

OBAFEMI AWOLOWO UNIVERSITY, NIGERIA

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Inaugural Lecture Series 86

**LANDMARKS
IN
NIGERIAN LABOUR LAW**

By O. I. Odumosu



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In a Nigerian University, it is not unusual to find a queue of newly appointed Professors waiting to deliver their inaugural lectures. I was in such a situation when the Federal Government gave me, in 1977, an assignment as a Judge of the then newly established National Industrial Court. In fact, I had already submitted to the University the title of my lecture. I was able to return to the University only at the end of May, 1985 and I am happy this afternoon for the opportunity to fulfil this important obligation.

The development of Labour Law in Nigeria has been greatly influenced by the common law rules and some local statutes which followed similar legislation in Britain. Nigeria was a British dependency for a whole century (1861-1960) and, inevitably, the labour policy of the colonial administration had a direct and far-reaching effect on the development of its Labour Law.

Following the economic depression of 1929, the Colonial Secretary gave directives to the Colonial Governors to pass to the workers in their territories, in form of improved social services, some of the economic improvements which the colonial economy had acquired after the depression. The Colonial Secretary further directed that there should be proper inspection and supervision of labour, and that a department of labour should be established by the Colonial Government.

As a sequel to these directives, the Trade Unions Ordinance No. 44 of 1938 was promulgated by the Nigerian Government followed, in 1939, by the setting up of a labour inspectorate and the passing of the Trade Disputes (Arbitration and Inquiry) Ordinance 1941. Furthermore, between 1940 and 1945 the British Government enacted a series of Colonial Development and Welfare Acts under which development schemes were established. To qualify for a development grant, the Government of a territory must have passed legislation with a view to encouraging the emergence

and functioning of trade unions. It was also a condition of the grant that the wages paid to the workers on the scheme must be reasonable.

In pursuance of the labour policy of the British Government, the period between 1945 and 1960 witnessed the enactment in Nigeria of a number of important Ordinances. There was the Labour Code Ordinance of 1945 which contained, *inter alia*, detailed provisions on contract of employment, forced labour, employment of young persons and recruitment of labour. In an earlier statute, the Workmen's Compensation Ordinance 1941, provision was made for payment of compensation to workers for injuries suffered in the course of their employment. The purpose of the Factories Ordinance of 1955 was to ensure the workers' safety at work by imposing a statutory duty on the employer to take specified precautionary measures and to provide certain facilities for the benefit of his workers. Equally important was the Wages Boards Ordinance of 1957, the aim of which was to protect workers against unreasonably low wages. It would be recalled that a Department of Labour had been created in October 1942 and following the federal constitution of 1954, regional offices of the Department were set up under Assistant Commissioners of Labour. The Department was, however, not integrated with the Ministry of Labour until April 1959.

An elaborate Bill of Rights was first written into the Nigerian Constitution in 1959 and some of the rights, such as freedom of expression and freedom of association, are crucial for the smooth working of the system of industrial relations. Successive constitutions have retained these provisions even with greater amplification. The rights are entrenched in the Constitution and are therefore more difficult to alter than the ordinary provisions of the Constitution.

Even as a colonial territory, Nigeria was not exempt from the decrees of the International Labour Organisation (I.L.O.)

of which Britain was a foundation member. I.L.O. Conventions ratified by Britain, such as those on freedom of association and freedom to organise and to bargain collectively, were extended by Britain to her overseas territories. Such Conventions and Recommendations, as well as the activities of the I.L.O. in general, have had considerable influence on the system of industrial relations in Nigeria. It was a measure of the wholesome nature of the influence that, since the attainment of independence in 1960, Nigeria has continued to espouse the tenets and policies of the I.L.O.

With this brief background, we may now proceed to consider some salient features of the Nigerian Labour Law, namely:

1. The Employer/Employee Relationship.
2. Collective Bargaining.
3. Trade Unions and the Law.
4. Protection of Employment, and
5. Industrial Conflicts.

The Employer/Employee Relationship

The pivot of this relationship is the contract of employment which an eminent jurist has described as "that indispensable figment of the legal mind."¹ "A contract of employment is "a voluntary relationship into which the parties may enter on terms laid down by themselves within limitations imposed only by the general law of contract."² It is governed by the ordinary rules of contract and in Nigeria those rules exist under common law and some Nigerian Statutes. Subject to these, terms and conditions of employment may be settled by the employer alone, or on the basis of an agreement between the worker and his employer, or by a collective agreement between a group of workers forming a trade union and the employer or a group of employers or by the state through legislation, or by some combination of these various methods.

By virtue of the relationship of employer and employee or "master and servant", certain rights and obligations between the parties are implied at common law. In general, the master has to exercise reasonable care in the choice of servants, provide and maintain proper plants and appliances and establish a safe system of work. On his part, the servant is expected to give honest and faithful service, display reasonable skill and care in the performance of his duties and obey lawful orders. He should not commit misconduct though he may be under no duty to disclose previous misconduct. As we have already indicated the employer/employee relationship is governed not only by common law rules but also by some Nigerian Statutes of which the Labour Decree of 1974 is one of the principal enactments.

The Labour Decree and Contract of Employment

Within 3 months of the commencement of the employment, the employer is expected to furnish the worker with a written statement of the terms of the contract which should include the name of the employer or group of employers, the name and address of the worker and the place and date of his engagement. Other particulars are the nature of the employment, the date of expiry of the contract if it is for a fixed period, the appropriate period of notice required to terminate the contract, the rates of wages and method of calculating them as well as the manner and periodicity of payment. The same document must also specify any terms and conditions dealing with hours of work or holidays and holiday pay or incapacity for work due to sickness or injury, including any provisions for sick pay and any special conditions of the contract.³

Similarly, any subsequent change in the terms of the contract should be communicated to the worker in writing by the employer within one month of the change. Unless a copy of the modified terms has been given to the worker, the

employer is required to ensure that the worker has reasonable opportunity of reading it in the course of his employment, or that it is made reasonably accessible to the worker in any other way.⁴

If, within 6 months of the termination of a worker's period of employment, a further period is begun with the same employer and on the same terms, the requirement for a statement under s.7(1) of the Decree will not apply but any changes in the terms of employment should be notified to the worker.⁵ It is further provided that a written statement of the terms of the contract need not be supplied to the worker under s.7(1) where he has a copy of his written contract of employment which contains all the particulars set out under the subsection.⁶

Under the Labour Decree, a person who is less than 16 years of age cannot validly enter into a contract of employment but can enter into a contract of apprenticeship.⁷

In some countries such as Britain, the system of "closed-shop" that is, making employment depend on membership of a trade union, has worked considerable hardship on individual workers as witnessed by decided cases; for example, *Rookes v. Barnard* 1964 A.C. 1129 and *Bonsor v. Musicians Union* 1956 A.C. 104. The Labour Decree has, however, preserved the right of the individual worker to join or to refuse to join a trade union by providing that a contract of employment can be concluded by any individual regardless of membership or non-membership of a trade union.⁸

The Labour Decree also provides, *inter alia*, for transfer from one employment to another, termination of contract of employment by notice, terms and conditions of employment and annual holidays with pay and redundancy.⁹

Freedom of Contract

This can be construed as freedom to conclude agreements and freedom from interference with an existing contract.

Even under the general law freedom of contract cannot be asserted in absolute terms. It is subject to the existing rules of common law and the relevant statutes. Similarly, the individual worker's freedom of contract under a contract of employment is not without important qualifications which will be considered presently. But what is the nature of the freedom and whose freedom is it? It will be observed that it is a tripartite situation involving the worker, the employer and, at least indirectly, the trade union. It seems that the freedom can be ascribed to any of the parties – the worker, the employer or the union.

In Nigeria, there is, in theory, the doctrine of freedom of contract but it is subject to a number of restrictions some of which are statutory. Firstly, the principle of freedom of contract presupposes equality of bargaining power between the employer and the employee but in reality this is fiction. The contract of employment is normally the result of a bargain between two unequal parties, i.e. the employer and the worker. The worker may be faced with accepting the terms and conditions of the employment or starve, a situation in which his choice seems only too obvious. For instance, a worker who seeks employment with the Nigerian Railway Corporation will, in reality, have little or no bargaining power vis a vis the prospective employer. The worker needs the job and is in a weaker bargaining position. Even collective bargaining can hardly put the worker or the union on a basis of equality with the employer, notwithstanding forms of industrial pressure such as strike, work-to-rule and ban on overtime which unions usually employ to back up their demands for improvement in their conditions of service.

Secondly, the whole concept of collective labour law which enables union representatives, on behalf of the members, to hammer out an agreement with the employer as regards wages and other conditions of service which may

amend the individual's contract of employment, appears to be inconsistent with his freedom of contract.

