



CHANGE IN CLIMATE: THE NATIONAL INDUSTRIAL COURT ACT, 2006 A VEHICLE FOR ACCELERATING DISPUTES SETTLEMENT TOWARDS INDUSTRIAL HARMONY IN NIGERIA.

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Introduction:

Labour enactments in the 1960s gave the Government a greater role to play in Nigeria's Industrial Relations. As a result of its role, the 1968 Trade Disputes Act introduced the Industrial Arbitration Panel (of 1969) making arbitral award final and binding. The incessant work stoppages made the government unwilling to negotiate with labour in the effort to improve the economic conditions brought about by the civil war. The worker then used the national crisis for making demands for food, security of life, democracy, national fraternity, unity and power¹. Despite the efforts of the panel, strikes (increased.) The most important change in disputes settlement was the creation of the National Industrial Court ostensibly as a means of providing a quick and effective way of settling disputes.

However, the legal structure of the National Industrial Court and the position accorded it in the Constitution did not enable the court to satisfy its role of contributing to accelerating peace and harmony for Industrialization². It was created in 1976 to achieve a noble goal for the society in the sphere of regulating labour disputes, while encouraging the survival of Labour relations for continuing supply of goods and services to the public at affordable prices.

The statutory structures which provided for the court were seriously flawed and this affected its credibility and performance Constitutionally for meaningful achievements. Its shortcoming gave concern to all. In particular, the President of the Court (Hon. Justice B. A. Adejumo) who worked tirelessly to ensure that the court is given its proper place in the Constitution to enable it play a proper role in the society. He welcomed the idea of Review of the Constitution in 2006. Thus, in February, 2006, the Joint Committee on Constitutional Reform was presented with memorandum for inserting the National Industrial Court (NIC) into the Constitution as a Superior Court of record. The Bill was assented to by Chief Olusegun Obasanjo, President of the Federal Republic of Nigeria on June 14, 2006.

The National Industrial Court Act, 2006, made pertinent changes in the climate of Labour relations by filling the gaps which prevented a workable Industrial Court in the past. We shall appraise the structure of the Court and the changes put forth for Labour dispute settlement in Nigeria.

**Section 1: Establishment of the National Industrial Court:**

Section 6 of the Constitution of the Federation has become broadened by inserting the National Industrial as a Superior Court of record with the powers of the High Court, except as may be otherwise provided by any enactment or Law.

The Federal Constitution is now defacto amended to give added legitimacy and proper standing to the NIC. This is a necessary recognition and good legal basis for such an important agency in the National judicial set up. The Court is thus given "teeth" to make pronouncements with social and economic implications for the nation towards promoting peace and harmony. The NIC shall henceforth be recognized not only as an existing court deemed to be charged by section 316(1) of the 1999 Constitution but by reasons of its inclusion in the Constitution.

Section 2: Appointment of the President and judges of the National Industrial Court:

Section 2 provides that the President must be qualified to practice as a legal practitioner in Nigeria for not less than ten years. The judges of the court too must be qualified to practice law for not less than ten years, unlike in the previous law which required "experience in Industry, Commerce and Trade..."

In effect the President can now give his colleagues binding legal advice on appropriate occasions bristling with legal complexities.

Section 3: Tenure of Office of President and judges of the court:

Section 3 guarantees the tenure, removal, gratuity and pension of the President and the judges of the NIC in line with the provisions of the 1999 Constitution of Nigeria for any persons holding or appointed to act in the office of the chief judge of the Federal High Court. There is now no difference in the security of tenure, and service conditions for the judges of the NIC. This change ensures independence of the court as the other judges are as human as the President. It was not appropriate or equitable to appoint the judges for a short term with the power by Government to renew their appointment for another term. It is also not desirable to empower the government to remove the judges from office more easily than the President³.

The 2006 Act appropriately guarantees the security of tenure for all "members" of the court in line with their colleagues of Superior Courts of records. All judges of the Court are now placed on equal footing in terms of tenure even if in respect of other matters, the President is more equal than the judges.



Section: 7. Jurisdiction

The National Industrial Court is mandated to exercise exclusive jurisdiction in civil causes and wide range of matters on Labour, working conditions, trade union and interpretations of award agreements, trade union constitution as well as interpretation of award or judgment of the Court in addition to any thing conferred on it by the National Assembly. Furthermore, it has jurisdiction over disputes referred to it by the Minister of Labour under the Trade Disputes Act, 1976.

The Act new gives the Court very wide jurisdiction as conceivable as possible in labour matter in order to have a channel to contain, address and resolve disputes. The NIC Act has thus widened the scope of its jurisdiction beyond the original scope as contained in S. 47 of the Trade Disputes Act as well as Section 20 which stated the Jurisdiction as it then was. Parties to a dispute now have direct access to the Court based on the new Act.

Previously access to the court was only by way of reference of trade disputes by the Minister of Labour under Sections 16 of the TDA which fell under the Court's original jurisdiction. Lack of direct access to the court led to unnecessary delays in settlement.

