



RECOVERING OVERPAYMENTS FROM EMPLOYEES



When Lanre Oni (“Lanre”) graduated from university, he was the envy of his contemporaries. No one had finished with such perfect cumulative grade point average in the history of that institution. Before his final exams, he already had offers from multinationals. Upon graduation, Lanre chose to join Choicest Oil & Gas Services Limited (“COGSL”) and worked for them for twenty years before moving on to other professional engagements and eventually starting an indigenous oil servicing firm.

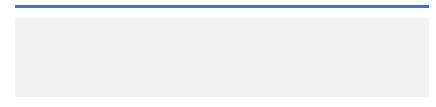
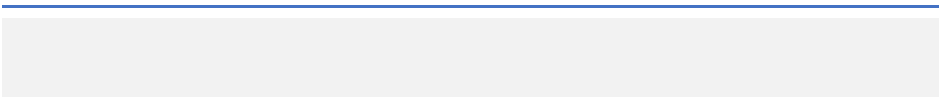
Two years after leaving COGSL, Lanre received a demand notice requesting refund of alleged salary overpayments made to him during the first five years of his service with COGSL. The demand notice informed him that he had been paid an excess of ₦15,000,000.00 (fifteen million Naira) during those years. The overpayment was due to an error of the Human Resources Department who paid Lanre salaries above his grade level. Lanre contested the demand notice, claiming that he was unaware of the said overpayments and acted in good faith throughout his time at COGSL.

COGSL has now commenced an action at the National Industrial Court of Nigeria (NICN) claiming the overpayments as well as damages and costs of the action. Lanre has now retained the services of Law & Spice LLP to defend his interests.

A similar scenario was considered in the recent case of *Pension Transition Arrangement Directorate v. Abednego Anyaegbuna Onuaguluchi*, Suit No. NICN/ABJ/104/2019, the judgment of which was delivered by the NICN, per Hon. Justice O.O. Arowosegbe, on June 9, 2022. In this case, the Court posited that overpayment *per se* is ordinarily refundable, but it would not be refundable if the justice of the case otherwise suggests.

FACTS AND FINDINGS

Mr. Abednego Anyaegbuna Onuaguluchi (“Mr. Onuaguluchi”) was a military personnel, a civil servant in the service of the defunct East Central State, a civil servant in the Anambra State Public Service and also served in the Enugu State Public Service at different times. He rose to the position of Permanent Secretary and retired from service on June 1, 1999, having served for a cumulative period of twenty-two (22) years. He thus became entitled to both Federal and State pension.



Sometime in 2015, in furtherance of its statutory powers, the Pension Transition Arrangement Directorate (“PTAD”/“*Directorate*”) carried out an audit which it claimed uncovered many discrepancies in the pension pay rolls of some retirees. This led to the suspension of the pensions of those retirees affected by the audit, pending verification. Mr. Onuaguluchi was one of those affected by the Directorate’s act. The Directorate’s claim was that Mr. Onuaguluchi was overpaid to the tune of ₦16,479,218.99 (sixteen million, four hundred and seventy-nine thousand, two hundred and eighteen Naira, and ninety-nine Kobo).

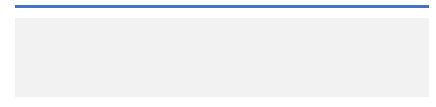
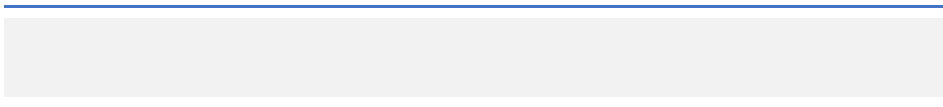


Before presenting its claims for recovery to the Court, PTAD called for verification to which Mr. Onuaguluchi voluntarily submitted himself. However, this did not resolve the issue at hand, nor was Mr. Onuaguluchi’s pension restored. Rather, PTAD instituted this matter for recovery of the overpayments. One of the grounds for recovery as presented by PTAD was that Mr. Onuaguluchi was aware that he was being overpaid, being not entitled to the sums he received as monthly pension but failed to report the overpayments at any time.

In his defence, Mr. Onuaguluchi pleaded that PTAD had no mandate to compute his pensions and that in any case, PTAD did not give him fair hearing, as he was not given an opportunity to explain his position. Rather, the Directorate secretly obtained his bank statements and tried to reverse payments made over eleven years from 2002 – 2013 and based its computations on the wrong grade level, seeing he retired as a Permanent Secretary and not on Grade Level 17 as PTAD wrongly submitted. In the circumstance, Mr. Onuaguluchi counterclaimed the sum of ₦17,064,597.68 (seventeen million, sixty-four thousand, five hundred and ninety-seven Naira, and sixty-eight Kobo) as pension arrears due and payable to him from July 2015 to October 2019 unjustly withheld by PTAD, amongst other ancillary reliefs.