Thirdly, in the absence of any statutory provision to the contrary, the common law doctrine of "restraint of trade" applies in a master/servant relationship. The contract usually takes the form of a restrictive covenant whereby the servant undertakes not to compete with his employer or be employed by others after leaving his employer's service. Such conditions will be enforced by the Courts only where they are a reasonable defence of the employer's proprietary interests, particularly trade secrets and business connections, the knowledge of which the servant has acquired in the course of his duty. Otherwise, such a contract will be declared void by the Court as being contrary to public policy. On this point, the attitude of the Nigerian Courts is exemplified in a number of decided cases.¹⁰

Fourthly, the employee's freedom of contract under Nigerian Labour Law has been curtailed by a number of statutory provisions:

- (i) Where a collective agreement has been deposited with the Federal Commissioner for Labour (now called the Minister of Employment, Labour and Productivity) as required by law, he may, by an order, declare that the provisions of the agreement or any part of it, shall be binding on the employers and the workers to whom they relate.¹¹
- (ii) In the absence of an objection from either of the parties to an award of the Industrial Arbitration Panel, the same Minister is empowered to confirm the award by an order, thus making it binding on the employers and workers concerned with effect from the date specified in the award.¹²
- (iii) A statutory obligation is imposed on the workers in essential services to give at least 15 days' notice

of a strike. Failure to do so will attract a criminal penalty.¹³

- (iv) Where it is provided by the Trade Disputes Decree 1976 that an award or the terms of a settlement shall be binding on the employers and workers to whom they relate, as from the date of the award or settlement or such other date specified therein, the contract between the employers and the workers concerned, "shall be deemed to include a provision that the rate of wages to be paid and the conditions of employment to be observed under the contract shall be in accordance with the award or terms of settlement until varied by a subsequent agreement, settlement or award; and accordingly the provisions of that contract shall be read subject to the award or terms of settlement, and any failure to give effect to the award or terms of settlement shall constitute a breach of contract."¹⁴

This is clearly an express modification of the principle of freedom of contract.

- (v) Under the Wages Boards and Industrial Councils Decree 1973, the Minister of Employment, Labour and Productivity may set up a Wages Board which may make recommendations to him on wages or any other condition of service. If the Minister accepts such a recommendation, he will embody it in an order which becomes binding on the workers described in the order as from the date of the order or any other date specified in the order.¹⁵ Wages and conditions fixed under these provisions are known as "statutory minimum wages" or "statutory minimum conditions". An employer is under a duty to pay to the workers described in the Minister's order, not less than the statutory

minimum wages and to apply to them not less than the minimum statutory conditions.¹⁶ Failure to do so is a criminal offence for which an employer may be convicted and fined.

As if to put the matter beyond any doubt, Section 12(6) of the Wages Boards and Industrial Councils Decree 1973 further provides:

"Any agreement for the payment of wages or the application of any other condition of employment in contravention of the provisions of this section shall be void."

The effect of the foregoing provisions is to deprive the parties to the contract of employment, of their freedom of contract. They cannot settle between themselves what the worker's wages and other conditions of service shall be; such an agreement is rendered nugatory if it contravenes the provisions of the Wages Boards and Industrial Councils Decree.

- (vi) Subject to the approval of the Federal Executive Council (now called National Council of Ministers), the Productivity, Prices and Incomes Board created by Decree No. 30 of 1977, regulates increase in wages and salaries by issuing yearly "Incomes Policy Guidelines".¹⁷ Any restrictions imposed on such increase in wages and salaries under the Guidelines are mandatory and non-compliance constitutes an offence under S.5 of the Productivity, Prices and Incomes Decree 1977. Pursuant to these provisions, no increase in wages and salaries can be granted without the approval of the Minister of Employment, Labour and Productivity. Agreement by the parties is not sufficient under the current economic emergency in the country. Freedom of contract can hardly thrive under such

circumstances. The same economic depression has resulted in an abnormally high unemployment in the country thus further weakening the position of the worker. University graduates in large number remain unemployed and their number continues to increase. Retrenchment of workers has become a common phenomenon both in the public and the private sectors.

2. Collective Bargaining

Collective bargaining has been described as “the procedure by which wages and conditions of employment of workers are regulated by agreements between their representatives and employers.”¹⁸ It is an essential condition of effective operation of collective bargaining that there should be freedom of association to enable workers to form trade unions as worker’s representative organisations which are independent of the employers. By means of collective agreement, wages and conditions of employment can easily be adjusted to take account of economic and technological changes. The parties to a collective agreement may meet and adapt their agreement to such changes. Legislation is not, however, as flexible as a source of labour law since no change in the law can be initiated except by the introduction of a bill in Parliament. The bill has to undergo all the normal processes before it can become law.

Collective agreement is primarily a method of regulating conditions of employment by the parties directly involved. But at the same time, the level of wages and labour costs arising from collective agreements are of interest to the whole community. They may affect the level of prices, the cost of living and the ability of the country to pay for its imports, and may also affect levels of employment.

Before the emergence of collective bargaining, the workers could only, as a group, appeal to the employer for any

improvements they might desire in their conditions of employment. More often than not, the employer would feel that it was his exclusive prerogative to determine the terms and conditions of employment or, in any case, it was a matter between him and the individual employee, thus underscoring the importance of the individual’s contract of employment. In the face of such an impasse, the workers were left with the strike weapon as an alternative.

Furthermore, employers were not favourably disposed towards the formation of trade unions in the early times. This was the case in many countries. In Britain for instance, trade unions were regarded as illegal under the Combination Acts and they were liable to criminal prosecution. The courts were also hostile to them with the result that the growth of the unions was hampered by the legal restrictions imposed by the common law judges. It was only about the mid-nineteenth century that trade unions along modern lines began to emerge.

Development of Collective Bargaining in Nigeria

A system of collective bargaining presupposes the existence of trade unions which are independent of the employers. Such unions are recognised by law as well as the employers for the purpose of bargaining.

In 1937, the Nigerian Government introduced a system of wages committees which were to review periodically the wages of the daily-paid labour employed by the Government. But it was only in 1942 that employees of the Government were represented on the Committees; the choice of such representatives was not even conceded to those employees. Rather, the ‘right’ was exercised on their behalf by the administrative officers. It was therefore not surprising that the situation was viewed with disfavour by the unions in the Nigerian Civil Service, more so, as they were the oldest and the most experienced labour organisations in West Africa.

As a result of changes in the labour policy of the Government after the Second World War, Mr. T. M. Cowan of the British Ministry of Labour and National Service was appointed in 1947 to inquire into the methods of negotiation of issues arising between the Government and its employees. Following the Cowan Report, Whitley Councils on the British model were established in the Nigerian civil service departments.¹⁹ However, the Councils broke down barely a year later and had to be reconstituted.

Collective bargaining did not, in fact, evolve from the Whitley Councils. Salaries Commissions were a common feature of the period between 1954 and 1970. It was on the basis of the reports of such commissions that salaries of civil servants were usually fixed. According to one of the Commissions, "there was no material difference between fixing pay by commission or by collective bargaining."²⁰ But a subsequent commission disagreed with this view.²¹

At first, the Nigerian Government did not find it easy to accord recognition to the union of civil servants and to extend to them the same bargaining rights that were expected by employees of private employers. But it was a deliberate policy of the Colonial Government, particularly in the post-World War II years, to encourage the emergence of trade unions and to promote their welfare in the various British territories and Nigerian trade unions were beneficiaries of that policy.

The Government had a dual role of making policy and of passing legislation on industrial relations on the one hand. This gave the Government the opportunity not only to regulate industrial relations but also to influence the pace of development of the system of collective bargaining. On the other hand, the Government had to take the lead in promoting good industrial relations by recognising the right of the trade unions to represent the interest of the workers in collective bargaining.

Similarly, private employers were compelled to change their labour policies by recognising the unions and accepting to negotiate with the unions acting on behalf of their employees. Employers' Associations were thus also formed and they too soon recognised the principle of collective bargaining.

Binding Force of Collective Agreement

A collective agreement is a contract between those who are directly parties to it, that is, an employer or employers or their associations on the one hand and a trade union or unions on the other. Under the Trade Disputes Decree 1976, a collective agreement is "any agreement in writing relating to terms of employment and physical conditions of work concluded between —

- (a) an employer, a group of employers or one or more organisations representative of employers, on the one hand, and
- (b) one or more organisations representative of workers, or the lawfully appointed representatives of any body of workers, on the other hand.

This definition makes it possible for workers to negotiate a collective agreement with their employer, without launching a formal union provided that their representatives have been lawfully authorised to act on their behalf.

