

A Brief Legal Reflection on the Recognition of Trade Unions under the Law in Nigeria

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Abstract

It is considered pertinent to take a brief legal reflection on the recognition of trade unions in Nigeria. The aim of this study is to assess the contributions made by the court in the settlement of labour disputes in the area of recognition of trade unions, towards cordial and peaceful industrial relations for maximum production and supply of goods and services. This research work will further discuss the economic impact of adjudication of labour disputes by the National Industrial Court in Nigeria. The justification for this research stems from the fact that addressing labour issues are vital to the development and growth of any nation. No matter how well-endowed a country is in terms of natural resources, this will be of no importance to the country if they are not efficiently tapped. Without labour, resources and services cannot be harnessed for the society.

Keywords: Trade union, Recognition, Trade disputes, National Industrial Court.

1.1 INTRODUCTION

Before going into the main discussion, it is considered customary that attempt is first made to canvass some points on issues of general relevance or importance. The truth of the foregoing assertion, it is hoped will become self-evident as we proceed in this discussion. Therefore, it is considered logical and valuable to first canvass some points on the meaning of trade union.

1.2 WHAT IS A TRADE UNION?

A trade union is defined 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 combination in question would not, apart from this Act, be an unlawful combination by reason of these purposes being in restraint of trade, and whether its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members.³

To Syney and Beatrice Webb, a trade union is an association of employees for the promotion and defence of terms and conditions of employment of their members including their standard of living⁴. It should however be noted that the fact that a combination of workers or employers has purposes or powers other than the purpose of regulating the terms and conditions of employment of workers shall not prevent it from being registered under the Act⁵. A person under the age of sixteen shall not be capable of being a member of a trade union, so is a person under the age of twenty one shall not be capable being an official of a trade union. However, the foregoing age limit for membership and leadership of a trade union is made subject to the rules of the particular union such that a person who is between the ages of sixteen and twenty one years may by the rules of a union be precluded from a union's membership⁶. This also means that a trade union rule may provide for any age limit above twenty one years for a member to be an official of the trade union⁷.

There exist two basic criteria for determining whether or not a combination of employees or workers is to be described as a trade union. One is that the combination must be a combination of employers or that of workers. Another one is that the regulation of the terms and conditions of employment must be a fundamental objective of the combination. According to Prof. Agomo, "There may however be other purposes or powers aside from these two."⁸ The Trade Union Act provides that a trade union cannot be formed by reason only of -

³ Trade Unions Act, 2005, section 1 (1).

⁴ Cited in Audi, J. A. M. (2007/2008), "Masters Students' First Semester Lecture Handout", 9.

⁵ Trade Unions Act, 2005, section 1 (2).

⁶ Agomo, C. K. (2011), "Nigerian Employment and Labour Relations Law and Practice", Concept Publications Limited, Palmgrove, Lagos, Nigeria, 274. See also, items 7 and 8 of the first schedule to the Trade Unions Act, 2005.

⁷ See generally, section 20 of the Trade Disputes Act, 2005.

⁸ Agomo, C. K. (2011), "Nigerian Employment and Labour Relations Law and Practice", *Op. Cit.*, 273.

any agreement between an employer and person employed by him as to the terms and conditions of that employment; or any agreement for the instruction of any person in profession, trade or handicraft; or any agreement between partners as to their own business or any trading agreement between employers; or any agreement imposing restriction in connection with the sale of the goodwill of a business.⁹

An application for the registration of a trade union shall be made to the Registrar of Trade Unions in the prescribed form and shall be approved by the Minister. No trade union shall be registered to represent workers or employers in a place where there already exist a trade union. In the case of *Osawe v. Registrar of Trade Unions*¹⁰, the appellants applied to the Registrar of Trade Unions for registration as 'The Nigerian Unified Teaching Service Workers' Union'. The Registrar rejected the application on the ground that another union that was sufficiently representative of the interest of the applicants was already in existence and registered as the Non Academic Staff Union of Educational and Associated Institutions. By so doing, the Registrar was merely following the discretion to turn down any application for registration of trade union where, in his opinion, there was already in existence another union sufficiently representative of the interest of the applicants.