In deciding the case, the Court found that the Directorate admitted against its own interest that Mr. Onuaguluchi indeed retired as a Permanent Secretary and not on Grade Level 17. The Court also found that the Directorate’s witness gave evidence at variance with pleadings as one of the documents showed a sum far below what the Directorate was claiming as overpayments. The contradictions were fatal to the Directorate’s case. The Court opined that the Directorate was just groping in the dark about the weighty issue of overpayment which must be exact to the hilt. The sum of these factors led to the failure of the Directorate’s claim.

The Court held that the way by which the Directorate abruptly and arbitrarily stopped Mr. Onuaguluchi’s pension completely for over seven years without first notifying him of the alleged overpayment, was wicked, harsh and uncivilized. The Court posited that if the Directorate felt Mr. Onuaguluchi was overpaid, the reasonable thing was to revert his pension to what it considered the right pension, and not to totally stop it, as pension cannot be stopped and stopping same is unconstitutional.



The Court also held that the defendant was not entitled to refund of overpayments spanning over a decade, having failed to prove both the existence and entitlement to the alleged overpayments in issue. To the Court, where the equity of the case demands that the Court declines to assist the alleged victim, it would not shy away from declining to help in recovering overpayment, where it appears that the repayment would cause more injustice than justice. The Court, having found that the Directorate's case failed, found Mr. Onuaguluchi entitled to the arrears of his pension and granted the counterclaim as well as ancillary reliefs.



OUR COMMENTS

Overpayments happen every now and then in employment relationships. Sometimes, employees are paid more salaries than they should contractually earn. At other times, remittances exceeding what is statutorily applicable are made in favour of an employee. Upon discovery of the discrepancies, employers are wont to take decisions to recoup the differential. Whilst this may seem a simple task, it has legal implications which will be discussed hereunder.

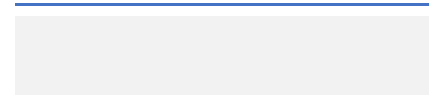
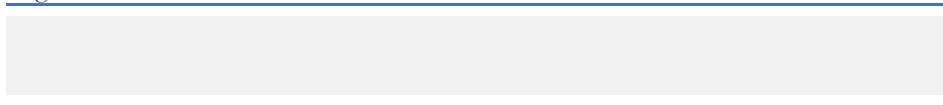
A claim for recovery of overpayments is a cause of action for money had and received, and is founded on equity. A claimant making this claim must be above board and be seen to be reasonably entitled to be refunded. The obligation (to repay) is imposed by the Court simply under the circumstances of the case and on what the Court decides is just and reasonable having regard to the relationship of the parties.¹ Equity looks at the conscience rather than the pure law and therefore, trims the harshness of the law.

The international labour standard² applicable to the scenario at hand is that, any sum which has been paid in error may be recovered, provided that the request for reimbursement is made in reasonable time. An organization's right to recover an overpayment may be partially or fully denied if the circumstances of the case show that the reimbursement sought would be unfair or inequitable for the staff member concerned.³ In the case under reference, the Court stated that overpayment *per se* is ordinarily refundable, but it would not be refundable if the justice of the case otherwise suggests; and some of the factors that might influence barring refund are stale claims, the fault of the organization in the mistake, the nature of the mistake leading to the overpayment, the relative inconvenience that would be caused to the person overpaid, and above all, the justice of the case.

¹ Oduwobi & Ors v. Backlays Bank, D.C.O (1962) LPELR-25108 (SC) 4, C–E.

² The NICN is empowered to enforce international labour standards by virtue of section 254C of the 1999 Constitution (as amended).

³ N. (R.) v. Global Fund to Fight AIDS, Tuberculosis and Malaria, Judgment 4139 of the 128th Session of the International Labour Organization Administrative Tribunal.



Although the case under reference refers to pension overpayment, the Court held that the principles govern payment of pensions and overpayment of pensions as well as payment of salaries and overpayment of salaries.

The take-home from this month's issue is that recovering overpayments of salaries or other post-employment benefits cannot be done arbitrarily. A company cannot, for instance, proceed to make deductions from the future salaries of a sitting employee outside the time permitted by law. Section 5(5) of the Labour Act provides as follows:

“Deductions may be made from the wages of a worker in respect of overpayment of wages, but only in respect of such overpayment made during the three months immediately preceding the month in which the overpayment was discovered.”

Although the Labour Act applies only to lower cadre employees,⁴ it is prescriptive of the expectations from employers even when the affected employees are senior cadre employees. In the case under reference, the Court held that section 5(5) of the Labour Act is a prescription law, prescribing when overpayments to employees would be statute-barred, thus, making such debts, stale debts. Where therefore, an employer notices an overpayment, same must be reclaimed within three (3) months of the overpayment. For claims still within the limitation period, other factors like the fault of the company, the nature of the mistake leading to the overpayment, the relative inconvenience caused the employee, and the justice of the recovery action must be put in perspective.

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⁴ See section 91(1) of the Labour Act.