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EFFECT OF NATIONAL INDUSTRIAL COURT AND INDUSTRIAL ARBITRATION PANEL IN RESOLUTION OF CORPORATE DISPUTE

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ABSTRACT

In any work environment, disputes are bound to occur from time to time, be it government, private sector, charity, the church etc. There is scholarly contention that a harmonious workplace that guarantees satisfaction of workers and employers aspiration is very essential for enhanced productivity. But when the interest of either or both the parties involved in industrial relation arc unsatisfied, industrial crisis becomes imminent. In settling industrial conflict in Nigeria, bold the Trade Dispute Act (as amended) and the 1999 Constitution of Nigeria (as amended gave the National Industrial Court the power to resolve all industrial relation disputes or conflicts. It is essential to state that the decision of Industrial Arbitration Panel is binding on the panic who submitted themselves to arbitration be it corporation or government. The objective of this study is *to appraise the effects of National Industrial Court and Industrial Arbitration Panel in Resolution of Corporate Dispute. Despite the laws and regulations of the Industrial Court and Industrial Arbitration Panel, it has not solved the problem of achieving a very* effective healthy, *quick and vibrant justice delivery in Nigeria whenever there is corporate dispute. Today, Nigeria Labour Congress (NLC), MITS and National Communication Commission (NCC) are always in loggerhead on payment of fines on one hand and enforcement of agreement on the other hand. Thus, a single court order could jeopardize the operations of the whole agreement and process. The study found that there is laid down procedures for resolving industrial disputes in Nigeria through the National Industrial Courts and the Industrial Arbitration Panel. Although the court has helped to resolve some conflict, it is not adequate and therefore, the statutory settlement procedure has not fostered industrial harmony to a large extent due to sonic challenges inherent in the implementation of the existing corporate dispute mechanism.*

Keywords*:* National Industrial Court; Industrial Arbitration Panel; Resolution; Corporate Dispute

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Introduction

Fagbemi[1] notably rationalized that labour and industrial disputes are essentially social and economic issues. Whenever there is labour dispute, the economy sector within the country is first hit. Trade disputes usually arise whenever there is disagreement in labour relations. Conflict management is the process of limiting the negative aspects of conflict while increasing the positive aspects of conflict. The aim of conflict management is to enhance learning and group outcomes, including effectiveness or performance in organizational setting[2]. Industrial dispute is often seen as a negative social phenomenon as a result of adverse effect it has on the structure of the work organization. Many scholars in industrial relation studies opined that such corporate disputes is necessary for the growth of the employer but the process of struggle in the dispute is definitely detrimental to the general dynamics of the work organizations.[3] However, hi settling industrial conflict in Nigeria, both the Trade Dispute Act[4] as amended and the 1999 Constitution of Nigeria as amended gave the Industrial Court the power to resolve all industrial relations disputes or conflicts.

The National Industrial Court (NIC) was established in 1976 by virtue of section 19(1) of the Trade Disputes Decree No.7 of 19767 as Revenue Court[5]. In 1992, the Trade Dispute-Act was amended by the Trade Disputes (Amendments) Decree N0. 47 of 1992. By virtue of section 5 (a) thereof the court became a superior court of record, with the status of a high court. Section 20 of the Trade Dispute Act and section I(a) of Trade Disputes (amendment) Decree No. 47 of 1992 gave exclusive jurisdiction to the National Industrial Court in matters of trade disputes, which is National Industrial Court Act, 2006.

The new Act empowers the President of the Court to create Judicial Divisions for the court so that the court may perform its statutory duties of dispensing justice most effectively. The court now has the following judicial division for the effective performance of its duties namely, Lagos, Kano, Abuja, Enugu, Jos, Ibadan, Maiduguri, Calabar, Akure among other[6]. Opara[7] further posited that to strengthen the court, the National

