

Section 18 of the Trade Disputes Act: A clog on the Employees' Right to Strike in Nigeria

Iguh, N.A., Ewulum, B.E., & Ikpeata, G.E.

Abstract

Since industrial conflicts have become a global phenomenon as a result of the unequal bargaining power between the employers and their employees, the right to strike becomes inevitable and a viable tool with which the employees press home their demand. The right to strike is the keystone of modern industrial society and no society which lacks it can thrive. However, the exercise of this right to strike in Nigeria has become difficult in the face of the glaring limitations placed on same by the prohibition of strike under the Trade Disputes Act owing to the procedural requirements which must be satisfied before workers can embark on a lawful strike in Nigeria. The study has shown that there are so many limitations placed on the workers right to strike in Nigeria by the Trade Disputes Act which have made the Nigerian workers suffer brunt hardship and oppression in the hands of their employers and have also reduced or limited the incidences of strike in Nigeria.

Through this research, it was revealed that although there are legislations promoting the workers' right to Freedom of Association and indeed the right to strike in Nigeria, the government in a bid to scuttle this right has through its legislations limited if not proscribed the exercise of the right to strike in Nigeria. To this end therefore, there is an urgent need to review the labour related legislations and government policies in Nigeria as it relates to the exercise of the right to strike with a view to promoting this right. The work recommended that for industrial harmony between the employers and the employees to

thrive in Nigeria, the government should be more pro-active to the demands of the workers and the employees should be allowed to exercise their right to strike when necessary. This will put the employees in an equal footing with their employer in pressing home their demand in resolving the industrial conflicts that exist between parties.

Introduction

Labour movements, the world over, aim at addressing the needs of the working class. While employers of labour are primarily concerned with maximizing profits, the employees are concerned with enhanced welfare packages and improved conditions of work. The existence of these two interest groups in an industrial establishment often results in trade disputes. The Nigerian industrial/labour law borders on the issue that pertains to the rules that govern employment, determination and enforcement of the terms and conditions of employment between the parties and the settlement of industrial/trade disputes between them. However, these disputes are oftentimes resolved on the basis of compromise, while many others end in lockouts, work-to-rule and strikes (Wigwe, 2014).

The employer who is usually in a more advantaged position unilaterally dictates and decides the terms and conditions of service while the employee either accepts those conditions or is at liberty to quit the employment (Ahmed, 2014). Because of this unequal bargaining power between the employers of labour and their employees, as regards their contract of employment and their conditions of service workers began to bound themselves together to resist the oppressions of the employers and thereby making collective bargaining for improved working conditions and welfare packages pivotal to their employment. It is therefore because of the breakdown of negotiations between the parties that trade unions ballot their members for a mandate to commence strike actions (Union Bank v Edet). It is therefore, the threat of strike or the actual exercise thereof that compels the employer to accede to the demands of the employees (Okene:2009). To this end, strike actions have become a weapon of last resort in the armory of the employees with which they press home their demands. To this end, Collins, Ewing and McColgan, noted that "the connection between the right to strike and collective bargaining is easy to understand...collective bargaining would be rather empty of substance

if the employer could say: “this is my offer – take it or leave it”, or if the employer could say: “I am proposing to change the terms of existing collective agreement – and there is nothing you can do about it, whether you agree or not”.

Thus, strike actions enable workers to collectively put pressure on their employer in pursuit of what they see as a just cause, and a way of resisting what they see as an unjust action by the employer (Collins et al: 2005). It is then true, that in the absence of the right to strike, "collective bargaining" would amount to "collective begging" (Jacobs:1993). It is therefore based, on the above, that the importance of the right to strike in industrial relations cannot be over-emphasized, as strike plays the same role in labour negotiations that warfare plays in diplomatic negotiations (Getman & Marshall: 2000).

Definition of Strike

Strike is a cessation or stoppage of work at the workplace by employees or workers. It is a strategy adopted by employees to seek recognition and press home their demand for better treatment and improved conditions of service from their employers (Audi:2005). Strike is a powerful tool through which the employees via their trade unions compel their employer to dialogue with them with the ultimate aim of achieving their demand in improving their welfare packages and conditions of work. The right to strike therefore has been described an essential tool of trade unions all over the world for the defense and promotion of the rights and interests of their members. Ahmed (2014), stated as follows: "take away the right to strike, workers and their trade unions will be lame ducks". Also, Lord Wright aptly puts it this way, "where the rights of labour are concerned, the rights of the employer are conditioned by the rights of the men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining" (Hand Woven Terris Case).

