. V. C. . Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria. *Journal of Research in National Development*, (2009) 7(1).

⁶ Nwankwo, O. B. C. "Trade Union Militancy and the Crisis of Collective Bargaining in Nigerian Universities." *Journal of Industrial Relations*, (2018) 60(4), 541-559.

⁷ Ibid.

between employers and employees, or between employees and employees, which is connected with the employment or non-employment or the terms of employment or the conditions of employment of any persons, whether employees in the employment of the employer with whom the dispute arises, or not; trade dispute means any dispute between employers and workers which is connected with the employment or nonemployment, or the terms or conditions of or affecting the employment, of any person.

2. Trade union (or workers' organization).⁸

Sec. 1(1) Trade Union Act⁹ states: "trade union" means 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 combination 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."

3. Conciliation

This is the amicable resolution of a dispute. It involves a method of alternatives dispute resolution whereby a third party meets with the parties and assists them in finding a way to settle their dispute. Conciliation is carried out by the members of the industrial court in accordance with section 12 of the industrial relations Act, chap 88.¹⁰ It is at the request of the parties, matters are referred for conciliation before a member of the court. Parties can make such a request.

4. Referral Letter

A referral letter is a formal document written by a professional, typically a medical practitioner or an academic, to transfer the care, supervision, or assessment of an individual to another professional or institution¹¹. In the context of higher education and labor disputes, a referral letter may be used to escalate a matter from one level of authority to another, or to redirect a dispute from an internal resolution mechanism to an external body. It serves as an official communication that outlines the pertinent details of the case, the reasons for referral, and any relevant background information that may assist the receiving party in addressing the matter effectively.¹² The referral letter plays a crucial role in ensuring continuity of process, maintaining procedural integrity, and facilitating informed decision-making in the resolution of complex disputes or issues.

⁸ Nwoke, U. *Collective Labour Law in Nigeria*. Malthouse Press (2017).

⁹ Sec. 1(1) Trade Union Act, Cap. T14 LFN 2004.

¹⁰ Section 12 of the industrial relations Act, chap 88:01

¹¹ Adewale, O. A. "The Role of Referral Letters in Dispute Resolution: A Case Study of Nigerian Universities." *Journal of Educational Administration and Policy Studies*, (2015) 7(2), 32-40.

¹² Nnamani, S. O., & Oyibe, O. A. "Effectiveness of Referral Systems in Tertiary Institution Conflict Management." *International Journal of Academic Research in Business and Social Sciences*, (2016) 6(5), 321-334.

Referral letter is a process where the members of conciliation will write and referred the dispute to the court on the ground of failure to settle or a breakdown in negotiations for court to adjudicate, and it must be initiated by the minister.¹³

4. History Of Conciliation

The Conciliation process at the Industrial Court stemmed from the development of the Industrial Relations System in Trinidad and Tobago, which started with the enactment of the Trade Disputes (Arbitration and Inquiry) Ordinance of 1938¹⁴. This Ordinance laid the foundation for the determination of disputes through collective bargaining, and was the first in formally legislating the use of the conciliation technique as part of the formal structure of the Industrial Relations System. This Ordinance was then repealed and replaced by the Industrial Stabilisation Act of 1965¹⁵, which established the Industrial Court and included provisions for the Court to settle disputes by conciliation.

The Industrial Stabilisation Act, 1965¹⁶ was repealed and replaced by the Industrial Relations Act (IRA), 1972¹⁷ “to make better provision for the stabilisation, improvement and promotion of industrial relations”. The IRA retained the provision to settle disputes by conciliation¹⁸.

Legal Framework For The Settlement Of Trade Disputes In Nigeria

The first legal framework for the settlement of trade disputes in Nigeria was contained in the Trade Disputes (Arbitration and

Inquiry) Act 1941¹⁹. Under that regime, government intervention in trade disputes was on invitation or with the consent of the parties. Under the Act, the stakeholders in the industrial relations system bore the primary responsibility of resolving their disputes using the mechanisms of negotiation, collective agreement and, where necessary, industrial action. However, this system of voluntarism was replaced with compulsory arbitration during the war period with the promulgation of the Trade Disputes

(Emergency Provisions) Decree 1968²⁰ banning strikes and lockouts, which was reinforced by the Trade Unions (Emergency Provisions) (Amendment) (No. 2) Decree 1969 which established the Industrial Arbitration Tribunal as the first permanent institution for the settlement of trade disputes. These Decrees seriously eroded the freedom of the parties to a trade dispute in the sense that the Minister of Labour was empowered to set into motion the machinery for settlement of trade disputes without the consent of the parties. It has been argued, quite correctly, that the provisions are honoured in the breach rather than in

¹³ Okoroma, N. S. "Admission Policies and the Quality of University Education in Nigeria." *Educational Research Quarterly*, (2008) 31(3), 3-24.

