

## Towards Employees' Job Protection and Security: Roles of National Industrial Court (NIC) in Ensuring Peace in Nigeria Workspace

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### Abstract

The study justified the veracity of National Industrial Court (NIC) in playing role of final arbiter in industrial matters. The National industrial Court was essentially established to adjudicate on all issues emanating from industrial relations and labour market breakdown. NIC combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialized courts. The potency of NIC was demonstrated in this study with clarity in its resolution of three industrial disputes among numerous others. Ultimately, hydra-industrial conflict which is an unavoidable phenomenon in the world of work now becomes resolvable with the machinery of NIC when properly explored.

**Keywords:** National industrial conflict, conflict resolution, employees' union, labour dispute.

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### Introduction

Labour and Management resort to collective bargaining as the normal process of resolving their disputes for the creation of peace and harmony. However, when the process fails, they could be under pressure to embark on industrial actions such as picketing, strikes, etc. which have great negative consequences for the economy of Nigeria and the environment of industrial relations. It is therefore, not in dispute that the implication of such an unstable environment of industrial relations for the economic development of the country is huge. It is in recognition of this fact that the National Industrial court was established to settle expeditiously all industrial disputes referred to it by the Minister of Employment, Labour and Productivity and the interpretation of collective agreement entered into by workers and management representatives (Aturu, 2013).

The National Industrial Court of Nigeria is now repositioned with powers to assume expanded jurisdiction on a wide range of issues relating to labour and on employment/industrial related disputes. A litigant is expected to exhaust all the processes of part 1 of the Trade Disputes Act which deals with negotiation, conciliation and Arbitration before activating the interpretation jurisdiction of the National Industrial Court (Babalola, 2014).

The National Industrial Court was essentially established to adjudicate on all issues emanating from industrial relations and labour market breakdown. It was against the background that the legislative arm of government made provision for the National Industrial Court Act. Section 7(1) of the Act provides that the court shall have and exercise exclusive jurisdiction in civil causes and matters relating to labour, including trade unions and industrial relations, environmental and conditions of work, health, safety and welfare of labour, and matters incidental thereto; and relating to the grant of any order to restrain any person or body from taking part in any strike, lock out or any industrial action or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action. Also the court have within its purview and jurisdiction the mandate to resolve any question relating to the determination of any question as to the interpretation of any collective agreement; any award made by an arbitral tribunal in respect of a labour dispute or an organizational dispute; the terms of settlement of any labour dispute, organizational dispute as may be recorded in any memorandum of settlement; any trade union constitution and any award or judgment of the court (Aturu, 2013).

The main objective of the National industrial court is settlement of labour disputes for attaining social justice and industrial peace between the employers and employees and their trade union and the settlement of any differences or disputes arising from their relationship. The National Industrial Court of Nigeria combines the rule of law applicable in conventional law courts with flexibility, expediency, reliability and affordability often associated with specialized courts. The judges of the court have considerable knowledge and experience in the law and practice of industrial relations and employment in Nigeria. This is in accordance with the Act establishing the court.

### Overview of the National Industrial Court (NIC)

The National Industrial Court of Nigeria was established by the Trade Disputes Decree No.7 of 1976. Prior to

the establishment of the Act in 1976, in particular, prior to 1968, industrial relations law and practice was modelled on the non-interventionist and voluntary model of the British approach. The statutory machinery for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Inquiry) Act. That Act, which was first enacted in 1941, gave the power to the Minister of Labour to intervene by means of conciliation, formal inquiry and arbitration where negotiation had broken down (Adejumo, 2011).

The year 1966 witnessed the beginning of the civil war in Nigeria. It was therefore expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. So, the Trade Disputes (Emergency Provisions) Act was enacted. It suspended the Trade Disputes (Arbitration and Inquiry) Act and gave to the Minister of Labour compulsory power of intervention in trade disputes while retaining the usual methods of conciliation, formal inquiry and arbitration.

The constitutional hurdles posed by the 1999 constitution and the general defects of the Trade Dispute Act structure meant that the repositioning of the NIC must be at two levels, the constitutional and statutory levels. The case was, therefore, made to all the three arms of the Federal Government on the necessity of remedying the anomalies in the enabling legislation governing the operation of the NIC. The NIC Act, 2006 was the first result in all the efforts put in place to remedy the anomalies that plagued the court and the subsequent passage of the Third Alteration Act, 2010. Cases touching on the jurisdiction and powers of the National Industrial Court of Nigeria in relation to the labour justice delivery system have created wide controversy throughout Nigeria (Audi, 2011).

