International Journal of Industrial Arbitration (IJIArb.)
(A research and practice journal of Chartered Institute of Industrial Administrators and Arbitrators)
Vol. 1, Issue 1, June 2021, e-ISSN: 2736-1179 p-ISSN: 2736-1187
www.industrialadministrators.institute editor.ijiarb@industrialadministrators.institute

Development of Industrial Arbitration System of the Future Within the Context of Industrial Courts Framework

O. Owo
dunnigold@gmail.com
DNL Global Consult

Abstract
This work showcased industrial arbitration as the future of the National Industrial Court system; thus projecting industrial arbitration as an effective alternative to litigation, when it comes to the management of industrial disputes resulting from corporate relationships of employee/employer, labour or union/management relationships, etc. In this paper, we have explored the tenets of industrial arbitration, highlighting the Nigerian Industrial Court System and how Alternative Dispute Resolution (ADR) principles and practice could be intertwined with the Industrial Court System for a better industrial harmony. A review of the past and present practice was benchmarked with the proposed amalgam. Necessary statutory enactments such as the Trade Dispute Act of 1990 and the National Industrial Court Act of 2006 were analyzed to see how the proposed system could be beneficial to the practice of industrial arbitration. In view of the position canvassed in this paper, it is recommended that necessary clauses that allows for Industrial Arbitration as the first option to dispute resolution, should be included in all and every contract, memorandum of understanding, staff handbook, union agreements, related work processes and procedure to be reviewed, agreed to, and signed off by all stakeholders. It was also proposed that rather than referring all industrial disputes to the Industrial Court, industries should be encouraged to set up branches of ADR Excellence Centers and the associated industrial arbitration panel should be set up more like a Commission, independent of the state, political party, trade union or minister.

Keywords: *industrial arbitration, alternative dispute resolution, corporate institutions, trade disputes, expeditious resolution, litigation.*

1. Introduction

The erudite judge and past President of the National Industrial Court, Honorable Justice Babatunde Adeniran Adejumo, OFR, delivered a paper similar to the title above- *The National Industrial Court of Nigeria: Past, Present and Future* at the refresher course organized for judicial officers by the National Judicial Institute, Abuja on March 24, 2011. As could be observed, year 2011 was of course a pivotal year for the National Industrial Court (NIC) as noted in this paper. In order to avoid reinventing the wheel, I shall proceed with the subject matter by paraphrasing the Learned Judge's extensive view on the issue of Industrial Arbitration:

> *'Given the dynamics of employment interrelationship and the challenges of an ever expanding global society, the need to establish a specialized Court to tackle disputes connected with labour and industrial relations has become poignant. This is because labour and industrial disputes are economic issues which need expeditious dispensation and it was felt that the regular Courts which were already saddled with enough duties should be spared the additional duties of handling labour and industrial cases. It was also felt that the procedures at the non-specialized Courts were too slow and cumbersome such that a nation desirous of rapid industrialization and socio-economic development could not afford to be bogged down by such procedures and delays. Therefore, such nations as America and India have seen wisdom in establishing specialized Courts to handle labour and industrial disputes. Nigeria also found it necessary to establish the National Industrial Court (NIC) - a specialized Court - to handle labour and trade dispute matters.*

The (NIC) was established in 1976 pursuant to the Trade Disputes Decree No. 7 of that year, but it actually took off two years later in 1978. Prior to the establishment of the NIC, industrial relations law and practice was modeled on the non-interventionist and voluntary model of the British system. The statutory mechanism for the settlement of trade disputes was found in the Trade Disputes (Arbitration and Enquiry) Act of 1958. The Act gave powers to the Minister of Labour to intervene by way of conciliation, formal inquiry and arbitration where negotiation had broken down. The major features of the non-interventionist model were that it was totally at the discretion of the parties to determine whether or not they would surrender to the jurisdiction of the Minister. Thus, the Minister could not compel the parties to accept his intervention; he could only appoint a Conciliator upon the application of the parties, and he could only set up an Arbitral Tribunal by the consent of both parties. In the second place, there was no permanent institution created to handle and settle labour disputes. An ad hoc body had to be set up for a particular dispute and once it delivered its decision it became functus officio. The declaration of hostilities between Biafra and Nigeria in 1968 marked a turning point in the Nigerian approach to settlement of trade disputes. As a result of the hostilities, it became expedient during the state of emergency to make transitional provisions for the settlement of trade disputes arising within the period. Consequently, the Trade Disputes (Emergency Provisions) Act of 1968 was enacted and it suspended the Trade Disputes (Arbitration and Inquiry) Act of 1958. The Trade Disputes (Emergency Provisions) Act 1968, for the first time, gave the Minister the power of compulsory intervention in trade disputes while still retaining the additional powers of conciliation, formal inquiry and arbitration. Thus, the requirement for consent of the parties before the Minister could act was suspended. The 1968 Act also stipulated the time frame within which the Minister was to act starting from the time that the employers and the employees became aware of the existence of a dispute to the time that the minister was notified.