No trade union is allowed to perform any act in furtherance of the purpose for which it has been formed unless it has been registered under the Act. A registered trade union shall be cancelled by the Registrar, if it is proved to his satisfaction that the registration of the union was obtained by fraud or the result of a mistake; or that any of the purpose of the union is unlawful; or that after the receipt of a warning in writing from the Registrar, the union has deliberately contravened any provision of the Trade Unions Act or the regulation; or the principal purpose for which the union is in practice being carried on is a purpose other than that of regulating the terms and conditions of employment of workers; or the union still in existence has ceased to function; or the union has ceased to exist.¹¹

1.3 RECOGNITION OF TRADE UNIONS IN NIGERIA

Literarily, recognition means the “*acknowledgement of a fact or claim*”¹². In Labour Law and Industrial relations, it means an employer’s acknowledgement that a union has the right to act as a bargaining agent for employees¹³. Recognition is therefore, the volitional act of an employer to acknowledge a trade union or its agent with whom to negotiate or consult for the purposes of collective bargaining.

The relevant provisions of our law governing recognition of Trade Unions in Nigeria include:

1. Section 5 of the Trade Unions (Amendment) Act, 2005, which provides that:

(a) For the purposes of collective bargaining, all registered unions in the employment of an employer shall constitute an electoral college to elect members who will represent their union in negotiations with the employer.

(b) For the purposes of representation at Tripartite Bodies or any other body, the registered Federations of Trade Unions shall constitute an Electoral College taking into account the size of each registered federation for the purpose of electing members who will represent them¹⁴.

2. Section 5(7) of Trade Unions Act¹⁵, makes the registration of trade unions specified in Parts A and C of the Third Schedule to the Act automatic.

3. Section 5(3) of the Labour Act¹⁶, provides for deductions by the employer from wages of all members of registered and recognized trade unions for the purpose of paying contributions to the trade union so recognized, but a worker may contract out of the system, in writing and where he had done so, no deduction shall be made from his wages in respect of such contributions.

4. Sections 3 and 4 of the Trade Unions (Amendment) Act, 2005, provides for the deduction by the employer of check-off dues and remission of it to the recognized trade unions. The trade unions shall in turn make remission to the appropriate registered Federation of Trade Unions¹⁷.

Section 25 of the Trade Unions Act provides that a duly registered trade union has statutory right to be recognized automatically. Failure to do so is an offence and the employer shall be liable on summary conviction to a fine of N1, 000. To Danesi, in view of the current state of the law contained in the Trade Unions (Amendment) Act, 2005, it appears that there is no automatic recognition upon registration for any trade union anymore as was the case in the past, until they constitute an electoral college to elect members who will represent them in negotiations or consultation with the employer. This is because this provision has been

⁹ Trade Unions Act, 2005, section 1 (3).

¹⁰ (1985) 1 NWLR (Pt. 4) 755.

¹¹ Trade Unions Act, 2005, section 7 (1)(a) - (f).

¹² Allen, W.R. et al (eds.), (2004), "The New International Webster's Comprehensive Dictionary of the English Language" (Encyclopedic Edition), Typhoon International Corporation, Florida, 1054.

¹³ Garner, B.A., et al (eds.), (1999), "Black's Law Dictionary", West Group, St Paul, MN, 7th Ed., 1277.

¹⁴ This section 5 of the Trade Unions (Amendment) Act, 2005 amended section 25 of the Principal Act (Trade Unions Act, Cap. T14, Law of the Federation of Nigeria, 2004).

¹⁵ Cap. T14, Law of the Federation of Nigeria, 2004.

¹⁶ Cap. L1, Law of the Federation of Nigeria, 2004. This shall subsequently be referred to as the Labour Act.

¹⁷ These sections 3 and 4 of Trade Unions (Amendment) Act, amended sections 12 and 17 of the Principal Act.

considered to mean that recognition is for the purpose of collective bargaining¹⁸.

Recognition in this sense promotes and extends collective bargaining thereby reducing managerial prerogatives and replacing it with bilateral regulations. The primary purpose of recognition therefore, is to use it for collective bargaining¹⁹. In America,²⁰ recognition leads to extension of matters to new subjects, which serves as the most effective way of ensuring the participation of the workers and their unions in the management's decision and policy making, or implementation, which affects the prospects of both the enterprise and the workers. Recognition in Britain is based on the principle of voluntarism. The employer would express his willingness to recognize the union for the purpose of voluntary collective bargaining²¹. May we see how the NIC have interpreted and applied the law of recognition in Nigeria.

