

Industrial Action in Nigeria: Legality, Causes and Consequences

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ABSTRACT

Industrial action is a work stoppage caused by the mass refusal of employee(s) to work. Industrial conflict was identified as the discord that occurs when the goals, interest or values of different individuals or groups in an industrial setting are incompatible. This conflict is however, inevitable. Such attributes like refusal of union recognition, public policies, failure of collective bargaining, etc, were identified as some of the reasons and causes of industrial conflicts. However, the paper identified that the strike incidence and propensity in Nigeria are alarming. Conflict in industrial relation is almost inevitable because of the divergent interest and aspirations of the two parties in the relationship, that the employer and employee. This most of the times touches on very critical issues like wages and other conditions of employment. Resolving these issues require negotiations, compromise, concessions which are usually done through the process of collective bargaining. The problem is that the process of collective bargaining is not ordinarily effective and can hardly resolve the differences, if the parties are denied the right to use the weapons within their armoury (lock out for the employer and strike for the employee). So where the problems are not resolved through negotiations any of the parties can declare an industrial action. When this occurs, it negatively affects industrial peace, particularly if it is allowed to degenerate into strike action. Although strike actions are generally allowed and protected by several international instruments and most states legislations. But because of the negative consequences of the right to strike, states has always controlled or restricted its use through appropriate legislations. A critical examination of the relevant legislations in Nigeria shows that there are too many stringent conditions which have almost denied the worker his right to strike. In this article, we evaluate the legality, causes and consequences of industrial action.

Keywords: Industrial conflicts, Industrial actions, Strike, Employers, Workers.

INTRODUCTION

Industrial action also called strike action or labour strike is a work stoppage caused by the mass refusal of employee(s) to work. A strike usually takes place in respond to employee grievances. Industrial action became important during the Industrial Revolution, when mass labour became important in factories and mines. Industrial conflict has been a characteristic of industrial societies since the Industrial Revolution era. Conflict is an inevitable part of organisational life, since the goals of different stakeholders in an organisation often differ and are incompatible. While industrial conflict is bound to exist, its prevalence and re-occurrence, as in

Nigeria, express the existence of unhealthy relationship between key actors in an industrial setting [1]. It is apparent that Nigeria is under industrial chaos and crisis.

From independence to contemporary times, there have been series of industrial conflicts and strikes in the Nigerian industrial sector. Since the wake of the 21st century, the strike incidence and propensity have become unprecedented in view of the current democratic system of governance in the country. Although the incidence of strike has been visibly infrequent since 1999, it has witnessed about hundreds to thousands work stoppages, and had a very high number;

several millions, of man-days lost. For the year 2007, the National Bureau for Statistics estimated a total of 79 work stoppages and 3415 man-days lost (www.nigerianstat.gov.ng). Virtually all sectors of the economy have witnessed one form of industrial conflict or the other. It is unworthy of note to mention that even the 'essential services' workers, for example the Nigerian Police Force, have embarked on a strike action. There are regular and consistent strikes and threats of it. The prevalence of strikes in the country perhaps prompted [2] to remark that "what was once thought to be a British disease seems to have become a Nigerian disease."

The Right to Industrial Action in Nigeria

A discussion on the right to strike in Nigeria necessarily starts from the position under the common law. This is because of the historical antecedent of the developments in Nigeria. At common law a worker is under a duty to serve his master or employer honestly and faithfully, and to obey all responsible and lawful orders that may be given in the course of his employment. It seems to be fairly clear that at common law a strike amounts to a breach of the contract of employment by those involved [3]. This point was made by Donovan L.J. in *Rookes v. Barnard* when he said that 'there can be few strikes which do not involve a breach of contract by the strikers'. This was reiterated by Cartwright J. in *Canadian Pacific Railway Company v. Zambin* when he said 'put simply, so far as an employee is concerned, if he refuses to work he is in breach of the contract'.

The question as to whether an employee has a fundamental right to strike has been the object of serious debate in the industrial relations cycle and also in academic discourse. It is also a point on which judicial opinions have continually been expressed [4]. There is no doubt that workers throughout the world are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, job security, redress of wrongs and good working conditions. But often the employer and the union (representing workers) find themselves in sharp

disagreement. Such frictions or disagreements give rise to trade disputes and strikes. The law seeks to regulate these conflicts by imposing limits on the lawful nature of the conduct of disputes [5]. Where however industrial action occurs, the individual contract of employment becomes affected. This is so because a contract of employment is one for the provision of services [6]. Consequently, the unilateral and unauthorized stoppage of such service, which a strike necessarily entails, constitutes a breach of contract on the part of the employee under the common law [7].

