
A Monthly Newsletter on Labour Law and Emerging Trends

DISMISSAL – MISS ROSEMARY MOKOGWU V. EXCEL CONTRACTS NIGERIA LIMITED (DHL EXEL CONTRACT LOGISTICS)

Facts

The claimant was in the employment of the defendant from December 16, 2004 and up till May 10, 2010, when she was summarily dismissed. Recently commended for excellent performance, the claimant received a mail from her immediate boss with the subject “*Final Warning*” on May 6, 2010, alleging that her performance was not up to standard. The claimant responded by a letter and a disciplinary committee was set up to try her case. She claimed that the panel failed to discharge its duties, which requires fair hearing, proper consideration of the charges and her defence. She also claimed that the appeal she filed against the improper decision of the panel was only heard and determined by the Managing Director, contrary to the disciplinary procedure manual of the defendant which provides that *the Appeal Board shall consist of the MD, Distribution Manager, HR Department Representative and the Manager concerned.*

The defendant claimed that it had followed due procedure for the dismissal of the claimant and gave her an opportunity to be heard, present her case and defend herself before an independent panel on the allegation of wilful insubordination, which constituted gross misconduct under its laid down procedure. It claimed that the claimant appealed the panel’s decision, her appeal was heard and the panel’s decision and letter of summary dismissal upheld.

Issues

- i. Whether the claimant has successfully proved that due processes were not followed by defendant in summarily dismissing her.
- ii. Whether the claimant is entitled to all the reliefs sought before the court.
- iii. Whether the claimant has successfully made out a case against the defendant to entitle her to the claims sought against the defendant.
- iv. Whether the court ought to place more probative value on *Exhibits D8 (a)* and *D8 (b)* tendered by the defendant.



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Finding/Decision

The court held that if a document which ought to be signed is not signed it is worthless as it renders its authorship and authenticity doubtful. It is the law that an unsigned and undated document has no evidential value. *Exhibits D8 (a) and D8 (b) (Staff Investigation Report and Investigation Report)* are reports of investigation which must be signed if they are to be authentic. The Honourable Justice mentioned **Mrs Titilayo Akisanya v. Coca-Cola Nigeria Limited & 2 others**¹, where the court held that even though the National Industrial Court (NIC) may depart from the Evidence Act in the interest of justice, this cannot be the case where it's the authenticity of a document in issue. An unsigned document calls to question its authenticity. The interest of justice in that regard cannot justify the court departing from the Evidence Act and in the manner canvassed by the defendants.



With regards to whether the dismissal was wrongful or illegal, the Honourable Justice brought up the Supreme Court's decision in **Ekeagwu v. The Nigerian Army**², where it was held that in an action for wrongful termination/dismissal/retirement only two primary issues call for determination: *whether the termination/dismissal/retirement of the plaintiff is wrongful*; and *the measure of damages recoverable where the termination/dismissal/retirement is found to be wrongful*. There is no doubt that an employer has the right to dismiss an employee even if the right is not specifically written in the contract of service. In this case the claimant agreed that the defendant has the immediate right to summarily dismiss her *but her contention is that where there is a condition precedent to the exercise of such right, the conditions must be complied with*. The claimant had disobeyed a lawful directive by her superior and claimed she wasn't given a fair hearing. *Fair hearing does not necessarily mean an oral representation. It is enough if it is in writing. Fair hearing is about an opportunity to be heard. It does not insist on oral testimonies so long as the employee had the opportunity to explain himself/herself by way of a query and reply. The moment the claimant was queried and she answered the query, the requirement of fair hearing was met*. The argument of the claimant that she was not given fair hearing by the defendant was held to have no merit whatsoever, the summary dismissal was in order. *The claimant's case accordingly fails and was dismissed*.

Comments

The NIC has been accused many times of being an employee's court, ironic in the instant case. This case also shows that though the NIC is quite flexible in its approach, it does not depart from the position of the law, evident in its refusal to attach probative value to an unsigned and undated document even though the interest of justice allows them to depart from the provisions of the Evidence Act.

Finally, the issue of fair hearing does not relate to the issue of breach of conditions of service; *the claimant must first plead and prove her conditions of service before any talk of breach of fair hearing can even be entertained. The conditions of service are accordingly sine qua non in any claim for wrongful dismissal or termination; for only the conditions of service can be used to determine the wrongfulness or otherwise of the dismissal or termination*. When the claimant asserted that her defence was not considered, it was up to her to prove that her defence, even if not actually considered, was strong enough to invalidate the summary dismissal meted on her. *She acknowledged that she disobeyed her superior, therefore her argument that she was not given fair hearing by the defendant failed*.

¹ Unreported Suit No. NICN/LA/40/2012

² [2010] LPELR-1076(SC); [2010] 16 NWLR 419 per His Lordship Onnoghen, JSC