See the case of *Management of Tuyil Nigeria Limited v. National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee*²²: This case had earlier on gone before the Industrial Arbitration Panel (IAP), whereupon the Panel held that the appellant should grant recognition to the respondent for it to inaugurate a branch union in the company of the appellant in view of the provisions of sections 6(7) and 24(1) of Trade Unions Act 1990, ((now sections 5(7) and 25(1)) of the Trade Unions Act 2004, which was the law then, and the provision of section 315 of the 1999 Constitution. The matter was later referred on appeal to the NIC pursuant to section 14(1) of the Trade Disputes Act by the Honourable Minister of Labour and Productivity vide a letter dated November 26, 2003, Ref No. ML.HE/813/CON.1/40 and a referral instrument dated April 4, 2003. By this letter and referral instrument, the court was asked to inquire into the trade dispute existing between the parties over the following points:

- i. Disallowing the union from organizing its members in that company, and
- ii. Threatening any worker that shows interest in his or her union.

The facts of the case were that the representatives of the respondent made an unexpected visit to the premises of the company (the appellant) to compel its workers to join or belong to the respondent's union. The appellant duly considered the request proposal and entreaties but insisted that due process and procedures must be followed before the union can be recognized by it, as it has no power to compel any of its employees to join or belong to any trade union, as that is expressly outlawed.

The appellant submitted that the foregoing findings of the Industrial Arbitration Panel were erroneous and has no legal backing. The appellant contended that the duty to recognize the respondent could only arise when the respondent shows that persons in the appellant's employment are members of the respondent union. The respondent, on the other hand, contended that by virtue of the provision of section 24(1), the appellant is under legal obligation to recognize and inaugurate a branch of its union on the appellant's business premises.

The court thereafter observed that the critical issue for determination was the question of recognition and the existence or non-existence of a trade dispute between the parties. The court, therefore, took the opportunity to reiterate the guiding principles on recognition of trade unions and summarized as follows²³:

1. The question of recognition of a trade union or deduction of check-off dues is one that is connected with the employment or non-employment or terms of employment or conditions of work or service, so too is the question as to what deductions to make from a worker's wages or salaries which is statutorily provided for under section 5 of the Labour Act. So when a trade union complains that an employer is refusing to deduct check-off dues in respect of employees or workers who are eligible to be its members, that complaint is a trade dispute and can properly be heard under the dispute resolution processes of the Trade Disputes Act.
2. Recognition of a trade union by an employer is compulsory and automatic by the combined effect of sections 5(7) and 25(1) of the Trade Unions Act, 2004 and by section 5(3)(a) and (b) of the Labour Act, 2004 (which were the law when this action started).
3. Regarding the workers' unions, the combined effect of sections 24(1) and (2) and 16A of the Trade Unions Act, is that the law intends and stipulates for compulsory recognition and deduction of check-off dues in respect of workers who are eligible to be members of a union.
4. By section 16A of the Trade Unions Act, 1990, eligibility for being a member of a trade union is the yardstick, test or standard for determining deductibility of check-off dues for which the employer has no choice in the matter. The duty to deduct check-off dues is mandatory and no employer is permitted to choose whether or not to deduct.

¹⁸ Danesi, R.A. (2007), "The Trade Unions (Amendment) Act, 2005 and Labour Reform in Nigeria: Legal Implications and Challenges", Nigeria Journal of Labour Law and Industrial Relations, Vol.1, No.1, 104.

¹⁹ Audi, J.A.M. (1985), The National Industrial Court and the Settlement of Labour Disputes in Nigeria, Master of Laws (LL.M.) Thesis (Unpublished) Faculty of Law, Ahmadu Bello University, Zaria, 55-56.

²⁰ Available at <http://www.emplaw.co.uk>. Accessed on 02/09/2009

²¹ *Ibid.*

²² (Unreported) Suit No. NIC/9/2003, delivered on January 23, 2008.