Again, it can be argued that every strike is in the nature of war, which necessarily entails that gain on one side implies loss on the other, and so to say that it is lawful to combine to protect this common interest but unlawful to injure the antagonist is taking away with one hand a right given with the other hand [8]. The question therefore arises as to whether there is in fact and in law a right to strike under the common law rules. Some countries have made the right a constitutional right, while some do not recognize any such rights or freedom in the same way that they recognize freedom of assembly. Whichever is the case, it may not be an exaggeration to say that except the "very insignificant lunatic fringe" outside the vast majority of the citizenry, no one can seriously argue that all strikes are illegal or unlawful [9].

In Nigeria, the position at the beginning was that of unequivocal acceptance of the existence of a right to strike. Nigerian trade unions, unlike their British predecessors, enjoyed the Colonial administration's encouragement and statutory protection from the very beginning. And in response to lack of proper negotiating machinery, especially in the immediate post Second World War years, workers were frequently on strike [10]. It can correctly be said that until the emergence of the military regime, the right to strike was not, save in the case of workers employed in essential services, statutorily regulated in any way. In fact,

the word "strike" up to then did not have any statutory meaning ascribed to it [11]. As established above, operating under the rules of the common law, will mean that although mere withdrawal of labour did not amount to a statutory offence, strikers may, however, by their activities, offend against some provisions of Criminal Code, by way of criminal conspiracy. It may also create an action in torts against the strikers, as in the torts of conspiracy, inducing breach of contract or intimidation [12]. But the occasions when the legality of strike actions has been tested against the network of these legal rules are so few and far between that it can be said that they are peripheral to the practice of labour relations law in Nigeria [13]. It is rare to find employers or other workers suing workers, trade unions and their officials alleging liability for the economic torts of conspiracy, inducing breach of contract and/or intimidation. The first trade union statute in Nigeria was enacted in 1938 and was in all material aspects, in pari materia with the 1891 English Act.

Before the 1938 Ordinance, trade union activities, if there were any, were not affected in any significant manner by the law. Indeed, the first semblance of a union had and pursued as its main object the promotion of "the welfare and interest of the native members of the civil service. Uvieghara records that it was not until 1931 that the first two trade unions, properly so called, were formed, and that with the outbreak of the second world war trade unionism received a greater impetus in both membership and activities.

The earliest Union organized strike in Nigeria is recorded to have taken place on January 9, 1920 when the Nigerian Mechanics Union of the Nigerian Railway stopped work to back their demand for war bonus due to an acute rise in the cost of living arising from the effect of the First World War (1914-1918). For the same reason, carpenters in the Public Works Department joined the strike on January 13 and it spread in pockets to such towns as Ibadan, Kaduna, Zaria, Offa and Benin City [14] [15] [16] [17]. The strike was brought to an end on January 19, 1920

through the mediation of Prince Eshugbaye Eleko then Oba of Lagos. By far the first most significant strike in the Nigerian Labour history in terms of coverage and effect is the General strike of 1945. The first general strike of 1945 was led by Michael Imoudu. The same economic crisis of the Second World War resulted to a lot of militancy among the unions especially the blue-collar workers [18]. This militancy of workers especially that adopted by the railway workers union led to a successful general strike in 1945.

Shortly after this general strike (may be because of its success) there were a rapid spread of union activities which equally led to further spread and growth of unions and of course strikes. One writer comments that no dispute has so shaken the foundations of the Nigerian nation as this tremendous incident which began throughout the nation at midnight of June 21st, 1945. The immediate cause of the strike was the un-willingness of the government to honour its pledges [19] [20] [21]. Government had in 1942 supplemented the wages and salaries of its workers with the grant of Cost of Living Allowance and in making the grant, had promised to review the allowance according to trends in the cost of living index. This undertaking was given by Sir Bernard Bourdillon, generally celebrated as a shrewd diplomat, having a disposition and temperament that earned him the respect and admiration of all. He retired as Governor of Nigeria in 1943 and was replaced by Sir Arthur Frederick Richard, the exact opposite of Sir Bernard. Richard viewed every desire for improvement and reform as unnecessary agitation which must be crushed at all costs. The cost of living index having risen sharply to 174 by October 1943, there was clearly a need for a review of the COLA as promised by Sir. Bernard but the Government of Sir Arthur Richard refused to make the review [22].