Under the same Decree, parties to a collective agreement are expected to deposit with the Minister of Employment, Labour and Productivity, at least 3 copies of the agreement within 30 days of its execution or 30 days after the date of commencement of the Decree in the case of collective agreements which were made before that date. Failure to do so constitutes an offence.²² Where a collective agreement has been so deposited, the Minister may, by an order, make the

provisions of the agreement or any part thereof binding on the employers and workers to whom it relates.²³

Interpretation of collective agreements also forms part of the exclusive jurisdiction of the National Industrial Court (N.I.C.), and there is no right of appeal to any other person or tribunal from any interpretation given by the Court.²⁴

Effect of Collective Agreement on Contract of Employment

A collective agreement cannot create a contract of employment but once the latter has been brought into existence by act of the parties, their rights and obligations may be governed by the collective agreement. A collective term may be expressly incorporated into the individual's contract of employment if the parties so desire. Such a collective term then becomes *ipso facto* part of the individual's contract of employment. The incorporation must be by clear and unambiguous words. In *Pearson v. William Jones Ltd.*, 1967 2 All E.R. 1062, the collective agreement read:

“Any overtime working is in accordance with the provisions of the national agreements currently in force between the Engineering Employers' Federation and the Confederation of Shipbuilding and Engineering Unions.”

This is a good example of express incorporation which contrasts with another case, *Camden Exhibition and Display Ltd. v. Lynott* 1966 1 Q.B. 555 where the collective agreement was found to be obscure.

Even where the contract of employment is silent on the collective agreement, it can still operate as an implied term. An implied term cannot however, be invoked to contradict the express words of the contract of employment. Where a worker joins a going enterprise, he may in law be found, irrespective of his knowledge, to have taken his employment on the same terms, whatever they were, as other workers

had.²⁵ A collective agreement can therefore be a legal code in that it prescribes the content of the existing contracts of employment and determines, before hand, the content of those which are yet to be made.

Furthermore, where the employer has consistently observed certain collective terms and procedures, they may be implied into the individual's contract of employment by usage or custom which the employer must have intended to be so binding. This treatment of custom applies also to the general law of contract but it is of special importance in labour law not only because of the vast number of commercial contracts which are made in that area from time to time but also because it is through this principle relating to custom that a legal bridge can be erected between collective agreements and contracts of employment.

It is, however, not every custom or usage that can have such legal effect. Thus in *Grieve v. Imperial Tobacco Co. Ltd.* (1963), *The Guardian*, 30 April, the plaintiff brought an action against his employers, the defendants, claiming part of a bonus which had been withheld from him and other workers who had participated in a strike. Bonus had been paid annually by the company for the past 50 years and the workers usually expected it. But it had not been negotiated by the union and on eleven occasions in the past, the directors had withheld the bonus or part of it from striking employees.

It was held by the Court that there was no implied term in Grieve's contract which entitled him to the full bonus; *moreso* as the company had made it clear that the payments were not intended to be more than gifts. “Mere repetition of gratuitous payments cannot convert that which is gratuitous into a contractual obligation.”

A decision on the other side of the line was given a year later in *Edwards v. Skyways Ltd.* 1964 1 W.L.R. 349. There was a meeting of the representatives of the pilots' association,

and those of the defendant company who employed members of the association, to discuss threatened redundancies. The meeting reached an agreement that redundant pilots who chose to claim back their contributions to the pension fund rather than take up a paid-up pension later on 'would be given an *ex gratia* payment equivalent to the company's contribution to the pension fund.' The company later wanted to rescind this decision.

The Court held that a pilot who was declared redundant and who had exercised his option to take up the *ex gratia* payment was entitled to it. The Court rejected the company's submission that the mere use of the phrase *ex gratia* as part of the promise to pay was sufficient to show that the parties contemplated that the promise, when accepted, should have no binding force in law.

3. Trade Unions and the Law

As far back as 1912 there had been trade union activities in Nigeria resulting in the formation of the Nigerian Civil Service Union 'to promote the welfare and interests of Native members of the Civil Service.' Two other unions, namely the Railway Workers' Union and the Nigerian Union of Teachers, were formed in 1931. The Unions were registered under the Trade Unions Ordinance of 1938, in December, 1941 and March, 1949 respectively.

Although the need for a central labour organisation was realised quite early, all efforts to achieve that goal proved abortive mainly because the leadership of the labour movement was being plagued by internal dissension, political influence and personal rivalries. By 1964, four central organisations had emerged – the United Labour Congress of Nigeria, the Nigerian Trade Union Congress, the Nigerian Workers' Council and the Labour Unity Front.²⁵ Each of them was affiliated to a foreign trade union.

The 1973 Trade Unions Decree repealed all earlier enactments and made provisions for recognition of trade union by the employer, federation of trade unions and central labour organisations. There are 2 types of recognition, namely, legal recognition which is conferred on registered trade unions by the Trade Unions Act. The other type is recognition by the employer for the purpose of collective bargaining and this can be achieved by legislation making it obligatory for the employers to recognise representative organisations of their employees and to bargain with them in good faith.

Quite a number of trade disputes have hinged on the question of recognition of a trade union and valuable man-days have been lost as a result of the industrial upheaval. The Trade Unions Decree 1973 contained a formula which was thought to be the best solution to the many-sided problem of recognition of trade unions.²⁷ Under the same Decree, automatic registration was granted to the four Central Labour Organisations.²⁸

By 1974, a desire for unity had once again been awakened among the leaders of the labour movement and a representative meeting of the four Central Labour Organisations resolved on 22nd February, 1975, to form one Central Labour Organisation to be called the Nigerian Labour Congress. But before the final step could be taken to inaugurate the Congress, a new labour policy was announced by the Federal Military Government.

On 18th December, 1975 when the N.L.C. was being launched, the Federal Commissioner for Labour announced that a commission of enquiry was to be instituted into the activities of the trade unions. Meanwhile, the Federal Military Government refused to register or give official recognition to the N.L.C. In the alternative, the Government decided to appoint an Administrator to coordinate and administer the affairs of all registered unions. Under a new Decree - Trade Unions (Central Labour Organisations) (Special Provisions)

Decree No. 44 of 1976, the registration of the four central trade union bodies was cancelled²⁹ and provision was made for the appointment of an Administrator.³⁰ The Administrator was given the responsibility to perform, on behalf of trade unions, "the same duties that are normally performed by a central labour organisation" The Decree took effect from 18th August, 1976 and the Administrator was empowered to exercise his functions for a period of one year from that date.

By the same Decree, the Administrator was given power to draw up a constitution to govern the formation, officers and all other matters concerning the structure and administration of the affairs of the new central labour organisation to be formed; to draw up election rules relating to the selection and number of conference delegates, voting rights, balloting and all other matters pertaining thereto; and to conduct in accordance with the constitution and rules so drawn up the election of the officers of the new central labour organisation.

The constitution and the election rules were to be ratified by a conference of delegates elected or selected in such a manner as the Administrator may direct and representing the trade unions concerned.³¹ Any disagreement between the delegates and the Administrator should be referred to the Federal Commissioner for Labour whose decision would be final. In the discharge of his functions, the Administrator was to be assisted by not more than 6 persons to be appointed by him after consultation with the Commissioner for Labour.³² Also, the Administrator was expected to carry out any directions of the Commissioner in respect of the Administrator's functions.³³

Report of the Enquiry into the Activities of the Trade Unions

The Tribunal which was headed by a Judge of the High Court, Mr. Justice S. D. Adebisi, submitted its Report to the

Government on 31st August, 1976.³⁴ The Tribunal, having highlighted instances of dishonesty and abuse of office by many of the trade union leaders, recommended, *inter alia*, that certain principal officers of the central labour organisations and certain trade unions be barred from trade union activities.

In accepting the recommendation, the Federal Government promulgated a decree banning 11 prominent trade union leaders from holding office or taking part in any trade union activity.³⁵ Any of those leaders who was in possession of any property held by him on behalf of a trade union was expected to hand it over to the Administrator within 30 days of the commencement of the Decree.³⁶

This was an extraordinary legislation which directly deprived the individuals concerned of the much-vaunted fundamental rights of freedom of expression and freedom of association. And to forestall any possible challenge of the legality of this Decree, the jurisdiction of the court under Chapter III of the 1963 Constitution, which deals with fundamental rights, was excluded by Section 4 of the Decree. We shall return to the point later in this lecture.

Restructuring the Trade Unions

The new Military Administration which took office in July, 1975 adopted a labour policy which aimed at giving the labour movement a new image, the restructuring of trade unions to secure their viability and unity and the adoption of guided democracy in labour matters. Following the restructuring exercise, 70 industrial unions were approved by the Federal Government with 42 of them representing the junior staff.³¹

The formation of a single central labour organisation was also entrusted to the Administrator. As a result of his efforts in consultation with the Federal Commissioner for Labour, the inaugural conference of the New NLC was held at Ibadan on 28th February, 1978.

After the adoption of the Constitution, the conference elected officers for the NLC. To tide the NLC over its immediate financial problems, the Federal Government made an initial grant of ₦1 million to the NLC which in turn passed on a sum of ₦10,000 to each of the 42 industrial unions.

