

STRIKES AND THE LAW IN NIGERIA

By

Jummai A.M. Audi (Mrs)*

Both Labour and Management have certain interests to protect; Management expects to secure labour at the price that would allow a reasonable margin for investment. Also workers expects real wages to increase steadily, to have a reasonable standard of living and to have job security. Furthermore, Management expects the production and distribution of goods and supply of services which is planned on a calculated cost and risk not to be interrupted. Strike, then is the most potent instrument for maintaining an equilibrium against management's desire to protect its planned property on the part of the workers. The equivalent of such weapon on the part of Management is lock-out. This inevitable conflict between labour and management has no known limits in industrial relations.

Strike involves the interruption of economic process, when necessary, as a means of exerting pressure collectively by workers on their employers. A trade union would become impotent if it is without such power of refusal to work. The workers are interested in protecting their lives and that of their families against downward trend of their real wages and loss of job by using their strength collectively. Sir Otto Kahn Freund referred to these interests as "Platitudinous confrontation of expectations and interests."¹

Section 37 of the Trade Disputes Act, 1976 defined "strikes" as a "cessation of work by workers in an employment acting in combination, or a concerted refusal to continue to work for an employer or to aid other workers in compelling their employer to accept or not to accept terms or work." "Strike" under this statutory definition includes "go-slow" and "work to rule." in "go-slow" the workers deliberately work at a slow pace and it results in maximum loss to the employer. Whereas in "work to rule," the workers work according to an archaic rule by insisting and actually working according to the rule which they do not usually obey as it slows down production.

The consequences of strikes action is the waste of human and other resources, leading to loss of mandays as production is considerably reduced or hampered resulting in economic and social stunted growth

*LL.B. (Hons); LL.M.; B.L. Deputy Dean, Faculty of Law, Ahmadu Bello University, Zaria - Nigeria

and unrest. The factors leading to work-stoppages are many and varied. They are non-payments of Christmas bonus, leave allowances, vehicle loans, medical scheme, payments of salaries and arrears. Others are better wages and conditions of employment union recognition, breach of existing collective agreements, and redress of industrial grievances.

The public or the consumers, too, are not without expectation. They expect to have the flow of goods and services without interruption and at a stable price. The law therefore, has to play an important role in order to reduce the frequency and magnitude of work stoppages for maximum production, economic growth and social tranquility.

For achieving the desired peace in industrial relations, law has to provide firstly, an acceptable and workable settlement mechanism capable of winning the confidence of both labour and management since neither party nor the government desires the collapse of the industry. Thus, any nation that seeks to promote peace and harmony would have to consider the conflicting interests when striking a balance, as the task of reconciling the use of strike and lock-outs, as ultimate sanctions is the sole responsibility of the government, which is a sovereign as well as the major employer of labour. Secondly, for the creation of industrial peace there, has to be fair institutional variables; the conditions of work, wages, work ethics and productivity of labour as well as sanctity of collective agreements, etc.

For the first time the Nigeria government provided legislative enactment for collective bargaining in industrial relations in 1941² in order to improve the unjust conditions of the workers at that period. It however, failed to provide the industrial peace as it did not provide any code of behaviour for the attainment of such peace. In the 1960s labour enactments following the civil war shows clearly the role government played in Nigeria's industrial relations, for example the Trade Disputes Decree of 1968 suspended the 1941 Act which was based mainly on collective bargaining. This Act was meant to be a temporary measure. The preamble provides that "it is expedient during the present state of emergency in Nigeria to make transitional provisions for the settlement of trade disputes arising within the period of such emergency."³ It also introduced compulsion for the first time as it required copies of agreement reached to be deposited with the Commissioner of Labour, and the award made through arbitration was to be regarded as binding. This clearly shows the government's unwillingness to negotiate with labour as an attempt to adjust the economic conditions brought by the war. Nevertheless, more strikes took place, at this period when the effect of one strike would have greater consequence on the nation's economy due to wars, than during peace time. For this reason the decree was amended in 1969 and the Industrial Arbitration Panel was thereby constituted as an agency for settling trade disputes. Then in 1976 a new Trade Disputes Decree was

promulgated, giving birth to the National Industrial Court as Arbitration was insufficient in controlling strikes which were on the increase.

