

**BEING A PAPER PRESENTATION AT A TWO-DAY POLICY
FORUM ON COMPENSATION MANAGEMENT IN NIGERIA
BY THE MICHAEL IMOUDU NATIONAL INSTITUTE FOR
LABOUR STUDIES (MINILS) IN COLLABORATION
WITH NATIONAL SALARIES, INCOMES AND
WAGES COMMISSION (NSIWC) AND
FRIEDRICH EBERT STIFTUNG (FES).**

RESOURCE PERSON: MALACHY UGWUMMADU ESQ.

DATE: 14TH NOVEMBER, 2022

**TOPIC: *"Conceptual And Theoretical
Perspectives On Reward System,
Issues In Legal, Policy And Practical
Frameworks On Compensation And
Analysis Of Trends And Current
Situation On Compensation In
Nigeria".***

**VENUE: NAF (NIGERIA AIR FORCE)
CONFERENCE CENTRE, PLOT 496
AHMADU BELLO WAY, KADO, ABUJA**

Abstract

This presentation commenced with an appraisal of the concept and theory of reward and compensation in work place. It provides a background that identifies the delicate social fabrics for a harmonious society and draws the linkages between the survival, viability, competitiveness and productivity of a political economy and a commensurate wage system, an adequate reward regime and an effective compensation template. The paper recognizes that the applicability of the forgoing conditions for smooth industrial relations remain a mirage without determinable legal and policy frameworks. In this respect, the paper examines the extant legal regimes relevant and relative to the concerns of wages, reward and compensation within the workplace environment. It argues that the issues of wages, reward and compensation are cardinal factors in general human resource management strategies as much as they constitute fundamental rights issue.

It interrogates the processes of wage adjustments and the mechanisms for compensation management with a view to achieving a harmonious coexistence founded on decent remuneration and reward system for the working class. The paper did not stay away from providing clarity and insights into some recurrent technical terms that constitute challenges in the implementation of compensation policies including "collective bargaining and Agreement", "Memorandum of Understanding", "Deeds" and "contract".

In conclusion, the paper contends that the emerging trends based on the SWOT analysis of current compensation and reward systems in Nigeria have direct correlation with present socio-economic imbalances in the country, national security, peaceful co-existence, citizens' commitment and general patriotism to the nation which deserve very deliberate and intentional considerations.

Introduction

I am particularly grateful to the Honourable Minister of State for Labour and Employment, Director General, the Governing Council and Managements of the Michael Imoudu National Institute For Labour Studies (MINILS), the Chairman of the Nigerian Salaries, Income and Wages Commission and of course, the development partner and long-standing friend of Nigeria and Nigerians, Friedrich Ebert Foundation for this auspicious opportunity to be part of this deliberation and, in particular, to share my thoughts on this very important topic under the broad theme of "Compensation Management in Nigeria". No doubt, this two-day conference represents the continued efforts of the foremost Labour Institute in Nigeria, (MINILS) in providing pragmatic solutions to existing challenges in labour relations and workplace environments while interrogating existing legal frameworks, policies and structures available for service delivery. By this exercise, you have demonstrated that you are staying the course and abiding by the responsibilities that you bear under the enabling Act establishing your Institute¹.

In the event, the Institute should be commended for paying close attention to the impacts of reward and compensation provisioning on the general well-being of society. The prevalent social strife and dislocations are traceable to socio-economic imbalances occasioned by uneven distribution of available resources including wages, salaries and other remunerations. Thus, for instance, the challenges of pay-disparity within a particular workforce when compared with disproportionate earnings by colleagues of the same grade and qualification in different sectors of the economy pose huge social disharmony, disincentive and bias resulting in decreased morale which affects productivity and growth. Indeed, my topic which is focused on the conceptual and theoretical perspectives of reward system in Nigeria calls for a deeper interrogation of the impacts of reward and compensation, on social economy, human behaviour and general disposition towards society. The paper approached the presentation as follows:

➤ An abstract

¹ S. 2(d) of the National Institute for Labour Studies Act. Cap 261 LFN 2004.

- Introduction
- Conceptual and Theoretical Perspectives on Reward system in Nigeria.

- i. Term Clarifications
- ii. The provenance of Wage, Reward and Compensation
- iii. Reward and Compensation as Instruments of Political Economy at different stages.

- Legal and Policy Frameworks on Compensation.

Benefits and Gaps

- i. The National Minimum Wages Act, 2019
- ii. National Salaries, Income and Wages Commission Act
- iii. Employees' compensation Act
- iv. Principles of collective Bargaining and Agreement.