Trade Unions (Amendment) Decree 1978

It became necessary to amend the 1973 Trade Unions Decree in order to bring it into conformity with the changes relating to trade unions which we have already indicated. One of such changes is the provision requiring the approval of the Federal Commissioner for Labour before a new trade union can be registered.³⁸

Another new provision is in these words, "For the avoidance of doubt, no executive or senior staff shall be a member of or hold office in a trade union whose members are workers of a rank junior to his own; but executive or senior staff may form and be members of or hold office in a trade union of workers of equal or higher rank than his own."³⁹ The same Decree defines the phrase "executive or senior staff" to mean "any members of the staff recognised as a projection of management, within the management structure, in terms of status, authority, power, duties and accountability, which are reflected in the conditions of service and by virtue of which the membership of a trade union of junior staff grade may lead to a conflict of loyalties to the union or to the management."⁴⁰

The 1978 Decree also provides for the automatic registration of the 70 trade unions listed in Schedule 3 to the Decree, and by virtue of that registration, the unions "shall have all the powers and duties of a registered trade union."⁴¹ In section 7(8) of the Decree, the words "central labour organisations" shall be replaced with the words "the Central Labour Organisation". And no person shall hold office in any capacity in more than one trade union at the same time. Nor

is a person who is a full-time official of the Central Labour Organisation allowed to hold office in any trade union.

Under a new section 22 of the 1978 Decree, a trade union which has been registered in accordance with this Decree is entitled to recognition by the employer. Failure to do so by an employer is an offence which on summary conviction attracts a fine of ₦1,000. For the first time, registration is linked with recognition. It may be recalled that one of the regular causes of friction between an employer and the union of his employees is the former's reluctance to accord recognition to the union. Many trade disputes were caused by this issue. The new provision has gone a long way in solving the problem. The new procedure is simple and tidy and may also save time for both sides unlike the previous cumbersome procedure.

By section 33 of the same Decree, the NLC is automatically accorded recognition as the only Central Labour Organisation and all trade unions, except association of senior staff or employers, are deemed to have affiliated to the NLC. A new Schedule 3 is provided setting out the names of the 70 newly restructured trade unions. Also, the certificates of registration of all existing trade unions were cancelled with effect from the date of commencement of the Amendment Decree, 1978.

As if that was not revolutionary enough, section 3 of the Decree provides:

"This Decree may be cited as The Trade Unions (Amendment) Decree 1978 and shall be deemed to have come into operation on 3rd August 1977."

In other words, even though the Decree was made on 15th August, 1978 it took effect retrospectively from 3rd August 1977.

It will be observed that this Decree contains no transitional provisions or saving clauses, yet it was retrospective for more than one year! The result was confusion. In practical terms, it meant that the new industrial trade unions had been in existence since 3rd August, 1977 and all the previous trade unions had ceased to exist as from that date since all trade unions had their certificates of registration cancelled with effect from the same date.

If that view was correct, it would mean that a trade union which was legally no longer in existence could not represent its members in industrial disputes before the Industrial Arbitration Panel (I.A.P.) or The National Industrial Court (N.I.C.). The question was whether the proceedings in each case would be a nullity since the new Decree had deprived the trade unions of their legal existence as from 3rd August, 1977. This point provided for Counsel a reasonable ground for raising preliminary objections in cases coming before the N.I.C. on appeal from the I.A.P. Also, proceedings before the I.A.P. could be similarly affected if the hearing took place after 3rd August, 1977.

The point was directly in issue in an appeal before the N.I.C. in the case of *Western Textile Industries Co. Ltd. & Ors v. Ado-Ekiti Westexinco Workers Union and Ors*.⁴² By an application dated 10th January, 1979, the National Union of Textile, Garment and Tailoring Workers of Nigeria sought leave of the Court to take over the conduct of the case on behalf of the old union which, as a result of the restructuring, had become only a branch of the new industrial union.

Opposing the application, Counsel for the Appellants contended, *inter alia*, that the applicant-Union could not be a party to the appeal since it was not under the Trade Unions (Amendment) Decree No. 22 of 1978, a successor of the defunct union. Counsel further argued that to grant the

application would be to import into the Decree a transitional provision which the Decree did not contain.

In its ruling approving the application, the Court declared:

“The workers may choose to be represented by one organisation or another. The primary right, however, to be party to a trade dispute belongs to the workers on the one hand and the employers on the other hand. Contrary to the argument that has been canvassed for the trade union, the right of appearance before this Court belongs to the worker. The Trade Unions are only the representatives of the workers. When, therefore, a trade union is extinguished by operation of law such as the situation that arose as a result of the Trade Unions (Amendment) Decree No. 22 of 1978, the trade unions’ rights may or may not be extinguished, but it must be emphasised that the rights of the workers who are the real parties in a trade dispute are not extinguished. It is therefore, perfectly in order for the new Industrial Unions under which the workers are re-grouped, to apply to this Court to represent the interests of the affected workers.”⁴³

As sound as this ruling may appear to be, it would be observed that there was no opportunity to test it at a higher level because the N.I.C. is the final Court in cases of trade disputes. The matter was not in fact laid to rest by this ruling as one would have expected.

Thus, in *Nigeria Airways Ltd. v. Nigeria Airways Association of Aircraft Engineers and Technologists*,⁴⁴ Counsel for the Appellants raised a preliminary objection to the proceedings mainly on the ground that “The Nigeria Airways Association of Aircraft Engineers and Technologists, have (sic) ceased to exist as from the 3rd day of August, 1977.” The matter was strongly contested by both parties but the

Court's decision was in substance, a confirmation of its earlier ruling.

In subsequent cases coming before the N.L.C. this type of application was no longer contested. Nevertheless, the first two cases already referred to illustrate the type of problems which may arise where a legislation of this nature has been passed without any transitional provision.

Trade unions in the modern sense cannot exist in the absence of freedom of expression and freedom of association. In the words of section 36(1) of the 1979 Constitution, "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. The right is, of course, not absolute but subject to qualifications which are not unreasonable.

Section 37 of the Constitution guarantees freedom of assembly and association. "Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests" Again, this right is subject to reasonable restrictions contained in the proviso to the Section.

The provisions relating to freedom of expression and freedom of assembly are not only justiciable but are entrenched in the Constitution so that they can be changed only by an elaborate procedure. Moreover, in the event of a conflict between these fundamental rights and any of the ordinary provisions of the Constitution, the latter must give way. The two fundamental rights have been further reinforced by the International Labour Organisation (ILO) Conventions No. 87 on freedom of association and protection of the right to organise, and No. 98 dealing with the right to organise and bargain collectively.

Let us now consider, in the light of the labour policy of the Federal Government, the fundamental rights of the

freedom of expression, freedom of association and the international obligations assumed by the Federal Government under the two ILO Conventions already mentioned. It may be recalled that between 1960 and 1978, the Federal Government was rather concerned about the lack of unity among the leaders of the labour movement in Nigeria.

As we have pointed out earlier in this lecture, the Federal Government went so far as to recognise by law four Central Labour Organisations under the Trade Unions Decree No. 31 of 1973. This was clear evidence of the Government's disinclination to impose unity on the labour movement. But the labour policy of the Federal Government from about 1975 can rightly be described as one of direct intervention. In fact, the Federal Government itself through the Minister of Employment, Labour and Productivity referred to it as the policy of "limited intervention and guided democracy."

It was this policy which led to Government intervention in certain fundamental issues such as the refusal of recognition to the first N.L.C., the appointment of the Adebisi Commission to probe the activities of the trade unions and their officers, the dissolution of the four Central Labour Organisations and the appointment of an Administrator who was to restructure the trade unions and establish one central labour organisation. From all the efforts of the Federal Government, a new N.L.C. emerged and the Government not only recognised it but made a lump sum grant to the organisation. The Labour (Amendment) Decree No. 21 of 1978 made it obligatory for the employer to operate the check-off system in respect of his employees who are union members (except those who have contracted out of the scheme in writing) and account to the union.

Furthermore, under the Trade Unions (Amendment) Decree No. 22 of 1978, the N.L.C. was recognised as the only Central Labour Organisation to which all trade unions,

except associations of senior staff or employers, are deemed to be affiliated.

The activities of the Federal Government in respect of the labour movement, such as we have just described, inevitably attracted accusation of violation of the ILO Convention No. 87. The relevant Articles of the Convention provide as follows:

Article 2

1. Workers and employers, without distinction whatsoever, shall have the rights to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or

confederation shall have the right to affiliate with international organisations of workers and employers.

Many of the steps taken by the Federal Government in respect of the labour movement seem to be clearly inconsistent with the provisions of Articles 2, 3, 4 and 5 already quoted. The situation was brought before the 63rd Session of the ILO Conference in May, 1977 by the World Federation of Trade Unions.

The ILO Conference Committee which looked into the matter recommended that the Governing Body of the ILO should point out to the Government of Nigeria that administrative cancellation of the registration of trade union organisations runs counter to Article 4 of Convention No. 87; that trade union organisations should be left free to reorganise the trade union movement themselves and that the duties entrusted to an administrator should not be such as to limit the rights set out in Article 3 of Convention No. 87; and to draw the Government's attention to the principle that the prohibition of trade union activities should be decided by the courts in accordance with the law.