The 1976 Trade Disputes Decree has two features. The first part encourages free collective bargaining, which is the normal process of settling trade disputes. The second part makes provision for alternative processes which is compulsory in nature where the normal process fails, namely mediation, arbitration and adjudication. Under the first part, which is collective bargaining, the parties are given the chance to reach an agreement on their own under Sections 2, 3, 3A and 6. Where collective bargaining process (voluntary) fails, begins compulsory methods. Under Section 7 of the Act, the Minister is to refer the dispute to an arbitration Panel within 14 days. Section 9(2) also gave the Minister the power to refer disputes to the National Industrial Court where notice of objection has been served within the stipulated time from the award for the Arbitration Panel.

What is Collective Bargaining?

Collective bargaining is negotiation in respect to terms and conditions of employment, or with respect to making variations or recessions of procedural agreement, or with respect to any matter to which a procedural agreement may relate.⁴ It is a highly flexible system of settling trade dispute, as it involves the balancing of the two great powers of labour and management from time to time. With this method the discretion of employer in the area of unilateral decisions affecting the welfare of the workers is now restricted; hence, ensuring workers' participation in the management of industries which in turn ensures industrial democracy.

The methods used for collective bargaining are of two types:

1. "Contractual method" (Static). Here the employer and the representatives of the workers meet for negotiation for the purpose of settling trade disputes. They bargain and if they succeed, they conclude a "collective agreement" which is a "social treaty." It becomes "Static" because after the conclusion of the agreement, it remains the only agreement that binds the parties. It remains static even when situations or circumstances surrounding the agreement changes.
2. "Institutional Method" (dynamic) labour and management join together to set up an institution and a Constitution. The body consists of an equal number of representatives while passing a resolution; the bilateral agreement is open to interpretation or modification, hence it is an open ended agreement. Also a time limit is usually not fixed for its operation. This agreement

cannot be enforceable under the law of contract.

Arbitration and Adjudication

The adoption of Arbitration and adjudication for the settlement of trade disputes implies an intention on the part of the government to participate actively in the control of economic powers. Arbitration is of two kinds: voluntary and compulsory arbitration. The award of voluntary arbitration binds the parties only when the parties to the dispute consent to the award, whereas the award of a compulsory arbitration does not require the consent of the parties for its enforcement; it is final and binding on the parties concerned just like adjudication. The IAP's award is not final and binding since an objection can be raised to the NIC, whose award only is final and binding.

Legislative Prohibition and Restriction on Strikes

Section 13(1) of the Trade Disputes Act 1976 prohibits strikes and lock-outs if connected with trade disputes of which no attempt is made under Sections 3 and 4 in bringing about settlement in an area of non-essential services. Section 3 allows the parties to apply their mode in settling their disputes, but where no such means exist they are to "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, with a view to amicable settlement of the dispute." Where the dispute has not been amicably settled under Section 3, it has to be reported to the Minister of Labour by or on behalf of either of the parties within 14 days. Furthermore, the workers are not entitled to go on strike where a conciliator has been appointed under Section 6 of this Act, or where the dispute has been referred to the Industrial Arbitration Panel for settlement under Section 7, or where an award by an arbitration tribunal has become binding under Section 9(3), or where the dispute has been referred to the National Industrial Court under Section 10(1) or (2) and where the National Industrial Court has issued an award on the reference.