¹⁴ Trade Disputes (Arbitration and Inquiry) Ordinance of 1938

¹⁵ Industrial Stabilisation Act of 1965

¹⁶ Industrial Stabilisation Act, 1965

¹⁷ Industrial Relations Act (IRA), 1972

¹⁸ see section 12 of the IRA

¹⁹ Trade Disputes (Arbitration and Inquiry) Act 1941.

²⁰ Trade Disputes (Emergency Provisions) Decree 1968 ²⁰ Trade Disputes Act, Cap. T8 LFN 2004.

their observance. This was evident in the massive wave of strikes that followed the earlier decree after an initial period of quiet. Thus, the institutionalization of trade dispute settlement and the ban or restrictions on the right to strike are not capable of eradicating strikes. The current legal framework for the resolution of trade disputes is contained in the Trade Disputes Act 1976²⁰ as amended, the Trade Disputes (Essential Services) Act 1976²¹ as amended, the National Industrial Court Act 2006²² and the Constitution of the Federal Republic of Nigeria (Third Alteration)

Act 2010²². The National Industrial Court Act 2006²³ repealed Part II of the TDA. However, the trade dispute resolution processes in Part 1 of the TDA are saved under the National

Industrial Court Act 2006.²³

Procedure For Trade Disputes Resolution

There are four ways of resolving trade disputes under the Trade Dispute Act. These are: a.

Resolution by the parties themselves

b. Resolution by a conciliator

c. Resolution by arbitration, and

d. Resolution by court.

We shall discuss of each of these briefly;

a. Resolution by the Parties Themselves

The provisions of the Act²⁴ is such that the employer and the trade union are expected and encouraged to always resolve for themselves whatever trade dispute that may arise between them. As a result, the parties are free to enter into collective agreement which will incorporate the method by which they can settle their disputes.

The Act further provides that the collective agreement be deposited with the Minister of Labour and Employment, failure of which attracts a fine of N100 on conviction. On the strength of the settlement clause in the collective agreement, the parties are required by law to settle their trade disputes themselves.

However, where the collective agreement does not contain a settlement provision, or if one exists but the parties fail to reach a settlement, the Act provides that the parties should “meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties

²¹ Trade Disputes (Essential Services) Act Cap. T8 LFN 2004.

²² Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 ²³ National Industrial Court Act 2006.

²³ National Industrial Court Act 2006.

²⁴ Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria 2004.

with a view to amicable settlement of the dispute”.²⁵

Notwithstanding the foregoing, where the minister becomes aware of a trade dispute between the parties, he may *suo motu*, inform them or their representatives in writing of his observation and of what steps he proposes to take for the purpose of resolving the dispute. In this regard, the minister may appoint a conciliator to inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement. Alternatively, the minister may refer the dispute for.²⁶

b. Resolution By A Conciliator

The minister may exercise his discretion to appoint a conciliator under two circumstances – first is where he, without allowing the parties to settle the disputes themselves, appoints a conciliator to inquire into the matter. The second, is where the parties could not resolve the dispute themselves or through their mutual mediator, then the appointment of a conciliator may become necessary. The conciliator must be a fit person whose duty is to effect a settlement of the dispute between the parties. Where the request to conciliate has been accepted by the other party the dispute is then referred to a conciliation body consisting of one or three conciliators to be appointed:-

- a. In case of one conciliation (jointly by the parties)
- b. In case of three conciliators
 - i. One conciliator by each
 - ii. The third conciliator jointly by the parties.

Section 41(1) of the Act²⁷ provides the conciliation body shall acquaint itself with details of the case and procure such other information, as it may be required for the purpose of settling the case.

After the conciliation body had examined the case and heard the parties, it shall submit its terms of settlement to the parties. If the parties agree to the terms of settlements, the conciliation body shall draw up and sign a record of the settlement. The conciliator shall thereafter forward to the minister the terms of settlement signed by the representatives of the parties and decision reached shall be binding as from the date which the memorandum is signed. But if the agreement is not reached and dispute not settled, the Minister shall report the case for settlement to the industrial arbitration panel. The Minister is obligated on receipt of any objection to make a referral to the National Industrial Court (NIC) which under the law, is the apex court on industrial dispute matters. This implies that unlike other courts where litigants can sue and be sued directly, only the Minister can refer trade disputes to the industrial court in cases other than in appeal cases where the party has the right to appeal directly to the

²⁵ Section 4(1) of the Trade Disputes Act, Cap. T8, Laws of the Federation of Nigeria 2004.