As a result of this development no doubt, the defunct Shagari Administration initiated a Bill to give the industrial unions freedom to decide whether to join the N.L.C. or pull out of the organisation. The Bill was also to restore to workers freedom to pay their union dues voluntarily from their wages. But the Bill came to grief when there was a military take-over of the Government on 31st December, 1983.

4. Protection of Employment

By virtue of the contract of employment, certain legal obligations are assumed by the employer on the one hand and the employee on the other. The obligations may be those imposed on the parties under common law or the Nigerian

Statutes but it is hardly possible for the parties in the contract between them, to foresee all eventualities. For instance, there may be an economic depression leading to the retrenchment of workers as a result of inevitable severe reduction in commercial activities of the employer. In such a situation the retrenched workers may be entitled to redundancy benefits.

Section 19(3) of the Labour Decree 1974 defines "redundancy" as "an involuntary and permanent loss of employment caused by an excess of manpower." The employer is expected to inform the trade union, or the workers' representative concerned, of the reasons for, and the extent of the redundancy. The principle of "last in first out" shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability; and the employer shall use his best endeavours to negotiate redundancy payments to any discharged workers who are not protected by regulations.⁴⁵

The Federal Commissioner for Labour is empowered to make regulations governing compulsory payment of redundancy allowances on the termination of a worker's employment because of his redundancy.⁴⁶ Although the employer may be without blame in the matter, payment of redundancy allowance can hardly be an adequate compensation to the worker. The question arises as to whether he has a 'right to the job'. The right to work includes the right to a means of livelihood through employment that is, the right to obtain and retain employment and the right to earn one's living under just and favourable conditions of employment. Coupled with the right to a means of livelihood through employment, is a right to a means of livelihood when no employment is available. In such circumstances, the right can be protected by means of a scheme of unemployment insurance or payment of unemployment benefits.

The right to work has assumed a new importance in the face of world-wide recession which has led to an industrial crisis with the attendant insecurity of employment. The right is one of the best methods of protection against loss of employment i.e. loss of means of livelihood. It has to be realised however, that full employment is an essential condition for the meaningful exercise of this right. Though the Nigerian Constitution of 1979 did not directly protect the right to work, it would appear that there are some provisions of the Constitution which lend support to the existence of such a right. For instance, section 16(2)(d) provides:

"The State shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and unemployment and sick benefits are provided for all citizens."

Section 17(3) of the same Constitution is even more explicit and seems to be much in tune with the idea of the right to work. According to the subsection, "The State shall direct its policy towards ensuring that –

- (a) all citizens without discrimination on any ground whatsoever have the opportunity for securing adequate means of livelihood as well as adequate opportunities to secure suitable employment.
- (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
- (g) . . . provision is made for public assistance in deserving cases or other conditions of need."

It should be recognised that the above-quoted provisions of sections 16 and 17 form part of Chapter II which deals

with Fundamental Objectives and Directive Principles of State Policy. The provisions of the Chapter are not justiciable in the sense that no court will lend its aid to the enforcement of any of those provisions. Nevertheless, they articulate fundamental principles and ideals by which the Government may be guided in the discharge of its functions.

Section 13 of the 1979 Constitution also provides:

“It shall be the duty and responsibility of all organs of government; and of all authorities and persons, exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of this Chapter (II) of this Constitution”.

If all the democratic institutions of government operate as expected of them, the provisions of Chapter II should be effective even in the absence of any legal sanction. In view of the checks and balances embodied in the Constitution, it would be wrong to conclude that they are empty rights completely devoid of any efficacy.

The Right to work and the Courts

At common law there is a well-recognised rule that the master can dismiss his servant at any time and without giving any reason. But if he does so in a manner not warranted by the terms of the particular contract of employment, he will be liable in damages for breach of contract. This runs counter to the right to work. It has been held by the Court of Appeal in England that “there is a right to work” and that its infringement was against public policy and could be checked by an injunction.⁴⁷

Recently, two important judgments were delivered by the Supreme Court on this aspect of contract of employment, namely: *B. A. Shitta-Bey v. The Federal Public Service Commission* (1981) 1 S.C. 40 and *Olaniyan & Ors. v.*

University of Lagos and the University of Lagos Council (1985) 2 N.W.L.R. 599 (S.C.).

In the *Shitta-Bey* Case, Miss Iyabo Olorunkoya (a Nigerian) was convicted, in London, of an attempt to import into the U.K. dangerous drugs (Indian Hemp). As a result of the Appellant's alleged involvement in the crime, he was first suspended from his duties without pay and later retired with full benefits by the Federal Public Service Commission. Appellant who was then a Legal Adviser in the Federal Ministry of Justice brought an action praying the High Court to declare “irregular, illegal, null and void” his suspension without pay as a public officer and his purported retirement from the public service. The Court granted the prayer but Respondent failed to reinstate him and did not appeal against the orders of the High Court. Appellant therefore applied to the High Court for an order of Mandamus. The High Court refused to make the order and the Court of Appeal upheld the refusal whereupon the Appellant appealed to the Supreme Court.

The High Court based its refusal on the following grounds which the Court of Appeal also approved:

- (i) an order of Mandamus is discretionary and is never granted as a matter of course; the relationship between Appellant and Respondent was one of master and servant which Respondent had determined as of right. Appellant's remedy lies in damages for wrongful dismissal as the Court would not grant specific performance of a contract of service,
- (ii) at common law the Court cannot force a master to accept the services of a servant which he has determined even unlawfully;
- (iii) Mandamus would not be available for admission or restoration to an office that is essentially of a private character;

- (iv) as a general rule and in the exercise of its discretion, the Court will not grant Mandamus where there is an alternative specific remedy at law which is not less convenient, beneficial and effective.

An order of Mandamus could not issue against the Crown or its agent such as the Respondent.

In the lead judgment, Idigbe, J.S.C. held, *inter alia*, that:

- (1) It is well-known that the principal purpose of Mandamus is to remedy defects of justice; and although it is a discretionary remedy, Courts of justice must always bear in mind this principal purpose;
- (2) Although as the High Court and the Court of Appeal have observed in their judgments according to a passage in *Halsbury Laws of England*, the Court 'will as a general rule, and in the exercise of its discretion refuse an order of Mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial and effective, Mandamus may issue in cases where although there is an alternative legal remedy, yet that mode of redress is less convenient, beneficial and effectual';
- (3) The Federal Public Service Commission was created by Section 146 of the Nigerian Constitution of 1963. By Section 147(1) of the same Constitution power is vested in the Commission "to appoint persons to hold or act in offices in the public service of the Federation including power to make appointments on promotion and transfer and to confirm appointments, and to dismiss and exercise disciplinary control over persons holding or acting in such offices";
- (4) According to Section 11(1)(c), (i) of the Interpretation Act No. 1 of 1964, power to appoint a

person to an office or to exercise any functions, includes power to reappoint or reinstate him;

- (5) The Civil Service Rules of the Federal Public Service govern conditions of service of Federal Public Servants and they were made under the powers conferred on the Respondent by virtue of the constitutional provisions in the 1963 Constitution, and the Rules relevant to this appeal were made in 1974 under Section 160(1) of the 1963 Constitution;
- (6) These Rules therefore, have constitutional force and they invest the public servant over whom they prevail with a legal status, "a status which makes his relationship with the Respondent and the government although one of master and servant certainly beyond the ordinary or mere master and servant relationship." The 1974 Rules have statutory force and therefore ought to be "judicially noticed". Paragraphs 04107 to 04121 provide the procedure which must be followed in the removal or retirement from service, as well as the general disciplining, of public servants in the established pensionable cadre;
- (7) In particular, paragraph 04201 defines "misconduct" in respect of which investigation was conducted in relation to matters allegedly arising between the Appellant and the woman, Iyabo Olorunkoya, who was convicted for importing dangerous drugs into the U.K.;
- (8) Although the Appellant was retired from the public service by the Respondent pursuant to the said investigation, Bada, J. declared the said retirement "invalid, null and void". There exists therefore, a declaratory judgment in a suit to which the Respondent was a party and before

whom a court of competent jurisdiction duly exercising its supervisory powers had made a pronouncement declaring its action invalid; and the effect of which pronouncement is that the Appellant was always, at all times material to the proceedings before the High Court, and still is an officer in the Federal Public Service;

- (9) Their Lordships of the High Court and the Court of Appeal, were in error in holding that public servants in the established and pensionable cadre of the Federal Government service are employed at the pleasure of the Federal Government. The Civil Service Rules already referred to, "invest in these public servants a legal status and they can be properly or legally removed only as provided by the said Rules;
- (10) The principle of law which precludes Mandamus from issuing against the Crown has historical justification in English legal history but there is no basis for its application in this country (a Republic) in respect of the Respondent who, being a creature of Statute, can sue and be sued. Mandamus can therefore issue in this country against the Respondent;
- (11) There is, by a combined operation of Section 147 of the 1963 Constitution and Section 11 of the Interpretation Act No. 1 of 1964, *prima facie* a discretion to reinstate, to retain in, and remove from service a public officer. But in the instant case, the High Court has by its judgment precluded the exercise of discretion to remove the Appellant from service, unless and until proceedings are properly taken and completed under the procedure laid down in the 1974 Civil Service Rules;

