



IS AN EMPLOYER BOUND TO STRICTLY ADHERE TO THE
RECOMMENDATIONS OF AN INVESTIGATIVE PANEL AGAINST AN
EMPLOYEE?



“Given that you were in attendance at the meetings where the conflicting figures were recorded, we find that you were complicit in the fraud, and hereby dismiss you with immediate effect”.

Kanayo Ogadi (“Kanayo”) could not stop ruminating on the above words as he cleared his office desk. He felt sad and disappointed because Oil Producing Company (“OPC”) had dismissed him despite a contrary finding of the Investigative Panel set up to review his actions.

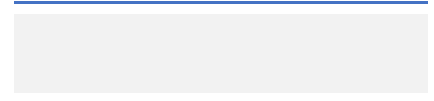
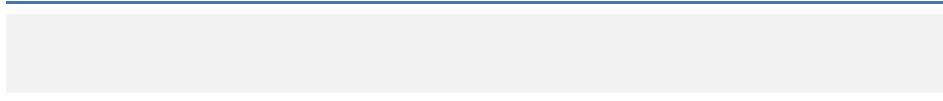
Kanayo had been a top-level officer in OPC, acting as a Senior Marketing Analyst in OPC’s business and marketing department for Eighteen (18) years. All through those years, Kanayo was known to diligently carry out his responsibilities whilst displaying a high level of integrity at the same time. No case of fraud had ever been recorded against him. Kanayo was a believer in the integrity, honesty and goodwill of his name. It therefore came as a rude shock to him when it was brought to his attention that he was being investigated alongside members of his department for conflicting figures in the accounting records presented by his department.

Kanayo appeared before the Investigative Panel with so much confidence due to his impeccable records as per his integrity. He had been hopeful that the verdict of the investigative panel would be in his favour. Despite his high expectations, the Panel found him culpable of fraudulent acts and recommended that he be compulsorily retired. Upon receiving the report of the panel, the management of OPC summarily dismissed Kanayo from OPC’s employment in utter disregard of the recommendations received from the Panel. This verdict left Kanayo feeling defeated.

Interestingly, the National Industrial Court of Nigeria (NICN) **per Hon. Justice B.B. Kanyip**, Ph.D. President, NICN, considered a similar scenario in the recent case of *Mr. Ayodele A. Opaleye v. Nigeria National Petroleum Corporation (NNPC)* (Suit No. NICN/ABJ/240/2018). In the judgement delivered on July 28, 2021 the NICN analyzed the question of *whether the NNPC was bound by the disciplinary measures recommended against the claimant by the investigative panel as to make the dismissal of the claimant illegal if not strictly adhered to.*

Facts and Findings

Mr. Ayodele A. Opaleye (“*the claimant*”) was employed by NNPC (“*the defendant*”) and was subsequently promoted to the position of Superintendent of Oil Movement (Operations) Department of the Pipeline and Product



Marketing Company of the defendant and charged with the sole responsibility of raising meter tickets based on nominated figures for loading of approved petroleum products including AGO on cargoes.

On August 3, 2005, the defendant nominated a cargo vessel to load 4000 metric tons of AGO product from Warri Refinery and Petrochemical Company (WRPC) Jetty. This was transmitted to the claimant's department and in tandem with their responsibility, the claimant's subordinate raised the meter covering the specified tons for subsequent issuance of the Cargo Order by the WRPC Jetty Operators.



However, in the course of preparing the shipping documents, a conflicting figure was discovered. The defendant set up a 6-man investigative panel, which after its enquiries found the defendant complicit in the alleged top up of petroleum products and recommended that he be compulsorily retired. To the claimant's dismay, the defendant went outside the recommendation of the Panel and instead sought the permission of the President of the Federal Republic of Nigeria to dismiss him from their service.