²³ These principles had already been laid down in the cases of *Corporate Affairs Commission v. Amalgamated Union Public Corporations, Civil Service Technical and Recreational Employees* (2004) 1 N.L.L.R. (Pt.1) 1 and *Mix and Bake Flour Mill Industries Ltd v. National Union of Food, Beverage and Tobacco Employees* (2004) 1 N.L.L.R. (Pt.4) 247.

5. The employer has a duty to grant a recognized union access to eligible members of the trade union in its employment.

6. By the provision of sections 16A, 24 and 52 of the Trade Unions Act, 1990, the Industrial Arbitration Panel and the National Industrial Court are the appropriate forum to entertain question of validity of any action taken by any person or authority in pursuance of the Trade Unions Act and these include the questions of recognition of trade unions and deduction of check-off dues by the employer.

7. Once any of the trade unions listed in the third schedule to the Trade Unions Act exhibits enough intention to be recognized by an employer by indicating its willingness to unionize workers who are eligible to be its members, an employer is obliged to accord recognition and not pose obstacles in the way of such unionization.

8. Refusal of an employer to accord recognition to a trade union to unionize eligible members in its employment will be ground for a valid trade dispute even if the union is yet to form a branch on the employer's premises.

9. Compulsory recognition and automatic deduction of check-off dues are the norm in the current labour law regime in Nigeria and the Supreme Court in *Osawe v. Registrar of Trade Unions*²⁴, had declared the system of restructured and highly compartmentalized trade unions as being constitutional. Incidentally this case has only recently been affirmed by the Supreme Court in the *Registered Trustees of National Association of Community Health Practitioners of Nigeria and 2 Ors v. Medical and Health Workers Union of Nigeria and Ors*²⁵.

The NIC, upon the foregoing reasoning, held that, "from the totality of these principles, ... we see no reason whatsoever to disturb the Industrial Arbitration Panel award". This means that the court confirmed the Industrial Arbitration Panel award that the appellant should recognize the respondent union automatically.

In another case of United Geophysical Nigeria Ltd/Integrated Data Services Ltd (UGNL/IDSL) Joint Venture Jv 165 v. National Union of Petroleum and Natural Gas Workers (NUPENG)²⁶, part of the issues was the management's (appellant's) refusal to accord recognition to workers to join trade union of their choice. The appellant argued that the respondent was insisting on unionizing its (appellant's) workers irrespective of whether or not the workers freely desire to join the respondent's union. The court held thus:

We must ...state that it is wrong for an employer to raise in its defence, in a recognition and/or check-off dues dispute, the fact that employees do not want to join or remain as members of a union without attaching the individually signed letters by the employees to that effect. The right to join a union or having joined, to cease to continue as a member of a union, belongs to the individual employee, not to the employer. So, only the employee can raise that issue before us, not the employer.

The court reinstated the law stated in section 5(3) of the Labour Act, 2004 that, it does not lie in the discretion or opinion of an employer to assume that its workers are reluctant to join or not to join a particular trade union, but that it is the statutory onus of such workers to put it in writing and not merely voicing it out or showing it in behaviour. This is another principle guiding recognition.

In yet another case of *Bemil Group Limited, Ikeja, Lagos v. National Union of Hotels and Personal Services Workers*²⁷, the dispute was on management's (appellant's) refusal to recognize the respondent's union and to allow its workers to belong to the union. The appellant in this case was a private enterprise providing personal security services to selected organizations including the American Embassy. The appellant claimed that, at no time was it averse to the recognition of the union and the unionization of its workforce, only that in view of the sensitive nature of the work environment of the American Embassy, its guards attached thereto should be excluded from the union since the basis of the contract, they claimed, is the ability of the appellant to provide the services in a continuous and peaceful manner without fear of a strike action by its workforce or the union making direct contract with the appellant's client on industrial matters. The appellant expressed fear that in a situation where the guards were unionized, there are bound to be some form of disruption of services, as their actions in certain situations would affect the services provided to the embassy. This, according to the appellant, "may result in loss of contract, termination of the workforce, loss of the revenue to the company and ultimately increase in the level of unemployment in the country". Besides, that the Embassy is an extension of the independence of the home country in the host country and must be accorded full immunity and the benefits of independence in accordance with the provision of the Diplomatic Immunities and Privileges Act²⁸ thereby avoiding union activities at the Embassy. The appellant further contented that there should be a letter of consent from each worker confirming intention to join the respondent's union.