Conceptual and Theoretical Perspectives on Reward System in Nigeria.

Term Clarifications:

1. Wage, Reward and Compensation:

In the context of this presentation and for the purpose of this exercise, I appeal that I should be granted the indulgence to use the words: wages and reward interchangeably even though reward means a thing given in recognition of service, effort or achievement recorded.

It is slightly different from wage which is a pledge of payment of remuneration by an employer for labour or services according to contract on an hourly, daily or piece of work basis and often including bonuses, commission....²

The Black's Law Dictionary³ defines wages as:

² Elizabeth A. Oji, Offornze D. Amucheazi; Employment & Labour Law In Nigeria 2015; Mbeyi & Associates Nig Ltd Page 392; Cited In Webster's Third New International Dictionary

³ Black's Law Dictionary, Eight Edition Edited by Bryan A. Garner P. 1610.

“Payment for labour or services usually based on time worked or quantity produced; compensation of an employee based on time worked or output of production. Wages include every form of remuneration payable for a given period to an individual for personal services including salaries, commissions, vacation pay, bonuses and the reasonable value of board, lodging, payment in kind, tips and similar advantage received from employer”

Section 91 of the Labour Act⁴ dealing with the interpretation describes Wages as;

“Remuneration or earning (however designated or calculated) capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by virtue of a contract by an employer to a worker for work done or for services rendered or to be rendered”

The interpretation section of the National Minimum Wage Act, 2019⁵ simply refers to it as Wage (instead of wages) and defines it as

“Remuneration or earnings (however designated or calculated) capable of being expressed in terms of money fixed by mutual agreement or by law which is payable by virtue of contract by an employer for work done or to be done for service rendered”

It should be observed that this is precisely the same definition and has the same effect with the prescription accord wage in the Labour Act which is an earlier legislation.

2. The Provenance of Wage, Reward and Compensation

It is very well known that one of the twin pillars of justice emerged directly from God’s own sense of *justice, audi alterm pattern* which means listen to or hear the other party as opposed to *nemo dat quod non habet*. Similarly the philosophical provenance of Reward System for the working man came

⁴ Labour Act, Cap L1, LFN 2004

⁵ S.17 National Minimum Wage Act, 2019.

also from his creator Himself when he admonished in his holy book as follows:

1Timothy 5:18: Thou shall not muzzle the ox that threads the corn.
And, the labourer is worthy of his reward.

Luke 10:7 "And in the same house remain, eating and drinking such things as they give for the labourer is worthy of his hire. Go not from house to house".

Matthew 10:10 "For the workman is worthy of his meat".

Leviticus 19:13 "Thou shalt not defraud thy neighbour, neither rob him: the wages of him that is hired shall not abide with thee all night until the morning".

Romans 4:4 "Now to him that worketh is the reward not reckoned of grace, but of debt".

Since the human race belong to God the creator, He certainly will know what is best for him which are very well documented above insisting that on no account should a labourer or workman be denied his wages or reward. He recognizes that humanity and the dignity of man will be better served through labour and thereby promote the dignity of labour. He charges man further to toil and be able to fend for their families despising any who is unable to cater for his family in the following verse⁶:

1 Timothy 5:8 "But if any provides not for his own, and especially for those of his own house, he hath denied the faith, and is worse than an infidel".

By what means and from which source would this means of livelihood be acquired other than through industry and the wages of labour? So, our Lord God created the man not only in his image but realized also what is best for his harmonious co-existence and insisted that whoever hires his services must pay him his wages or due.

These admonitions have become imperative because the tendency of man and employers generally is to persist in their exploitation, as slave masters

⁶ 1 Timothy 5:8

for greed and profit. It is only an adequate checks, through legislations, collective bargaining, organized labour and unionism, strikes, and other industrial engagements that employers can be tamed. Yet, policy regulations and directions on labour issues particularly wages and compensation must be deliberate and intentional, and not functions of strikes and industrial actions as they have become in our clime and circumstances.

Historical Background:

Workers and Reward Under Colonial Rule

Historically, it is a documented fact that, at every phases of workers' agitations for adequate pay package, the colonial employers of the first generation of Nigerian workers who were deeply entrenched in their slave mentality of total ownership of their workers, deserving no wage or reward, fiercely resisted the first generation workers, demonstrating reluctance, arrogance, threat of mass sack, subterfuge which were most time escalated to sheer brutalities⁷ **emphasis mine**.