The Trade Disputes Act provides that there shall be a National Industrial Court for Nigeria which shall have such jurisdiction and powers as are conferred on it by the Act or any other Act with respect to the settlement of trade disputes, the interpretation of collective agreements and matters connected therewith. A similar provision is also contained under the Third Alteration Act which formalized the inclusion of the National Industrial Court of Nigeria into the 1999 constitution as a Superior Court of record which invariably has finally put to rest the chequered constitutional history of the National Industrial Court (Kanyip, 2014).

Composition of the National Industrial Court shall be (a) The president of the court; and (b) Four other members (referred to as ordinary members) of the court all of whom shall be persons of good standing, to the knowledge of the Minister, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have a competent knowledge of economics, industry and trade. Also for the purposes of dealing with any matter which may be referred to it, the court shall, at the discretion of the president of the court, be constituted of either (a) All five members; or (b) The president and two ordinary members (Aturu, 2013).

Similarly, for the purpose of dealing with any matter, the court at the discretion of the president of the court be assisted by assessors appointed in accordance with the Act and any decision of the court in the exercise of its functions shall be taken. In the event of a difference between the members dealing with the case, by the votes of the majority of those members, Section 1(2) of the National Industrial Court Act provides that the court shall consist of: (a) The president of the court who shall have overall control and supervision of the administration of the court; and (b) Not less than twelve judges.

The National Industrial Court Act further provides that the president of the court shall be appointed by the president, on the recommendation of the National Judicial Council, subject to confirmation by the senate. The appointment of a person to the office of a judge of the court shall be made by the president on the recommendation of the National Judicial Council (Aturu, 2013).

A new dawn came for the National Industrial Court on the 4th of March, 2011 when the President of the Federal Republic of Nigeria assented to the constitution (Third Alternation) bill, 2010 which amended the 1999 constitution to include the NIC in the relevant sections of the Constitution. In general, sections 6, 84(4), 240, 243, 287(3), 289, 292, 294 (4), 316, 318, the Third schedule, the seventh schedule to the Constitution have all been altered to include the new National Industrial Court of Nigeria. In addition new sections 254A – 254F have been added to the Constitution to accommodate the National Industrial Court of Nigeria. The National Industrial Court of Nigeria is now formalized in the constitution and equates with the High Courts in terms of status, jurisdiction, powers and privileges (Adejumo, 2014).

The establishment of the National Industrial Court of Nigeria has rightly been applauded as a significant development in the Nigerian judiciary. A sober reading of Sections 7 and 11 of National Industrial Court Act would reveal that the jurisdiction of the regular courts in entertaining trade disputes matters was ousted and exclusive jurisdiction vested in NIC. The effect then was that the High Court of a state cannot exercise jurisdiction in Trade Disputes cases as provided for in section 272 of the constitution. The National Industrial Court Act is tailored to enlarge alternative methods of disputes resolution by providing enhanced, timely, cost effective and user friendly access to justice for foreign and domestic investors and all stakeholders in the Nigeria Economy (Adejumo, 2014).

The National Industrial Court is now in a position to play its role in balancing the diverse economic interests in the labour/industrial relations regime through the resolution of labour and industrial disputes having regards to the Third Alteration Act currently in force throughout Nigeria. It is now settled that the jurisdiction of

the National Industrial Court clearly covers all matters connected and incidental to labour, Trade Disputes and industrial relations. It is pertinent to also note that the National Industrial Court now has exclusive jurisdiction on labour, trade disputes and other ancillary matters that may arise out of same which hitherto had been within the confines of concurrent jurisdiction of the State High Courts and Federal High Court at first instance.

### **National Industrial Court (NIC) as the Final Arbiter in Industrial Matters**

By virtue of section 7(6) of National Industrial Court Act, the National Industrial Court is permitted and even enjoined to take into cognizance international best practices in industrial and labour relations in arriving at decisions in cases before the court. What amount to international best practices in a particular instance is a question of fact to be proved by the person urging the court. This provision obviously permits the court to borrow from foreign jurisdiction in tandem with the present global village system. The various conventions of ILO which the member states are enjoined to apply come in handy here. The implication of this is that what the National Industrial Court decides to be interpreted best practices might not be appealed against being a question of fact (Kanyip, 2015).