In the case of "Essential Services" the prohibition under Section 13 is still effective even though Section 13 requires "notice" of intention to go on strike by the workers. Section 31 provides that (1) without prejudice to Section 13 of this Act, if any worker employed in any essential services ceases, whether alone or in combination with others to perform work which he is employed to perform without giving to his employer at least fifteen days' notice of his intention to do so, he shall unless he proves that at that time when he ceased to perform that work he did not know, or had no cause to believe, that the probable consequence of his or their doing so would be to deprive the community

or any part of the community either wholly or to a substantial extent of that or any other essential service, be guilty of an offence and be liable on a conviction to a fine of N100 or to imprisonment for six months.

The "notice" of intention to go on strike in the area of essential service would be meaningful only when the workers can go on strike at all under Section 13, as it prohibits strikes, presumably under any circumstance. Section 13 is a blanket ban on strikes.

Section 13 subsection (2) provides for sanction for the breach of Section 13(1) as follows:

"Any person who contravenes subsection (1) shall be guilty of an offence and be liable on conviction in the case of an individual to a fine or imprisonment for six months, and in the case of a body corporate to fine of N1,000."

This prohibition is inadequate, impossible and impracticable. The section has left lee-ways for strikes as it imposed no restriction on strikes during the pendants of trade dispute before the Arbitration Panel and the National Industrial Court. It also has gap for strikes under Sections 3 and 4, that is, when the workers declare a trade dispute and the Minister of Labour fails to refer it to any agency for settlement. It is impossible to prevent strikes as it is inevitable in labour management relation. The law can prohibit its occurrence, but is cannot prevent it. Also the threat of imprisonment at the background against the strikes cannot prevent the workers from embarking on work-stoppages; as strikes often involves hundreds of workers, imprisonment becomes practically impossible since our prisons are already congested. Statistics have shown that these reforms contributed very little to industrial peace and harmony. The objects of all the mentioned Acts were to curtail industrial actions which became frequent during the civil war and after.

Nevertheless, Nigeria suffered more strikes since 1968, during 1976 and after, and no attempt was made to prosecute the strikers. For example 744 workers went on strike for seven days at the Western Marketing Board⁵, and 600 workers of National Press went on strike in 1968⁶. Also after the promulgation of the Trade Disputes Decree 1976 the teachers throughout the federation went on strike, all the Resident Medical Doctors, Academic Staff Union of the Universities, the Central Bank employees too went on strike, as well as the Labour Congress. (See Table 1.1 over-leaf for the number of strikes and man-days lost for the years 1969-1983).

Table 1.1

No. of Strikes and Man-days Lost

	No. of Strikes	Workers Involved	Man-days Lost
1960/61	65	36,667	157,373
1961/62	58	18,673	57,303
1962/63	45	—	53,039
1963/64	62	45,409	96,621
1964/65	195	73,447	253,460
1965	125	—	238,679
1966/67	89	41,344	100,000
1967/68	63	11,767	705,555
1968/69	29	11,551	35,025
1969/70	46	18,357	718,946
1970/71	124	78,474	224,470
1971/72	85	31,915	63,254
1972/73	71	43,676	105,415
1973/74	105	41,527	148,130.1
1974/75	254	126,818	357,028.2
1975/76	264	122,546	439,296.3
1976/77	130	83,126	225,709.6
1977/78	153	97,802	448,335.7
1982			
1983	141	—	—
	183	629,177	404,822

Source: Federal Ministry of Labour Annual Reports, Quarterly Reviews. O. Sunubi, *Trade Dispute in Nigeria 1966-1971*, Nigerian Journal of Economics and Social Studies, XV, 2 July, 1973, 1973 p. 232.

