

Abstract

Industrial action, often employed by workers and trade unions to demand better wages, improved working conditions, and other labour rights, faces significant impediments in Nigeria. Strike by trade union or workers' is the most common form of industrial action in Nigeria. This paper examines the major impediments to industrial action in Nigeria which include cumbersome legal provisions which must be undertaken before a strike action can be lawful, economic impediments, intimidation and repression of workers/trade union. These impediments collectively hinder the effectiveness of industrial action in Nigeria, limiting the workers' ability to advocate for their rights and demand better labour conditions. The paper found that the procedures which must be followed by workers or trade unions for a strike to be lawful in Nigeria are rigorous. The paper adopted the doctrinal research methodology and utilized both the primary and secondary sources of data including statutes, journal, textbook and subsidiary legislations. The paper recommends that the Trade Dispute Act be amended to provide a more practical procedure for workers/trade union who wish to embark on an industrial action.

Keywords: Trade Union, Industrial Action, Collective Bargaining, Trade Dispute

1. Introduction

Trade union also called a labour union is a union formed or organized by workers or employees in various industries and occupations to protect and promote their common interest, right and welfare in their workplace. Trade unions are essential to the protection of workers' rights. Industrial action is the various actions and steps that a trade union or workers who is a party to an industrial conflict or dispute may resort to in either expressing their grievances, pursuing a particular right or goal. The major form of industrial action is usually embarked upon in Nigeria by trade unions is Strike. In Nigeria multiple obstacles including cumbersome legal provisions which must be undertaken before a strike action can be lawful, economic impediments, intimidation and repression of workers/trade union hinder the exercise of the right to strike which is constitutionally recognised. The paper critically examined the impediments to industrial action in Nigeria.

2. Clarification of Terms

Trade Union

Trade union also called a labour union is an organization formed by workers in various industries and occupations to protect and promote their common interest, right and welfare in the workplace.¹ The Trade Union Act² defined trade union as meaning any combination of workers or employers, whether temporarily or permanent, the purpose of which is to regulate the terms and condition of employment of workers, whether the combination in question would or would not, apart from the Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purpose do or do not include the provisions of benefit for its numbers. The Constitution of the Federal Republic of Nigeria 1999 (as amended) provides that every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union or any other association for the protection of his interest³. Thus, every Nigerian has the right to form and belong to a trade union. However, a person under the age of sixteen years shall not be able or capable of being a member of a trade union and a person under the age of twenty-one shall not be capable of being an official of trade union.⁴ This is in line with the provisions of the Child Rights Act which sets the minimum age for labour in Nigeria at 18years.⁵ Members of the armed forces (Army, Navy, Air Force), the Nigeria Police, the Customs Services, the Immigrations Services and the Correctional Services, the Nigeria Security Printing and Minting Company Limited, the Central Bank of Nigeria, the Nigeria Telecommunications Limited and every Federal or State government establishment the employees of which are authorized to bear arms are all prohibited from forming a trade union⁶ Thus, the relevance of trade union in industrial relations is purely in the framework of collective bargaining. This entails first and foremost, the collective effort and combination of workers to enhance their bargaining powers that seemed virtually nil at the individual level and then the workers as a respectable and powerful party collectively negotiating or bargaining with the employer for improved terms and conditions of employment of workers. In other words, the efficacy of the effort is dependent on the existence of a virile trade union and it affords the opportunity for a harmonious and respectful bargain and eventually rule making agreement between the workers and the employers.⁷

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¹Johnson Emily and Chen Li Wei 'Fundamental Assessment of the Scope of Trade Unions' Right to strike in Nigeria' *Noland Interdisciplinary Research Journal of Economic and Banking policy* [2024] 12(1)10

² Trade Union Act, Cap T14 LFN 2004, s 1(1)

³ Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 40

⁴ Trade Union Act Cap T14 LFN 2004, s. 20 (1)

⁵ Child Right Act 2003, s 28(1) (b) and 277

⁶ Trade Union Act 2004 Cap T14 LFN 2004, s. 11

⁷ Sam Erugo 'Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice' (Lagos, Princeton Associates Publishing Co. Ltd 2019) 334