- (12) The same judgment of the High Court invests the Appellant with a legal right to remain in office and carry out his public duties as a civil servant. The judgment impliedly confers on the Appellant a right to be placed *de facto* in his original position i.e. a right to be reinstated; for, although his termination and retirement were declared "invalid, null and void" and so, in law, he was never legally terminated or retired from his employment, there had been a *de facto* termination or removal from office. In the words of Tucker, J., "reinstatement involves putting the specified person back in law and in fact in the same position as he occupied in the undertaking before the employer terminated his employment;
- (13) The Appellant therefore has a right of reinstatement to his former position and the Respondent has the correlative duty by the combined operation of Section 147 of the 1963 Constitution and Section 11 of Act No. 1 of 1964 to replace the Appellant in the position he occupied before events which culminated in the judgment of the High Court, and so to restore the *status quo ante* his purported retirement;
- (14) In *Hill v. Parsons Ltd* 1972 Ch. 305. Per Lord Denning, M. R., at 314, the Court of Appeal in England not only declared the dismissal of a servant invalid but also granted a mandatory injunction restraining the master (i.e. employer) from treating the contract (one which was not an ordinary master and servant relation) as at an end. In that case Lord Denning, M.R. said, ". . . Accordingly the servant cannot claim specific performance of the contract of employment . . . I would emphasise, however, that this is the consequence of the

ordinary course of things. This rule is not inflexible. It permits of exceptions. The Court can in a proper case grant a declaration that the relationship still subsists and an injunction to stop the master treating it as at an end . . . ” The injunction of the nature of the one issued in *Hill v. Parsons* is not far away in form from a Mandamus;

(15) His Lordship adopted the statement of Lord Ellenborough C.J. in *R. v. Archbishop of Canterbury* 8 East 22 that “there ought in all cases to be a specific legal right as well as want of a specific legal remedy, in order to found an application for a Mandamus”. As has earlier been shown in this judgment, there is vested in the Appellant, by virtue of the High Court Judgment, a specific legal right to reinstatement in his post in the Federal Public Service which the Respondent has a duty to protect and render effectual.

The appeal was allowed and the judgments of the High Court and the Court of Appeal were set aside. It was ordered that:

the prerogative order of Mandamus should issue against the Respondent ordering the Respondent to issue necessary directive duly reinstating the Appellant in his post of Legal Adviser in the Federal Ministry of Justice and that this shall be the judgment of the High Court of Lagos State in Suit LD/230/78.

The facts of the *Olaniyan* Case were similar to those of the *Shitta-Bey* Case. The Council of the University of Lagos, after considering the Report of a Visitation Panel, had decided to terminate the appointments of the 3 Appellants who were Professors with immediate effect and payment of

6 months' salary in lieu of notice. The said Report contained various allegations of misconduct against the Appellants and emphasised that each of them “has rendered himself unfit for any position of leadership and responsibility in the University.”

By a letter dated 30th December, 1980, each of the Appellants was informed of the purported termination of his appointment and a cheque for 6 months' salary was tendered. Each of them, however, wrote back to reject the termination of his appointment as *ultra vires*, null and void and of no effect. The cheques were also returned.

In a consolidated suit before the High Court, it was held that “the plaintiffs who are holders of public office with legal status in the established pensionable cadre of the public service of the Federation are entitled to remain in office until properly removed in accordance with the procedure applicable to their removal in the Regulations which apply to them.” The purported termination of the appointment of each of the plaintiffs by the defendants was *ultra vires* and contrary to the provisions of Section 17 of the University of Lagos Act 1967 as amended. The defendants, their servants and/or agents were restrained from preventing any of the plaintiffs from performing any of the functions and duties of his office or offices or interfering with the enjoyment of the rights, privileges and benefits attached to his office or offices. The defendants were therefore ordered to restore each of the plaintiffs to his post and offices and to all rights and privileges attached thereto. The Court of Appeal reversed the decision of the High Court and the Appellants appealed to the Supreme Court.

Oputa J.S.C., who delivered the lead judgment, held, *inter alia*, that:

- (1) The contract of master and servant is subject to both statutory and common law rules and the master can

terminate the contract with his servant at any time and for any reason or for no reason at all. But if he does so in a manner not warranted by the particular contract under review, he must pay damages for breach.

- (2) When the employing authority wants to remove its servant on grounds permitted by statute, then as Lord Campbell C.J., observed in *Ex parte Pamshay* (1852) 18 Q.B. 173 at page 190, 'the principle of eternal justice' dictates that the servant cannot be lawfully dismissed without first telling him what is alleged against him and hearing his defence or explanation.
- (3) There was no evidence, let alone a finding, that the Council of the University of Lagos before removing the Appellants on 30/12/80 communicated to any of them the grounds of misconduct alleged against him to enable each Appellant reply to such grounds as required by Clause 7 of the Memorandum of Appointment or Section 17(1) of the Lagos University Act 1967.
- (4) The status of each party to these contracts is of paramount importance and it had been held in *Shitta-Bey's* case that the Rules or the statutory provisions concerning the termination of the contract have constitutional force and that the servant over whom they applied was thus invested with a legal status which status guaranteed that he could not be removed except as provided by those statutory provisions.
- (5) The University of Lagos and the University Council were both creatures of statute and could not act except within and under the powers conferred on them by the University of Lagos Act No. 3 of 1967.
- (6) The Regulations, the Memoranda of Appointments and Section 17 of the University of Lagos Act No. 3

of 1967 all derived from Section 69(1)(G) of the 1963 Constitution, Act No. 20 of 1963; and that being so, they "all have constitutional force and they invest the Appellants over whom they prevail a legal status which makes their relationship with the Respondents although one of master and servant, certainly beyond the ordinary or mere master and servant relationship.

- (7) It was not correct for the Court of Appeal to equate dismissal with loss of benefit; what constitutes dismissal in any particular case would ever remain a question of fact. In law however, dismissal means such act or acts on the part of the master as amount to a repudiation by him of the essential obligations imposed on the servant by the contract. Thus a man may dismiss his servant if he refuses by word or conduct to allow the servant to fulfil his contract of employment. See *Re Rubel Bronze etc. and Vos* (1918) 1 K.B. 315. Loss of benefit is not at the root of dismissal but repudiation of the servant's obligations under the contract is. Once there is that repudiation by the master then there is a dismissal or termination or removal – it does not matter which expression is used, the effect is the same.
- (8) The removal of the Appellants without recourse to the procedure outlined in Section 17(1) of the 1967 Act and Clause 7 of their Memorandum of Appointment was *ultra vires* the powers of the Respondents and therefore null and void, and their purported dismissal invalid. The judgment of the High Court was restored and the Court of Appeal overruled on this issue.
- (9) In *Vine v. National Dock Labour Board* 1956 1 All E.R. 1 at page 8, Viscount Kilmuir, L.C. said, "It follows from the fact that the plaintiff's dismissal was

invalid that his name was never validly removed from the register and he continued in the employ of the National Board.” This is an entirely different situation from the ordinary master and servant case, there, if the master wrongfully dismisses the servant, either summarily or by giving insufficient notice, the employment is effectively terminated, albeit in breach of contract. Here the removal of the plaintiff’s name from the register being, in law a nullity, he continued to have the right to be treated as a registered dock worker with all the benefits which, by statute, that status conferred on him. It is therefore right that, with the background of this scheme, the Court should declare his rights.

- (10) *Vine’s* case is strikingly similar to the case on appeal—the Appellants’ dismissal or removal or termination was invalid; for that reason their names have not been validly removed “from the register” of Professors of the University of Lagos; they continued therefore to have the right to be treated as Professors of the University of Lagos with all the benefits which by statute (the University of Lagos Act 1967) their status as such Professors conferred on them. The Plaintiffs/Appellants therefore have a right to have their status restored and their rights declared — *Shitta-Bey’s* case refers.
- (11) His Lordship, having referred to the case of *Francis v. Municipal Councillors of Kuala Lumpur* 1962 3 All E.R. 633 continued, “This clearly implies that there may be circumstances crying out for a declaration. In *Vine’s* case the special circumstance was that the plaintiff had a legal or statutory status which put his case over and above the ordinary master and servant relationship. This was what Idigbe, J.S.C. said in the case of *Shitta-Bey* and this was what the

learned trial judge Bada, J. said in this case and I am in complete agreement with him. I do not see any valid reason why the court below should have set aside his order for declaration. I therefore hold that the court below erred in setting aside the declaratory orders made by the court of first instance. I hereby restore those orders.

