STRIKES IN NIGERIA: LEGAL IMPLICATION AND CHALLENGES

BY

DR. (MRS) J.A.M. AUDI*

INTRODUCTION

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 expect 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.[1]

Strike is the most potent instrument for maintaining 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 look-out[2]. This inevitable conflict between labor and management has not known limits in industrial relations.

This paper will therefore discuss the inciaence of strikes in Nigeria, pointing out the legal implication and challenges.

WHAT IS LOCK-OUT

By virtue of section 48 (1) of the Trade Dispute Act, 1976 (as amended)[3], "lock-out:

"means the closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or aid a other employer in compelling persons

* Associate Professor of Law, Faculty of Law, A.B.U, Zaria.

[1] Audi, J.A.M., Strikes and the Law in Nigeria, Ahmadu Bello University Law Society' Journal (1993) Vol. 2, p. 73.

[2] Ibid

[3] Now Cap. T8, L. F. N., 2004

employed by him, to accept terms of employment and physical conditions of work.[4]

WHAT IS STRIKE?

Section 48(1) of the Trade Dispute Act[5], defined "strike" as the: cessation of work by a body of persons employed acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers or body of persons employed, to accept or not or not to accept terms of employment and physical conditions of work, and in this definition, "Cessation of work" includes deliberately working at less than usual speed or with less than usual efficiency, and "Refusal to continue to work" includes a refusal to work at usual speed or with usual efficiency.

Strike under this definition includes "go-slow" and "work to rule". In the case of *FEDERATED MOTOR INDUSTRIES (DIVISION OF UAC LTD) V. AUTOMOBILE BOATYARD: TRANSPORT EQUIPMENT AND ALLIED WORKERS UNION,*[6] the court held that a "go-slow" action constitutes a strike action. 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 EFFECT OF STRIKE

Strike involves the interruption of economic process. The consequence of strike actions therefore, is the waste of human and other resources, leading to loss of man-days as production is considerably reduced or hampered resulting in economic and social stunted growth and unrest. The factors leading to work stoppages are many and varied. They are non payments of Christmas bonus, leave allowance, vehicle loans, medical scheme[7], payments of salaries and arrears. Others

---

[4] *The Austrian — Nigerian Lace Manufacturing Company Limited v. National Union of Textile, Garment and Tailoring Workers or Nigeria (1978 — 2006) DJNIC, 102 at 103*

[5] Op. Cit., footnote 3

[6] (1978 - 2006) DJNIC, 48

[7] *National Union of Hotel and Personal Services Workers v. The Tourist Company of Nigeria Limited (Federal Palace Hotel Complex) (1978 - 2006) DJNIC, 108*

are better wages and conditions of employment, breach of existing collective agreement, and redress of industrial grievances[8].

BRIEF HISTORY OF TRADE DISPUTE LEGISLATION IN NIGERIA

For the first time the Nigerian government provided legislative enactment for collective bargaining in industrial relations in. 1941[9] 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 code of behavior for the attainment of such peace. In the 1960s, Labour Enactments following the civil war shows clearly the role government played in Nigerian's industrial relations, for example, the Trade Dispute 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 *period of such emergency"*[10] 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 war than during peace time. For this reason, the decree was amended in 1969 and Industrial Arbitration Panel was thereby constituted as an agency for settling trade disputes.

In 1976 a new Trade Dispute Decree[11] was promulgated, giving birth to the National Industrial Court as arbitration was insufficient in curtailing strikes which were in the increase. The Trade Dispute Decree was further amended in 1977,[12] 1988[13] and 1992[14] respectively. And recently, in 2006 when the

---

[8] Audi, J.A.M, Loc. Cit., footnote 1

[9] Trade Disputes (Arbitration and Inquiry) Act, 1941, Cap. 201, L.F.N., 1958

[10] Decree of June 1, 1968, No. 21.

[11] Decree No. 7 of 1976

[12] Decree No. 54 of 1977

[13] Decree No. 39 of 1988

[14] Decree No. 47 of 1992

National Industrial Court Act and Rules were enacted, the Provisions on Trade or Labour Disputes were repealed as a result of re-structuring and repositioning the NIC.

The 1976 Trade Dispute Act[15] has two features. The first part encourages free collective bargaining, (still remains) which is the normal process of settling trade disputes. The second part makes provisions for alternative process which is compulsory in nature where the normal process fails. Under the first part which is collective bargaining, the parties are given the chance to reach agreement on their own under sections 4, 5 and 7. Where collective bargaining process which is voluntary in nature fails, begins compulsory method. Under section 9 of the Act[16], the Minister is to refer the dispute to an Arbitration Panel within fourteen days. Section fourteen of the Act[17] 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 of the Arbitration Panel. However, under the new legal regime of the National Industrial Court Act, 2006, the power of reference of a trade dispute by the Minister from the, Industrial Arbitration Panel to the National Industrial Court does no longer exist in all cases. The jurisdiction of the National Industrial Court now allows parties free and direct access to the court subject to section 7 of the National Industrial Court, 2006.