As a product of an interventionist mechanism in industrial and trade disputes, the NIC was structured as a regimented disputes resolution mechanism under the firm control of the Minister of Labour. Thus, the NIC at inception was dogged with a lot of problems mainly traceable to the enabling Act. And these problems impacted negatively on the ability of the Court to effectively perform its duties.

The non-inclusion of the National Industrial Court in both the 1979 and 1999 Constitutions was also a hindrance to the effective exercise of its jurisdiction as the Court could not enjoy the needed respect of litigants and counsel. Although section 19(2) of the Trade Disputes Act 1990 had provided that the National Industrial Court should be a Superior Court of Record, lawyers disregarded that provisions by asking the Federal High Court to judicially review decisions reached at the National Industrial Court in a number of cases.

An attempt was made to correct the shortcomings identified above in the National Industrial Court Act 2006 (NICA), which made a bold attempt to tackle a majority of the shortcomings faced by the National Industrial Court. However, the Court still struggled especially after the Supreme Court ruled in the 2004 case of National Union of Electricity Employees and 1 Or V. Bureau of Public Enterprises that NIC was a subordinate Court and that it had no exclusive jurisdiction over the matters assigned to it under section 7 of the NICA and other enabling Acts. The Supreme Court rationale was that the NIC was not one of the superior Courts of record recognized and known to the 1999 Constitution.

Consequently, the National Assembly rose up to the challenge by exercising its powers under sections 4 (2) and 9 (1) & (2) of the Constitution of the Federal Republic of Nigeria 1999 by setting in motion the processes of amending the Constitution to cure the problems confronting the NIC. A new dawn came for the NIC on the 4th of March, 2011 when the President of the Federal Republic of Nigeria assented to the Constitution (Third Alteration) Bill, 2010 which amended the 1999 Constitution to include the

> *NIC in the relevant sections of the Constitution to enable it become a constitutionally a recognized superior court of record. The controversy about the status of the court as to whether it is a superior court of record was thus laid to rest.* [1]

In addition to the foregoing position, other innovations could be found in the new jurisdictions, which the amended Constitution has now granted to NIC. Very importantly, for the future NIC, which is the focus of this paper, s. 254c of the Constitution empowers the NICN to establish an ADR Center. [2]

The picture painted above with the help of Justice Adejumo's submissions speaks to the past and present of NICN but it is an important backdrop to our imagining the NICN of the future. In this regard, what does the future imply in view of the new administration at NICN? Given the extensive powers now conferred on the NICN by the Constitution of the Federal Republic of Nigeria, the question is no longer about giving sufficient powers and expanded jurisdiction to the NICN but about NICN prioritizing its enormous constitutional powers to strategically contribute to fast track Nigeria's needed economic development through measures such as Industrial Arbitration initiatives.

In Consideration of the foregoing, it is the view of this paper (as highlighted in the subsequent sections); that the future of any nationally based industrial court should be in mainstreaming the ideologies of Alternative Dispute Resolution (ADR) practices, such as industrial arbitration, mediation, conciliation or strategic negotiation. This practice may likely and significantly proffer solutions to disputes that reflects human circumstances and realities that were not in contemplation and perception of the framers of our laws which the Courts seeks to abide to, and sustain. Secondly, this approach also has the capacity for the parties to engage themselves and produce a workable solution to their dispute under the guidance of the arbitrator(s) when made to understand the legal positions of their individual claims and defenses.