Workers and Wages Under Military Rule

Progressively, successive military regimes being the unwanted heirs to the exiting colonial masters adopted the same legacies of masters, servants relationship towards the Nigerian worker. It was so bad, as Comrade Isa Aremu remarked in that same book, that Military Administrators of the so-called 19 Northern States met and unanimously agreed to pay the entire workforce in the affected States salaries less than the national average wage or minimum wage⁸. This was, at all time, relevant to that pronouncement, a nullity under **S. 1(2) of the National Minimum Wage Act** which provides thus:

S.1(2) "Any agreement for the payment of wages less than the national minimum wage as prescribed in subsection (1) of the section shall be void and of no effect".

⁷ Isa Aremu, the Wage Crisis; A Nigerian Paradox; Reflections on Labour and Trade Unions. Malthouse Press Limited 2015, page 34.

⁸ Ibid P.35 Reflections on Labour and Trade Unions

See also S. 3(3) of the National Minimum Wage Act, 2019.

Workers and Compensation under Civil Rules

Workers under Civil Rule did not fare better. The hope that civilian administrations would be favourably disposed to the workforce of the nation was dashed. Similarly, scant interest and indifference to the plight of workers continued unabated. The trust of their argument was that the entire workforce of Nigeria was no more than 10% maximum of the entire population of the nation and that country could not afford to gulp huge percentage resources belonging to the rest of the population for the mere 10% workforce. This argument completely discounts the bases for adequate pay and reward system. It exposes the shallow understanding of the ruling elite to the principles and philosophy of appropriate reward and wage system to a nation and an economy. It indicates that the underlying principles for a socially balanced society is far flung in the political calculation of the ruling elites.

They are unable to fathom the fact that it is labour that creates wealth. A well paid workforce, adequately motivated, properly trained, skilled and motivated will enhance productivity, remain competitive and become self actualized. They are unable to appreciate that a well-motivated workforce through adequate remuneration will ultimately stimulate the economy and drive small and medium enterprises of the economy. More jobs would be created and social strife will thereby reduce impacting on quality of life and security generally. If the “military boys” like their civilian collaborators were not aware of the foregoing benefits of a properly remunerated workforce then, how much more would they realize that the alarming cases of brain drain in virtually every sectors of our national life could be reversed with a properly motivated and incentivized workforce. In a sense, a carefully managed wage and compensation regime within the context of the economic ideals and objective principles of state policy could guarantee a properly harnessed economy structured to secure maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality

consistent with the Constitution⁹. Now let us turn to the legal regimes on compensation and wages as well as the relevant policy frameworks.

Legal and Policy Frameworks on Compensation

An appropriate cord to strike as I commence my intervention on this sub-topic is to state, indisputably, that every effort and measure adopted through acceptable labour practices and conventions; principles of collective bargaining, policy frameworks and adherence to standards of international best practices will count very little, if not absolutely useless, without ascertainable and enforceable legal and policy frameworks. The additional point to emphasis on this score, is that, in labour relations, certain practices and conventions have emerged over the years requiring codification for certainty and measurability. In this respect, I like to examine the following legislations and policy frameworks relating to labour matters and, more specifically, relevant to the twin issues of Reward and compensation.

- **National Minimum Wage Act**
- **National Salaries, Income & Wages Commission Act**
- **Employees' Compensation Act**
- **Pension Reform Act**
- **Labour Act**
- **Trade Dispute Act**
- **Wages Board and Industrial Council Act**
- **Nigeria Social Insurance Trust Fund Act**
- **Principles of Collective Bargaining and Agreements**

1. The National Minimum Wages Act, 2019

This Act repeals the National Minimum Wage Act, Cap 61 Laws of the Federation of Nigeria, 2004. It has **eighteen (18) sections** as against the **ten (10) sections** in the previous Act with innovative reforms included to protect the workers.

By **Section 2** of the extant Act, it is now clearly beyond prevarication that this legislation is of general application throughout the Federal Republic of

⁹ S. 16(1) (b) & (c) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) dealing with the Fundamental Objectives and Directive Principles of State Policy.

Nigeria. Besides the generic categorization of National Minimum Wage amongst other issues of labour, trade union, industrial disputes, industrial relations, conditions of safety under item **34 of the 2nd Schedule to the 1999 Constitution**, it was usually difficult to recognize minimum wage as a strictly national issue. It became susceptible to varied interpretations when cynical employers of labour choose to stretch the wordings in **Item 34 of the 2nd Schedule** a notch further by insisting that the phrase “National Minimum Wage for the **Federation or any part thereof**” gives room to the federating units to see it as either national or state issue.