All these go to show that the Nigerian worker enjoyed his right to strike without any serious restriction or consequences under the colonial government. Until late sixties no-one had seriously contended

that there was no right to strike in Nigeria. Statutory restrictions began in Nigeria in 1968 in the heat of civil war. By the promulgation of the Trade Disputes (Emergency Provisions) Act, the government placed an outright ban on strikes [23]. The following year, the government reinforced the earlier Act by promulgating the Trade Disputes (Emergency Provisions) (Amendment No2) Act of 1969, as a result of the unbridled wave of strikes after the Act of 1968. Presently, the law relating to strikes is to be found in the Trade Disputes Act 1976 as amended [24]. The provisions of that Act have called to question, whether a right to strike exists in Nigeria today. The Act bans strikes or lock outs all together unless, and until the laid down procedures have been exhausted. So the question is not whether there is a right to strike or not in Nigeria, what ought to be the primary consideration in every strike action organized in Nigeria today, should be whether the strike action has been exercised within the prescribed procedure, which makes it lawful or otherwise. Therein lays the legality or the illegality of a strike action.

Causes of Industrial Crisis in Nigeria

Fashina attributes the causes of industrial crisis in the Nigerian workplace to policy inconsistencies and wrong placement in organizational priorities on the part of the management. When employers place higher premium on capital input far above the workers without appreciating that the latter makes the former productive, it broods industrial rancor [25] [26]. This connotes that poor remuneration may be a strong cause of industrial crisis. Low level of workers' motivations with respect to remuneration (both promptness and total package) has been a bone of contention between the workers and employers.

The wave of globalization (trade liberalization amongst various economies of the world in global trade relations) had been said to have created inequality in bargaining power between corporations and workers (Aremu). It could have the potency of intensifying different forms of competition, resulting in stronger

responses from labour by stimulating quest for information (Kanfam). This portrays that increased international competition resulting from increased interdependence between different economies of the world would exert pressure that would result in increased labour market flexibility and dampened labour protection [27]. This is because when employers tend to have strong bargaining power, they may become authoritative which will affect the management style and work rules.

The above had been corroborated by the high level of unemployment in the country, which makes employers to believe that they can always replace workers that do not comply with their domineering initiatives. Then workers are provoked to join force to resist such propensities of the employer, thereby straining the strand of industrial tranquility that hitherto existed [28]. This is because it intensifies the strength and strategies of workers as well, thereby prompting them to rely on the tools of trade unionisms to push forth their rights and privileges that are been dampened (Kim and Kim). Even if there is the existence of 'yellow dog contract' (where workers are not allowed to unionize), industrial crisis may still occur. Though the workers may not be able to stop work, their attitudes towards their work will be negatively affected leading to other forms of grievance expressions such as lateness, absenteeism, high rate of turnover, sabotage, among others, which will ultimately affect productivity [29].

Industrial crisis could also result from conflict of opinions when there is asymmetric information between the workers and employers. This arises from clash of interests during the process of negotiation and incompatibility resulting from incomplete means in the pursuance of their respective goals. Adesina had also acknowledged that the government (especially the military regimes) had profound impacts on the trade unions, which manifested in the alteration of the rules of engagement between the State and the unions in Nigeria [30]. This could also be as a result of insensitivity and

insincerity in handling union demands by the government and managements (Otobo).

Another source of the crisis is the breach of collective agreement that has being reached (CHDR). Ideally, once decisions are reached via the process of collective agreement (or by other means) each party is supposed to adhere strictly to the terms and conditions. Employers (and government) have in most cases been guilty of this, due to their seemingly stronger force [31]. The University of Ilorin crisis is a very clear instance, which has lingered on for some years where the management refused to reinstate the sacked lecturers as directed by the court (Ojiabor and Faloseyi).

In addition, the use of contingent workers (temporal workers that are not usually entitled to some employment benefits besides wages) is another issue. The Nigerian Labour Congress-NLC has frowned at and fought against the use of casual workers (Fashakin). The use of contingent workers makes the employers not to compensate satisfactorily their regular staff in as much as there are other cheaper ways of using labour resource. The economic situation especially the inflationary trend in the country has not equally helped matters [32] [33]. The inflationary trend has always been worsened as a result of fluctuations (increases) in the prices of petroleum products which translate to increased transportation cost and higher cost of living (Osabuohien). This devalues of the workers' income, which is capable of increasing their agitations that could lead to industrial crisis.