- (12) Although the court is usually reluctant to grant specific performance of a contract of personal service because an order that cannot be enforced by the court will rather not be made, a distinction must be drawn between a contract of personal service and an ordinary contract of service like in *Vine’s* case or *Shitta-Bey’s* case. In a contract of personal service, personal pride, personal feelings, personal confidence and confidentiality may well be involved — all these make it difficult to compel performance of a contract of personal service against an unwilling master. Fortunately in the case on appeal, one is not dealing with a master who is an ordinary human being with pride, feeling, etc. The Respondents are creatures of the law and the self-same law will not find it difficult to compel performance of the contract.
- (13) By Section 4 of Act No. 3 of 1967, the Respondents were given the power to appoint senior staff like the Appellants and by Section 11(1)(c)(i) of the Interpretation Act No. 1 of 1964, power to appoint includes the power to reappoint or reinstate.
- (14) In *Hill v. Parsons* (1971) 3 All E.R. 1345 Lord Denning, M.R. after observing that generally “a servant cannot claim specific performance of the contract of employment, continued at page 1350”; I would emphasise, however that, that is the consequence in the ordinary course of things. The rule is not inflexible. It permits of exceptions. The court can in a

proper case grant a declaration that the relationship still subsists and an injunction to stop the master treating it as at an end. The declaration and the injunction granted by the trial court were restored. Finally, the appeal was allowed and the judgment and the orders of the Court of Appeal were set aside and the judgment and orders of the Lagos High Court in the consolidated suit were restored.

Servants with legal or statutory status

With all respect, each of these judgments constitutes a gold mine of legal principles lucidly and carefully formulated and logically applied particularly on contract of employment. By these decisions, a new category of "servants" has been recognised under Nigerian Law, namely, "servants who are protected by legal status". Where such a servant is removed by the master in breach of the contract of employment and the act is therefore declared a nullity, damages will not be the only remedy open to the aggrieved servant because the nexus between him and the master transcends the mere relationship of master and servant.

Also arising from the said judgments is the question of what other remedies are available to the special servant apart from damages. On this point the judgments are rather instructive. In the *Shitta-Bey* case, an Order of Mandamus was granted to the Appellant "ordering the Respondent (the Federal Public Service Commission) to issue necessary directive duly reinstating the Appellant in his post of Legal Adviser in the Federal Ministry of Justice."

It may be recalled that the Appellants in the *Olaniyan* case, had asked the High Court for a declaration that the Plaintiffs/Appellants were still Professors in the University of Lagos and that the purported termination of the appointment of each of them by the Defendants, was *ultra vires* and

contrary to the provisions of the University of Lagos Act, 1967 as amended. The Plaintiffs/Appellants also sought an injunction to restrain the Defendants, their servants and or agents "from preventing any of the plaintiffs from performing any of the functions of his offices or interfering with the enjoyment of the rights, privileges and benefits attached to his office or offices." The High Court granted all these reliefs and added, "The defendants are hereby ordered to restore each of the Plaintiffs to his post and office or offices and to all rights and privileges attached thereto."

While reversing the judgment of the Court of Appeal, the Supreme Court approved and restored the judgment and orders of the High Court in their entirety. It follows therefore that the remedies of Declaration, Injunction, and Specific performance (reinstatement) are also available to the servant with legal status. In effect, his right to the job is well protected or, at least, is better protected than that of an ordinary servant.

The panel of 5 Justices of the Supreme Court was unanimous in its decision in the *Olaniyan* case. One of them had no doubt in his mind that it was an appropriate case to which the rule of specific performance should apply. He further said,

The law has arrived at the state where the principle should be adopted that the right to a job is analogous to right to property. Accordingly, where a man is entitled to a particular job, I cannot conceive of any juridical or logical reason against the view that where the termination of appointment is invalid and consequently alters nothing, a reinstatement of the employment barring legal obstacles intervening between the period of purported dismissal and the date of judgment is the only just remedy. (Per Karibi-Whyte, J.S.C. in *Olaniyan & Ors. v. University of Lagos and the*

But what of the ordinary servant? His position under the common law principle remains precarious; the dice seems to be loaded against him. He can be capriciously deprived of his job i.e. his means of livelihood, as long as the employer is ready to pay damages for breach of contract. This view is supported by the facts of the *Olaniyan* case where the services of some University Professors were dispensed with in a most arbitrary manner with immediate effect and payment of 6 months' salary in lieu of notice. But for the legal status conferred on them by statute they would have been relegated only to award of damages.

If University Professors, in spite of their status and their usually well-documented conditions of service, could suffer so much insecurity in their employment, how much more a worker with a more humble status. In fact, arbitrary termination of appointment of workers is a common feature of the industrial establishments in Nigeria. For instance, majority of the cases which came before the National Industrial Court between 1978 and 1981 involved wrongful discharge of workers.⁴⁸

5. Industrial Conflicts

In spite of the various methods of promoting industrial peace which have already been discussed, fundamental disagreements do occur between an employer and the union of his employees on matters pertaining to conditions of service. In that event the two parties are expected to resort to mediation by coming together under a mediator mutually agreed upon by them.⁴⁹ If the dispute cannot be settled within 14 days, a report of the efforts made and the points of disagreement must be furnished to the Minister of Employment, Labour and Productivity by or on behalf of either

party.⁵⁰ It is the Minister who sets in motion the machinery for conciliation. He appoints a conciliator to "inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement."⁵¹ Where the dispute is settled within 14 days, the conciliator is expected to submit to the Minister a memorandum setting out the terms of the agreement with the signatures of the parties. As from the date of the agreement its terms become binding on the parties to whom they relate.⁵² But if conciliation fails, the Minister should refer the matter to the Industrial Arbitration Panel (I.A.P.).

Many a time however, the logical sequence just described may be upset by the union calling out its members in the particular establishment, on strike or other forms of industrial action such as "go slow", or ban on overtime. Similarly, the employer may exercise his power of lock-out i.e. exclusion of the workers from the place of work.

Strike and Lock-out under Nigerian Law

Under Section 37(1) of the Trade Disputes Decree No. 7 of 1976, "Strike" means the cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any 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 other workers in compelling their employer or any person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work; and in this definition—

- (a) "Cessation of work" includes deliberately working at less than usual speed or with less than usual efficiency; and

This definition appears to be comprehensive, and it must have been intended to cover all cases including those which fall short of a full-blown strike. But in a matter like this, it is hardly possible to provide an exhaustive definition.

The same subsection defines "lock-out" as the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him in consequence of a dispute, done with a view to compelling those persons, or to aid another employer in compelling persons employed by him, to accept terms of employment and physical conditions of work. Unlike a lock-out, a strike cannot be embarked upon by a single worker, it requires the concerted efforts of a group of workers which need not be a trade union. A strike may be organised or unorganised, for instance, it may be promoted by groups formed ad hoc or it may be spontaneous.

A strike or lock-out is prohibited where the procedure specified in Section 3 or 4 of the Trade Disputes Decree 1976 (as regards mediation) has not been complied with in relation to the particular dispute; or when an award of the I.A.P. has become binding after confirmation by the Minister under Section 9(3) of the same Decree; or the dispute has been referred to the N.I.C.; or the N.I.C. has issued an award on the reference.⁵³ Conviction for contravention of these provisions will attract a fine of N100 or 6 months' imprisonment in the case of an individual, or a fine of N1,000 in the case of a corporate body.⁵⁴

Furthermore, Schedule 1 to the Trade Unions Decree 1973, sets out "matters to be provided for in Rules of trade unions". One of such matters is that no member of the union shall take part in a strike unless a majority of the members have in a secret ballot voted in favour of the strike. Under Section 31 of the same Decree, a worker who is engaged in

Failure to do so renders the worker liable to conviction with a fine of N100 or 6 months' imprisonment.⁵⁵

It is also provided by Section 32A of the Trade Disputes (Amendment) Decree No. 54 of 1977, that where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly. Similarly, where any employer locks out his workers, the workers shall be entitled to wages and any other applicable remuneration for the period of the lock-out, and this period shall not prejudicially affect any rights of the workers being rights dependent on the continuity of period of employment.⁵⁶

If any question arises as to whether there has been a lock-out for the purposes of this Section, the question shall on application to the Minister by the workers or their representatives be determined by him and his decision shall be final.⁵⁷

Effect of Strikes on Contract of Employment

Although workers have to act in concert to promote a strike, the result has to be considered in the light of the individual worker's contract of employment. If sufficient notice of the strike is given by the worker or on his behalf, there will be a breach of contract. A proper notice i.e. one given in accordance with the terms of the contract lawfully terminates the contract. Failure to give any notice of a strike is clearly a breach of the contract of employment.