²⁴ (1985) 1 N.W.L.R. (Pt.4) 755; (2004) 1 N.L.L.R. (Pt.1) 32.

²⁵ (Unreported) Suit No. SC/201/2005, delivered on January 11, 2008.

²⁶ (Unreported) Suit No. NIC/3/2006, delivered on January 22, 2008.

²⁷ (Unreported Suit) No. NIC/13/2006, delivered on January 23, 2008

²⁸ Cap. D9, Law of the Federation of Nigeria, 2004.

The respondent, however, submitted that by the combined effect of sections 5(7) and 24 of the Trade Unions Act, membership and recognition of a duly registered trade union specified under Parts A and B of the Third Schedule to the Trade Unions Act (such as the respondent) is compulsory, referring the court to its decision in *Corporate Affairs Commission v. Amalgamated Union of Public Service Technical and Recreational Services Employees*²⁹.

This case had gone before the Industrial Arbitration Panel, which upheld the statutory recognition of the respondent union by the appellant. The court while affirming the award of the Industrial Arbitration Panel held that:

... their (union members of the respondent's trade union) right to be unionized arises by virtue of being employees of Bemil (the appellant), not the American Embassy. But because of the sensitive nature of the job the security guards posted to the Embassy may be doing at the Embassy, there must be limitation as to their right to embark on union activities while on duty. The argument of the appellant that there was no individual authorization as to the membership of the respondent union is not only wrong but shows a gross misunderstanding of the laws relating to recognition of trade unions and the deduction of check-off dues in the country.

It is important to emphasize here, that for the purposes of recognition, while it is proper to express an intention in writing to denounce membership of a union, the same written intention is not required for the membership of a union to which a worker appropriately belongs by virtue of the "Law of automatic recognition". This is another principle guiding recognition.

In yet another case of *Trans International Bank PLC v. National Union of Banks, Insurance and Finance Institutions Employees*³⁰, the court reaffirmed the obligation of an employer in recognition process when it laid down that:

*the employer is obliged to accord recognition to the union and allow the union to unionize eligible members by making available to the union the names of, for instance, all junior staff within its employment who are deemed to be members of the union. Additionally, the employer is obliged to deduct check-off dues in respect of the eligible staff and pay same to the registered office of the union in question*³¹.

1.4 THE ECONOMIC IMPACT OF ADJUDICATION OF TRADE DISPUTES BY THE NATIONAL INDUSTRIAL COURT.

The NICA has made tremendous strides in shaping the way in which labour disputes would be resolved in Nigeria. The establishment of NIC by NICA would help prevent industrial anarchy, as the court would impact positively on the nation's security, socio-economic development and peace, economic growth and stability. The NIC is central to the role of the judiciary in ensuring industrial harmony. The court plays this role and it complements the role of other courts in ensuring that industrial harmony is promoted so as to attain economic development and growth³².

In the case of *Amadi v. Nigeria National Petroleum Corporation*³³, a worker challenged his suspension and subsequent dismissal from work and it took 13 years to resolve the question of jurisdiction with an order by the Supreme Court that the case be remitted to the High Court and be tried all over by another Judge. This cannot be tenable in an ideal industrial relations situation because, labour matters being economic matters are very sensitive and may spell doom for the industrial harmony required at the work place and the nation if not speedily resolved³⁴. Hence, the NIC exist to ensure a speedy trial of labour matters.

Labour or Industrial Courts are being established in several countries because the conventional courts and the system of law they administer which is essentially based on common law principle are ill suited for the challenges of modern economies and so can no longer adequately and timeously deal with labour related issues. Labour issues are pure economic matters, which require equitable approach rather than purely legalistic approach.

The NIC is, therefore, empowered to decide industrial relations issues on application of both equitable

²⁹ (2004) 1 N.L.L.R. (Pt.1) 1 at 9 Ratios 12 and 13.

³⁰ (*Unreported*) Suit No. NIC/17/2000., delivered on 3/5/07.

³¹ This principle was also elaborate in the case of *Mix and Bake Flour Mill Industries Ltd. v. National Union of Banks Insurance and Finance Institutions Employees* (2004) 1 N.L.L.R. (Pt.2) 247.