Economic Consequences of Industrial Action

An industrial action injures not only the party against whom it is directed but the society as a whole. The larger the number of workers involved the longer the duration of strike and the more essential a commodity or service is the more widespread will be the effects of strike. Industrial strikes entail both economic as well as non-economic costs for the employer. The economic losses caused by a strike may be serious [34]. The financial

loss of a project is only one among its various losses. When the production stops and the sales go down, the market is captured by rival concerns and the concern's goodwill may be lost. Besides additional expenditure incurred in protecting the plant and taking other steps to deal with the effects of strike. A lot of money is wasted in the efforts made by both the labour and management in projecting their respective images. Industrial workers too have to undergo severe hardship due to loss of wages. The union funds get exhausted and it may become difficult for the workers to make their both ends meet [35]. The employer forfeits his profit during the strike period. Although strikes are based on genuine grievances, they have partially paralyzed administration and disturbed the pace of planning and development [36].

To weigh up the gains and losses of a strike is like weighing up the gains and losses of any other kind of warfare. On the employers side the immediate losses are idle capital, loss of profits, the delaying of orders and loss of goodwill as well as the possible incurring of insurance or strike breaking expenses while on the workers side there is loss of wages, the contracting of debts and all the personal hardships that may be involved [37] [38]. The strike weapon penalizes every one of the workers more than the employer at whom it is aimed. Apart from their effects on the particular workers and employer concerned, strikes have an appreciable effect upon the economy in general. Almost all stoppages appear, irrespective of their origins, acts of the workers though much against their wishes often cause inconvenience, they may reveal disturbing political aspirations and these considerations are to promote people's judgments of their economic effect. Better purpose is served by the spirit of strikes and the threat of strikes rather than the strikes themselves [39].

The relationship between strikes and wage increase is in fact far more complex and indirect. The strikes that actually happened seemed to have had greater indirect effect on wages rather than direct. Wages are the object of the unions'

strategy towards strikes. Strikes have a greater effect on output. The output lost by strikes is commonly made on the basis of a count of the working days lost [40] [41]. The effect of strikes may sometimes be disproportionately severe because even though the output directly lost is small, the multiplied effect of the loss may be very big in a context of shortages and low stocks, and because labour in so far as it is fully employed is in a stronger bargaining position and may use this in order to secure a succession of wage increase in the industry. The figure of working days lost remains the only direct quantitative evidence available of the effect of strikes [42].

In spite of legal position and restraints on strikes, the time lost due to strikes has been on the increase. The loss of working time due to strikes in any country reveals the intensity of the conflict and its bearing upon the industrial laws of the country. It remains a matter of interest to see as to what extent the country has taken cognizance of those conflicts to help reduce the areas of conflict [43]. Though strikes are a social necessary yet

Owing to the nature of man and his society, conflict is inevitable. Industrial conflicts have been identified as an offshoot of an imbalance, exploitative relationship between parties involved in an employment relation. Though causes of industrial conflicts or the resultant strikes are complex, it becomes oftentimes difficult to pinpoint the main causes of strikes. However, generally strike is an expression of grievance, mostly attributable to failure of collective

CONCLUSION

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they give a very severe jolt to the economy of the enterprise and indeed of the country [44]. Usually big strikes take place in nationalized industries which goes on to prove that nationalization is no guarantee against the outbreak of strikes. Even after nationalization there can be tensions and conflicts between the management and workers and if effective steps are not taken to find a quick solution to the differences, they may lead to industrial conflict and cause abnormal loss of working time besides giving a severe jolt to the economy of the country. After the strike, if there is a resumption of work with mutual understanding, then the things get back again on to its usual footing very quickly, otherwise not [45]. 'Cost of strikes' is a vague concept and it includes theoretical estimates of cost to employer's workers and to the public. The only justification for a strike as a technique of collective bargaining is that the costs imposed by a strike on both the management and employees will eventually bring about a more reasonable attitude and lead to a compromise settlement [46].

bargaining. Strike is a weapon of last resort which is to be employed when other means of achieving an agreement or resolving disputes has failed. The socio-economic effects and challenges of strikes cannot be over emphasised. While it hinders national productivity and economic development, it serves to alienate man from the social interactions obtainable in his workplace, as well as hindering the socialisation process.

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