Collective Bargaining

Collective bargaining involves a process of consultation and negotiation of terms and conditions of employment between employers and workers, usually through their representatives.⁸ It involves a situation where the workers union or representatives meet with the employers or representatives of the employer with the purpose of deliberating and reaching agreement on the demands of workers concerning certain improvement in the terms and condition of employment.⁹ The Supreme Court in *Toyinbo v Union Bank Plc*¹⁰ on the meaning of collective bargaining held that collective bargaining is the means of establishing industry democracy as the essential condition of political democracy. It is the means of providing for the workers lives in the industry the sense of worth of freedom and of participation that democratic government promise them as citizens. It simply means the joint determination by employees and employers of the problems of the employment relationship such problems may include rates, hours, vacation, workloads, classification of employees, retirement, disciplines etc.¹¹ A collection bargaining denotes series of negotiations between an employer and the representatives of organised employees, to determine the conditions of employment, such as wages, hours, fringe benefits, discipline et al. The term denotes a contract between multiple parties, most especially where one side consists of many people or entities with a common interest, also where an association or organisation acts on behalf of the members thereof. A collective agreement is an anti-climax of a collective bargain.¹² A major function of collective bargain is settlement of industrial dispute or trade dispute.

Trade Dispute

Trade dispute is a dispute between employers and workers or between workers and workers which is connected with the employment or non employment, or the terms of employment or non employment or the terms of employment and physical conditions of work of any person.¹³ The trade dispute must involve trade as distinct from political dispute.¹⁴ The Trade Dispute Act¹⁵ defines a trade dispute as: ‘Any dispute between employers and workers or between workers and workers, which is connected with the employment or non employment, or the terms of employment and physical conditions of work of any person.’ The Trade Union Act also made a similar definition of trade dispute.¹⁶ However, section 54 of the National Industrial Court Act¹⁷ extends the definition of trade dispute and defined it as any dispute between employer and employees, including disputes between their respective organisation and federation, which is connected with the employment or non employment of any person, terms of employment and physical conditions of work of any person, the conclusion or variation of a collective agreement; and an alleged dispute. The Court of Appeal in *Oshiomhole v FGN*¹⁸ held that in trade union matters, the determination of the concept or ambit of trade dispute is most crucial in the construction of the right of parties. It is pivot on which trade unionism in labour relationship devolves. Although trade dispute as a concept is used for a number of purposes, the main function of it is to define the freedom to strike which is the cessation of work by a body of persons and a trade dispute invokes ‘conciliation’ and ‘arbitration’ Jurisdiction provided for in the Trade Dispute Act.¹⁹

Industrial Action

Industrial action is used in describing the various actions and steps that the parties to an industrial conflict may resort to in expressing their grievances, pursuing or prosecuting the claims and asserting perceived rights. The major form of industrial action is strike.²⁰ Strike is defined by the Trade Dispute Act as ‘cessation of work by a body of person employed acting in combination, or 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 in compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.’²¹ In *Tram Shipping Corporation v. Greenwich Marine Incorp*,²² Lord Denning stated that a strike is:

a concerted stoppage of work by men, done with a view to improve their wages or conditions of employment, or giving vent to a grievance or making a protest about something or sympathising with other workman in such endeavour. It is distinct from stoppage brought about by external factor even such as bomb scare or by apprehension of danger.

Strike is the commonest and most popular form of industrial action and for that, is almost synonymous with the apparently wider term. Strike can simply be described as a deliberate and concerted withdrawal of labour usually done in furtherance or

⁸ Ibe and Maduka, ‘Examining collective bargaining and its role in labour relations in Nigeria’ *African Journal of Law and Human Rights* [2024]8(I) 133.