Sec. 48(1) of the Trade Disputes Act defines strike as: “the cessation of work by a body of persons employed, acting in combination, or a concerted refusal under common understanding of a 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 others in compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment or 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”.

From the above definition, it is evident that strike is a concerted and deliberate stoppage of work or the intentional reduction of the work speed or efficiency by the employees or workers in a bid to compel the employer to accept and improve their terms of contract or physical conditions of work. Thus, the right to strike having been accepted and recognized globally as an effective and inevitable tool with which the employees press home their demands in labour and industrial relations; it will be safe to describe it as a tool with which the employees bridge the unequal bargaining power between them and their employers. It is however regrettable to say that this right has suffered serious setback in the Nigerian State in the face of the limitations placed on the exercise of same by the extant laws and policies.

Right to Strike in Nigeria

Whether or not workers in Nigeria have the right to embark on strike has been a subject of considerable debate in various books, journals and a plethora of judicial authorities. To this end, in recognizing this right of Nigerian workers to embark on strike action, Uwaifo JCA (as he then was) observed in the case of Union Bank of Nigeria Ltd v. Edet(1993) and remarked as follows; “It appears that whenever an employer ignores or breaches a term of that agreement, resort could only be had, if at all to negotiation between the union and the employer and ultimately to a strike action should the need arise and if it be appropriate”.

Furthermore, Danesi(2006/7) while commenting on the right to strike in Nigeria remarked as follows:

Strike is the weapon of last resort that the union resorts to in order to compel their employer or management to accede to their demands, just as the employer has right to lockout their employees. If you deny the workers the right, then what will they be left with? It is the knowledge that the workers can withdraw their services when the terms and conditions of employment are not favourable that keeps the employer on his toes.

Again, Professor Wedderburn(1986) in giving credence to the fact that the right to strike is both recognized and protected by law submitted that;

To protect such a right is not to approve or disapprove of its existence in any particular withdrawal of labour, it is to recognize the fact that the

limits set on the right to strike and to lockout are on measure of the strength which each party can in the last resort bring to bear at the bargaining table. The strength of a union is bound to be related to its power and its right to call out its member, so long as any semblance of collective bargaining survives.

Also, on whether a right to strike exists in Nigeria, Ogunbiyi(1991) observed as follows: “A situation where there is no freedom to decide whether or not to work and where people can be compelled to work is compatible only with totalitarianism. Therefore, the right to go on strike is fundamental to the employment relationship and is compatible with the traditional values of a society which professes democracy”. Thus, from the foregoing, it is conclusive to say that the right to strike exists in Nigeria and more importantly taking a look at the statutory provisions in our laws which lend credence to this right.

Sec. 40 of the Constitution (1999) guarantees a citizen's right to form and belong to any trade union of his choice for the protection and promotion of his interest. It is thus important to note that the right to freedom of association and to freely join trade union of one's choice is a corollary or base upon which the employees' right to strike is built. However, this law is subject only to derogation by any law that is reasonably justifiable in a democratic society (Section 45). To this end, it is submitted that the right to form, join or belong to trade unions of one's' choice as guaranteed by the Constitution of Nigeria also implies the right of trade unions to call out their members for strikes when the situation arises. Therefore any law which seeks to derogate the right to strike cannot be said to be a law which is reasonable in a democratic society. More so, Sec. 4 of the Trade Unions Act (2004) recognizes the right of workers to go on strike by requiring all Trade Unions to provide in their constitution a rule to the effect that no members of the trade union shall not take part in a strike action unless the majority of its members in a secret ballot voted in favour of the said strike.

Again, the law also gives immunity to trade union members for any tortuous liability which arose out of any action done in contemplation or furtherance of trade dispute (Section 44). Thus, Sec. 44(1) of the Trade Unions Act provides that:

“An act done by a person in contemplation or furtherance of trade dispute shall not be actionable in tort on any one or more of the following grounds only, that is to say:

That it includes some other person to break a contract of employment; or
That it is an interference with the trade, business or employment of

some other person or with the right of some other person to dispose of his capital or his labour as he wishes; or that it consists in his threatening that a contract of employment, (whether one to which he is a party or not) will be broken; or

That it consists in his threatening that he will induce some other persons to break a contract of employment to which that other person is a party”.