²⁶ Okene, O. V. C. Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria. *Journal of Research in National Development*, (2009) 7(1).

²⁷ Section 41(1) of the Act

court where he objects to the award made out either at the conciliation level or at the Industrial Arbitration Panel thereafter known as IAP.²⁸

c. Resolution By Arbitration

One of the ways and the most civilized method of settling dispute is arbitration whereby those concerned agree to submit the dispute to a third party in whom both have confidence and undertake to abide by the decision of the said party.

Arbitration practice is as old as the history of human civilization. It is as old as mankind himself. It has a history that goes as far back as the medieval ages. In many parts of the world, forms of arbitration are known to have existed in much earlier times.²⁹

In fact, in classical Roman times, all settlements of disputes were by private arbitration with the approval and assistance of a magistrate the pretor, elected annually for that purpose. So, what is arbitration? Ordinarily, arbitration is the use of an arbitrator to settle a dispute. An arbitrator is an independent person or body officially appointed to settle dispute that is to say that arbitration is different from going to court and asking the court to enforce a legal claim against someone or against some company, or against the state itself. So arbitration is another way of enforcing a claim. Halsbury's Laws of England arbitration as the reference of a dispute or differences of a dispute between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. So from the foregoing, arbitration must involve a reference of a dispute or difference, there must be two or more parties to the dispute, and the hearing must be in a judicial manner, by a competent person other than the court. It should however be noted that arbitration is different from mediation, negotiation and conciliation which are forms of alternative dispute resolution (ADR).³⁰

The Minister may refer the trade dispute to the Industrial Arbitration Panel when a mediator appointed by the parties under

Section 3(2) of the Act³¹ could not resolve the matter or may refer such matter to an arbitration tribunal when he becomes aware of a pending dispute between the parties. This may entail his bypassing the use of a conciliator to settle the dispute.

²⁸ Mbanefo, G. F. "Alternative Dispute Resolution and the Courts in Nigeria." *Nigerian Law and Practice Journal*, (2014) 13(1), 115-134.

²⁹ Ibid.

³⁰ Ibid.

³¹ Section 3(2) of the Act.

Industrial Arbitration Panel (IAP)

Industrial arbitration panel is a statutory arbitration that arises out of a statute which provides that disputes of a particular class are to be settled by arbitration. Section 4 (2)(a) of the Act³² empowers the Minister to refer the dispute to the Industrial Arbitration Panel (IAP). Note that the Minister wields enormous powers under the law as he could, by virtue of Section 32 of the Act³³ also appoint a board of inquiry when a trade dispute exists or is appointed to investigate the causes and circumstances and make a report thereon. The Minister also exercises enormous powers as to his options upon receipt of an objection from any party to the trade dispute. Under the law, he could forward such objection to the NIC or he could decide to redirect the award back to the IAP for reconsideration as in Section 11(2)(d)³⁴ This statutory arbitration will be under such heads as hearing, award and enforcement in a matter.

4. The Role Of The Minister Of Labour And Employment

Under the Trade Disputes Act, which is the principal legislation that details with the settlement of industrial disputes in Nigeria, the Minister has both powers to intervene into a trade dispute for the purpose of settling it or to await its report by either of the parties for his settlement. Though the Minister can apprehend a dispute and communicate to the parties or their representatives what he propose to do for the purpose of settling same. The Act provides

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that, where there exist an agreed means for settlement of the dispute apart from this Act, whether by virtue of the provisions of any agreement between organizations representing the interest of employers and organization of workers or any other agreement, the parties to the dispute shall first attempt to settle it by that means.³⁵

By this section, the power of the Minister to apprehend and intervene in a trade dispute for the purpose of settlement is subject to an existing agreed means of settlement by the parties or their representatives. Though the Act is not clear on this, one can argue that, for the purpose of public safety and security base on the doctrine of overriding public interest, it is tenable to argue that, even where the parties have so agreed but the nature of the dispute is such that, the agreed method may not curb its adverse impact on the society or appears to be inadequate in bringing about an amicable and speedy settlement, the Minister may nevertheless bypass their agreement and intervene. If the attempt to resolve the dispute by any agreed means of settlement fails or if no agreement exist, the parties must within seven days of the failure, or seven days from the date on which the dispute arose, or was first apprehended where no means of settlement exist, meet together by themselves or their representatives meets with a

³² Section 4 (2)(a) of the Act.

³³ Section 32 of the Act.

³⁴ section 11(2)(d).