The denial of the right to go on strike by the Trade Disputes Decree has been given effect by the Constitution. Even though it provided for the freedom of association under Section 37, nevertheless it implied that there is no such fundamental right to go on strike; Section 41 provides that nothing in Sections 34, 35, 36, 37 and 38 of the Constitution shall invalidate any law that is reasonable in a democratic society in the interest of defence, public morality or public health, etc. The right to go on strike therefore, is subject to an overriding interest and the State has the right to intervene during war or any other public emergency threatening the life of public, national security, public health or morals. The government by so doing has shown its concern for industrial peace by using law as a panacea for industrial actions but in vain. It is worthy of note that freedom to go

on strike is necessary under the principle of collective bargaining, and where the workers can not use this right collectively then they could not bargain collectively, as in is their ultimate sanction against management for securing concession. This reality led the Federal Government to insert an additional section in 1977 into the Trade Disputes Decree of 1976 under Section 32A as a means of curtailing work stoppages due to the failure of Section 13 to provide the necessary peace by use of compulsion in industrial relations. It has been noted generally that countries where government has bias for compulsory methods of settlement of disputes as in India, Australia, New Zealand etc. has witnessed greater number of strikes than the countries where collective bargaining is operating like U.S., France, Finland etc. as shown on the table below.

Table I - Industrial Strikes^m

Countries	1975	1976	1977	1978
Australia	1,390	1,490	700	1,010
Belgium	340	560	420	650
Canada	2,810	2,550	830	1,930
Denmark	110	220	240	90
Finland	310	1,310	2,360	160
France	390	420	260	200
Germany (FR)	10	40	—	370
India	1,450	380	1,510	1,280
Ireland	810	640	1,050	1,630
Japan	390	150	70	60
Netherland	—	10	140	—
New Zealand	390	950	810	790
Spain	370	2,540	3,550	1,620
Sweden	20	10	23	10
Switzerland	—	20	—	—
U.K.	540	300	840	840
U.S.	990	1,190	1,070	1,080

^mDyham, S N "Labour Management Relations in Cochlin University Law Review, Industrial Relations Law Vol VI June and Sept 1982 p 346

The government has gone a long way to recognise that the freedom to strike during peace time cannot be unlimited. This is why Britain and America did not tell their trade unions not to go on strike during peace time. Rather the law has been used to cut down the extent of the trade union's immunity. For example in England before enacting the Employment Protection and Consolidation Acts of 1980-82 which cuts down the trade union's immunity, the government concluded that the unrest caused by the trade unions were responsible for the economic depression of 1970s which lasted up to the 1980s. It was the House of Lords which cut down the trade unions immunity in the case of *Heaton Transport (St. Helens) Ltd. v. Transport and General Workers' Union*,⁷ by re-establishing that the trade union as distinct from individuals could be held legally liable for their actions which were termed "unfair industrial practice." It merely restored the principle in the *Taff Vale Railway Co. v. Amalgamated Society of Railway Servants*.⁸ It held that a registered union was to be treated as a separate legal entity and applied the principle of vicarious liability for the tortious acts of its officials. Immunity is deprived even where the industrial action is in "contemplation or furtherance of a trade dispute, and it is actionable by the person that is adversely affected by the strike. The Acts makes their funds liable to a civil action.

Section 32A of the Trade Disputes Act of Nigeria provides that "notwithstanding anything contained in the Act or any other law any worker that takes part in a strike shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not be counted for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected." The same section provides that locked out workers shall also be paid during the period of lock-out. Under this section the level or amount of wages payable to the strikers is exposed to deductions. This provision is almost similar to the English principle laid down in *Rookes v. Bernard*⁹ in 1964, and Section 147 of the Industrial Relations Act, 1971. In this case Rookes was dismissed from the employment of B.O.A.C. due to pressure from the trade union who wanted him dismissed because he refused to participate or join their union. Rookes brought an action against the Secretary of the Union asking for exemplary damages. The House of Lords held that the resolution passed by the Union threatening to go on strike if Rookes was not dismissed amounted to intimidation. Donovan L.J. in the Court of Appeal pointed out that a strike is where the employer and the employees regards the contract terminated the moment the strike began. He said the workers are expected to return to work at the end of strike, without is affecting their seniority, pensions and other rights. The employer also expects the workers who are his labour force to return by a given date, but where there is refusal to abide by the warning the employer can regard their services

as severed. He added that the employer does not pay the workers for the days they went on strike, but the contract continues. This view was applied in *Stratford v. Lindley*¹⁰ in *Morgan v. Fry*¹¹. The theory was later opposed by Phillips J. in *Simons v. Hoover Ltd*¹² by holding that there was no case at common law which suggests that strike merely suspend the contract unilaterally before the case of *Morgan and Fry*.