[1] S. Fagbemi, 'Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis' Journal of Law Policy and Globalization, Vol. 28, 2014
[2] MA Rahim. 'Managing Conflicts in Organizations', 3rd Edition, Westport, Quorum Books, 2001.
[3] A. T. Okechukwu, 'Industrial Court and Management of Dispute between Government and ASUU 2009-2017 International Journal of Science and Knowledge, Vol 7 (3).
[4] Trade Dispute Act. No.7 of 1976
[5] now Trade Disputes Act, Chapter T8, Volume 15, Laws of the federation of Nigeria, 2004
[6] Opara, LC. The Legal Frame Work of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade Disputes. International Journal of Humanities and Social Science * 4 (3): 302. 2014.
[7] Opara. Opcit

Assembly enacted a new National Industrial Court Act on 14th June, 2006 which was assented to by His Excellency, Chief Olusegun Obasanjo, GCFR and the former President of the country without delay. One of the problems faced by the National Industrial Court was jurisdictions problem between the court and other federal high courts in Nigeria. The matter was resolved in *Attorney General of Oyo State v Nigeria Labour Congress*[8] decisions of these other courts, including the Supreme Court of Nigeria, which held that the Federal High Court of justice. State High Court of justice and the High Court of Federal Capital Territory. Abuja have concurrent jurisdiction with the National Industrial Court did not help the matter The NIC Act provides that the president of the court shall rank equal with the Chief Judge of the Federal High Court or the Chief judge of the High court of the Federal Capital Territory Abuja, in precedence and the judges of the court shall, in like manner, rank with the judges of the Federal High Court or High Court of the Federal Capital Territory, Abuja.

Furthermore, the Act[9] states the jurisdiction of the court in civil cases and matters relating to labour, including trade unions and industrial relations; environment and condition of work.

Thus, in spite of above pragmatic steps taken by the Government in identifying the jurisdiction of the NIC, litigants continued to institute their cases in these other Courts instead of the NIC. To completely checkmate this seemingly self-imposed problems on the part of litigants, the Nigeria National Assembly in collaboration with the State House of Assemblies in Nigeria in 2010 amended the Nigeria Constitution through the Constitution of the Federal Republic of Nigeria (Third Alteration) Amendment Act, 2010 thus incorporating the establishment of the NIC, its composition and power like other superior courts of record into the provisions of the Constitution.(See section 6 (3) (5) (a) to (i) of the Constitution of the Federal Republic of Nigeria Constitution, 1999 as amended),Specifically, section 254 of the Constitution of the Federal Republic (Third Alteration) Amended Act. 2010 reaffirmed and reinforced the status and jurisdictions of the NIC as contained in the National Industrial Court Act, 2006.[10]

It is against this background that the work seeks to examine the effect of National Industrial Court and Industrial Arbitration Panel in Resolution of Corporate Disputes in Nigeria.

[8] (2003) 8 NWLR (Pt, 821)1 at 35
[9] Section 7 (1) of National industrial Court Act 2006.
[10] S. Fagbemi; 'Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis' Journal of Law Policy and Globalization, Vol. 28, 2014

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Effects of National Industrial Court and Industrial Arbitration Panel in Resolution of Cooperate Disputes in Nigeria

Andrew Onyeu's Article on the national Industry Court: Regulating Dispute Resolution i Labour Relations in Nigeria captured the true essence of its activities in Nigeria. In his opinion[11] Trade and Industrial dispute generally originated from interaction within an organized labour market. Government monetary and physical policies also play a significantly role in developing this framework.

Union activities, pension issues and employment conditions usually contribute the balance of the framework. The role that trade unions play in negotiating disputes between employers and their members is also a key feature of these relationships. It is the breakdown in this negotiation process that produces postures which leads to disputes. Strike actions remain the most easily recognizable form of relationship breakdown in labour law. The adverse effects of strikes are commonly known. The loss of productive man house: attendant difficulties in meeting demand for services within the period: breakdown in communication, law and order as well as major threats to economic development are all known features of strike action. Inefficient management of industrial compromises socio-economic stability of countries. In development economies therefore, the mechanism for easier resolution of these disputes is often clearly identified. It is probably to replicate international best practices and create a contemporary dispute resolution mechanism that gave impetus to the establishment, in its previous and current forms, of the National Industrial Court. Its brief appeared concise – to adjudicate on all issues emanating from industrial relations and labour market breakdown. As was to transpire, the course to attaining this objective has been a difficult but critically necessary one.