⁹ Ibid

¹⁰ [2023] 1 NWLR (pt 1865) 403

¹¹ Ibid at pp 423-424, para G-A

¹² Ibid P. 423 para E-G

¹³ *AG Oyo State v. NLC* [2003] 8 NWLR (Pt 821) 1; *Ekong v. Oside* [2005] 9 NWLR (pt 929) 102

¹⁴ *Oshiomole v. FGN* (2007) 8 NWLR (pt 1035) 58; *NURTW v Ogbodo* [1998]2 NWLR (pt 537) 189

¹⁵ Trade Dispute Act, 2004 Cap T8 LFN 2004, s. 48

¹⁶ Trade Union Act, Cap T14 LFN 2004, s. 54

¹⁷ National Industrial Court Act 2006

¹⁸ Supra

¹⁹ See *NURTW v. Ogbodo* [1998] 2 NWLR (pt 537) 189

²⁰ Sam Erugo (n 7) 354

²¹ Trade Dispute Act, Cap T8 LFN 2004, s. 48

²² [1975] ICR 261 at 276

prosecution of a trade dispute.²³ Strike is a potent tool of workers in collective bargaining and without which the efficacy of their bargaining looks suspect.²⁴ Strike is the most recognised form of industrial action in Nigeria

3. Impediments to Industrial Action in Nigeria

Several impediments exist in Nigeria that impairs trade unions in their ability to undertake industrial action as a tool in collective bargaining. The Impediments include cumbersome legal provisions which must be undertaken before a strike action can be lawful, economic impediments, intimidation and repression of workers/trade union.

Cumbersome Legal Provisions for Lawful Strike

The Trade Dispute Act²⁵ in section 4 prescribes the procedure the parties must take before any action is taken in court. And in this regard section 4 states that if there is agreed method for settlement of the matter apart from the provisions of the TDA, whether in the provisions of any contract between employers' organisations and workers' organisation or some other agreement, the disputing parties must first make effort to settle by that means. If the effort to settle the matter fails, or if no agreed method of settlement as are mentioned herein exists, the disputing parties must in seven (7) days of the failure meet a mediator jointly agreed on and selected by or in behalf of the disputing parties, with the aim of settling the dispute.²⁶ Where a trade dispute is apprehended by the minister he may in writing inform the parties or their representatives of his apprehension and of the steps he proposes to take for the purpose of resolving the dispute.²⁷ Such steps as the minister may, pursuant to this section, take may include: the appointment of a conciliator under section 8 of this Act; or a reference of the dispute or any matter relating thereto for settlement to the industrial Arbitration panel under section 9 of this Act, or a reference of the dispute to a board of enquiry under 33 of this Act.²⁸ The above section gave the minister of labour a wide power which may be used to delay disputes so as to avoid industrial action by the organised labour. Section .2 of the Trade Dispute Act States that 'Such steps as the minister may pursuant to this section, take may include....', this gives the minister power to take any steps he deems fit which may cause undue delay in the resolution of industrial dispute. Moreover, the Trade Dispute Act in Section 8 should contain a time frame within which any dispute referred to the conciliator may be determined. The Trade Dispute Act in section 18 contains cumbersome procedures which must take place before a trade union or workers can embark on a strike. Section 18 (1) of the Trade Dispute Act provides as follows:

'An employer's shall not declare or take part in a lock out and a worker shall not take part in a strike in connection with any trade dispute where—

- a) The procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute; or
- b) a conciliator has been appointed under section 8 of this Act for the purpose of effecting a settlement of the dispute; or
- c) the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9 of this Act; or
- d) an award by an arbitration tribunal has become binding under section 13(3) of this Act; or
- e) the dispute has subsequently been referred to the National Industrial Court under section 14(1) or 17 of this Act; or
- f) the National Industrial Court has issued an award on the reference.

1. Any person who contravenes subsection (1) of this section shall be guilty of an offence and be liable on conviction -

- a) in the case of an individual, to a fine of ₦100 or to imprisonment for a term of six months;
- b) in the case of a body corporate, to a fine of ₦1,000

The summary of the procedure stipulated in the foregoing provisions of the TDA is that the parties must first on their own make effort to settle the matter. Also, where a dispute is perceived by the Minister of Labour and productivity, he may notify the parties of his fears and steps he intends to take to resolve the dispute. The steps the labour minister may take include either appointment of a conciliator as in section 8 of the TDA. Then section 18(1) of the TDA stipulated that a worker should not be involved in a strike action where:

- a) the procedure stipulated in section 4 or 6, TDA (relating to voluntary settlement, appointment of a mediator or conciliator) has not been met.
- b) a conciliator was appointed or chosen in section 8 of the TDA for the aim of settling the dispute; or
- c) the matter has been transferred to the IAP in section 9 of the TDA; or
- d) an award was made by arbitration tribunal in section 13(3) of the Act; or
- e) the dispute has been transferred to the NICN in section 14; or in section 17 of the Act; or
- f) the NICN has made an award of it.