Dismissal after Strike

Since the contract is not brought to an end, but is suspended, it follows that dismissal following strike is not contemplated by the Law in Britain and in Nigeria.

In Britain every worker has a right not to be "unfairly dismissed" after strike and where there is an infringement on such a right the workers are to make complaint to the Industrial Tribunal. The worker has a right of suing for "wrongful dismissal." Section 62(2) of the Employment Protection Consolidation Act, 1978 provides that a strike is a breach of contract which entitles the employer to dismiss all those workers that took part in it. But where he proposes to offer re-engagement, he must re-engage all the workers. However, where the employer is selective in offering re-engagement, he will be said to have acted "unfairly." The Tribunal will have jurisdiction to hear any complaint where the employer dismisses everyone engaged in the strike at the date of dismissal without re-engaging only some of the workers. This principle was applied in the case of *Health v. J.F. Longman (Meat Salesman) Ltd.*¹³ The workers went on strike and later on decided to resume work. They were subsequently dismissed. The National Industrial Relations Committee decided that the workers had returned to work as they were no longer at strike, in which case the dismissal was declared "unfair."

In the *Federated Motor Industries (Division of U.A.C. Ltd. v. Automobile Boatyard, Transport, Equipment and Allied Workers' Union*,¹⁴ the dispute was between the U.A.C. and Associated Companies African Worker's Union, for refusal to remove the works Manager, which led to "go-slow" action on the part of the workers. This demand was later withdrawn, but management insisted for the application of non-work-no pay principle for the period of the strike. This industrial action led to the dismissal of 403 workers.

The court applied 32A relating to no-work-no-pay principle. But on the issue of re-engagement management was selective and the court even though not satisfied merely ordered for severance payments to the left out workers. The other case that went before the National Industrial Court since the enactment of Section 32A is the *Management of Union Bank of Nigeria v. National Union of Banks Insurance and Financial Institutions*.¹⁵ The court refrained from making the order in this case on the ground that such deductions

would not promote peace in the Bank. The workers demanded for ex-gratia payment out of the over N60 million profits, and refusal by management to meet the demand led the workers to go on strike.

The Court proceeded in all the cases of dismissal following strike by not making an order of re-engagement as it operates under the Common Law. The common law does not recognise strike as a suspension of contract but a termination of the relationship. The contract cannot be enforced as the mutual confidence existing between them cannot be restored on the principle of public policy. The common law in Britain in the modern times is shifting towards being supplemented and supported with new statutory rights for the workers in the case of dismissal following strikes, contained in the Employment Protection (Consolidation) Act of 1978 mentioned above.

Recommendations

The provision of institutional variables which forms the basis of workers' employees such as wages and salaries, work ethics, sanctity of collective bargaining, and conditions of work should be fair to the workers. This will in return bring about peace and harmony for maximum production, which in turn is responsible for acceleration of economic growth. Rapid economic growth and the resultant economic prosperity brings about education, scientific and technological advancement of the people. Since this would minimise the inevitable conflict, so that any dispute that may arise would be taken care of by the laid down procedure. The provided procedure for settlement of such dispute under the Act is unnecessarily long and time consuming — authority especially with the involvement of the Minister of Labour for the reference of trade disputes for conciliation, mediation, arbitration and finally adjudication. The non-availability of direct access to the court leads to delays.