³⁵ Nwankwo, O. B. C. "Assessing the Effectiveness of Conflict Resolution Techniques in Selected Nigerian Universities." *African Journal on Conflict Resolution*, (2015) 15(3), 3558.

Mediators mutually agreed upon and appointed by or on behalf of the parties with a view to have the dispute settled amicably.³⁶

However, if within seven days of the appointment of the Mediator, there is no settlement, the dispute shall be reported to the

Minister by or on behalf of either of the parties within three days of the end of the seven days. Such a report shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.

It is pertinent at this juncture to point out that, under the Trade Disputes, Trade Union, and Labour Acts, no clear dichotomy is made between the powers and functions of the Minister of Labour and Employment in the settlement of trade disputes. However, a keen perusal at the provisions of the Acts, judicial and academic exposition on the subject, an attempt has been made to distinguish the two though, the distinction serves little or no utilitarian value to the discussion of the subject matter herein discussed. This notwithstanding, we shall endeavor to look at the provisions that are power conferring first and those that are duty imposing subsequently without any special order. This is done, solely for the purpose of accuracy of presentation and precision in understanding and not an attempt to create any concrete distinction as such is considered unnecessary for this exercise and medium.

The Power of the Minister of Labour

A critical perusal of the Trade Disputes Act will reveal the following as the powers of the Minister of Labour and Employment in the settlement of industrial disputes.

(a) Power to make Binding either in part or whole any Collective Agreement between an Employer and Workers:

Generally, collective agreements are only binding in honour between the parties to whom it relates and therefore nonjusticiable though it is the product of voluntary, deliberate and painstaking negotiation between the parties. The Minister is empowered under the Act, upon receipt of copies of a collective agreement deposited in accordance with the Act, to make an order, the terms of which may in respect of that agreement specify that the provisions of the agreement or any part thereof as may be stated in the order shall be binding on the employers and workers to whom they relate.

Any party who fails to comply with the terms of the said order, shall be guilty of an offence and shall be liable on conviction to a fine of N100 or to imprisonment for a term of 6 (six) months. Though collective agreements once incorporated expressly or impliedly into the contract of employment become binding on the parties thereof.

This express or incorporation by necessary implication can only be done after the approval of the Minister has been given going by the tenor of section 3 (3) of TDA³⁷.

³⁶ Ibid.

³⁷ section 3 (3) of TDA

- (b) Power to direct Parties to comply with any agreed Settlement means by the Parties or their Representatives:** pursuant to the extant provisions of the Trade Disputes Act, if the Minister is not satisfied that the requirement for internal/party agreed settlement means has been substantially complied with, he has the power to issue to them a notice in writing specifying the steps which must be taken to satisfy those requirements (i.e. sections 4 and 6 of the Trade Disputes Act³⁸) and may specify in the notice the time within which any particular step must be taken. Where after the expiration of the period specified in the notice issued above or, if no period is specified, after the expiration of fourteen days following the date the notice is issued, the dispute remains unsettled and the Minister is satisfied that the steps specified in the notice have been taken or that either party is, on its part, refusing to take those steps or any of them, the Minister may proceed to exercise such of his powers under section 8, 9, 17 or 33 of the Trade Disputes Act³⁹ as may appear to him appropriate in the circumstance.
- (c) Power to appoint a Conciliator :** The Minister has the power upon the failure of the parties through any agreed means as required of them to settle the dispute or where one exists and on their mutual agreement a mediator is appointed but the mediator is also unable to fine tune an agreement, appoint a fit person to act as conciliator for the purpose of effecting a settlement of the dispute by inquiring into the cause or causes and circumstances of the dispute by negotiating with the parties and endeavor to bring about a settlement.

The Conciliator so appointed does not conciliate as an appointee of the parties to the dispute but as a representative or agent of the Minister though he is to abide by the rules and procedures regulating conciliation as a means of alternative dispute resolution mechanism.

- (d) Power to refer the Dispute to Industrial Arbitration Panel upon failure of the Conciliation:** If a settlement of the dispute is not reached within seven days of his appointment, or if, after attempting negotiation with the parties, he is satisfied that he will not be able to bring about a settlement of the dispute, the person appointed as Conciliator shall forthwith report this fact to the Minister of Labour and Employment. Within fourteen days of the receipt by him of a report under section 8 of the Trade Disputes Act, the Minister shall refer the dispute for settlement to the Industrial Arbitration Panel established pursuant to Section 9 of the Trade Disputes Act.

The use of the word “shall” with reference to Ministerial referral of the dispute to the Industrial Arbitration Panel (IAP) makes it more of a duty just as it is a power.