Most State Governments that are unable to justify their inability to pay the present minimum wage of **₦30, 000 (Thirty Thousand Naira)** now postulate that wage is optional and applicable to the federating states differently in accordance with the principle of federalism. They forget that even in a federation, the federating states agree and surrounded some of the attributes of their autonomy to the centre including, but not limited to, national defence, currency, foreign policy and national minimum way. In fact, **section 9(2) of the Act** criminalizes the act of an employer throughout the federation who fails to pay his workers their national minimum wage. Such an employer shall upon conviction pay:

- a. Fine not exceeding 5% of the offender’s monthly (salary) wage;
- b. All outstanding arrears of worker’s wages and
- c. An additional penalty of not less than the prevailing CBN lending rate on the wages owed.

What is more, it is that any agreement for the payment of wages less than the national minimum wage shall be void ***abinitio***¹⁰.

Instructively, it is now the law unlike the repealed Act, Cap 61 2004, that the National Minimum Wage shall expire after five (5) years and it **shall** be reviewed in line with the provision of the Act¹¹. Similarly, Employers of labour in Nigeria with a work force above Twenty five (25) staff are no longer

¹⁰ S. 3(3) of the National Minimum Wage Act, 2019

¹¹ S. 3(4) Ibid.

exempted from paying the National minimum wage as against the repealed Act 61, 2004 which pegged the figure at fifty (50) staff.

Earlier than that, all previous reviews, reforms and adjustment of the national minimum wage had always been products of agitations and sustained protests by the labour centres and the Nigerian workers. This should not be. Reviews and adjustments of wages in the country ought to be a very deliberate and an intentional exercise putting into account, the inflationary rates in the country vis-à-vis the purchasing power of workers; the exchange rates and other economic indices. Bear in mind also that the review should never be arbitrarily done but through the **Tripartite Committee** comprising representatives of Government, organized labour and private sector on equal representation with a secretariat domicile in the National Salaries, Income and Wages Commission¹². Indeed, **S. 12(1) of the Act** insists that both the Ministry of Labour and Employment and the National Salaries, Income and Wages Commission shall collaborate to monitor the implementation of the National Minimum Wage in line with the provisions of the Labour Act and NSIW Act.

Progressive as the reforms may appear, it is important, to equally appreciate some of the gaps and concerns that I have about this piece of legislations.

- ❖ Emerging Gaps and Concerns: The National Minimum Wage Act, by all intents and purposes, does not inspire as much confidence as it should when you consider the fact that it throws the complaints and concerns of the employees back to the very defaulting Minister of Labour and Employment who is in default of monitoring and enforcing the law¹³. It is believed that the said Minister, in normal circumstance, would, upon receipt of such report of none compliance, activate the machinery for enforcing compliance to redress the breach within thirty (30) working days. Is that always the case?
- ❖ Secondly, the law requires that where the workers aggrieved lodge a complaint with his or her union, the union must not later than thirty (30) days after that complaint approach the National Industrial Court for adjudication¹⁴ in the event that compliance failed. By limiting the time

¹² S. 5,6&7 of the National Minimum Wage Act, 2019

¹³ S. 12(3) National Minimum Wage Act 2019.

¹⁴ S. 13(c) National Minimum Wage Act 2019.

frame within which the action must be taken to court to thirty (30) days, the law has inadvertently created **a statute of limitation** thereby compromising workers' rights and access to seek redress. Although, it can be argued, conversely, that an aggrieved person should be diligent and proactive since equity, as we say in law, does not aid (assist) the indolent, yet, such statutory provision, in law, erects a condition precedent which must be satisfied and failure to act within the time frame renders any suit so instituted afterwards incompetent and divests the trial Judge the jurisdiction to entertain the suit let alone determine same. Very many cases have suffered technical defeat in limine on account of this even if those cases were well founded in law and in fact. When you consider the bureaucracies and bottle-necks associated with the operations of these unions, as well as the costs of litigation generally, you will find me that there are multiple reasons why an aggrieved worker and his or her union may not be able to approach the Industrial Court within the time frame and consequently shut out of the process of seeking redress.