Based on this provision, any tortuous act committed by members of trade union which falls within any of the stipulated grounds as highlighted in the above section is not actionable, thus the union members are protected from prosecution.

The pertinent question to ask is constitutes trade disputes which can degenerate into strike action? In answering this question, the Court of Appeal laid down the ingredients of a trade dispute in the case of *N.U.R.T.W v. Ogbodo*(1998) as follows: “Sec. 47 of the Trade Disputes Act Cap 432 defined a trade dispute as follows: “any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or terms of employment and physical conditions of work of any person”. From the foregoing, it is clear that the following ingredients are not only necessary but inevitable to sustain a trade dispute that will sustain a strike action:

There must be a dispute;

The dispute must involve a trade;

The dispute must be between;

Employers and workers;

Workers and workers;

The dispute must be connected with;

The employment or non-employment,

The terms of employment and physical conditions of work of any person”.

Thus, from the points made above, it is deducible that the right to strike plays a dual role: firstly, it is regarded as part of the mechanism of collective bargaining, secondly, it is submitted that strike is used as a tool/sword in the hand of the employees and minorities in general to compel the employers to perform their own end of the bargain in the contract, thereby maintaining industrial harmony in the society.

The right to strike being a legal right of the workers which is constitutionally provided for in the right to freedom of association and expression, and the right not to be held in servitude, torture and forced or compulsory labour. This right is also recognized and enforced by all

workers globally and it has also gotten international backing through treaties, covenants and conventions which Nigeria as a member of the comity of nations has ratified and signed.

Section 18 of the Trade Disputes Act and the Right to Strike in Nigeria Since strike action is a legitimate tool that workers or union members use to further the interest of their members, these workers or union members should be given unfettered rights and freedom to exercise this right without any form of inhibition. Although it has been observed that the Nigerian workers have the right to strike like other workers in any part of the world, it is regrettable to say that these workers have been denied the freedom to exercise this right in accordance with the internationally acceptable and recommended standard. This is because the limitations imposed on the exercise of this right in Nigeria far-out-weights the freedom to exercise same. It is therefore argued that a right without the freedom to exercise same is as good as no right at all. It is therefore submitted that these procedural bottle necks or restrictions found in Sec. 18 of the Trade Disputes Act is a deliberate ploy by the government to limit or restrict the exercise of the employees' right to strike in Nigeria.

Prohibition of Strike

Sec. 18 of the Trade Disputes Act (2004) provides as follows;

“...a worker shall not take part in a strike in connection with any trade dispute where;

The procedure specified in Sec. 4 or 6 of this Act has not been complied with in relation to the dispute; or

A conciliator has been appointed under Sec. 8 of this Act for the purpose of effecting a settlement of the dispute; or

The dispute has been referred for settlement to the Industrial Arbitration Panel under Sec. 9 of this Act; or

An award by an Arbitration Tribunal has become binding under Sec. 13 of this Act; or

The dispute has subsequently been referred to the National Industrial Court under Sec. 14(1) or 17 of this Act; or

The National Industrial Court has issued an award on the reference....”

It is submitted that from the wordings of the above section, it could be concluded that the Act has severely circumscribed the workers' right to strike in Nigeria and has also subtly placed an outright ban on same. By so doing, the Act introduced both voluntary and compulsory means of settling a trade dispute which includes the process of Mediation,

Conciliation, Arbitration and the National Industrial Court.

Furthermore, the said Sec. 18 of the Trade Disputes Act equally makes it an offence for an employee or worker to take part in a strike action or perform any act in preparation to organizing a strike without first of all going through the processes highlighted in that section. It is on the strength of the above provisions that it was held and amplified in the cases of *Eche v. State Education Commission* (1983) and *Chigbo v. Local Court Service Commission* (1983) any strike action embarked upon without first of all fulfilling and exhausting the settlement provisions set out in the Act is illegal and unlawful. It is also important to note that the Act criminalized the said act, and anyone who contravenes the said provision is guilty of an offence and is liable to either imprisonment or a fine or both. Thus, from the foregoing it could be said that Sec. 18 of the Trade Disputes Act has completely impaired if not outrightly banned the employees' right to strike in Nigeria. This is because the whole processes laid down in the said Sec. 18 are intertwined with each other so that one process leads you to the other until you have exhausted the whole processes.