2. Structured ADR as Applied to Industrial Arbitration

It is important to note that structured or industrial based ADR is the procedure for resolving industrially related disputes without litigation in a Court of law. This paper observes that this procedure can be expressed in such forms as, arbitration, mediation, or negotiation. Consequently, ADR procedures are usually less costly and more expeditious. They are increasingly being utilized in disputes that would otherwise result litigation, including high-profile labor disputes, divorce actions, and personal injury claims, etc. When these disputes become institutional, i.e. involving corporate of public organizations with large number of aggrieved persons with collective or divergent claims, they could be said to have become industrial in nature and likely to affect a wide majority of persons within the community of interests.

In furtherance of the forgoing, it has been observed that one of the primary reasons parties may prefer ADR proceedings over litigations in courts, is that, unlike adversarial or confrontational litigation, ADR procedures are often collaborative and allow the parties to understand and appreciate each other's positions and thus, make personal adjustments to accommodate variances to their claims in order to reach a resolution of issues brought to the panel. Relatedly, ADR permits the parties to initiate more creative solutions favorable to both sides, which ordinarily, a competent Court may not be legally allowed to impose on either of the parties. [3] Thus, under industrial arbitration conditions, ADR methods can be applied by a clear understanding of the various issues and how they can be well addressed by using articulated ADR methods.

3. Adoption of ADR Principles in Industrial Arbitration Proceedings and Practices [4]

It is implicit to state that ADR is a system of voluntary conflict management and dispute resolution which is governed by a set of tested principles indicating that it is has been rooted in the understanding that when people have disputes or conflicts, such conditions results from existing interpersonal relationships between the parties prior to the conflict. Thus, the *philosophy of conflict* dictates that conflicts results where expectations of the parties are not met. At industrial scale, such view holds largely on the basis lack of compliance with duly agreed working conditions between employers and employees. In such cases, this principle can be adopted to assuage the contentions of the aggrieved party.

As could be observed from practices, the second principle of ADR that could be adopted in industrial arbitration proceedings speaks to *approach to conflict resolution*. It demonstrates that the principal task of dispute management under industrial conditions of conflict resolution is an understanding of the critical needs in the interpersonal relationships of the parties that are not being met. Thus, what are the critical needs of the party that are likely affecting the productivity of the organization? Answers to this poser presages a great deal of a pathway to the resolutions of the issues.

In view of the conditions set out above, the third cardinal ADR principle that could be adopted in the resolution of industrial conflicts borders on the principle of *forum for conflict resolution* and it shows that conflict resolution is effective when flexibility is allowed in the determination of venue for the conflict resolution proceedings. The principle of *ground rules for conflict resolution* is the fourth in the lineup of principles and it implies that conflict resolution does not succeed outside of the ground rules of confidentiality, mutual respect, empathy and albeit private audience. This imply that under adoption for purposes of industrial arbitration, these ground rules means that the parties must have made up their minds to accept the arbitral awards and only in extreme cases that an aggrieved party may seek a judicial review of same.

Consequent on the foregoing, it should be stated that the fifth principle speaks to the *foundation for conflict resolution* and it teaches that conflict resolution only happens when we lay the fundamental basis of resolution, which has to do with gathering; hearing; re-hearing; understanding. Thus, these fundamentals towards an effective conflict resolution involves mutual conciliation and reconciliation.

The sixth fundamental principle that could be adopted is referred to as *building blocks of conflict resolution* and this emphasizes that conflict resolution is a ten-step process, which must all be taken to reach durable and holistic resolution. Consequently, these steps draw inference from the motive of the arbitrators that resolution is not only possible but reasonable for the purposes of advance of the industrial enterprise.

Finally, it should be noted that in all the principles enunciated above, the personal attribute of confidence in the arbitration process is fundamental to the success of all other principle. In this regard, the seventh principle that could be adopted speaks of *key to conflict resolution* and it demonstrates the need for the parties to trust the workability of the system to finding solutions to their problems. This means that as the proceedings goes forward, there should be increasing trust that the system will achieve the best possible outcome.

4. Judicial Institutionalization of ADR Practice in Modern Industrial Era

It is important to note that ADR as a confidence building measure is only made effective where the legislative or judicial arm makes pronouncements that creates the impression of certainty of justice outside the regular Court system. In this regard, the views of the jurist expressed at the beginning of this paper is important as it sets agenda for further interrogation of the current system in the direction of industrial disputes resolution. A question arises thus; why must the National Industrial Court of Nigeria (NICN) promote ADR given its constitutional and jurisdictional competence and mandate to adjudicate on industrial related cases that are brought to it?