For example it took 20 months to adjudicate the case of *Management of Union Bank of Nigeria Ltd. v. National Union of Banks Insurance and Financial Institution Employees*.¹⁶ Delays in the settlement of trade disputes ought to be avoided as such disputes relates to sensitive issues affecting not only the parties, but, the purse of the nation as well. Also the dispute settlement mechanism has to be workable and acceptable to both labour and management. Strikes would continue to be on the increase where the workers no longer have confidence in its working as they hardly obtain a fair remedy especially against unfair dismissal. It hardly award re-engagement order even where the dismissal is "unfair" and the only remedy available in this respect is severance payments. Lack of confidence on the court and the long laid down statutory procedure for the settlement of trade dispute leads the workers to resort to strike first, negotiation last.

State's active intervention in industrial relations erodes collective

bargaining, leading to governmental control over wages and conditions of employment of the workers. Labour and Management know their problems and are best placed to find solutions to such problems as they are directly concerned in the productive process, through discussion, persuasion, compromise and agreement, i.e. negotiation. Such a governmental policy is considered inadequate in evaluating its impact on the national economy, trade unions, as well as hindering industrial harmony, social justice and industrial democracy. The consequence of such intervention is indiscipline, agitation and strikes, which consequently affects production.

Section 32A of the Trade Disputes Act of 1977 is preferable to Section 13 which prohibits strike without actually preventing its occurrence. This is why it should be applied by the National Industrial Court to all category of workers that goes on strike. We have seen the *Union Bank* case mentioned above where the court refused to apply Section 32A on the workers that threatened to go on strike and actually embarked on industrial action. Only by applying it can we test its impact on curtailing work-stoppages. Nevertheless, workers cannot be subjected to unfair institutional variables, long and time consuming dispute settlement mechanism and be prevented from resorting to strike actions. Strike is the ultimate weapon the workers have against managements' refusal to negotiate and to abide by the collective agreement. Where employment factors are conducive to industrial peace and harmony strike would be used as a last resort and the loss of man-days would be fewer, and consumers or the public would be supplied goods and services with a minimal interruption and at a reasonable price if not stable.

The right to go on strike is guaranteed by Section 37 of the 1979 Constitution (i.e. the right to form a trade union). The Trade Unions Act of 1973 also provides for the formation, registration, membership and organisation of Trade Unions. Immunity, too is guaranteed against civil and criminal actions when it is in contemplation or furtherance of a trade dispute; the Penal Code under Section 96 as well as Section 518A of the Criminal Code provides for criminal immunity. Civil immunity is contained in Sections 21 and 46 of the Trade Unions Act, 1973. That notwithstanding, there is no fundamental right to go on strike. The negation of the right to strike is contained in Section 41 of the 1979 Constitution implying that the State can intervene in strikes in times of war and other public emergency Threatening the life of the nation, as it was the case during the civil war. Consequently, the right to strike in Nigeria is not an absolute one. This is also the case in Britain. There the European social chapter in the European conventions recognises the fact that the State can intervene during strikes and emergency threatening the nation.

NOTES

See Freund, O.K.: Labour and the Law, 2nd ed. London Stevens and Sons, 1977, pp. 48-49.

Trade Disputes (Arbitration and Inquiry) Act, 1941 Cap. 201, 1958 edition law. Decree of June 1, 1968, No. 21.

See Section 167 of the Industrial Relations Act, 1971, England.

See Fashayin, T. Industrial Relations in Nigeria Longman Group Ltd., 1980 pp. 78-9.

See Fashayin, T. Industrial Relations in Nigeria Longman Group Ltd., 1980 pp. 78-9.

(1973) A.C. 15, (1972) 3 W.L.R. 431.

(1901) A.C. 426.

(1964) A.C. 1129. It provides that a strike in breach of a restriction on strike action constitute a breach of contract where that restriction was expressly or impliedly incorporated into the individual contract of employment.

(1965) A.C. 269.

(1968) 2 A.B. 710, 724-28

(1977) 1 C.R. 61.

(1973) 2 All E.R. 1228.

(1978-79) N.I.C.L.R., 153-169.

1982-83 N.I.C.L.R. 185-189.

Supra.

LAW LIBRARY
A.B.U. ZARIA