In discussing whether the provisions of Sec. 18 of the Trade Disputes Act placed a complete ban on the employees' right to strike in Nigeria, Okene (2017) has this to say;

Our contention is that the wordings of Sec. 18 seem not to leave any room for a lawful strike. Its effect is submittal, to prohibit strike completely. By virtue of Sec. 18 (1), workers cannot go on strike unless they observe the dispute settlement procedures. If at the end of the processes, workers are dissatisfied with the award of the National Industrial Court whose decision is final, then by virtue of Sec. 18(3) they must go through the whole process of dispute settlement all over again. The law has apparently created a vicious circle of compulsory arbitration from which the workers cannot escape. By implication, the right to strike seems to have been smartly circumvented by the legislature.

It is submitted that with the obvious provisions of Sec. 18 of the Trade Disputes Act, it is very difficult if not impossible for trade unions to boycott this well calculated obstacles placed on their way before embarking on a strike action. Consequently, it might be right to conclude that strikes are regulated by the Trade Disputes Act. Also, Agomo(2008) in agreeing with Okene that the Trade Disputes Act has

proscribed the right to strike in Nigeria, further explained thus:

A literal construction of Sec. 18 of the Trade Disputes Act suggests that there is a right to strike although severely circumscribed. However, it seems more reasonable to say that there can never be a lawful exercise of any right to strike in Nigeria as long as Sec. 18 remains on the statute book of Trade Disputes Act. Strikes and lock-outs are prohibited until all the procedures laid down in the Act are exhausted. Subsection (3) of the same section stipulates that any disagreement at any stage constitutes a new dispute. This is a sort of merry-go-round where they can never differentiate one stage from another. It can therefore be said that Sec. 18 constitutes, in effect, a total ban on the right to strike.

It is submitted from the foregoing, that the import of Sec. 18 of the Trade Disputes Act is that none of the parties to an industrial disputes in Nigeria can resort to strikes or lock-out while negotiations and other steps enumerated in the said section are in progress and non-compliance with the procedures highlighted in that section will make such strike both illegal and unlawful.

It is most humbly regrettable to say that the above provisions of Sec. 18 of the Trade Disputes Act are in direct conflict with the internationally accepted best practices on Labour Relations. This is because the Code of International Labour Law provides as follows:

The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organization. Also the procedure for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike(Rubin:).

Though it is submitted that the provisions of the Code of International Labour Law are mere guidelines and not strictly a legal document with force of law recognized in Nigeria, it is in tandem with the international accepted best practices on labour. It is therefore recommended that this code of international best practices on labour should therefore be incorporated into our labour laws in order to make it enforceable.

Looking at the conditions for exercising the right to strike under the International Labour Organization (ILO), the ILO being the highest regulatory body on labour globally has recommended that if there must be laid down conditions or requirements that must be met in order to make a strike lawful, such conditions and requirements must be reasonable and in any event should not place a substantial limitation on

the right of trade unions to embark on strike(Gernigon et al:2000). Thus to ILO, if there must be pre-conditions to be fulfilled before workers can embark on strike to ventilate their grievances, those pre-conditions must be reasonable and should not constitute a hitch to the exercise of the workers right to strike. To this end, ILO identifies the following conditions to have qualified as pre-conditions for exercising the workers right to strike:

1. The workers must give prior notice of their intention to embark on strike.
2. The workers should have had a recourse to voluntary settlement of the trade dispute, that is Conciliation, Mediation and Arbitration (provided that the proceeding are adequate, impartial and speedy) before embarking on a strike action.
3. The workers must form quorum before they agree and decide to embark on strike.
4. The decision to embark on the strike must be reached through a secret ballot, etc.

It is submitted that the above pre-conditions for exercising the right to strike issued by the International Labour Organization is in line with the international best practices on labour. However, in the case of Nigeria, the provisions of Sec. 18 of the Trade Disputes Act on the pre-conditions for embarking on a lawful strike did not only fall short of the ILO standard but placed a total ban or restriction on the Nigerian workers to embark on strike.

To this end, it is submitted that Sec. 18 of the Trade Disputes Act, being one of the laws governing labour in Nigeria have placed a lot of hurdles for the employees to cross before they can engage in a lawful strike in Nigeria. It is therefore recommended that these obstacles in form of limitations to strike should be lifted so that Nigerian workers will join their counterparts across the globe in exercising their rights to strike with little or no restrictions.