The above provision of section 18 of the Trade Dispute Act constitutes an impediment to Industrial action in Nigeria as it may take years to exhaust the procedures contained above. There should be a time frame within which the procedures must be exhausted. Where a dispute is settled under the provision of section 18 of the Trade Dispute Act, either by agreement or by the

²³ Sam Enugo (n 7) 354

²⁴ Ibid 356

²⁵ Trade Dispute Act, Cap T8 LFN 2004

²⁶ Emuobo Eraudainohwo 'Prerequisites for Exercising the Right to Strike in the ILO Jurisdiction and Nigeria Labour statutes: Analysis' *International Journal of Law, Policy and Social Review* [2024] 6(2) 26

²⁷ Trade Dispute Act, Cap T8 LFN 2004, s. 5(1)

²⁸ Ibid, s.5 (2)

acceptance of an award made by an Arbitration Tribunal under section 13 of the Act, that dispute shall be deemed for the purpose of the Act to have ended; and accordingly any further trade dispute involving the same matters (including a trade dispute as to the interpretation of an award made as aforesaid by which the original dispute was settled) shall be treated for the purposes of this section as a different trade dispute²⁹. The implication of section 18(3) of the Act³⁰ is that even in cases where the dispute is an interpretation or enforcement of an award, it must go through all the procedures contained in section 18(1) of the Trade Dispute Act.

Suffice to state that an attempt to satisfy the pre conditions to embark on strike under section 18 would be an exercise in futility. That means that at no point and under no circumstance can the worker legally employ strike as a bargaining or enforcement tool under the sections considered.³¹ In fact, being a statutory inhibition the sections appear to have buried whatever moribund recognition to right to strike, sentimentally and halfheartedly made in judicial pronouncement.³² The courts have consistently held that for a strike to be lawful, the workers or union must observe the procedure laid down by section 18 of the Trade Dispute Act. In *Chigozie Sunday Nzekwe v. Geoplex Drillteq Ltd*³³, the court considering the actions of the claimant who undertook an industrial action stated:

Rightly so, the exercise of a right to strike is regulated by the Trade Unions Amendment Act, 2005 and the Trade Dispute Act. For sake of clarity section 4, 6 and 18 of the trade Dispute Act provides thus in the instant case, there is no iota of fact relating to the claimant and his colleagues as workers adopting the procedure as stipulated in the Trade Dispute Act before they initiated a 'serious' and 'persistent' industrial action which had implication on production and operation of the defendants.

In *Attorney-General of River State v. Dr George Matthew Ela and Ors*³⁴ the National Industrial Court of Nigeria while dealing with the legality or otherwise of a threatened strike by Resident doctors held

...The defendants did not comply with the mandatory provision of section 31 (6) of the Trade Union Act and section 18 (1) of the Trade Dispute Act, which renders the declaration of strike unlawful. The use of Semi colon in section 31(6) of the Trade Union Act and 'and' between paragraphs (d) and (e) imply that they are to be read together. In essence paragraphs (a) to (e) are a continuation of one to the other, but with pauses. It is a cardinal principle of law that a statute must be given its correct and true interpretation. The duty of the court is to construe each and every word the way it should be construed, and not to go outside it to give a different connotation from what was envisaged by the legislature. See *Abubakar & ors v. Yar' Adua & Ors* (2008) LPELR – 51 (SC) 203-204, 205. Clearly, none of the circumstances inure in favour of the defendant rendering the declaration of the strike unlawful.