The jurisdiction of the National Industrial Court is not the product of only the National Industrial Court Act. By virtue of S.7(2) of the National Industrial Court Act, the National Assembly has power to confer such additional jurisdiction on the court in respect of such other causes or matters incidental, supplementary or related to those set out in subsection of this section. Thus the National Industrial Court had the additional mandate of determining appeals against refusal or cancellation of registration by the Registrar of Trade Unions to register any trade union.

The National Industrial Court Act has vested the National Industrial Court with certain powers for instance, the court has the power to grant injunctions in all cases in which it appears to be just or convenient so to do, the power to make an order of mandamus (requiring any act to be done), or an order of prohibition (prohibiting any proceedings, cause or matter) or an order of certiorari (removing any proceedings, cause or matter into the National Industrial Court) and also the power to make an order of injunction in lieu of quo warranto by restraining a person who acts in an office in which he is not entitled to act from so acting, and if necessary declare the office to be vacant. By Section 19 of the National Industrial Court Act, the National Industrial Court may in all other cases and where necessary make any appropriate order, including:

- i. The grant of urgent interim reliefs;
- ii. A declaratory order;
- iii. The appointment of a public trustee for the management of the affairs and finances of a trade union or employer's organization involved in any organizational disputes
- iv. An award of compensation or damages in any circumstance contemplated by the National Industrial Court Act or any of the National Assembly dealing with any matter that the National Industrial Court has jurisdiction to hear; and
- v. An order of compliance with any provision of any Act of the National Assembly dealing with any matter that the National Industrial Court has jurisdiction to hear.

The National Industrial Court also has power to enforce its judgment and accordingly, may commit for contempt any person or a representative of a trade union or employer's organization who commits any act or an omission which in the opinion of the court constitute contempt of the court. The passage of the Third Alteration Act has essentially put to rest the controversial jurisdictional problems associated with the establishment of the National Industrial Court of Nigeria and its functional roles (Adejumo, 2014).

It was clearly not the intendment of the legislature that same should affect part-heard causes and matters related to labour or employment that were on going in the High Courts before the 4/3/2011 being the commencement date of the Act. There is equally no abatement provision or express provision in the said Act specifying that it should operate retrospectively. Therefore, the High Courts can conclude such proceedings. However, all those cases that were filed and commenced after 4/3/2011 in the High Courts should be transferred to the National Industrial Court of Nigeria. This is because as from 4/3/2011, the High Courts no longer possess the requisite jurisdiction to entertain all matters relating to labour, employment or industrial disputes or matters related or connected therewith.

Since the inception of the National Industrial Court according to Babalola (2014), it has adjudicated upon over 298 cases within the period of 1978-2017 on a wide range of subject matters which has been disposed of and several others still pending. Some of the notable decided cases according to Babalola (2014) are:

- 1) The case of *Senior Staff Association of Universities v Academic Staff Union of Research Institution & 2ors*, the Court via an originating summons dated 21/5/2008 was called upon to determine whether the registration of the 1st Defendant as a separate trade union is legal and hence valid. The argument of the claimant is that the 1st Defendant ought not to have been registered by the 2nd Defendant (Registrar of Trade Unions) as a separate and distinct trade union, after having had her interest and rights guaranteed and protected by an existing trade union (SSAUTHRIAI).

The court held thus: The basis for the jurisdiction and eligibility of membership of a trade union is as contained in the registering of Trade Unions, Government No. 92 Official Gazette of the Federal Republic of Nigeria No.6 of 8 February, 1978. By that instrument and the succeeding instruments, which all culminated in the Trade Unions Act, as amended, there is a deliberate policy of ensuring that the academic section is stratified into unions along specified lines. National Union of Teachers (NUT) for teaching staff in primary and secondary school; Non Academic Staff Union of Education and Associated Institution (NASU) for all non-academic workers employed in public and privately owned education, research and associated institutions including universities teaching hospital except professional, administrative, medical and para-medical staff; Academic Staff Union of Universities (ASUU) for academic staff of universities; and Senior Association of Universities, Teaching Hospital, Research Institutes and Associated Institutions (SSAUTHRIAI), the claimant in the present case, for senior non-academic staff of the institutions there listed. The registrar of Trade Union has satisfied himself that the 1st Defendant ought to be covered by ASUU but was not so covered.

The case was therefore dismissed because the court was satisfied that the Registrar of Trade Unions and the Minister of Labour and Productivity have indicated that it was expedient to register the Academic Staff Union of Research Institutions as a separate and distinct union having regard to the fact that the jurisdictional scope of the claimant (SSAUTHRIAI) does not cover the Academic Staff Union of Research Institutes.