Conclusion

In summary, it is submitted that the position of the law on strike in Nigeria today is that Sec. 18 of the Trade Disputes Act has placed a total ban on the workers' right to strike. This is because, if the workers have no right to embark on strike before they have taken steps to resolve a dispute, if they cannot do so once the machinery for the settlement of the dispute has been set in motion, and if they are prohibited from striking against the award of an Arbitration Tribunal or of the National

Industrial Court, and if the workers who partake in strikes are prosecuted and denied their wages, it is practically impossible to see or think of any circumstance the Nigerian worker may embark on a lawful strike at any point in time without running afoul of the law. To this end, it is concluded that the position (in the present day Nigeria) is that strikes are illegal and Nigerian workers have no right to strike.

Consequently, the trade disputes resolution mechanisms as entrenched in the Acts are very rigorous and cumbersome therefore making the exercise of the employees' right to strike difficult. It is thus in the light of this that it is recommended that there be a total over-haul or review of the Trade Disputes Act so that those procedural limitations on the exercise of this right to strike be removed or at least reviewed. In doing this, a more speedy procedure for the settlement of trade disputes should be provided wherein the processes of mediation, conciliation and arbitration will be collapsed into one single process and a limited time frame within which to settle the trade dispute be provided as this will make parties to industrial conflict responsive to their obligations.

References

- Agomo, C. K. (2008). "Federal Republic of Nigeria" in R. Blanpain, (ed), *International Encyclopedia of Labour Law and Industrial relations* (Deventer: Kluwer law International, Para. 270
- Ahmed, A. B. (2014). 'A Critical Appraisal of the Right to Strike in Nigeria', *International Journal of Humanities and Social Science*, Vol. 4, No. 11 (i)
- Audi, J. A. M. (2006). 'Strike as a labour union tool Nigeria: Reflection on Trade Union Act 2005', *Ahmadu Bello University Law Journal* Vol. 23-24, ABU press. P. 94
- Collins, H, Ewing, K. D. and McColgan, A., (2005). *Labour Law: Text and Materials* (Oxford and Portland: Hart, pp. 864
- Christian C. Wigwe (2014). 'The Extent of the Right to Strike in Nigerian Labour Law', *From the Selected Works of Christian Chizindu Wigwe*.
- Danies, R. A., (2017). 'The Trade Union (Amendment) Act 2005 and Labour Reform in Nigeria: Legal implication and challenges', *Labour Law review (Nigeria Journal of Law international Relation*, Vol. 1 p.109.
- Getman, Julius G. and Marshall, F. Ray, (2001). 'The Continuing

- Assault on the Right to Strike', Texas Law Review 79, no. 3, pp: 703–4
- Gernigon, B., Odero, A., and Guido, H., (2000). ILO Principles Concerning the Right to Strike, International Labour Office, Geneva International Labour Law Review, Ed. p. 25
- Jacobs, A. J. M. , (1993). 'The Law of structures and Lock-outs' in comparative Labour Law and Industrial Relations in Industrialized Market Economics, ed. R. Blanpain and C Engels, 5th edn (Deventer: Kluwer, p. 423.
- Okene, O. V. C., (2009). 'Derogations and Restrictions on the Right to strike under International Law: The Case of Nigeria'. The International Journal of Human Rights, Vol 13. No. 4. September 552- 580.
- Okene; O.V.C (2017). The Right to Strike in a Democratic Society: The case of Nigeria; From the Selected Works of Dr. O.V.C. Okene, Jan. , P.207
- Ogunbiyi, O (1991).Nigerian Labour and Employment Law in perspective, Folio Publishers Ltd, at p. 286.
- Rubin N., Code of International Labour Law, Law, Practice and Jurisprudence; Vol. 1 Essential of International Labour Law Pg. 226
- Wedderburn, K.W. (1986). The worker and the law,(London: Penguin Books, 245.
- Hand-Woven Harris Tweed Co. Ltd v. Veitch (1942) A.C. 435 at P. 463
- Union Bank of Nigeria Ltd V. Edet (1993) 4 NWLR (Pt 287) 288 of 291,
- Trade Disputes Act Cap T14, Laws of the Federation of Nigeria 2004
- 1999 Constitution of the Federal Republic of Nigeria (As Amended)
- Sec. 44(1) of the Trade Unions Act