

TERMINATION OF EMPLOYMENT: THE EFFECT OF THE ILO CONVENTION ON CONTRACTS OF EMPLOYMENT



For an employment relationship that is not clothed with statutory flavor, a contract of employment is the basis of that relationship. In a contract of employment, the terms of the relationship, benefits, and responsibilities of the employer and employee are clearly stated. Such terms may include salary, retirement benefits, companies policies and termination¹. Amongst these terms, the term that has significantly evolved is termination.

In an employment relationship, the mode of exit is as important as the mode of entry. Most termination clauses would state that either party can terminate the contract of employment upon giving the employee the required notice under the contract or by paying salary in lieu of notice. An employer had an unfettered right of termination under common law and was entitled to terminate a contract of employment without any reason upon given a notice² or paying salary in lieu. An employee whose employment is terminated in breach of the requirement of notice or payment of salary in lieu was entitled to compensation in the amount that would have been paid in lieu of notice³. However, the International Labour Organization (“ILO”) Termination of Employment Convention of 1982 (No. 158) (“Convention 158” or the

“Convention”) has introduced fundamental changes to the common law position on termination of employment. This article discusses the application of Convention 158 and its effects in Nigeria.

Termination of Employment under Convention 158

Article 4 of Convention 158 prohibits an employer from terminating a contract of employment “. . . unless there is a valid reason for such termination connected with the capacity or conduct of the worker, or based on operational requirements of the undertaking, establishment, or service.” Regarding remedies for wrongful termination, Article 10 of the Convention empowers the court to order a reinstatement unless reinstatement is not permitted or practicable under national law and practice. Where reinstatement is prohibited or not practicable, Article 10 empowers the court to award adequate compensation or such other appropriate relief.

By the above provisions of Convention 158, an employer is required to justify the termination of an employee’s employment. An employer who fails to justify termination by complying with the conditions stipulated by the Convention could be faced with reinstatement or award of significant damages.

Section 254C (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (the “Constitution”) and Section 7(6) of the National Industrial Court Act, 2006 (“NIC Act”) allow the National Industrial Court (“NIC”) to apply the provisions of international conventions, treaties, or protocols relating to labour, employment, workplace, industrial relations, or matters connected therewith that have been ratified by Nigeria. The idea behind the constitutional provision is, arguably, to allow the NIC

¹ Longe v. F.B.N. PLC (2010) 6 NWLR (Pt.1189)1 S.C

² Oforishe v. N.G.C. Ltd (2018) 2 NWLR (Pt.1602)134 S.C

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³ Katto v. CBN (1999) 6 NWLR (Pt.607) 390 S.C.

grow local labour/employment laws at the required pace, and in view of present-day realities. Even though Nigeria is yet to ratify Convention 158, the NIC has continued to apply the Convention to employment disputes. For instance, in the decisions of the NIC in *Ebere Onyekachi Aloysius v. Diamond Bank Plc*⁴ and *Ibrahim Bello v. Eco Bank*⁵, the NIC applied the provisions of the Convention 158 and in the *Ibrahim Bello v. Eko Bank*⁶ case, the NIC ordered the reinstatement of the employee in accordance with Convention 158.

Effects of the Implementation of Convention 158

While the application of Convention 158 by the NIC could be considered a laudable and progressive step, it is arguable that a wholesale adoption of the Convention without regard to the peculiarities of the Nigerian environment, and to extant local laws and practices will produce undesirable outcomes. This was the case in *Bello Ibrahim v. Eco Bank*⁷ where the NIC ordered reinstatement of the employee on the ground that the termination of his employment did not adhere to Convention No. 158, even though the employment was not one clothed with statutory flavour. This decision of the NIC contravenes the time-honoured rule in Nigerian labour law that the court cannot force a willing employee on an unwilling employer⁸. The decision also ignores the practicality of imposing an employee in private employment on an unwilling employer. By terminating the employment, the employer had clearly indicated that it no longer needed the services of the employee. It is therefore difficult to comprehend how such an employee can effectively work in an organisation that has no need for his services and may present a hostile work environment.

The provisions of Article 10 of Convention 158 which provide for reinstatement also flavour clearly provide an alternative for the court to order payment of adequate compensation or such other relief as may be deemed appropriate where reinstatement is not practicable or not in accordance with national laws or practice. The draftsmen of Convention 158 recognise the fact that there may be situations where reinstatement will not be practicable or not supported by national law or practice and therefore provided the option of adequate compensation. Given that reinstatement is not in accordance with Nigerian labour law and practice, the NIC ought to have ordered payment of compensation and not reinstatement.

Another negative effect of a wholesale implementation of Convention 158 is that it erodes the sanctity of contract between parties which in this case is the binding employment contract. It also does not create a level playing field for the employer and employee, as it tends to protect only the right to employment of the employee and does not protect the employer's right to retain or release an employee. In addition, while Convention 158 in its Article 4 enumerates the valid grounds for termination of employment to include capacity and conduct of the employee and operational requirements of the employer, the salient question is whether the grounds provided in Article 4 are exhaustive.

It is noteworthy that there appears to be no clear yardstick or parameter in the Convention to determine what constitutes a valid reason on ground of operational requirement. This ground could therefore be applied as an omnibus ground by employers to justify termination. But the scope and implications of this ground are yet to be seen as the term "operational

⁴ (2015) 58 NLLR (Pt. 199)

⁵ Suit No. NICN/ABJ/144/2018

⁶ Foot Note No. 5

⁷Foot Note No. 5

⁸ Nwoye v. Federal Airports Authority of Nigeria (2019) 5 NWLR (Pt.1665) 193

requirements” has not been a subject of judicial interpretation in Nigeria.

Conclusion

Convention 158 has introduced radical changes to Nigerian labour law. So far, the NIC seems to have adopted a wholesale, unrestricted approach to the application of the Convention. The current approach of the NIC tends to accord a status of supremacy to the Convention over local laws and practices. It is, however, important to align the application of the Convention with our local employment laws and practices. Otherwise, the Convention may create more problems than solutions.

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Contact person for this article



Omono Blessing Omaghomi

Senior Associate

omono@sskohn.com

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Contact us at:

16D Akin Olugbade Street
(Off Adeola Odeku Street)

Victoria Island, Lagos

Tel: +234 1 271 2276; Fax: +234 1 271 2277

Email: info@sskohn.com; Website: www.sskohn.com