The National Industrial Court was established in 1976.[12] Section 19(1) of the Trade Dispute Decree No. 7 of 1976 creates the court. This legislative direction has been reinforced by more specially tailored legislation, the National Industrial Court Act. Section 7(1) of the National Industrial Court Act provides that the court shall have and exercise jurisdiction in several courses and matters relating to labour, including trade unions and industrial relations: environment and conditions of work, health, safety and welfare of labour, collective agreement, any circumstances relating to seeking orders to restrain any personal body from taking part in any strike, lock out or any conduct on contemplation or in furtherance of a strike, lockout or any industrial action; any question as to the interpretation of any collective agreement; any award made by

[11] Andrews. Solicitors @ virgin net

[12] Section 19(1) of the Trade Dispute Decree N: 1976

an arbitral tribunal in respect of a labour dispute, organizational dispute as may be recorded in any memorandum of settlement and any award, or judgment of the court and states that the court has jurisdiction and power to hear cases arising from labour, trade dispute, employment matters and all other matters relating to trade activities. It is also charged with the responsibility of interpreting trade union contributions.

Its operational mechanic provide that the President of the court may appoint a single judge to sit and determine interlocutory applications or preliminary matters in any other cases before the court but in substantive terms, the sitting panel of judges to hear any of its cases must compromise no less than three including the President. To engender its growth and spread, the President of the court is also empowered to create judicial relations so that the statutory functions of the court may be administered more effectively. In consequence of this power, the court now has judicial divisions sitting in Lagos, Abuja, Enugu, Kano, Jos, Ibadan, Maiduguri and Calabar. To regulate its day to day conduct, the president of the court is also empowered to make rules of court to give effect 10 the statutory obligations imposed by the various regulating legislation. In this regard, the National Industrial Court Rules 2007 have been made and these provide guidance for litigants coming to the court. These major developments, along with others that have been initiated and driven by its current President, Mr. Justice Babatunde Adejumo who has seen the court's constitutional development grow in geometric proportions to become, as expected, a specialist court of considerable value and significance in Labour and Employment Law.

To achieve this importance, it has and continues to be confronted by some of the digressional challenges that innovative judicial initiatives customarily suffer. The much vexed issue about the status of the court as a superior court of record has been the subject of justifiable criticism by the court's protagonists. Simply put, their argument is that section 6(5) of the 1999 Constitution[13] provides a complete list of superior courts of records in Nigeria and that the National Industrial Court is not one of the listed courts. Only an amendment, they contend, to expand the list can correct this defect. Accordingly, the *provisions of both the* -Trade Disputes Act 1976 (as amended) and crucially, the latter National Industrial Court Act 2006[14] declaring its superior court status, are incapable of curing this defect. Indeed, this much was confirmed by the Court of Appeal in the oft-cited decisions *Kalango* v *Dokubo*[15] and *Attorney General, Oyo State v National Labour Congress*[16] in which the courts held that the court is not a superior court of record. Added to this is also the criticism that the court does not have exclusive jurisdiction in relation to the areas that it

[13] Section 6(50 of the 1999 constitution (as amended)
[14] National Industrial Court Act 2006
[15] (2003) 15 WTN P 32
[16] (2003) 8 NWLR P

covers. Its exclusive jurisdiction status is, these cases say, affected by the application of section 272[17] of the 199V constitution to the extent that its jurisdiction is at best, concurrent. In other words, it share-jurisdiction in relation to these matters in both the state and Federal High Courts, The issue about its position as a superior court of record should be treated as moot. There appears, within the judiciary, to be common ground of understanding that the court; its value and benefits as well as its role in labour relations are overwhelmingly desirable and necessary. Until such time as the constitutional differences are addressed by an appropriate amendment, courts whose intervention is sought in cases that ought to be dealt with by the National Industrial Court

Act 2006[18] dealing with transfers lo and from State and Federal High Court to the National Industrial Court. Section 24(2) directs that no case which should originate in the National Industrial Court shall be struck out by the court purely for the reasons that such a case was started in the Federal High Court or the High Court of a state. The converse provision is in section 24(3) which provides a similar position in relation to cases wrongly started in the Federal High Court or the State High Court. Section 24(4) provides that where orders are made in relation to transfers either from or to the National industrial Court from the Federal or State High Court, those orders shall operate as a stay of proceedings and shall not be the subject of any appeal.