This was the situation with respect to the enforcement of citizens' fundamental rights under the 1979 Fundamental Rights (Enforcement Procedure) Rules until 2009 when a new Fundamental Rights (Enforcement Procedure) Rules was enacted. It used to be that any action properly instituted in Court beyond a year after the alleged infringement will be struck out in violation of the limitation clause. However, today and by the extant Rules, amongst other reforms, an important innovations was also established as follows:

"An application for the enforcement of Fundamental Right shall not be defeated by any limitation statute whatsoever¹⁵.

- ❖ Finally, you would observe under **S.13 of the Act** that complaints in respect of the National Minimum Wage may be enforced by the aggrieved worker, trade unions and even Minister of Labour and Employment. But how many times have we seen a Minister of Labour and Employment in Nigeria take up the complaint of an aggrieved worker to Court (NIC) for redress?¹⁶ Very often than not, while they remain mute on this vital right

¹⁵ Ord. 111 Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009

¹⁶ S. 13 National Minimum Wage Act 2019.

as Ministers of and for Labour, they are quick to activate and ventilate their powers under the Trade Dispute Act¹⁷ which empowers them to apprehend a dispute and rush to Court seeking sundry restraining orders against workers as seen in the recent case of the **Federal Government of Nigeria & Ano Vs. Academic Staff Union of University**¹⁸ delivered on the 22nd of September, 2022 before it was appealed against¹⁹.

This is very similar and analogous to a deep concern I have on the issue of the enforcement of citizens' fundamental right to life under S. 33(1) of the 1999 Constitution where our appellate court have taken a strange position that fundamental right action to life cannot be instituted against a private person except the State²⁰. This strange position is faulty in my humble view and ought to be revised. It is possibly informed by the general notion that a breached right to life (resulting in outright murder) is against the State. This is not entirely correct because the victim and his family is also aggrieved and violated. Justice has been described to travel on three routes: Justice to the State, Justice to the victim(s) and Justice to the accused person(s). Besides, violation of fundamental right to life must not always result in death. In fact, the Constitution under S. 46 envisages circumstances in which the right is LIKELY going to be abused and empowers the victim to seek redress. In any case these rights as presently contemplated by the rules of fundamental rights enforcement procedure are not just rights that can be enforced by the victims alone, but by their friends, next-of-kin, relations, human rights, group etcetera. Thus if that is so, why can't right to life become enforceable against the individual persons knowing that in our clime and owing to failure of leadership, breakdown of law and order, insecurity and limited space for economic survival, citizens have turned against themselves for survival and existence?.

2. National Salaries, Incomes and Wages Commission Act: Cap N72, LFN 2004

In many respects, I find this Commission very important in properly evaluating and assessing the economy of the country for the purpose of recommending

¹⁷ S. 14 of the Trade Dispute Act, Cap 18 LFN 2004

¹⁸ Suit No: NICN/ABJ/270/2022; delivered on 22/9/22

¹⁹ Appeal No: CA/ABJ/PRE/CV/995/2022.

²⁰ Agbeniga vs. Adejimiroy & Ano (2016) LPELR – 40138 CA

appropriate Minimum Wage, salaries based on revenue and incomes of the nation. To better appreciate this, I hereby reproduce the entire functions of the Commission under the Act²¹. The functions of the Commission shall be to:

- a. Advise the Federal Government on national incomes policy;
- b. Recommend the proportions of income growth which should be utilized for general wage incomes;
- c. Inform the Federal Government of current and incipient trends in wages and propose guidelines within which increase in wages shall be confirmed;
- d. Keep the Federal Government informed on a continuing basis of movement of all forms of income and propose guidelines relating to profits, dividends and all income other than wages;
- e. Encourage research on wages structure (including industrial, occupational and regional and any other similar factor), income distribution and household consumption patterns;
- f. Keep prices under continuous surveillance, interpret price movements and relate them to other developments in the national economy;
- g. Propose measures for the regulation of prices and wages in the various sectors of the economy and for the control of hoarding;
- h. Encourage and promote schemes for raising productivity in all sectors of the economy;
- i. Establish and run a data bank or other information centre relating to data on wages and prices or any other variable and for that purpose to collaborate with data collection agencies to design and develop an adequate information system;
- j. Inform and educate the public on prices, wages and productivity, their relationships with one another and their inter-play in determining standards of living and real economic growth;
- k. Examine and advise on any matter referred to it by the Federal and State Government concerning any of the functions conferred on it by or pursuant to this Act;

²¹ S. 3 of the National Salaries, Incomes and Wages Commission Act Cap N72 LFN 2004