The National Industrial Court Act, 2006 provides under section 53 as follows:

(1) Part II of the trade disputes act is hereby repealed.[18]

(2) Without prejudice to the provisions of subsection (1) of this section, the other provisions of the Trade Disputes Act shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of this Act.

(2) If any provision of the trade dispute act is inconsistent with the provision of this Act the provisions of this Act shall prevail.

[15] Loc. Cit. footnote 3.
[16] Ibid.
[17] Ibid.
[18] The said part II being referred to is the part containing provisions relating basically to the National Industrial Court

The effect of the foregoing provisions of section 53 of National Industrial Court Act, 2006 is that the Trade Dispute Act' must be interpreted in consonance with the National Industrial Court Act, 2006 and in the case of any inconsistency, the later will prevail. Therefore, the National Industrial Court having properly assumed the status of a Superior Court of record[19] and having by so doing been incorporated by legal implications as one of the courts referred to under section 6 (3) (5) of 1999 constitution, the parties now have free and direct access to the court subject to section 7 of National Industrial Court, 2006.

Notwithstanding anything to the contrary in National Industrial Court Act, 2006 or any other enactment or law, the National Assembly may by an Act prescribe that any matter under section 7(1) (a) of the Act[20] may go through the process of conciliation or arbitration before such matter is heard by the court[21]. Also, an appeal shall lie from the decisions of an Arbitral Tribunal to' the court as of right in matters of disputes specified -in section 7(1) (a) of the Act [22]

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[23]. 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 industrial democracy. The methods used for collective bargaining are of two types:

1. "Contractual method" (static): Here, the employer and the representative 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

[19] Section 1 (3), National Industrial Court Act, 2006
[20] National Industrial Court Act, 2006
[21] Ibid, Section 7(3)
[22] Ibid, Section 7(4)
[23] See Section 167 of the Industrial Relations Act, 1971 of England

agreement, it remains the only agreement that binds the parties. It remains static even when situation or circumstances surrounding the agreement changes.

2. "Institutional method"(dynamic): It requires labour and management 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, and 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

However, an undertaking to abide by the award of Industrial Arbitration Panel does not constitute a waiver of right of appeal to National Industrial Court. Thus, appellants can exercise their right of appeal to the court notwithstanding their earlier agreement to abide by the award of the Industrial Arbitration Panel[24]

LEGAL IMPLICATION AND CHALLENGES - OF LEGISLATIVE PROHIBITION AND RESTRICTION ON STRIKES

Section 18 (1) of the Trade Disputes Act 1976[25] prohibits strikes and lock-outs if connected with trade disputes of which no attempt is made under sections 4 and 6 in bringing about settlement in an area of non-essential services. Section 4 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 representations under the presidency of a mediator mutually agreed upon and appointed***

[24] Nigerian Ports Authority v. Nigerian Ports Authority Workers Union (1978 - 2006) DJNIC, 75 at 77. See also section 7(4), National Industrial Court Act, 2006

[25] Loc. Cit., footnote 3

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 4, it has to be reported to the Minister of Labour by or on behalf of either of the parties within three days of the end of the seven days within which a mediator is appointed[26]

Furthermore, the workers are not entitled to go on strike where a conciliator has been appointed[27] or where the dispute has been referred to the industrial Arbitration Panel for settlement[28], or where an award by an arbitration tribunal has become binding,[29] r where the dispute has been taken to the National Industrial court[30].

In the case of Essential Services,[31] the prohibition under 18 is still effective even though section 41 requires fifteen days' notice to be given by workers in essential services before ceasing work.

Section 41 provides that:

> "without prejudice to section 18 of this Act, if any worker employed in any essential service ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving his employer at least fifteen days notice of his intention to do so, he shall, unless he proves that at the time when he ceased to perform that work he did not know, or had no cause to believe, that the probable consequences 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 essential service, be guilty of an offence and be liable on conviction to a fine of N100 or to imprisonment for a term of six months."

---

[26] Ibid, section 6(1).
[27] Ibid, section 8(1).
[28] Ibid, section 9(1).
[29] Ibid, section 13(4) See also section 13(3)
[30] See the National Industrial Court Act, 2006.
[31] "Essential Service" means any service mentioned in the first schedule to the Trade Dispute Act, 1976. Now Cap. T8, L.F.N., 2004.