³² Adejumo, B. A. (2007), "The Role of the Judiciary in Industrial Harmony", being a commentary delivered at 2007 All Nigeria Judges' Conference, organized by the National Judicial Institute at Ladi Kwali Hall of the Abuja Sheraton Hotel and Towers, Abuja, (November 5 -9, 2007), 3.

³³ (2000) 5 W. R. N. 47.

³⁴ Adejumo, B.A. (2007) "The Role of the Judiciary in Industrial Harmony", *Op. Cit.*, 18.

and legal principles³⁵. For example, under the common law, a demand for higher wages cannot be justifiable except on the basis of what has been contracted or has been prescribed by a statute in Nigeria; while such issues could be justifiable before the NIC, if it is the product of collective bargaining with a valid collective agreement entered into in that regard.³⁶

Furthermore, abundant opportunities are available to trade unions, employers and their organizations as well as government and private individuals for effective utilization of the NIC³⁷. For instance, NICA contains provision by which management or workers may approach the court to ask for injunctive relief restraining any person or body from taking part in any industrial action or any conduct in contemplation or in furtherance of any industrial action³⁸. The utilization of such opportunities will contribute in no small measure in maintaining industrial peace and harmony for a virile economy. The significance of industrial peace and harmony to the nation and the world has placed the NIC as a desirable institution of justice. Management and workers now have the right place to take their cases to the NIC for adjudication more than ever before.

The adjudicating machinery of the NIC would undoubtedly play a conclusive role in the settlement and resolution of labour disputes and in ameliorating the working and living conditions of labour class. The court can now exercise considerable influence on several aspects of conditions of work and labour management relations. It would serve as an instrument for the improvement of wages and working conditions and for introducing uniformity in benefits and amenities³⁹. It would also help to avert work stoppages and to protect and promote the interest of the weaker sections of the working class, who are not well organized or are unable to bargain on equal footing with the employer⁴⁰.

CONCLUSION

The law on recognition has the effect of compelling the employers to recognize registered trade unions and assist in ascertaining the matters for recognition of unions. Matters for recognition are normally enumerated in collective agreement. Therefore, the aim of the law of recognition is to compel employers to negotiate with the registered trade unions in order to prevent dispute. Audi, J.A.M.⁴¹, however, is of the view that the law on recognition in Nigeria has not really helped the situation because the workers have to struggle for recognition all the processes.

Recognition and deduction of check-off dues are issues for consideration concerning workers who are eligible to join a trade union. In other words, eligibility is the yardstick. Since recognition is compulsory and eligibility is the yardstick, once a trade union indicates its willingness to unionize workers who are eligible to be its members, an employer is obliged to accord recognition and not to impose restraint in the way of such unionization. An employer is not expected to throw spanners in the works when a branch union is to be established. The employer is expected to avail the workers the opportunity and all the assistance for the smooth take-off of the branch union and create the enabling environment for it to function or operate. The essence of this is to create room for collective bargaining towards ensuring industrial harmony.

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³⁵ *Ibid*, P.5.

³⁶ See for instance, the case of *Oyo State Government v. Alhaji Bashir Apapa and 3 Ors* (Unreported) Suit No. NIC/36/2007, the judgment of which was delivered on July 15, 2008.

³⁷ Adejumo, B.A. (2007), "Opportunities for Effective Utilization of National Industrial Court", a paper presented at the Nigerian Bar Association 2007 Annual General Conference at the Banquet Hall, Kwara Hotels, Ilorin, Kwara State, on (August 30, 2007), 31 - 33.

³⁸ See section 7(1) (b), NIC Act.

³⁹ *Oyo State Government v. Alhaji Bashir Apapa and 3 Ors* (Supra) footnote 37.

⁴⁰ *Oyo State Government of Nigeria v. Committee of Industrial Unions in the Public Service of Oyo State* (supra) footnote 36, p. 123 of this work.

⁴¹ Audi, J.A.M. (2005/2006), "Strike as a Labour Union Tool in Nigeria: Reflection on Trade Unions Act, 2005", Ahmadu Bello University Law Journal, vol. 23 - 24, 105.

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