In response, we dare to say that it is the law. Thus, the law mandates the NICN to establish an ADR Centre, that is, to institutionalize ADR within the framework of the NICN mandate. This mandate is clearly definable for the legislative arm who certainly understand that that institutionalized ADR is currently an embodiment of best industrial practice in conflict management and dispute resolution all over advanced economies. It follows therefore that the NICN must have and be connected to the best ADR practice locally and globally.

It also implies that the NICN must consciously and actively promote ADR especially where it can be shown to be effective in the face of industrial applications that has to do with dispute resolution of a large scale involving various workers' unions. As a case in point, the NICN is required to ensure that at the commencement of every new Court case, ADR is explored before proceeding to litigation proper, and full hearing of such matters. There is no danger in doing this, as exploring ADR after filing a suit in Court but before going into full scale trial of the issues does not shut the parties out of the Courtroom even if the ADR process ends in disagreement.

Consequently, it should be noted that the end of ADR is a consensus, not an imposition. However, certain industrial scale issues may require the pronouncement of Court to make them binding between institutional parties. In such a case, a blend of ADR and open litigation may be more appropriate as only ADR which is an industrial arbitration tool, may only make awards that are binding on the immediate parties without more. It should be noted that in such cases, these awards do not possess the *sui generis potentialities* evident in judgments of competent Courts. Under this proposition, issues not resolvable under institutionalized ADR could be referred to the Court for conclusion by way of a judicial pronouncements that are binding on the parties and all other persons and institutions that may likely claim through them. This amalgam of ADR and Court proceedings makes for two pronged or dual approach to justice and thus enhances the industrial scale dispute resolution mechanisms. This practice can further make the Court to focus its energy on fewer caseloads that could not be resolved by ADR. Consequently, all win at ADR.

Finally, how would this future ADR Centre of Excellence be established at the NICN in such a way as to cater to the needs of litigants? In response, it could be safely posited on the basis of available facts that the NICN has for some years preceding this paper, invested in ADR by way of training, facility provisions and appointment of experts in various ADR fields. Consequently, it is important to emphasize that the management of NICN has been given a crucial responsibility of being the institutional promoter of ADR beyond its immediate courtroom practice of law. It is therefore the duty of the NICN to sell this vision to the global community of investors; conveying the message that there is effective dispute resolution framework for all shades of legitimate investment.

Consequently, the paper observed that Nigeria is one of the few countries that have enshrined ADR into its national Constitution and given to a specifically named custodian. When such awesome responsibility and trust fall on any individual or organization as it has happened to the NICN, they must deliberately own it, deeply grasp it and effectively leverage on it for the good of all who may want to vent their grievances. In view of the foregoing and having established the relevance of institutionalized ADR as applicable to industrial arbitration practice, we shall consider large scale dispute resolution efforts, on the basis of globally emerging tenets of Industrial Arbitration.

5. Institutionalizing Industrial Arbitration for National Economic Development

As has been observed, industrial arbitration is designed to provide for a less cumbersome, rationalized and cost-conscious alternative for the timely resolution of legal issues and questions.

In regard to the position of this paper, industrial arbitration is a special type of arbitration intended to prevent or settle large scale labor disputes that may have arisen between an industrial employer and a union, or union members, or union representatives to prevent the parties from taking to legal actions that may further worsen the already bad situation. Thus, it is a less costly way to settle industrial

disputes. However, when it is institutionalized, this administrative and judicial tool of settling labour disputes has the ability to stabilize the industrial system and create the needed harmony required for advancement in modern labour practices.

It should be stated that taking a matter to court or a resulting breakdown of negotiations is not beneficial for the parties, i.e. both management and labor; as such parties to an employment engagement are often willing to negotiate and discuss their issues with a third party intermediary in the form of an arbitration in order to come to a fair conclusion that is workable for all. Hence, industrial arbitration refers to this process by which organized labor and their management appear before agreed third parties who are imbued with the adequate training and skills for the purpose of resolving an industrial dispute that has or can threaten the existence of industrial harmony. [1]

It should be noted that this process is of beneficial consequence to the employer, in the sense that it reduces the possibilities of strikes or industrial actions in addition to legal actions in courts of law. Thus, industrial arbitration also benefits the employee because it creates opportunity for more bargaining which generally prevents mass layoffs of the workforce during a dispute. It should be pointed out that irrespective of these benefits, national governments have been known to confront the issue of industrial disputes by negating its own rules and policies; thereby making attempts to compel labour to tow its line of solution. This have often resulted second and third layers of disputes.