The notice of intention to go on strike in the area of essential service would be meaningful only when the workers can go on strikes at all under section 18, as it prohibits strikes, presumably under any circumstance whatsoever. Section 18 is a blanket ban on strikes. Section 18(2) provides for sanction for the breach of section 18(1) as follows: "Any person who contravenes subsection (10 of this *section shall be guilty of an offence and be liable on conviction in the case of an individual, to a fine of WOO or to imprisonment for a term of six months, in the case of a body corporate to a fine of ₦1, 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 pendencies of trade dispute before the Arbitration Panel and the National Industrial Court. It also has gap for strikes under sections 4 and 6, 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 relations. The law can prohibit its occurrence, but it cannot prevent it. Also, the threat of imprisonment at the background against the strike cannot prevent workers from embarking on work stoppages[32]. As strikes often involve numerous numbers of workers, imprisonment becomes practically impossible since Nigerian prisons are already congested. The objectives of all the above mentioned efforts were to curtail industrial actions which became frequent during the civil war and after. However, statistics have shown that those efforts contributed very little in bringing industrial peace and harmony into Nigerian's labour environment.

As an addendum, section 30(6) of the Trade Union Act[33] provides that: "No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless:

(a) The person, trade union or employer is not engaged in the provision of essential services.

(b) The strike or lockout concerns a labour dispute that constitutes a dispute of right.

[32] Audi, J.A.M., Op. cit., p.77.

[33] Trade Unions (Amendment) Act, 2005.

(c) The strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of that employee, trade union or employer.

(d) The provisions for arbitration - in the trade Disputes, Act Cap. 432, Laws of the Federation of Nigeria, 1990 have first been complied with;

(e) (e) In the case of an employee or trade union, a ballot has been conducted in accordance with the rules and constitution of the Trade Union at which a simple majority of all registered members voted to go on strike.

The foregoing provision seems more practicable as it imposes prohibition on strike and not limitation of strike. However, the provision of paragraph (d) of the foregoing provisions appears to have reverted back the situation to the *status quo ante* under the Trade Dispute Act[34]. Besides, the foregoing provision could be construed. In the conjunctive sense[35].

The question has then been asked times without number if there is a "right to strike" in Nigeria. Some Scholars have argued that since the Constitution guarantees the right to form or belong to a trade union, then there should be a right to strike[36]. In Nigeria today, the right to strike has been highly circumscribed by the Trade Dispute Act[37].

Nevertheless, Nigerians 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 Board[38], and 600 workers of National Press went on strike in 1968[39]. Also, after the promulgation of the Trade Dispute Decree, 1975, the teachers throughout the federation went on strike, all the Resident Medical Doctors, Academic Staff Union of Universities, the Central Bank employees too went on strike as well as the Labour Congress[40]. The recent years have equally witnessed many strikes by different groups of workers such as association of Senior

---

[34] Section 18, Cap.T8, L.F.N., 2004

[35] *Ezekwesili v. Onwuagba (1998) 3 N. W L. R. (PT. 541)*

[36] Danesi, R.A., The Trade Union (Amendment) Act, 2005 and Labor Reform in Nigerian: Legal Implication and Challenges, Nigerian Relations (2007) Vol.1 No.1, P.108

[37] Op. cit., footnote 34

[38] Fashayin, T., Industrial Relations in Nigerian, Longman Group Ltd (1980) PP.78-79.

[39] Ibid.

[40] Audi, J.A.M., Op.cit., PP.77 – 78.

University Union (ASUU).National of Teaching Union of Teachers (NUT) etc, During President Obasanjo's Government, Nigerian Labour Congress staged over four general strikes to protest against the increase in fuel price by the federal government. The denial of the right to go on strike by the Trade Dispute Act has been given effect by the constitution. Even though it provided for the freedom of association[41], nevertheless, it implied that there is no such fundamental right to go on strike. The Constitution provides that nothing in section 40 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health, or for the purpose of protecting the rights and freedom of other persons[42].

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, national security, public health or morality. 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 cannot use this right collectively then they could not bargain collectively as it is their ultimate sanction against management for securing concessions. This reality led the Federal Government to insert additionally, section 43[43]. In 1976 as a means of curtailing work stoppages due to the failure of section 18 to provide the necessary peace by use of compulsion in industrial relations.