- (e) Power to refer the Award of the Tribunal back to the Tribunal for**

³⁸ sections 4 and 6 of the Trade Disputes Act

³⁹ section 8, 9, 17 or 33 of the Trade Disputes Act

Reconsideration: An Arbitration panel constituted by the Minister pursuant to section 9 of the Trade Disputes Act⁴⁰, shall make its award within 21 days of its constitution or such longer period as the Minister may in any particular case allow. The award shall be send to the Minister and not to either of the parties thereto. Where on the receipt of the award of the tribunal the Minister considers it appropriate to do so, he may refer the award back to the tribunal for reconsideration and shall cause a copy of the award to be communicated to the parties until the tribunal has reconsidered the award.

- (f) Power to refer the dispute to National Industrial Court if the Industrial Arbitration Tribunal's Award is objected to by either of the Parties:** If notice of objection to the award of an arbitral tribunal appointed under section 9 of the Act is given to the Minister within the time and in the manner specified in the notice by the Minister to the parties or their representatives communicating the award to them, the Minister shall forthwith refer the dispute to the National Industrial Court whose award/decision shall be binding on the parties it relates to from the date it is given.
- (g) Power to appoint Board of Inquiry:** Where any trade dispute exist or is apprehended, the Minister may cause an inquiry to be made into the causes and circumstances of the dispute and, if he thinks fit, may refer any matter appearing to him to be connected with or relevant to the dispute to a board of inquiry appointed for the purpose by the Minister. The board so constituted shall inquire into the matter referred to it and report its findings thereon to the Minister.

ii. The Functions of the Minister of Labour

Below are the functions statutorily ascribed to the Minister with regards to the settlement of trade disputes:

(a) Duty to publish an Award of the Industrial Arbitration Panel in the Federal Gazette: Upon receipt of the award of the IAP and there is no objection to same nor it is considered desirable to refer back the award for reconsideration, the Minister is thereto with the Minister. Subject to the provisions of this Act, the Minister may, upon receipt of copies of a collective agreement deposited in accordance with subsection (1) of this section, make an order, the terms of which may in respect of that agreement specify that the provisions of the agreement or any part thereof as may be stated in the order shall, be binding on the employers and workers to whom they relate.

An analysis of the nature of collective bargaining from which collective agreement results is necessary in order to underscore the importance of analyzing the Minister's power to give binding force to collective agreements. Collective agreement is a term coined by Beatrice

Webb⁴¹ in the 19th century to describe the arrangement concerning pay and other conditions of employment settled between the trade union on the one hand and employers on the other

⁴⁰ Section 9 of the Trade Disputes Act

⁴¹ Davis, J. "Webb [née Potter], (Martha) Beatrice (1858–1943), social investigator, Fabian socialist, and historian". Oxford Dictionary of National Biography. Oxford University Press. (2004) <https://doi.org/10.1093/ref:odnb/36799>

hand; meaning a negotiation in which the employees do not bargain individually, and on their own behalf, but do so collectively through their representative which in most cases is a trade union.

Its nature is continuing institutional relationship between an employer entity (government or private) and labour organization (union or association) representing exclusively, a defined group or employee of said employer (appropriate bargaining unit) concerned with the negotiation, administration, interpretation and enforcement of written agreements covering joint understandings as to wages or salaries, rates of pay; hours of work and other conditions of employment.⁴²

It is the practice of settling wages claims, conditions of work, Employment and related matters through bargaining between trade unions, representing employees, and organizations representing employers.

It can be gleaned from the above that, collective bargaining is characterized by the following:

- (i) It presupposes the recognition by the employer of a trade union or workers association;
- (ii) It presupposes a voluntary agreement between the employer and employees or their union (association);
- (iii) It presupposes an understanding of the existence of a trade dispute and willingness to settle it or at least attempt to do so by the bargainers. (iv) It presupposes an understanding that, there may or will be an agreement.

Without much ado, one may wish to ask, what is the purport and import of submitting collective agreement voluntarily reached between consenting parties for approval by the Minister of Labour and Employment for it to become binding in whole or any part thereof as the Minister may so approve? This requirement of the Trade Disputes Act, is faulty and undemocratic base on several factors. First, it is of common knowledge that the Minister of Labour and Employment by virtue of section 147 (1) (2) (3)⁴³ of the Constitution of the Federal Republic of Nigeria, 1999 (As amended) is a member of the Federal Executive Council, by section 148 thereof, the duties the Minister is expected to performed are as assigned to him by the President. In the discharge of his functions, the interest of the government is the paramount consideration. Where the Federal Government or any of its

agency (like it is mostly the case) is a party to a collective agreement which has to be deposited with the Minister to choose and pick whether it will be binding wholly or in part, this will naturally tantamount to affording a party to the agreement a 'second chance' to the already concluded agreement through its agent. This will mean, the Government can through the Minister scrupulously amend the collective agreement to suit its taste at the detriment of the employee, a situation of double standard.