In the foregoing regard, Alternative Dispute Resolution have been shown to possess various aspects for which *industrial arbitration* is a specialized form. Thus, in this method, the aggrieved party by regulation is required to send the opposing party a notice of their intent to proceed to arbitration over the specified disputes, outlining the basis for the dispute and sometimes efforts that have been made to resolve it internally. This notice is followed by response and subsequent window is opened for the selection of arbitrator(s) that would be engaged for hearing of the issues. Thus, an arbitrator can only be engaged upon the agreement or concurrence of the parties, after examining the qualification, experience and pedigree of the arbitrator(s). Further, it should be noted that the powers of the arbitrators are based on the initial agreements of the parties to resort to arbitration when disputes arise; and the parties are not able to settle same. Hence an arbitration clause must be stated in the contract documents including the mode of selection of the arbitrators and the forum for the arbitration. In this regard, *forum* in arbitral proceedings imply the law to be applied and the national venue or location for the hearing.

These cardinal principles are not only relevant for the jurisdiction of the arbitrator but necessary to show that the panel acted within the limits of its powers. Since a proof to the contrary will not only vitiate the actions of the panel but can result a setting aside of its award by the courts. Secondly, the enforceability of such awards is problematic as the forum court empowered to give effect may require substantial compliance with statutory enactments or administrative resolutions in such regards. Thus, under employment engagements, staff handbooks are expected to make provisions for industrial arbitration between employers and their employees on both individual and collective bases.

Further, the benefits of institutionalizing industrial arbitration as a specialized form of ADR is very crucial to national economic development. A case in point is the observation of this author at the National Industrial Court, in November 2020. It was noticed that the 15 cases for hearing before the court were issues that could have been effectively handled by an efficient arbitration without resort to the Courts. Thus, the parties in the hearing referred to, were all in court over flimsy cases since there was no known framework for effective management of industrial disputes by arbitration contained in

the workers' handbook or conditions of service. This makes the need for public enlightenment on the modern requirements for effective industrial arbitration practice which can be handled by the human resources departments of employer organizations. This department can be empowered to interface with arbitration issues. The operation of such arbitration procedures and proceedings could be discussed at employee induction and included in their staff handbook or other engagement documents.

In view of the related importance of industrial arbitration, agreement such as supply agreements, sales and purchase agreements, etc., are currently responding to the clear need for commercial arbitration as a form of ADR. Although many people may not really be aware or conscious of it, consumers every day agree to resolve potential legal problems via arbitration (or some other method of alternative dispute resolution) in the course of their shopping, traveling, and numerous every-day transactions. For example, online shoppers may or may not be surprised to discover that if they take time to read the fine prints, disclaimers or notices on their favorite travel websites, it may contain agreements to resolve any disputes via arbitration or a similar form of ADR. Hence, industrial organizations need to also emulate this form of dispute settlement in small scales, since problem prevented at the earlier stage is more beneficial to downing tools and proceeding to Court or any other form of specialized upscaled ADR such as industrial arbitration.

6. Nature and Essence of Industrial Arbitration Panels

The study finds that arbitrations are sometimes presided over by a panel of trained arbitrators, as opposed to just one arbitrator. Regardless, the selection process is typically outlined either in the contract, but typically some type of input from both parties is necessary in the determination of the arbitrator(s). Thus, if the parties' arbitration clause in the agreement requires a single arbitrator, the procedure for selection of that arbitrator will also be spelt out in that clause. However, where multiple arbitrators are provided for in the arbitration clause, then the method of their selection is also stated and must be complied with otherwise the entire proceedings can be reviewed or nullified by a court on the complaint of any of the aggrieved party.