Before the NICA, 2006 amendment picketing was lawful under the Trade Unions Act[44]. But it is allowed only in contemplation or furtherance of a trade dispute and it must be limited to employees in the organization. It must not be extended to suppliers, shoppers, clients or other customers. The use of violence is prohibited, and if used, amounts to a criminal offence. In the case of Queen V. Imoudu & Ors,[45] Imoudu a Labour Union Leader was convicted along with five others on a charge of taking part in a riot. The men became riotous in order to compel all the railway workers to join in the demonstration intended to draw the attention of the employer to certain demands made by

[41] Section 40, Constitution of the Federal Republic of Nigeria, 1999.
[42] Ibid, Section 45(1)(a)(b).
[43] See Section 43 Loc. Cit. footnote 3.
[44] Sections 43, Cap. T14, L.F.N., 2004.
[45] (1961) 1 All N.L.R. 13.

the union.

However, under the new Labour Act of 2005[46], an outright ban has been placed on picketing, and it actually made it an offence to engage -in picketing during industrial actions. The said amendment provides that:

"(a) No person shall subject any other person to any kind of constraint or restriction of his personal freedom in the course of persuasion;

(b) No trade union or registered Federation of Trade Unions or any member thereof shall in the course of any strike action compel any person who is not a member of its union to join any strike or in any manner whatsoever, prevent air crafts from flying or obstruct public highways, institutions or ... of any kind of the purposes of giving effect to the strike."

The above provision is to the disadvantage of workers. But in reality, Nigerian Labour Congress has not relented in its picketing of companies that it labels as implementing or engaging in"unfair labour practice[47]. In recent years, the Nigerian Labour Congress has declared war on organizations who do not allow their members to join or form trade unions and their strategy for achieving their aims and objectives has always been the picketing of those organizations. Moreover, of course this strategy has paid off for the Nigerian Labour Congress[48].Meanwhile, the government has gone a long way to recognize that the freedom to strike during peace time -cannot be unlimited. This is why countries like 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 cut 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 that cut down the trade union immunity in the case of *HEATON TRANSPORT (ST. HELENS) LTD V. TRANSPORT AND GENERAL WORKERS' UNION*[49], 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

---

[46] Section 42 (1)(a)(b), OP.cit., footnote 33.
[47] Danesi, R. A., Loc. Cit., P. 113.
[48] Ibid.
[49] (1972) 3 W.L.R. 431; (1973) A.C. 15.

restored the principle in the case of *TAFF VALE RAILWAY CO. V. AMALGAMATED SOCIETY OF RAILWAY SERVANTS*[50].

Finally, under this heading, the fact that striking workers did not exhaust all constitutional provisions before embarking on strike makes a strike action illegal and nullifies whatever claim they may have during the period of the strike actions[51]. On this note, the right to strike must here be distinguished from the exercise of that right. If an apparently vested right is exercised in breach of law or terms of the contract, the worker may not be protected from its legal consequences. The sanction provided in[52] Trade Dispute Act is loss of wages for the period of strike. This section in question provided that *"notwithstanding other law, where any worker takes part in a strike, he shall not entitled to any wages or any other remuneration for the period of strike and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly"*. The same section goes further to state that –lockedout workers shall also be paid during the period of lockout[53]

In *MANAGEMNET OF METAL CONSTRUCTION (WA.) LIMITED V. METAL PRODUCTS WORKERS' UNION OF NIGERIA,*[54] the court held that where there is a lock-out of workers by management, the workers are entitled to payment of full salaries for the period of the lock-out.

Hence, like the English provisions, it could be argued that a strike which is not in breach of the worker's individual contract of employment would be lawful so long as the relevant statutory provisions is satisfied[55].

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 Nigeria[56].

---

[50] (1901) A.C. 426.
[51] Concorde Hotel Limited V. National Union of Hotel and personal services workers (1978 - 2006) DJNIC, 317 at 319.
[52] Section 43 (1)(b), Loc. Cit., footnote 36.
[53] Section 43 (1)(b), Loc. Cit., footnote 36
[54] (1978 - 2006) DJNIC, 152 at 155
[55] *See Rookes v. Barnard (1964) A.C. 1129, (1962) 2 All ER., 579, (1962) 3 W.L.R. 260.*
[56] Audi, J.A.M., Loc.cit., P.81

Lord Denning argued that, *"if the strike takes place, the contract of employment is not terminated. It is suspended during the strike and revives when the strike is over*[57].

The supreme court of Nigeria appears to have lent support to the Denning's argument. Delivering the court's judgment in *ANNENE v, J. ALLEN & Co. LTD*[58] Brett, J.S.C., said: *"Prima facie a striker intends to return to work once the objects of the strike have been obtained and although this may involve a fresh contact of service, an intention to repudiate the existing contract is not necessarily to be presumed"* The whole circumstances of the case, including the duration of the strike, may be such as to warrant the employer in treating the ',striker as having manifested an intent to repudiate. But this, according to the instant case, must depend on the facts of each case.