It is equally worthy of note that no combination of workers or employees shall be registered of a trade union save with the approval of the Minister on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise howsoever, but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.

- 2) In the case of *Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) & Ors*, the issues that came up for determination are: 1) Whether the National Minimum Wage Act was intended to increase the salary of workers generally with N18,000 being the benchmark on which to erect a new salary structure or whether only a category of workers are intended to benefit from the minimum wage. 2) Whether the Defendants can embark on a strike action in the circumstances of the case.

In determining the first issue and in a bid to apply international best practices, the court was persuaded by the study of the duo of *Hansjorg Herr and Milka Kazandziska(2011)* who opined that statutory minimum wages are not a substitute for wage bargaining. The main purpose of minimum wages is to set a floor for wages in the whole economy. Unions can and whenever possible should increase the wages of the lowest paid above the minimum wage especially in some developing countries where minimum wage negotiations in tripartite bodies have become a substitute for wage bargaining.

The court held that there is nothing fundamentally wrong with the National Minimum Wage Act, 2004 as amended in delimiting the scope of workers that it applies to. The National Minimum Wage Act only sets out the minimum benchmark of wages that those it defined as entitled beneficiaries cannot be made to earn anything lower but does not foreclose an increase over and above the minimum benchmark.

On the second issue, the court held that the manner in which the requirement of Section 31(6) of the Trade Unions Act as amended, are provided for suggests that all of them must be met before the right to strike can arise. The non-satisfaction of any of them necessarily means that the right to strike has not arisen and so cannot be exercised. Since there is no evidence that the requirements have been met, the threatened strike action of the Defendants cannot be legal and valid. All to these clearly reflects the giant strides taken by the court in giving full effect to the provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) particularly in relations to the innovations contained therein. For instance, the issue of the national minimum wage, discrimination on grounds of sex at the workplace, the application of international best practices etc.

- 3) Another interesting case that was decided in 2013 is the case of *Surveyor (Dr.) J.G Adesina & 6ors v The Governing Council of Rufus Giwa Polytechnic, Owo*, wherein the claimants filed an action claiming, amongst other, ancillary reliefs for a declaration that their purported retirement on the ground of age before attaining the mandatory retirement age of 65 years contained in the Federal Government Public Service Rules (PSR 02081-0) 2008 edition, regulation governing service contained in the staff manual of Rufus Giwa Polytechnic, and Federal Ministry of Education circular Ref. N0. DHE/POLY. 53/C.2/IV/57 is unlawful, invalid and of no effect whatsoever.

The court held that retirement age for Academic Staff of Tertiary Institution is an issue of law. The Claimants did not place before the court any legislation at the time they were retired which provides for retirement age at 65 years. Instead, what the claimants placed before the court are circulars which enjoins polytechnics in the country to stay action in academic staff who have already attained 60 years

of age pending the enactment of an enabling legislation to that effect. The circulars do not have the force of law and so not binding.

The retirement age of the claimants which was hitherto fixed by law can only be amended by law and not by circulars and that is what exactly the retirement age of staff of polytechnic and college of Education (Harmonization) Act 2012 was promulgated to address. It is clearly in evidence that the claimants were retired before the coming into effect of the Act when they attained the age of 60 years and above. Consequently, the claimants are not entitled to benefit from a law enacted after their retirement which did not have them in contemplation especially because the law was not made to apply retrospectively.

All the above cited cases clearly demonstrates the fact that the National Industrial Court is now repositioned to entertain disputes of which jurisdiction has been conferred on the court by either the Constitution or the Act of National Assembly on a wide range of subject matters which were hitherto not within the powers and jurisdiction of the court to entertain. It has no doubt given a new outlook and approach in the determination of labour and industrial related matters in Nigeria.

### Conclusion

The National Industrial Court of Nigeria has now been elevated to the status of a superior court of record with enhanced powers and enlarged jurisdiction on labour and employment related matters with the passage of the Third Alteration Act 2010 which amended the Constitution of the Federal Republic of Nigeria 1999 thereby putting to rest the controversial jurisdictional problems associated with the establishment of the National Industrial Court of Nigeria and its functional roles.

It is clear from the pertinent provisions of the National Industrial Court Act and the Rules of Court, the judgment or decisions of the National Industrial Court of Nigeria are binding in nature and must be obeyed accordingly, failure of which the court may act appropriately with a view to protecting its integrity and powers to ensure the enforcement of its decision delivered and in addition to sanctioning any contemnor who fails to obey or comply with the decision or judgment of the court.

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