- l. Examine, streamline and recommend salary applicable to each post in the public service;
- m. Examine areas in which rationalization and harmonization of wages, salaries and other conditions of employment are desirable and feasible as between the public and private sectors of the economy and recommend guidelines which will ensure sustained harmony in work compensation policies in both the public and private sectors;
- n. Examine the salary structures in the public and private sectors and recommend a general wages framework with reasonable features of relativity and maximum levels which are in consonance with the national economy;
- o. Examine and recommend effective machinery for assembling data on a continuing basis taking into account changes in the cost of living, productivity levels, levels of pay in the private sector and other relevant economic data on which public sector salary and other benefits can be reviewed annually;
- p. Examine the current rate of retirement benefits and recommend appropriate mechanism for periodic review of retirement benefits;
- q. Inquire into and make recommendations on any other matters which, in the opinion of the Commission, appear to be relevant to the foregoing and therefore ought, in the public interest, to be inquired into; and
- r. Undertake any other activity which is likely to assist in the performance of the functions conferred on it by or pursuant to this Act.

A critical appraisal of this Act underscores the pivotal role of this Commission in bringing about a better an egalitarian society founded on accurate data towards the fundamental objective and directive principles of our national economic policy as captured under Chapter II of the Nigerian Constitution²². By and large, it is easy to appreciate from the elaborate scope of the functions of the Commission that the theory and notion of Reward and Compensation must necessary be based on productivity, needs and competence to be sustainable.

²² S. 16 Constitution of the Federal Republic of Nigeria 1999 (As Amended)

Those functions if aggressively pursued and implemented would take care of the socio - economic imbalances in the country thereby control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. It will also help to direct the Nigerian State economy towards ensuring **“that the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individual or of a group”²³.**

In my humble view, the roles that the NSIWC plays, if properly harnessed and coordinated go beyond the foregoing benefits but also impact our national security by creating equality, pay parity and appropriate distribution of the resources of the country through the workforce of the country. Conversely, a poorly managed crisis of wage and compensation create social strife, intensifies the struggles for survival and equal opportunities, demotivate workers and labour, incentivize greed, primitive accumulation and corruption. Thus, it is far deeper than economic and welfare issues. What about the growing demography of pensioners? It is generally very telling of our attitude to the virtues of dignity of labour through labour and productivity as opposed to sheer avarice and opportunism without work.

3. Revenue Mobilization Allocation And Fiscal Commission

This is one of the Federal Executive Bodies created in the Nigerian Constitution²⁴. The composition and function are set out also in the Constitution²⁵. Its powers are largely similar to those of NSIW Commission including:

- a) Monitoring accruals to and disbursement of revenue from Federation account
- b) Review, from time to time, the revenue allocation formulae and principles in operation, to ensure conformity with changing realities.

²³ S. 16(2)(c) *ibid*.

²⁴ S. 153(1)(n) of the Constitution Of The Federal Republic Of Nigeria 1999 (As Amended)

²⁵ The 3rd schedule part 1, item N of the Constitution Of The Federal Republic Of Nigeria 1999 (As Amended)

But very curiously, unlike the National Salaries, Incomes and Wages Commission which is mandated to review its formula and recommend fresh wages and income within five years immediately after the expiration of the extant wages for workers, the Constitution introduces a proviso which says that:

“any revenue formula which had been accepted by an Act of the National Assembly SHALL REMAIN in force for a period not less than five (5) years from the date of the commencement of the Act” – *emphasis mine*

Thus, when the Chairman of the RMAFC, Mohammed Shehu cried out recently on a national television that the last time the formula was reviewed was in 2008, fourteen (14) years ago, some of you can now understand better where that is coming from. He makes the additional revelation that the monthly take home and retirement benefits of Chief Executives of some national parastatals and corporations including Nigerian National Petroleum Company Ltd (NNPCL), Nigerian Port Authority (NPA), FIRS are more than that of the President let alone the Judicial Officers and thought that it was inappropriate. You would recall that only in July this year 2022, the National Industrial Court Per His Lordship **Osatohanwen Obasaki-Osagha J**, at the instance of Learned Senior Advocate of Nigeria Sabastine Hons obtained a judgement against the National Assembly, RMAFC and the Attorney General of the Federation²⁶ directing them to commence monthly payment of N10million to the Chief Justice of Nigeria (CJN); N9million to other Supreme Court Justices and President Court of Appeal; N8million to President Customary Court of Appeal and N7million to other judges respectively and across board. Thus, while the Chairman of RMAFC was scandalized and in a haste to see further adjustments and upward review of the salaries of the judicial officers, the system through our Constitution was not so much in such a haste by the dictates of the foregoing proviso. He contends that more changes ought to be made to enable the legislature particularly the National Assembly Commission focus and deal with the allowances, operational costs and benefits of support staff attached to members of the Legislative and Judicial Arms of Government as it is done in other democracies like in Malaysia, Indonesia, India and even in the United States of America. I adopt this viewpoint contrary to the current practice where a lump sum of all that a legislator needs for himself, his support staff and aides are