In Britain, every worker has a right not to be "unfairly dismissed strike and where there is an infringement of such a right, the workers are to make complaint to the Industrial Tribunal. The worker has a right of suing for "wrong dismissal". Though Section 62(2) of the Employment 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*[59] where 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 *FEDERATED MOTOR INDUSTRIES (DIVISION~ OF UAC LTD) V. AUTOMOBILE BOATYARD, TRANSPORT EQUIPMENT AND ALLIED WORKERS' UNION*[60], workers embarked on industrial action which led to

---

[57] *Morgan v. Fry (1968)3 All E.R. 452*

[58] (1964) SC. 88/64. In *Morgan v. Fry* (Ibid), Davies, L.J. agreed with Lord Denning, saying that a strike meant "that the obligations under the contract would be mutually suspended".

[59] (1973) 2 All E.R. 1228

[60] Supra, footnote 6

the dismissal of 403 workers. 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.

Another interesting case on the principle of "no-work-no-pay" is the case of *MANAGEMENT OF UNION BANK OF NIGERIA LIMITED V. NATIONAL UNION OF BANKS, INSURANCE AND FINANCIAL INSTITUTIONS, EMPLOYEES*[61]. In this case, the court refrained from making the order of no-work-no-pay on the ground that such deductions would not promote peace in the bank. The workers demanded for *ex-gratis* payment out of the over W60 million profit, and refusal by management to meet the demand led the workersi 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 recognize strike as a suspension of contract but as termination of the relationship[62].

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 time is shifting Towards being supplemented and supported with new statutory rights for the workers in the case of dismissal due to strike[63].

RECOMMENDATION

The provision of institutional variables which form the basis of workers employment such as wages and salaries work ethics, sanctity of collective bargaining and conditions will in turn 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 bring about education, scientific and technological advancement of the people. Since this would minimize the inevitable conflict, so that any dispute that may arise would be taken care of by the laid down procedure.

The procedure for settlement of such dispute under the Act 'is unnecessarily long and time consuming, especially with the involvement of the Minister of Labour for the reference of trade disputes for conciliation, mediation,

---

[61] (1978-2006) DJNIC, 115

[62] *Springhead spinning Co. v. Riley (1-868) L.R.6 Eq. 551.* See *also, Morgan v. Fry (1968) 3 WLR.269.*

[63] See the Employment Protection (Consolidation) Act, 1978 of England

arbitration. Delays in the settlement of trade disputes ought to be avoided as such disputes relate 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. Nevertheless, it must be noted here that by the coming into operation of the national Industrial Court Act, 2006, parties to trade disputes now have direct access to 'the court in all cases without waiting for reference by the minister of Labour.

Moreover, it is recommended that state should desist from active participation in Labour affairs. State's active intervention in industrial relation erodes effective collective bargaining, leading to governmental control over wages and conditions of employment of workers. Labour and management know their problems and are best placed to find solutions to such problem 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 productions.

Section 43 of the Trade Dispute Act[64] is preferable to sections 18[65] and 30(6)[66] which prohibit strike without actually preventing its occurrence. This is why it should be applied to all categories of workers that go on strike. We have seen the Union Bank case mentioned above where the court refused to apply section 43 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 management's refusal to negotiate and to abide by the

[64] OP-Cit., footnote 62
[65] Loc. Cit. footnote 3.
[66] Ibid

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.

CONCLUSION

The right to go on strike is guaranteed by section 40 of 1999 constitution, i.e. the right to form a trade union. The Trade Unions Act[67] also provides for the formation, registration, membership and organizations of trade unions. Immunity too is guaranteed against actions by trade unions. The Penal Code under section 96 as well as section 518A of the Criminal Code provide for criminal immunity. That not withstanding, there is no fundamental right to go on strike. The negation of the right to strike is contained in section 45 of the 1999 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.

Strike is 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 or redundancy by using their strength collectively. Sir, Otto Kahn Freund referred to these interests as "platitudinous confrontation of expectations and interests.[68]

Suffice it to say that prohibiting strikes and lockouts whether expressly or by implication will be tantamount to bleeding trade unionism to death in Nigeria. It deprives workers of the one weapon they have to improve their position which invariably employers are not willing to improve. It is a measure designed to rob Nigerian workers of the universal' right of free trade unionism and to undermine and destroy the existing Nigerian trade unions.

---

[67] Loc. Cit., footnote 35.

[68] Freund, O. Kahn, Labour and the Law, London Stevens and sons, 2nd edition (1977) PP, 48-49.