Additional, section 31(6) of the Trade union Act³⁵ (as amended) contains another impediment to strike in Nigeria. The section provides that no employee or trade union should take part or participate in a strike action or engage in a conduct in pursuit of a strike action unless:

- a) The employee or trade union is not engaged or involved in the provision or delivery of essential services
- b) The strike concerns or relates to a labour dispute that is a dispute of right
- c) The strike concerns or relates to a dispute flowing from a collective or joint and important breach of contract, work or agreement on the side of the worker or employee or trade union,
- d) The provisions concerning arbitration in the Trade Dispute Act have been first complied and
- e) In the instance of an employee or labour union, a ballot or vote has been conducted done in line with the constitution and rules of the labor union in which a simple majority of the registered members voted or chose to go on strike action.

From the foregoing, it is obvious that the cumbersome legal procedures discussed above which a trade union or workers must adhere to before a strike action can be lawful in Nigeria is one of the major impediments to collective bargaining and industrial action in Nigeria. It is suggested that the Trade Dispute Act and the Trade Union Act be amended to provide a more practical procedure.

Economic Impediment to Industrial Action in Nigeria

As earlier discussed, the major form of industrial action by trade union or workers in Nigeria is strike. Economic impediment is one of the major impediments to strike in Nigeria. A large percentage of Nigeria workers particularly in the informal sector, live in poverty. Many workers survive on month-to-month salaries without any savings. The fear of lack of alternative source of income for sustenance makes it difficult for workers to engage in extended industrial action. Employers often exploit this economic vulnerability to discourage or break strike by delaying negotiations, knowing that workers will eventually be forced back to work due to financial hardship, as salaries are often withheld and the *No work No pay* clause implemented. The No work No pay policy is statutory recognized by section 43 (1) of the Trade Dispute Act which provides as follows:

Notwithstanding anything contained in this Act or in any other law –

²⁹ Trade Dispute Act, Cap T8 LFN 2004, s. 18(3)

³⁰ Trade Dispute Act, Cap T8 LFN 2004

³¹ Sam Erugo (n 7) 364

³² Ibid

³³ Unreported Suit No: NICN/PHC/160/2013 delivered by Hon. Justice Z.M Bashir on 30th April, 2021.

³⁴ Unreported, Suit No. NICN/LA/279/2021 delivered by Justice Ikechi Gerald Nweneka on 9th November 2021

³⁵ Trade Dispute Act Cap 18 LFN 2004

- (a) Where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the 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 No work No pay policy has received judicial blessing in a number of decided cases. In the recent case of *Federal Republic of Nigeria v. Academic Staff Union of Universities*,³⁶ the National Industrial Court of Nigeria per Hon Justice BB Kanyip PhD held, ‘I declare that in the instant case, the claimants are legally permitted not just by section 43(1)(a) of the Trade Dispute Act but by ILO Convention No 87 and its accompanying ILO Jurisprudence, to withhold, and so not pay, the salaries of members of the defendant union (ASUU) who partook in the strike that commenced on 14th February 2022 up to the date it was called off.’

Intimidation and Repression of Workers/Unions

Repression and intimidation by employers especially the government poses significant challenges on industrial action by employees/ trade union in Nigeria, they often undermine the ability of workers to organize, bargain and protest effectively. Trade Union leaders in Nigeria are often harassed, arrested or threatened to be arrested by security forces and employers in order to prevent them from organizing industrial actions and or calling off an already declared industrial action.

4. Conclusion

The right to industrial action is a fundamental aspect of labour relations internationally and in Nigeria, serving as a pivotal mechanism for collective bargaining and the protection of workers' rights. However, in Nigeria, significant impediments exist which hinder industrial action as a trade union/workers tool for collective bargaining especially with respect to strike which is the major form of industrial action. These impediments include cumbersome legal provisions which must be undertaken before a strike action can be lawful, economic impediments, intimidation and repression of workers/trade union. These impediments collectively hinder the effectiveness of industrial action in Nigeria thereby limiting the workers' ability to advocate for their rights and demand better labour conditions. The procedures under the Trade Dispute Act which must be followed by workers or trade unions for a strike to be lawful in Nigeria are rigorous and too difficult to comply with. It is necessary that the entire provisions of the Trade Dispute Act as it relates to strike be overhauled to make it practical as a lawful strike is almost impossible in Nigeria under the current laws

³⁶ Unreported, Suit No.NICN/ABJ/270/2022 delivered by Justice B.B Kanyip on 30th May 2023