In view of the foregoing, the rules of arbitration proceedings also vary, depending on the choices of the panel members in concert with the parties or their lawyers. However, in many instances, this study finds that a contract will specify the rules and timelines that will be applied in the determination of issues in a dispute. These are characteristically structured under conventional instruments such as UNCITRAL and could be used where parties did not make special provisions for such procedures. In addition to the foregoing, an attorney specializing in alternative dispute resolution can also provide valuable assistance in such matters. As a case in point, s. 47 of the Nigeria Trade Dispute Act 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"*

Consequent on the foregoing, it has been observed that in Nigeria, the Minister of Labour and Productivity is empowered to "refer the dispute after due process for conciliation, arbitration, and adjudication or appoint a Board of Inquiry as the case may be". [5] Accordingly, arbitration is semi-judicial means of settling disputes to which both sides agree in advance to be bound by the decision of a neutral arbitrator or a panel of arbitrators. In addition, when conciliation fails and internal machineries

for settlement have been exhausted, the matter could go to arbitration in between the disputing parties. [6]

In Nigeria for instance, in order to avoid the problems of not including an arbitration clause in a contract document, the law now mandates the use of arbitration first before litigation. This is as stipulated in the s. 9 of Nigeria Trade Dispute Act, thus:

9. Reference of dispute to arbitration tribunal if conciliation fails

> *(1) Within fourteen days of the receipt by him of a report under section 6 of this Act, the Minister shall refer the dispute for settlement to the Industrial Arbitration Panel established under this section.*
> *(2) The Industrial Arbitration Panel (in this section referred to as "the Panel") shall consist of a chairman, a vice-chairman and not less than ten other members all of whom shall be appointed by the Minister so however that of the ten other members- (a) two shall be persons nominated by organisations appearing to the Minister as representing the interests of employers; and (b) two shall be persons nominated by organisations appearing to the Minister as representing the interests of workers.*
> *(3) For the purpose of the settlement of any dispute referred to the Panel by the Minister, the chairman of the Panel shall constitute an arbitration tribunal in accordance with whichever of paragraphs (a), (b) and (c) of subsection (4) of this section appears to him to be appropriate having regard to the subject-matter of the dispute and the means by which an attempt to settle the dispute was made in pursuance of the foregoing provisions of this Act.*
> *(4) An arbitration tribunal may consist of- (a) a sole arbitrator selected from among the members of the Panel by the chairman; or (b) a single arbitrator selected from among the members of the Panel by the chairman and assisted by assessors appointed in accordance with subsection (5) of this section; or (c) one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workers concerned, all nominations being made from among the members of the Panel, and presided over by the chairman or vice-chairman.*
> *(5) The assessors for an arbitration tribunal which is to consist of a single arbitrator assisted by assessors shall be appointed by the chairman as follows- (a) one or more shall be persons nominated by or on behalf of the employers concerned from the panel of employers' representatives drawn up under section 44 of this Act; and (b) an equal number shall be persons nominated by or on behalf of the workers concerned from the panel of workers' representatives drawn up under the said section 44 of this Act: Provided that if after seven days of being required to do so by the chairman the employers or workers concerned or their representatives fail to make a nomination for the purposes of any appointment falling to be made in accordance with this subsection, the chairman may appoint from the appropriate panel such persons as he thinks fit.*
> *(6) The award of an arbitration tribunal consisting of a single arbitrator assisted by assessors shall be made and issued by the arbitrator only; and if, in the case of an arbitration tribunal consisting of more than one arbitrator, all the members of the tribunal are unable to agree as to their award, the matter shall be decided by a majority of them.*
> *(7) In this section, "chairman" means the chairman of the Industrial Arbitration Panel appointed pursuant to section (2) of this section; and functions conferred on the chairman may in the absence of the chairman be exercised by the vice-chairman*[5]. [7]

As could be seen, the arbitration process involves many of the same components as a courtroom trial, where, evidence is adduced, arguments are made, witnesses are called and questioned by the parties, etc. However, many of these facets are simplified or limited so as to make the process quicker than the typical courtroom trial. Following the required hearings, an arbitrator or a panel of arbitrators will usually deliver a ruling to the parties within a specific period of time. Depending on the type of arbitration, this ruling may be final, or there may be options to appeal.