In effect, an ideal way to deal with situation is that applications for supervisory relief should be determined summarily by upholding the finality of the decisions of the National Industrial Court and establishing regulatory precedents, hi this way. applications whose sole purpose is to undermine the decisions of the National industrial Court should be met with an endorsement of the specialist role that the court has and will play in the development of labour law jurisprudence in Nigeria

The single biggest constraint, even in the justice sector, affecting the work of the court is the limited public awareness of its role. Governments, legal practitioners, employers of labour trade unions and employees have a narrow and consequently inadequate understanding of the court; its role and working practices. Without prejudice to its limitations, legislation has clearly defined its role in labour law and relations in Nigeria to extent that the failure to engage it especially by practitioners advising clients, should be considered professional negligence. The necessity to acquire better understanding and functional familiarity of the court's significance should be such that its better understanding must become of mandatory use in labour related issues.

[17] 5 272 of the 1999 constitution (as amended)
[18] Ibid

The full and greater appreciation of the court's role must become a matter of urgent priority. The work of its President, Mr. Justice Adejumo has been prodigious and remarkable in forcing increased appreciation' of the role of the court. It is incumbent on those within and outside the legal profession who can be affected by labour issues to complement that work and to strive to increase the awareness of access to the court in an area of law that is clearly specialized and designed to maximize effective dispute resolution in labour relations.

The Industrial Arbitration Panel: Establishment, Functions, and Challenges.

The Industrial Arbitration Panel (1AP) was created under the Trade Dispute Decree No. 7 of 1976 Cap 438.[19] The panel is charged by section 9 (1) of the Trade Dispute Act[20] with the responsibility of arbitration on Industrial dispute between employers and employees inter and intra union disputes upon referral by the Honourable Minister of Labour and Productivity. The Minister of Labour and Productivity acts as a supervising body to the panel and the panel can only arbitrate on matters referred to it by the Minister of labour and productivity. The Industrial Arbitration Panel has a mission to maintain industrial relation and Harmons between workers and employers from both public and private sectors to enhance the political and socio-economic development of workers and employers in various working environment in the Nation. The panel as a quas-judiciary agency is to service the need of stakeholders in both the private and public sector of the Nigeria Economy, maintain peaceful atmosphere in all sectors of Nigeria.

The Act provides that the Industrial Arbitration Panel shall consist of a Chairman, the Vice Chairman and not less than 10 other members all of whom shall be appointed by the minister out of the 10 members, *2* shall be persons nominated by organizations appearing to ministers as representing the interest of the workers,[21] when a trade dispute is referred the panel it shall constitute an Arbitration Tribunal, which may be a sole Arbitrator ted by assessors, one or more arbitrators nominated by or on behalf of representatives of employers and workers in equal numbers with the Chairman or Vice Chairman presiding. The Industrial Arbitration Panel is expected to make its award with 21 days or such longer a^ the Minister may direct.[22] Upon the making of the ward a copy of it should be to the minister publish same, setting out its award and specifying the time within which objections to the award should be made.[23]

If no objection is made within the time stipulated a notice confirming the award

[19] Now cited chapter T8 Laws of the Federation of Nigeria 2004
[20] Cap T8 Laws of the Federation of Nigeria
[21] Ibid, Section 9(3} & (5)
[22] Ibid, section 13 (1)
[23] Ibid, section 13 (2)

shall be published in the Federal Gazette and the award shall be binding on the parties[24] and a breach of which will render parties guilty of an offence and liable upon conviction.[25] If a notice objection to the award is given to the minister within the stipulated time, the minister refers the dispute to the National Industrial Court.[26]