⁴² Suleiman, B. "The Effects of ASUU Strike on Students' Performance in Entrepreneurship Studies in Nigerian Universities: A Study of University of Maiduguri".

Journal of Humanities and Social Science, (2013) 17(5), 1-7.

⁴³ section 147 (1) (2) (3).

Besides, the law that empowers the minister to determine the extent of bindingness of a collective agreement, does not provide the principles that shall guide the exercise of this power by the minister nor is there any provision made, for a party who is aggrieved by the exercise of this power to seek redress. Thus, in the exercise of this all-important power, the Minister is left to use his absolute and unguided discretion to determine the fate of an agreement. This unrestrained use of discretion, as examples have shown, is susceptible to abuse. Thus, tenet of justice requires that, any person who will or must be an arbiter where the determination of the rights and obligations of persons is in issue, such an arbiter must not only be presumed neutral but must in fact be neutral in all ramification. The Minister, as an officer of the Government, whose powers, functions and remuneration is determined by the Government is the least to be considered as neutral in dealing with any matter that the government whom he works with and works for is a party. Besides, the truth remains that, he who pays the piper dictates the tune. Also, it is a cardinal principle of natural justice that, a man shall not be a judge in his own cause (*nemo iudex in causa sua*) but, the requirement of the Act, that collective agreements be deposited with the Minister for determination of the extent to which it shall be binding between the parties goes to negates this. Where the government is a party to such an agreement and the Minister is to so sanction, the fact is, it is the same government that is sanctioning such an agreement through its agent, the minister and there is bound to be no equality in doing so.

The doctrine of equality which is a cardinal in labour, by this statutory provision, is further shown to be a myth than reality as there is no justification for submitting an agreement reached between two equal persons to the approval of one of them, howbeit, indirectly. Moreover, the provision directly subjugates the product of the voluntary determination of the parties thereto to the quirks and caprices of the Minister who is not a party to such an agreement and as far as such a collective agreement is not offensive to the generality of the public by offending any law or established rule or convention, the administrative blessing of no other person should be necessary for it to become binding between the parties. The ordinary doctrine of *pacta sunt servanda* should be invoked to give approval to such an agreement once it is shown that the parties intended it to be binding. The monumental power of the Minister is further explicated by section 43(2) of the Trade Disputes Act⁴³ as to the determination of whether a lock-out has taken place or not and such a determination is final and binding. The section provides that, “if any question should arise as to whether there has been a lock-out for the purposes of this

section, a question shall on application to the Minister by the workers or their representatives be determined by the Minister whose decision shall be final” No doubt, the state of the law in Nigeria in relation to enforceability of collective agreement to say is obsolete is the epitome of an understatement.

Trade Dispute Settlement In Public And Private Universities In Nigeria

Trade dispute settlement in Nigerian universities, both public and private, has become an increasingly important issue in recent years. As labor conflicts between university management and staff unions continue to arise, effective mechanisms for resolving these

⁴³ Section 43(2) of the Trade Disputes Act

disputes are crucial for maintaining stability in the higher education sector⁴⁴. The primary actors in these disputes typically include academic staff unions, non-academic staff unions, and university administrations⁴⁵. The settlement processes often involve negotiations, mediation, and sometimes arbitration, with the government frequently stepping in as a mediator in public universities⁴⁶. Private universities, while not directly under government control, are still subject to national labor laws and may seek external mediation in severe cases. The effectiveness of these settlement mechanisms varies, with some disputes resolved quickly while others lead to prolonged strikes, affecting the academic calendar and overall quality of education.⁴⁷

The Nigerian educational system especially the tertiary, is yet to recover from the hazardous experience of over 6 (six) months strike action embarked upon by the Academic Staff Union of Universities owing principally to the non-implementation of the agreement voluntarily reached between the Federal Government and A.S.S.U in 2022. If the agreement was meant to be self-enforcing once reached and not subject to the whims and caprices of the Minister, the avoidable delay and obstruction in the academic calendar of all the tertiary institutions in Nigeria with its concomitant effect would have been prevented.

As a way of consolidating on Nigeria's nascent democracy towards attainment of industrial tranquility and the compelling winds of industrial democracy blowing across the nations of the world, it is pertinent and urgent for review and deletion of section 3(1) of the Trade Disputes Act⁴⁹.