²⁶ Suit No: NIC ABJ/142/2022

given to him creating the kind of administrative lapses that we witnessed at the Nigerian Supreme Court recently. This will enable RMAFC focus on its core mandate which is provided for under **Item N paragraph 32(d)** thus:

32(d) “determine the remuneration appropriate for political office holders including the President, vice president, Governor, deputy Governor, Ministers Commissioners, Special Advisers, Legislators and holders of the offices mentioned in Sections 84 and 124 of the Constitution”

Finally, he decried the situation in which Judges and Judicial officers who are recruited today are placed on the same salary structure with their colleagues who had been on the bench for decades.

4. PRINCIPLES OF COLLECTIVE BARGAINING AND AGREEMENTS

Section 91 of the Labour, Act²⁷ defines Collective Bargaining as.

“The Process of arriving or attempting to arrive at a collective Agreement”

Similarly: The black’s Law Dictionary defines it as:

“Negotiations between an employer and the representatives of organized employees to determine the conditions of employment such as wages, hours and fringe benefits²⁸”

From these definitions, you could see that what stands out is the idea that a bargain, which is collective in this respect, is a PROCESS or PROCEDURE contemplating the making of a collective agreement between employers and accredited (recognized) representatives of employees concerning wages, hours, and other conditions of employment including job security and safety issues.

It is important to note that a collective bargain will not, by reason of the joint (collective) negotiation, constitute or supplant the contract of employments of workers involved with their employers but operates as a supplement to the primary contract of employment. In that respect, it is the secondary aspect of

²⁷ Labour Act, Cap. LI LFN 2004

²⁸ B. A. Garner (Ed), 7 Edition

industrial relations and incidental to the existence of the contract. Thus, collective bargaining leading up to collective agreement are still not justiable and enforceable unless and until the terms are expressly translated and incorporated into the contractual relationship between the employer and the employee. Otherwise, it will be of no legal moment or significance other than a gentleman agreement borne out of trade union negotiations.

See, *The Registered Trustees of the Planned Parenthood Federation of Nigeria & Error V Dr. Jimmy Shogbola*²⁹

It is not always the case that collective bargaining being a bilateral process between the employer or representatives of management and unions on behalf of workers, remain a dual process. Instance arise in serious vital industrial dispute where government officials may be involved. Recall the recent involvement of Wale Babalankin SAN, and Prof. Lulu Briggs Committees on the Asuu/FG face off.

The purpose of collective bargaining are:

- a. to create equality of bargaining power, of course, through the representatives as against an individual employee.
- b. to adjust the terms of employment
- c. to unify labour relations and produce individual peace and harmony.
- d. provide procedure for settlement of dispute and submit matters within the joint regulation of management and trade unions which were hitherto the exclusive preserve and prerogative power of management³⁰. Emphasis mine. Successful bargain culminate in an agreement. The Agreement so reached must be for the purpose of dispute resolution and not otherwise³¹. A simplistic understanding of this statutory provision will suggest that all collective agreements would presuppose an existing dispute sought to be resolved or settled. The learned Authors of the Employment and Labour Law in Nigeria took a different view and argue that there are instances in which the collective agreement reached would be to forestall or handle a possible trade dispute and not necessarily an existing one.

²⁹ (2005) 1 WRN 15 @167

³⁰ Elizabeth A. Oji & Offornze D. Amucheazi; Employment & Labour Law in Nigeria. 2015, Mbeyi & Associate (Nig.) Ltd. P. 213.

³¹ S. 43, Trade Dispute Act, Cap. T8 LFN 2004.