It is observed that the IAP is faced with the following problems

1. Because of the wide powers given to the minister under section 5,6,7 and 8 of the ACT[27] appears the IAP is a department under the Ministry of labour and productivity and being administered by the minister. This does not give room for independence as advocated u; the doctrine of separation of power.
2. The awards of the IAP are not binding and there is no legal process to enforce such awards. Ibis reduces the efficacy of the tribunals as employers deliberately pay no attention to the awards of the panel. An example of this situation was the case between National Union of and Non-Metallic products workers V Management of Glaxo (Nig) Ltd[28] where the management refused to obey the orders of the Industrial Arbitration Panel.
3. The IAP delay in delivering its award reduced the practical effect of the award. The award is first forwarded to the minister who may delay in communicating it to the parties.[29] This may lead to frustrated expectations and create a group for resumption of the dispute.
4. IAP could be likened to the civil courts but unlike the civil courts, litigant cannot go to directly. It must be done through the Minister of Labour. This is a major hindrance to fast speedy dispensation of justice.
5. Parties to a suit before the Industrial Arbitration Panel were not allowed access to the ion or award of the Panel in respect of their cases by virtue of the provisions of part 1 of the TDA it was only the Minister of Labour who had the right to disclose and it was felt that this practice did not quite accord with the rules of natural justice and fair hearing.

[24] Ibid ibid, Section 13(2)
[25] Ibid. Section 13(4)
[26] Ibid. Section 14(4)
[27] Ibid. Section 14(1)
[28] Trade Dispute Act Cap 432, LFN 1990.
[29] IAP/L201/87

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The status of the industrial arbitration panel in dispute settlement in Nigeria

AFTER THE NIC ACT 2006

The NIC was established in 1970 to decide trade and union disputes and to create a unable industrial harmony. The founding legislation is the Trade Disputes Act, Cap Laws of the Federation of Nigeria 1990 ("TDA").

TDA created the NIC as a specialized tribunal whose jurisdiction is solely to the exclusion of all other courts, on matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, Including health, safety, welfare of labour, employees, workers and matters incidental thereto or connected therewith.[30]

One major innovation of the MICA is that it took the NIC out of the IDA .and gave il a separate enabling law. Before the NIC Act 2006, a precursor to tilling a labour dispute case with the NIC mandated that the matter must concern an award from the Industrial Arbitration Panel (IAP) under section 24 of TDA providing for a right of appeal to the NIC from the award of the IAP. It is provided that where the award of the IAP is objected to and notice of this has been given to the Minister within the stipulated time, as provided for in the Act. The Minister is to refer the disputes to the NIC whose award will be final and binding he parties as from the date of the award.

There is no appeal to any other body as this is the apex court for the settlement of trade dispute.[31] The award of the NIC is final and binding on the parties in dispute. With the NIC Amendment Act (2006), the NIC is now a superior court of record just like the State High Court, Federal High Courts, Court of Appeal and the Supreme Court for labour matters. As a superior court of record, the NIC will no longer be subject to the supervisory jurisdiction of the State and Federal High Courts. It no longer shares jurisdiction with the High Courts and enjoys exclusive jurisdiction over labour, trade union and industrial relations matters. Unlike, under the old Trade Dispute Act with the 2006 NIC Amendment Act, A party can approach "'the NIC as a court of first instance. A party does not need to first go to the IAP before having access to the NIC.[32] With respect to the relationship between the NIC and the Minister of Labour and Productivity, in the new 2006 Act, the NIC has no direct relationship with the Minister. An individual has the right to refer the decision of the Industrial Arbitration Panel (IAP) to the NIC and not through the Minister,[33]

[30] Section 12 T.D.A. 1990

[31] Section 7(1) of the National Industrial Court Act (2006)

[32] Sec 9 NIC Act 2006

[33] Chidi, Odogwu C., "Collective bargaining and Dispute Settlement in the Food, Beverage and Tobacco Industry in Lagos State, Nigeria". European Journal of Business and Management Vol 6, No. 2. (2014)

After The New Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010

In 2010, there was an alteration to the 1999 Constitution via a legislative intervention providing for the establishment of the NIC as a superior court of record under the Constitution. Further, the 2010 Act also provided an elaborate scope of the NIC's specified jurisdiction by the insertion of a new enactment in Section 254C of the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010,[34] the exclusive adjudicating power on labour and industrial relations laws.[35]