Comparative Analysis Concerning Trade Dispute Settlement In Case The Case Of ASUU And The Federal Government Of Nigeria The Academic Staff Union of Universities (ASUU) has been involved in numerous disputes with the Federal Government of Nigeria over the years. These disputes often revolve around issues such as funding, university autonomy, and working conditions. The case⁴⁸ represents a significant legal confrontation between ASUU and the Federal Government.

⁴⁴ Okoroma, N. S. Admission Policies and the Quality of University Education in Nigeria. *Educational Research Quarterly*, (2008) 31(3), 3-24.

⁴⁵ Ajayi, I. A., & Ekundayo, H. T. The Deregulation of University Education in Nigeria: Implications for Quality Assurance. *Nebula*, (2008) 5(4), 212-224

⁴⁶ Okuwa, O. B., & Campbell, O. A. The Influence of Strike on the Choice of Higher Education Institutions in Nigeria. *Journal of Education and Practice*, (2011) 2(4), 88-96.

⁴⁷ Anyamele, S. C. (2004). Institutional Management in Higher Education: A Study of Leadership Approaches to Quality Improvement in University Management - Nigerian and Finnish Cases. University of Helsinki, Department of Education Research Report (2004) 195. ⁴⁹ section 3(1) of the Trade Disputes Act

⁴⁸ *ASUU vs Federal Govt & Anor* NICN/ABJ/270/2022.

Dispute Resolution Mechanisms

Traditionally, ASUU and the government have engaged in direct negotiations to resolve disputes. This process involves representatives from both parties meeting to discuss grievances and potential solutions. In the case at hand, negotiations had reached an impasse, leading to a prolonged strike.⁴⁹

The Federal Government's decision to take legal action⁵⁰ marks a departure from the usual negotiation process. This move indicates a shift towards using the judicial system to resolve the dispute, rather than relying solely on collective bargaining.⁵¹

The case being heard at the National Industrial Court of Nigeria (NICN) highlights the court's role in settling trade disputes. This approach differs from previous disputes where resolution was primarily sought through negotiation and occasional government intervention.⁵²

By taking legal action, the Federal Government aimed to compel ASUU to end its strike. This approach demonstrates a more assertive stance compared to previous disputes where the government often yielded to prolonged negotiations.

ASUU's engagement in the legal process, while continuing to advocate for its demands, shows a willingness to participate in formal dispute resolution mechanisms. However, this also indicates a potential erosion of trust in the traditional negotiation process.⁵³

This case sets a precedent for using legal channels in resolving academic union disputes. It may influence how future disagreements between ASUU and the government are approached, potentially leading to more frequent recourse to the courts.⁵⁴

⁴⁹ Odiagbe, S. A. *Industrial Conflict in Nigerian Universities: A Case Study of the Disputes between the Academic Staff Union of Universities (ASUU) and the Federal Government of Nigeria (FGN)*. (PhD Thesis, University of Glasgow, 2012).

⁵⁰ *Federal Government of Nigeria vs Academic Staff Union of Universities (ASUU)*, NICN/ABJ/270/2022, National Industrial Court of Nigeria.

⁵¹ Okene, O. V. C. (2009). Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria. *Journal of Research in National Development*, (2009) 7(1).

⁵² Uvieghara, E. E. *Labour Law in Nigeria*. (Malthouse Press, 2001).

⁵³ Adeniji, M. A., & Adedeji, S. O. "Trends of Academic Staff Union of Universities (ASUU) Strikes in Nigeria". *KIU Journal of Humanities*, (2019) 4(2), 101-109.

⁵⁴ Nwoke, U. *Collective Labour Law in Nigeria*. (Malthouse Press, 2017).

The court's involvement brings public interest into sharper focus, as prolonged academic strikes significantly impact students and the education sector. This legal approach may be seen as an attempt to expedite resolution in the interest of the broader public.⁵⁵

The government's move to seek legal intervention could be interpreted as an attempt to shift the power balance in trade dispute negotiations with ASUU. This approach may influence the dynamics of future negotiations between the union and the government.⁵⁶

While legal action may provide a definitive resolution, it could potentially be a lengthier process compared to successful negotiations. The effectiveness of this approach in addressing the root causes of recurring disputes remains to be seen.

The court case might limit the flexibility for compromise that is often possible in direct negotiations. However, it could also provide a structured framework for resolving key issues.