For instance, there was twenty months (20) delay in the case of the **Management of Union Bank of Nigeria Limited V. National Union of Bank Insurance and Financial Institution employees (allied and Financial Institution)**.⁵ Direct access by parties to the court dispenses with waiting for reference by the Minister which was solely at his discretion in the past.

Settlement of Labour Disputes through a Court implies an intention on the part of the government to participate actively in ensuring the smooth working of economic power centres. The Court's awards aims at ensuring industrial peace by accepting the "award" as a last avenue for seeking settlement as neither the government nor the parties to a dispute desire the collapse of the economy or disruption in providing goods and services as well as earning a living.

The erstwhile controversies surrounding the definition of "Trade Dispute" by other courts to parties before them is settled by the jurisdiction conferred on the NIC by the new Act. Particularly the question of whether inters and an intra-union dispute is a trade dispute and within the jurisdiction of the NIC or a High Court has been resolved. The Jurisdiction of the NIC embraces matters that could conceivably fall within the definition of a trade dispute including inter and intra-Union disputes. The use of the phrase "Trade Dispute" has been avoided in the Act as it tended to restrict conceivable disputes that may arise in employment arena. Thus, by giving exclusive jurisdiction to the NIC on all trade disputes the new jurisdiction conferred on the NIC has tackled the problem by embracing inter and intral-union disputes which were decided and viewed by courts differently as in **NURTW V. Ogbodo**⁶



which laid down ingredients to look out for in a "trade dispute, including "... worker and worker's dispute. Similarly, in **NURTW v. FCT, Abuja V. R TEAN, FCT, Abuja and 7 ors**⁷ which upheld that such matter is a trade dispute. Cases abound in which the phrase was conceptually confused definition wise, which are capable of circumscribing the jurisdiction of the NIC⁸ because it may seem that the High Court and the NIC shared concurrent jurisdiction in trade disputes being civil matters.⁹ This seemingly led to proliferation of such cases with confusion of definition in the High Courts.

In terms of jurisdiction the NIC has general powers of the regular courts by virtue of section 31 of the Trade Disputes Act, emanating from the provisions of the Supreme Court Act relating to offices, seal, process and reserved judgments which applies with the necessary modifications to this Court. This includes the granting of injunctions in all cases under section 16 of the Act. The Court may in appropriate cases make order including the granting of interim reliefs and declaratory orders. This finally put to rest the court's lack of jurisdiction on these matters which were argued in courts. See for instance the Orbiter dictum of Oputa, JSC in **Western Steel Works v. Iron and Steel Workers Union**¹⁰ in which he lamented the situation in which the 1999 constitution before the amendment threw industrial relations into a situation without a proper status to settle disputes. The unconstitutionality of the NIC is no longer an issue.

For the NIC to have jurisdiction on disputes, access to the court does not depend as in the past on the Minister to "report" a dispute to it, thereby doing away with the discretionary powers' of the Minister which confirms the right to fair hearing contained in section 36(1) of the 1999 Constitution. Since the Government may be a party to such disputes the government i.e. the Minister should not play the role of an arbiter in its own cause¹¹. The uncertainty of the NIC's Constitutionality led to uncertainty of its role in terms of its jurisdiction on very many important matters that have been resolved by the new Act.

Many other cases brought to light in the past evidenced the dilemma of the Court's unconstitutionality in terms of jurisdiction and powers. Such cases include **Kalango V. Dakubo**¹², **Ekong V. Oside**¹³, **Attorney-General of Oyo State V. Nigeria Labour Congress, Oyo State Chapter**¹⁴. Justice B. B. Kanyip once said:

"Judges of coordinate jurisdiction speaks volume of the confusion they engender in this area that they gave conflicting verdicts."¹⁵

Additionally, the court has jurisdiction to entertain objections/appeals from the Industrial Arbitration Panel under section 24 of TDA and any other power conferred on it by Part I dealing with reference by the Minister from the IAP. As



well as under section 2 of the Trade Unions (Amendment) Act of 1999 relating to refusal to register any trade union or refusal by the Minister to approve application made by a Trade Union Under Section 3 of the same Act.

Powers of the NIC in Civil Appeal.

The Act empowers the Court upon hearing appeal under subsection (4) of section 7 to draw any inference of fact and –

- (a) Confirm vary or set aside the Judgment award or order of the court, tribunal or body mentioned therein; or.
- (b) Order a rehearing and determination on such terms as the court may think just; or
- (c) Order judgment to be entered for any party or
- (d) Make a final or other order on such terms as the court may think fit to ensure the determination on the merits of the matter in dispute between the parties.

These powers are more relevant to resolution of disputes and clearer than the repealed provision which was vague and unimportant to lead to the desired objective of having the NIC adjudicate for industrial harmony. The repealed provisions on powers under SS. 34 and 35 would handily fall in place for utilization in appropriate circumstances when bristling with serious matters stated in the new law in the matters before it NIC.