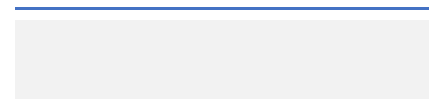
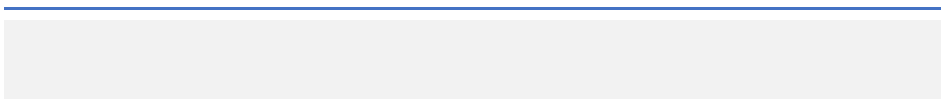
In its defence, the defendant stated that the claimant was properly dismissed in line with the law and the Public Service Rules (PSR). The defendant claimed that the dismissal was neither done maliciously nor in bad faith, but to serve as a deterrent to other staff who were in the habit of unlawfully altering and inflating approved figures of petroleum products for loading in the designated vessels thereby shortchanging the Federal Government of Nigeria and its citizens.

The Court found in favour of the claimant and ruled that the defendant not only got the claimant to be punished under an inappropriate rule of the PSR but that in handing down a punishment higher than that which the Investigative Panel recommended, the defendant went beyond its powers and so acted wrongly, maliciously, and in bad faith.

Our Comments

It is the law that an employer has the discretion to give a lesser punishment to an employee but has no discretion to give a higher punishment than that prescribed. However, this works in terms of the contract of employment and/or conditions of service. What this means is that while within the contract/conditions of service, an employer can give a lesser punishment, it cannot substitute a higher punishment than that prescribed by the contract of service.

It must be stated that there is a distinction between the recommendation of an investigative panel, which has no statutory power, and the action on the recommendation by statutory body with requisite statutory powers. The Court in the case of *University of Nigeria Teaching hospital Management Board v Nnoli* highlighted this distinction where it held that whereas the recommendation of the panel will not affect the civil rights and obligations of the



person whose act or omission is being investigated, the acting upon such recommendation does. Thus, the implementation of the recommendation by a statutory body must comply strictly with rules of natural justice.

In arriving at its conclusion in the case under review, the Court made reference to the case of *Mrs PrisciliaKio Ojei v. Central Bank of Nigeria (CBN)* where the similar question of whether the employer can reject the recommended sanction of the investigative panel and substitute it with a higher sanction, which higher sanction is provided for in



the contract/conditions of service, was considered. In this case, the claimant had been queried and investigated for an infraction. At the end of the investigation, the investigative panel recommended that she be issued a warning letter with full effect. However, CBN jettisoned this recommendation and instead dismissed her.

In an action for her wrongful dismissal, the Court having established that her employment was one clothed with statutory flavour, held that she was not punished under the appropriate provision of the Human Resource Policy and Procedure Manual as she was charged under the chapter that provided for termination but punished under the chapter that provided for dismissal. Thus, the court further held that her dismissal being a far cry from the recommendation of the disciplinary committee was indeed irregular, vindictive, illegal, null, and void.

Furthermore, the Court had noted that an employment clothed with statutory flavour must be terminated in a manner prescribed by the relevant statute and any other manner of termination which is inconsistent with the statute will be null and void and of no effect. Consequently, the implication of finding her dismissal null and void and of no effect is to set aside the said dismissal as if it never happened and to have her restored to her position. On this principle, she was immediately reinstated with all her rights.

It must be stated in conclusion, that for employments without statutory flavour, whilst the principle remains the same, and employers must terminate their employees in line with the contract of employment and recommendation of any Investigative Panel set up by the employer, no right to re-instatement exists, nor can a termination of that employment be found illegal, null and void, and of no effect. At best, the termination will be declared wrongful and the employee will be entitled to damages.

Lagos: 1, Perchstone & Grays Close, off Remi Olowude, Lekki Epe Expressway, Lagos; Tel: +234- 1-3429131, 7611051

Abuja: D3, Jima Plaza, 1627 Ahmadu Bello Way, Area 11, Garki Abuja; Tel: +234 92919191, 07045984792

Benin City: #0, Adesogbe Road, Benin City, Edo State; Tel: +234 7068518650, 07045984776

Email: counsel@perchstoneandgrays.com

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