7. Empanelment of Statutory Industrial Arbitration Panel: Nigeria case

Since industrial harmony is crucial to national economic development, nations of the world are required to create avenues of peaceful industrial work environments. The study observed that in Nigeria, attempts at industrial harmony has resulted statutory establishment of the Industrial Arbitration Panel (IAP), which was established under the Trade Dispute Decree No. 7 of 1976 Cap 438.[6] As required in its establishment instrument, the Panel under s.9(1) of the Trade Dispute Act[7] is charged with the responsibility of arbitrating on industrial disputes between employers and employees, inter and intra union disputes, upon referral by the Honorable Minister of Labour and Productivity.

Instructively, 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. This condition becomes precarious where the dispute is between organized public sector labour and the State, especially the Federal Government. In such as case, the Minister of Labour and Productivity as a representative of the employer cannot be a judge in his own case. Thus, the Trade Dispute Act requires amendment to suit the purpose of modern applications; especially those practicable under international best practices which will open up the space for more foreign investments into the country.

Further, the Industrial Arbitration Panel has a mission to maintain industrial relation and harmony between workers and employers from both public and private sectors as to positively enhance the political and socio-economic development of workers and employers in various working environments in the Nation. The panel is allowed to achieve this under very clear provisions of the enabling instrument. Accordingly, the panel as a quasi-judicial agency *inter alia* is to service the need of stakeholders in both the private and public sector of the Nigeria economy, maintain peaceful work atmosphere in all sectors of Nigeria. The Act provides that the Industrial Arbitration Panel shall consist of a Chairman, Vice Chairman and not less than 10 other members; all of whom shall be appointed by the Minister and out of the 10 members, 2 shall be persons nominated by organizations appearing to the Minister as representing the interests of the workers.[8]

When a trade dispute is referred to the Panel it shall constitute an Arbitration Tribunal, which may be a Sole Arbitrator, assisted 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.[9]

The Industrial Arbitration Panel is expected to make its Award within 21 days or such longer period as the Minister may direct.[10] Upon the making of the Award, a copy of it should be sent to the Minister who shall send copies to the parties and publish same, setting out the Award and specifying the time within which objections to the Award should be made.[11]

If no objection is made within the time stipulated a notice confirming the Award shall be published in the Federal Gazette and the Award shall be binding on the parties[12] a breach of which will render the non-complying party guilty of an offence and liable upon conviction.[13] If a notice of objection to the Award is given to the Minister within the stipulated time, the Minister shall refer the dispute to the National Industrial Court.[14]

8. Conclusion

In view of the foregoing, and most especially the structure of the Industrial Arbitration Panel, a major recommendation by this paper is the creation of pockets of ADR *centers of excellence* nationwide. These centers shall be focused on industrial arbitration practice for the generality of the public. The arbitration *centers of excellence* can be industrial or institutional based, unique and modified to suit the policies and laws governing such industries or institutions. The center may be designed to be the first point of call for resolution of disputes relating to specific industries or sectors. For instance, ADR center for the Agricultural sector, ADR center for Energy sector, ADR center for Mining and Extractive industries, etc. This recommendation is very important for the stabilization of industrial harmony within a modern society.

References

1. Adejumo, Babatunde Adeniran, The National Industrial Court of Nigeria: Past, Present and Future. Nicn.gov.ng accessed November 2019
2. Olagunju, O. (2017) Alternative Dispute Resolution (ADR). Amazon.com
3. https://www.findlaw.com/adr/arbitration
4. Olagunju, O. (2017), Alternative Dispute Resolution (ADR), available online at: https://www.amazon.com/ALTERNATIVE-DISPUTE-RESOLUTION-Olajide-Olagunju/dp/1521127301
5. s. 9, Nigerian Trade Dispute Act
6. Now cited Chapter T8 Laws of the Federation of Nigeria 2004.
7. Cap T8 Laws of the Federation of Nigeria
8. *ibid*, s. 9(2)
9. *ibid*, s. 9(3) & (5
10. *ibid*, s. 13(1)
11. *ibid*, s.13(2)
12. *ibid*, s. 13(4)
13. *ibid*, s. 14(4)
14. *ibid*, s.14(1)

Additional Resources

- Akpala, A. (1993), Critical History of Nigerian Industrial Relations, Precision Publishers, Enugu.
- Anyim, F.C (2009). A Critique of trade Disputes Settlement Mechanism in Nigeria: 1968 to 2004. A Thesis Submitted to University of Lagos School of Postgraduate Studies PhD Dissertation, 426pp.
- Constitution of The Federal Republic of Nigeria (Third Alteration) Act, 2010