One of the innovative provisions of the Third Alteration Act is Section 2540 (3) which provides that the NIC may establish an Alternative Dispute Resolution Centre. Court within the premises on matters within her jurisdiction.[36] This is a Court connected (annexed) ADR. The Court is about to give effect to this provision by establishing an ADR Centre within the Court premises.[37] There are plan in place to design and start ADR pilot scheme in the court premises starting with Lagos and Abuja.[38]

One envisages that the court could adopt the multi door concept model, using experienced personnel who will refer the parties to the appropriate ADR door or litigation or the Court may make provisions in its rule for compulsory submission to ADR, and that litigation commences on the failure of ADR to resolve the matter. Once an agreement is reached through conciliation, mediation or arbitration or a hybrid model, the terms of settlement is then drawn and signed by the parties and the facilitator. The signed memo is then filed before the Court and treated as consent judgment enforceable against the parties.[39] NIC had and can exercise appellate and supervisory jurisdiction over the centre.[40]

To this extent, therefore, the following can be inferred:

a) That the ADR Centre is not independent of the court i.e. in terms of judicial review and administrative structure.

[34] Ibid

[35] Olumide, Koolawole O. "Enragement of rights of appeal from the decisions of the Nigeria Notional Industrial Court" Prosphare. Sunday. January 26, 2014. Web. 12 May 2014. http://wwwproshareng.com/articles/2639/enlargrnent-of-Rights-of-Appeal-from-the-uecision-of-the-Npgerian-Nafconal-lndustrial-Court

[36] Ibid

[37] Section 7(3) of the National Industrial Court Act (2006)

[38] Hon. Justice Babatunde A. Adejumo "Building Effective Conflict Management Mechanism for Sustainable Development in Nigeria". Being a Paper presented at the 7th edition of the National labour Relations Summit organized by the Michael Emoudu National Institute for Labour Studies, Illorin on Nov 17lh2011 p 19-20 [i9] Ibid p. 19

[39] Ibid 19

[40] Awmashaun, Oyesola. "Court-Connected ADR and Industrial Conflict Resolution Lessons from South Africa Guatemala Web". 14.2014<http://nich.gov.ng/publications/Court-Connected%20ADRpdf

b) That decisions outcomes of the Centre's ADR procedures are not final and appeals lie to the NIC A pertinent question to ask is whether the Third Alteration Act had the IAP in mind in empowering the NIC to establish an Alternative Dispute Resolution Centre in its premises. According to Hon Justice Kanyip, a matter which had to go through the process of part 1 of the Trade Disputes Act (TDA) continues to go through the process (mediation. conciliation arbitration) even after the passing of the NIC Act.

However, as his lordship further observed these dispute resolution processes of part 1 of the IDA has a high emphasis placed on ministerial discretion. The role or" minister is profound.[41] For instance, disputes cannot go directly to the IAP except through the instrumentality of the minister.[42]

It is in view of the above that the IAP, through may provide facilities for the conduct of arbitration; it cannot replace the functions or scope of the Alternative Dispute Resolution Centre. The IAP waits for disputes to be referred to it, while in the Alternative Dispute Resolution Centre; parties can walk in and request arbitration or any other ADR process.

Conclusion

Just very recently, a centre of ADR was established in the National Industrial Court (NIC) under S354 (3) of the 1999 Constitution as amended. This is to welcome development that the constitution has finally empowered a Court to establish an annex of Alternative Dispute Resolution (ADR) centre in the National Industrial Court is a step in the right direction. Some litigation protagonist had remained unmoved insisting that the process infringed on the constitutional rights of parties to have unfettered access to courts of law. On the strength of this, labour related matters the world over relates with this concept as the most convenient tool to resolve conflicts in the first instance before such matters could be referred to courts as was elaborated in the work.

Recommendation

The 21st century lawyer should possess relevant knowledge of both domestic and international arbitration laws including the manner in which they are conducted particularly as it relates to management of corporate disputes.

There is need to expand the scope of the National Arbitration Legislation to accommodate - the current act in order to make it more relevant to settlement of corporate disputes.

[41] Ibid

[42] Justice Benedict Bakwaph KANYIP. "The National Industrial Court of'