Difficulties arise however, because in practice, the employer usually regards the contract as still subsisting in spite of the breach. Among other reasons, it has been suggested that the employer does not want to lose the services of

experienced workers, successors of whom he will have to train. Similarly, the workers do not want to throw away their jobs with gratuities and pension rights and other privileges which the workers have accumulated over a period of years. In short, it is the intention of both parties to keep the contract alive in spite of the rupture in the industrial relations, which they both expect to be temporary.⁵⁸ In other words, the contract is merely suspended. The view was canvassed before the Donovan Commission that this intention of the parties to suspend the contract of employment for the period of the strike should be given statutory recognition. The proposal did not however, find favour with the Commission.⁵⁹

As we have already mentioned, when conciliation fails and report to that effect is received by the Minister, the dispute is referred to the I.A.P. The I.A.P. consists of a Chairman and a Vice-Chairman and ten other members all of whom are appointed by the Minister. Of the ten members, two represent the interests of the employers while two represent the interests of the workers.⁶⁰ For the purpose of each dispute referred to the I.A.P., the Chairman constitutes an arbitration tribunal drawn from the members of the I.A.P. which may consist of a sole arbitrator, or a single arbitrator assisted by assessors, or 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, presided over by the chairman or vice-chairman.⁶¹ Where an arbitration tribunal consists of a single arbitrator assisted by assessors, he alone makes the award. In other cases, the award is arrived at by the majority of the members.⁶²

An arbitration tribunal is expected to make its award within 42 days unless the period is extended by the Federal Commissioner for Labour. The award shall be communicated to the Commissioner and to nobody else, and he shall send a

copy of the award to each of the parties. If he receives no notice of objection from either party within 21 days, the Commissioner shall publish in the Gazette a notice confirming the award which then becomes binding on the employers and the workers to whom it relates as from the date of confirmation. But if a valid notice of objection is received by the Commissioner, he must refer the dispute to the N.I.C. whose award shall be final and binding on the parties to whom it relates as from the date of the award.

The National Industrial Court

The Court consists of a President and 4 other members who must be persons "of good standing being to the knowledge of the Commissioner, well acquainted with employment conditions in Nigeria, and at least one of whom shall, to his satisfaction, have a competent knowledge of economics, industry or trade." The Court may be constituted with 3 members including the President or all the 5 members.⁶³ The members of the Court are appointed by the Supreme Military Council (now re-named Armed Forces Ruling Council) acting in the case of the President, after consultation with the Advisory Judicial Committee. The President must have the same qualifications as required for appointment as a High Court Judge. Exclusive jurisdiction is conferred on the Court to make awards for the purpose of settling trade disputes; and to interpret any collective agreement or any award made by the I.A.P. or the Court itself and the terms of settlement of any trade dispute as recorded in any memorandum under Section 6 of the Trade Disputes Decree 1976.⁶⁴ The jurisdiction of the High Court and the Supreme Court is however, preserved in respect of fundamental rights. Subject to this, there is no right of appeal to any other body or person from any determination of the Court.

In accordance with Section 27(1) of the Trade Disputes Decree 1976, the N.I.C. Rules were promulgated in 1979 by the Chief Justice of the Federation.⁶⁵ The inaugural session of the Court took place in 1978 so that it has now operated for a little over 8 years.

The regularity with which a party dissatisfied with the award of the I.A.P. has been bringing his case before the N.I.C. through the procedure already described above, attests to the fact that the N.I.C. is performing a useful role as an appellate Court. But the Court suffers from certain weaknesses which adversely affect its operation. Although the Court is vested with the powers of an appellate Court, there is no provision of the Trade Disputes Decree 1976 (or of any other Decree) which expressly makes it a court of appeal in relation to the I.A.P. Cases do not come directly on appeal to the N.I.C. from the I.A.P. with the result that the latter does not feel obliged to supply the N.I.C. with its full record of proceedings of cases on appeal, and the N.I.C. is not in a position to compel the I.A.P. to furnish such. Furthermore, the N.I.C. has not been designated as a Superior Court of record; consequently it is neither an administrative tribunal nor a part of the judiciary and more importantly, its record of proceedings can be challenged through the order of *certiorari* as has been done on some occasions. Also, the Court has no power to enforce its judgments and this has led to practical difficulties.

Conclusion

As we have shown in this Lecture, the contractual relationship between the employer and the employee (master and servant) is crucial for the meaningful operation of a system of collective bargaining. Equally important is the existence of strong trade union organisations whose membership depends on workers who are "job-holders". We have

discussed at length these various aspects of our Labour Law in order to shed light on their merits and demerits.

The superiority of the employer *vis-a-vis* his employee looms large in the whole of their employment relationship. The employer has the power to lock-out his workers and his liability to pay wages for the period of lockout and the grant to the workers concerned of continuity of employment do not appear to be a sufficient deterrent.⁶⁶ Closely related to this is the whole range of disciplinary powers such as suspension or dismissal, which the employer exercises at will. And, unless the employee is one of the few ones protected by legal status, his only remedy will be claim for damages.

It is also pertinent to refer to the hostile attitude of the employers to unionisation in their establishments, which usually results in the loss of employment through victimisation of the workers concerned. In one of such cases, the N.I.C. had this to say, "It is relevant here to mention that until *after* the industrial dispute, the Appellants had no document laying down the terms and conditions of service for workers as required by section 7 of the Labour Decree No. 21 of 1974 . . ." From all the evidence placed before the Court, it would appear that the Management was determined to get rid of the 100 workers permanently in order to destroy the union. The purpose of their dismissal was never explained to the Court and from all evidence available to the Court, the Management seemed to have set themselves against their reinstatement.⁶⁷

But this was not an isolated case; from time to time, the Court has had cause to use such strong or, even stronger language.⁶⁸ The Court usually then proceeds to award redundancy benefits to the aggrieved workers provided the situation fits into the technical definition of "redundancy", that is, "an involuntary and permanent loss of employment caused by an excess of manpower."⁶⁹ Where for this reason

a redundancy benefit is inapplicable, the Court will award "severance pay" in deserving cases: The two types of award are exemplified by the cases cited as footnotes above.

Police intervention in industrial conflicts is an important factor. Quite early in the history of industrial relations in Nigeria, a group of experts have said, "On the question of police intervention in industrial conflicts, it was the view of the conference that police should not intervene except where there was threat to life or property."⁷⁰ It would appear however, that in spite of that timely advice, the police continue to throw caution to the wind. In the *Alzico* case already cited, the N.I.C. had cause to deprecate police intervention in these words, "It is rather unfortunate that the Police, whose duty in such a situation is to maintain law and order, had to intervene so actively in matters of industrial relations where there was no breach or threat of a breach of the peace. It will be observed that the workers had, barely 30 minutes before the Police issued the quit order, given assurance to maintain peace. The Court views with disapproval this type of intervention by the Police which is not uncommon in a number of industrial establishments in this country judging from the cases which have been referred to this Court."⁷¹ It will be observed that unwarranted police intervention remains a common feature of industrial relations in Nigeria. More importantly, such intervention is, more often than not, at the instance of the employer, the superior of the two parties to the contract of employment. Instances must be few and far between when the workers or the trade union in an industrial establishment has succeeded in invoking police intervention.

In the same *Alzico* Case, the Court further said, "It may be argued that the lock-out by the Respondents was justified by the work-to-rule action of the workers on 29 November 1976. Nonetheless, the Court takes the view that that action was precipitated by a number of negative factors prevailing

in the industrial relations situation in the establishment, namely:

- (a) absence of conditions of service since the establishment of the Company in 1967;
- (b) absence of a competent personnel manager;
- (c) the frustration of conciliation by the refusal of the Respondents to allow workers' representatives to enter their premises on three occasions when the Conciliator appointed by the Federal Commissioner for Labour attempted to bring both parties together to effect a settlement of the dispute;
- (d) the disillusionment of the workers arising from their past experience of no action being taken on their demands, once they called off an industrial action on the advice of the Federal Ministry of Labour Officials."⁷²

Recommended Changes in the Law

1. There should be direct appeal from the I.A.P. to the N.I.C. and the award of the I.A.P. should be given in open court.
2. The N.I.C. should be given power to enforce its judgments. The absence of such power at present makes it possible for any of the parties to flout the court's judgment with impunity.
3. Individuals should be given the right to bring cases before the N.I.C. At the moment, only a union can appear as a party on behalf of a worker or workers, and if the union, for one reason or another, fails to take up the case, the individual worker or workers cannot.
4. Jurisdiction in cases of wrongful dismissal (unfair dismissal) should be conferred on the N.I.C. This will save time and costs for the aggrieved party. The less formal procedure at the N.I.C. compared with the ordinary courts

5. The Federal Government seems to be reluctant to place the Court in the Judiciary by designating it a Superior Court of Record. But the Court should, at least, be protected by statute against the use of an order of *certiorari* to quash the Court's proceedings.
6. It is superfluous to provide for assessors at the level of the N.I.C. They are not being used in practice and it is necessary to repeal the relevant provisions of the Trade Disputes Decree, 1976.
7. Finally the present definition of "redundancy" is too narrow; it should be extended to cover cases of loss of employment due to causes other than excess of manpower.

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