The repealed S. 35 of the NIC Law likened the court's power in enforcing any summons to that of the Supreme Court, but lacked such power to convict for contempt of court. It made only committal to the High Court under section 26(4) as in the case of the *Union Bank*¹⁶. It was a case of refusal by workers against the order of the court to go back to work and the workers or their representatives were not committed to the High Court probably due to the attitude of the workers or their leaders. Similar attitude of defying the court's order in the past is depicted in the case of *National Union of Textile Government and Tailoring Workers v. Nigerian Kraft bass Limited*¹⁷ involving 44 workers who were prevented from going back to work by the secretary of the Union following mass lockouts and lay off of workers but with no committal to the High Court for contempt. All these are relics of dead statute impacts as the new law has recognized such gaps and have filled them up in the interest of giving meaning to adjudication in industrial relations by providing the power to commit for an act or omission deemed as contempt.

Henceforth, the court under section 10 of the new Act is accorded the power to commit for contempt and enforcement of Judgment. The NIC shall cease to commit its awards to the High Court or Magistrate Court for the recovery of debts arising from the judgment of the National Industrial Court. As the facts showed in its award dated 12th March, 1981 requiring all governments of the Federation to pay



a new scale of salary to the workers with effect from 1st April, 1980. The Ogun State government then paid the arrears from the 1st of August, 1981 thereby refused to pay the arrears of 15 months due to lack of funds in its purse.

However, the NIC Act, 2006 is silent on the sanction for failure to comply with the award or judgment of the Court. The Law provides for committal for contempt only without prescribing the mode and nature of committals. Would it be in the form of fine or conviction in such a civil matter?

After the fine or conviction where ordered, but the parties continue in their attitude of defying the Judgment, what next could the court do to ensure that it enforces its judgment? Such that an employer can refuse to comply with the judgment of the Court on the ground of financial constraints in meeting with making payments where the employer is Government. What can the court do to enforce such judgment? It is envisaged that government on its part being the largest employer of labour would make efforts to reconcile its conflicting interest and make a just and equitable balance in order to give effect to the court's role to nation building by virtue of the independence, power and jurisdiction given to it for settlement of disputes in employment. The Court now holds the best for workers and employers in their conflicting legitimate interests, as well as the public or society's legitimate interests of having uninterrupted supply of goods and services.

The NIC is enabled to adequately maintain the highest degree of impartiality in its deliberations and the matters referred to it will be disposed of without delay as Benjamin Disraeli the Great thinker said "Justice is truth in action..."

Practice and Procedure of the NIC

For effective discharge of its role, the NIC is to conform with the application of rules and regulations in its proceedings.

Section 36(1) of the TDA¹⁸ empowers the Chief Justice of Nigeria to make such rules and regulations for the NIC.

The 2006 Act provides under section 12(1) that:

The jurisdiction vested in the court shall, so far as practice and procedure are concerned, be exercised in the manner provided by this Act or any other enactment or by such rules and orders of court as may be made pursuant to this Act or, in the absence of any such provisions, in substantial conformity with the practice and procedure of the court existing immediately before the commencement of this Act.

The NIC is bound to conform with the provisions of section 36 (1) of the TDA, section 12(1) of the law. The Scope is widened by the phrase. "... in the absence of any such provisions, in substantial conformity with the practice and procedure of the court existing immediately before the commencement of this Act."



In effect the practices that relates to the appointment of the (now) judges, sitting qualification, etc are the matters that the new law changed for the better. Relating to appointment Section 2 of the new law specifies the qualification for appointment of the President and Judges, as those qualified to practice as legal practitioners for a period of not less than ten years. Unlike in the repealed law as explained above where the appointment of the president and Judges shall now be made by the president on the recommendation of National Judicial Council subject to confirmation by Senate without exception, thus repealing the provision on appointment of 'members' by the president acting after consultation with the Federal Judicial Service Commission under S. 25 (1) TDA.

The practice relating to sitting in court created problem in the past when the President was indisposed to preside over the proceedings on whatever ground meaning the court cannot sit. The new Act did not tackle the problem of empowering an acting Judge to preside over the proceeding in the absence of the President under section 22 of the Law. Cases heard but not concluded may therefore be required to be commenced de novo when a new one is appointed due to such inability to sit.

Sittings location of the court remains the same as the new Law did not address the issue.

CONCLUSION

The reform of the NIC has brought positive changes that gives it powers, jurisdiction, secured tenure and fair appointment practice for efficacy, particularly the power to enforce its judgment for real settlement.

Ministerial power of reference has been removed to make parties to have direct access to the Court for speedy settlement. Above all, it is now a Constitutional Superior Court of Record and enjoys the status and positions of Superior Court of Records. The radical reforms have shown concern of placing the Court in its right place in conformity with democratic norms and International Laws obligations in line with the ratified Convention no. 33 of the International Labour Organisation (ILO), requiring all the pieces of Labour laws be studied and arranged. This is a new climate setting for Labour disputes resolution in Nigeria for accelerating production and industrial harmony.



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