In this regard, reliance is placed on the Court of Appeal decision in **Rector, Kwara State Polytechnic & 3 Ors vs. Adefila & 2 Ors**³² where the Appellate Court Per Agube J.C.A held pursuant to S.47(1) of the Trade Dispute Act, Cap. 432 LRN 1990 that:

“a collective Agreement is an agreement in writing for settlement of disputes relating to terms of employment and physical condition of work concluded between”:

- a. An employer, a group of employers or one or more organizations, representative of employers on the one hand; and**
- b. One or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand.**

Collective Agreement in the Eye of the Law:

It is equally of extreme importance to note that the status and effect of collective agreement on contract of employment which are not intended or capable of giving individual employee a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest, nor are they meant to supplant or even supplement the employee's contract of service³³. It is precisely so because even in the event of any litigation, the individual employee cannot enforce the agreement by the worker member of the union since the agreements are usually between trade unions or a union and an employer in which case, any attempt to enforce same will contravene the principle of privity of contract.

In some remote senses, it could be argued that the unions or the representatives of the union may be regarded as the agent of the principal workers who can sue and be sued on behalf of the principal. Learned Authors of the Employment and Labour Law in Nigeria acknowledge that much but argue that even at that, the assumption cannot escape the twin legal hiccups including the fact that some members of the union may be below the age of 21 when they will have full legal capacity to contract and have an agreement.

³² (2007) 15 NWLR (Pt. 1056) P. 42 @Pp. 86, para E-C; 113 para G-H.

³³ Rector Kwara Poly (Supra) R.87/88 para, G-D.

Similarly, a proper agency cannot be created without the consent of the principal or for a principal not yet in existence³⁴.

In the same vein, it's important, in discussing the appropriateness of labour terms, to highlight the distinction between a memorandum of understanding and an Agreement.

"A memorandum of understanding is a written statements detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement. It is a non-committal writing preliminary to a contract³⁵".

See the Court of Appeal decision in S.F & P. Ltd. Vs. N.D.I.C.³⁴.

Whereas the agreement is the ultimate expression of the intention of parties who desire to be bound by their understanding, a memorandum of understanding represents parties' intention to enter into a contract or an agreement but may wish to first declare that intention in a document which they wish they are ready to sign as a legally binding contract or an agreement. Such a document expresses the preliminary understanding of parties who plan to enter into a contract or some other agreement. Such a document is a **"Memorandum of Understanding"** the contents of which serve to fix in memory, the desire of the parties which is to serve as the basis for a future formal contract or deed. It is not the real agreement, but a document guiding the future agreement. Its status is something less than a complete contract³⁶

Conclusion

This presentation on Compensation Management in Nigeria focused on Wages and Reward Systems and pointedly questioned the survival chances of an economy that toys with the socio-economic imbalances and disruptions created by pay-disparities, inadequate pay-package and delayed or suspended remunerations. The paper emphasized the correlation between wage and compensation management with security and wellbeing of the State. It evidently interrogated the theory that a nation seeking peace and growth must consciously pursue a living wage and deliberated harmonized its economic

³⁴ Elizabeth A. Oji: Offornze D. Amucheazi P. 224.

³⁵ S.F & P. Ltd. Vs N.D.I.C (2012) 10 NWLR (Pt. 1309) P.522 @538, para C.D.

³⁶ S.F & P. Ltd. Vs N.D.I.C Supra) Ibid Pp. 537-538, para. H-B.

policies with needs and performance indices for productivity. The paper recognizes that enough legislations and statutory instruments abound to drive the reforms and progress anticipated in the labour market and environment. It however, highlighted some areas for amendments particularly in the National Minimum Wage Act, 2019 and the National Salaries, Incomes and Wages Act against the backdrop of the powers of the Minister of Labour and employment in relation to the complaints, compliance and litigation by aggrieved workers. A total removal of the statute of limitation was advocated to give free access to workers to ventilate industrial disputes without necessarily resorting to industrial actions. In contending that workers should be allowed access to justice without hindrance, it strongly recommends that the Industrial Court and not a political appointee, like the Honourable Minister of Labour and Employment, should adjudicate on matters submitted to it without undue political interference or inputs. It is understood, as seen, in the numerous instances in Nigeria, that such an arrangement, compounds rather than resolve labour issues. Moving forward, there are tremendous hope in the horizon that a properly implemented legal and policy frame works would guarantee an effective Compensation Management in Nigeria. Benchmarking reward against performance and needs will secure growth and productivity. A conscious network of collaboration crafted amongst players in the industrial circles will accelerate a quicker bridge of pay disparity between the private and public sector. It is believed that a well-motivated and remunerated workforce, whether in private or public sector, will help jumpstart the economy in many respects, provide the incentive to attract the best, sustain the services and restore the dignity of labour through respect for the fundamental rights of Nigerians to dignity of human person³⁷.

Thank you immensely for your rapt attention.

³⁷ S.34(1) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).