The case of *Minister of Labour and Employment, Federal Government & Another v ASUU*⁵⁹ represents a significant shift in the approach to settling trade disputes in Nigerian universities. It highlights the tension between traditional negotiation methods and legal interventions, potentially reshaping the landscape of labor relations in the Nigerian higher education sector. The outcome and implications of this case will likely influence future dispute resolution strategies between academic unions and the government.

Conclusion

This work has studied and evaluated the legal frameworks for adjudication of industrial disputes in Nigeria. A fair and just determination of industrial disputes is a sine quo non for industrial peace and stability which, again, ultimately impacts positively on output and economic growth. The principal legal frameworks for adjudication of industrial disputes in Nigeria are the 1999 Constitution of Nigeria as amended by the Third Alteration Act,

2010⁵⁷; the National Industrial Court Act, 2006⁵⁸ ; and the National Industrial Court of Nigeria (Civil Procedure) Rules, 2016⁵⁹ . The laws and Rules mentioned above have taken comprehensive steps to ensure harmony in the industrial sector for better output and economic growth. But there are still inherent setbacks that have been examined.

For effective adjudication of industrial disputes in Nigeria, the principal legal instruments, namely, the Constitution of Nigeria; the National Industrial Court Act, 2006⁶⁰ ; and the National Industrial Court of Nigeria (Civil Procedure) Rules, 2017⁶¹ should be amended or

⁵⁵ Olulu, R. M., & Udeorah, S. A. F. The Principle of Collective Bargaining in Nigeria: An Evaluation. *International Journal of Business and Law Research*, (2018) 6(1), 22-31.

⁵⁶ Okene, O. V. C. "Collective Bargaining, Strike and the Quest for Industrial Peace in Nigeria". *Journal of Research in National Development*, (2009) 7(1). ⁵⁹ NICN/ABJ/270/2022

⁵⁷ Third Alteration Act, 2010.

⁵⁸ National Industrial Court Act, 2006.

⁵⁹ National Industrial Court of Nigeria (Civil Procedure) Rules, 2016.

⁶⁰ National Industrial Court Act, 2006

⁶¹ National Industrial Court of Nigeria (Civil Procedure) Rules, 2016 ⁶⁶ [2010] 7 NWLR (Pt. 1194) 538.

altered by the National Assembly to remove certain provisions that militate against the attainment of their set objectives and add other elements that would enhance the efficiency of industrial disputes adjudication in the country. Accordingly, section 6 of the Nigeria Constitution dealing on judicial powers specify and add the National Industrial Court to the list of superior courts of record therein.

This, has finally settle the lingering controversy concerning the status of the court in the judicial hierarchy that became manifest in

*National Union of Electricity Employees v. Bureau of Public Enterprise*⁶⁶ and similar cases.

Section 36 (2) of the National Industrial Court Act, 2006⁶² , should be amended to apply the rules of court to labour relations in the private sector rather than restrict it to the public sector. Third, the terms official referee and special referee should be clearly defined and injected into section 54 which is the interpretation section of the National Industrial Court Act. Again, their appointment should not lie completely at the discretion of the presiding Judge. Fourth, section 12 (2) (b) of the National Industrial Court Act, 2006⁶³ , should be amended to specify the circumstances under which the court may depart from the provisions of the Evidence Act. This would curb the excessive discretion placed on the Judge. Similarly, section 13 of the Act⁶⁹ should be amended to give pre-eminence to a statute and clearly defined contracts over equity. To place the rules of equity on equal play ground with these two, panders to the unlimited discretion of the Judge which is not healthy for fair, valid and consistent court decisions.

With respect to procedure, it is recommended that Order 5 Rule 3 and Order 1 Rule 9 (2) be amended to specify the circumstances under which the Judge may depart from the rules of court and the Evidence Act respectively. This is to ensure judgment is delivered based purely on the facts and the law and also to instill confidence in the minds of litigants that they can obtain justice where the facts and the law are on their side. Again, Order 59 of the Rules should be amended to revert the authorization for the appointment of the public trustee to the National

Industrial Court Act. The President of the Court cannot lawfully assume the powers to so appoint as is presently the case. Considering the far-reaching powers of the public trustee as interim administrator of the labour union, such power to appoint ought to be conferred on him by an Act of the National Assembly and not by the Rules he made by himself. Lastly, the allowance payable to assessors, referees and witnesses generally under Order 67 and Schedule 2 to the 2016 Rules should be reviewed upward to take adequate care of the actual expense incurred by witnesses in attending court. This would enable them do so willingly and also co-operate effectively with the court when they do attend.

⁶² section 36 (2) of the National Industrial Court Act, 2006

⁶³ section 12 (2) (b) of the National Industrial Court Act, 2006 ⁶⁹ section 13 of the Act