



THE RISKS OF INDEFINITE SUSPENSION OF EMPLOYEES



Mr. Toni Ignatius (“*Toni*”) heads one of the branches of Pacific National Bank (“*PNB*”/“*the bank*”) in Nigeria. In a recent audit, the bank noticed some fraudulent activities in the branch headed by Toni and reported those activities to the Special Fraud Unit (SFU) of the Nigeria Police Force for investigation. PNB also placed Toni on an indefinite suspension without pay pending the investigation of the Police.

The SFU concluded its investigation and Toni was exonerated of the allegations levelled against him. Notwithstanding, PNB failed to recall Toni from suspension despite various correspondence to

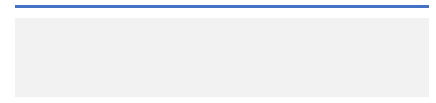
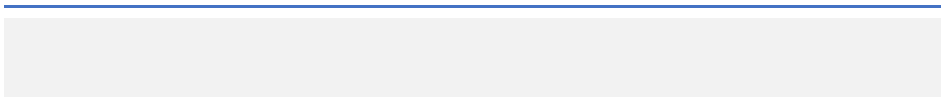
PNB. PNB then went on to terminated Toni’s employment without notifying him of same. Aggrieved, Toni instituted an action, seeking redress.

The National Industrial Court of Nigeria (“*NICN*”) per Hon. Justice O.O. Arowosegbe was opportune to consider a similar scenario that played out in the recent case of ***Mrs. Ogechukwu H. Ogbaka v. Ohha Microfinance Bank Limited (Unreported) Suit No. NICN/LA/03/2020, delivered on December 13, 2022***, where the Court held that suspension without pay that spans more than a month cannot be reasonable and valid, and same would be declared unlawful.

FACTS AND FINDINGS

Mrs. Ogechukwu H. Ogbaka (“*Ogechukwu*”) was employed by Ohha Microfinance Bank (“*OMB*”/“*the bank*”) and was deployed to its Ogu Branch as the Branch Manager/Head Treasury. In 2018, the bank lost the sum of ₦219,034,901.50 (two hundred and nineteen million, thirty-four thousand, nine hundred and one Naira, fifty Kobo) fixed with a commercial bank and accused Ogechukwu and other managerial staff of negligence and recklessness for not taking steps to avert the monumental loss. Ogechukwu was accordingly queried.

Following the query, the bank reported the matter to the Economic and Financial Crimes Commission (“*EFCC*”) for investigation and subsequently suspended Ogechukwu indefinitely. The suspension was without pay and required Ogechukwu to report to the office twice a week. The bank also forbade Ogechukwu from resigning pending the outcome of EFCC’s investigation. Upon the conclusion of the investigation by the EFCC, Ogechukwu was completely absolved of all allegations. Despite not being linked with the fraud, the bank failed to recall Ogechukwu, neither did the bank pay the arrears of salaries owed her despite many requests to that effect.



Ogechukwu proceeded to institute an action against the bank to recover her entitlements and found out for the first time that her employment had been terminated by a letter dated January 16, 2020, for gross negligence about two years after her suspension. The termination was allegedly based on the report of the bank's internal panel on the same set of facts earlier investigated by the EFCC which vindicated Ogechukwu.



Upon careful consideration of the evidence placed before the NICN, the Court concluded that the suspension and eventual dismissal of the claimant was without justification and that having not been served a dismissal letter until the institution of the suit, where same was first in time exhibited, Ogechukwu remains in the defendant's employment and is entitled to arrears of salaries from the date of her suspension till the date judgment was delivered.

The NICN further held that where suspension forbids resignation and requires the employee to report to work, such must automatically be with pay to compensate the employee for his or her deprivation to secure another job and prevented from being useful to him/herself. The Court stressed that any suspension without pay that spans more than a month, even if the contract provides for it cannot be reasonable and valid and would be declared unlawful while the employer will be held liable for payment of the arrears because it is totally inhumane to expect an employee deprived from his job, without salary, and prevented from securing another job while forbidding him to resign. In the reasoning of the court, to validate same is to encourage a worse form of enslavement in an employer-employee relationship while subjecting employees to the caprices of the employer.

OUR COMMENTS

Employers have inherent power to discipline their employees¹ but same must be reasonable and must not be outside the provisions of the contract of employment.² Throughout the period of suspension, an employee remains in the employ of the employer until that employee is dismissed or terminated. Suspensions are of two kinds.³ First, suspension as a precursor to disciplinary action, during which the employer has not made up its mind about the employee and suspension as a disciplinary action, where the allegation against the employee has been properly investigated, proven and found culpable.

When an employee is suspended without pay, it is likely to be interpreted as a disciplinary action and an employer must comply with the established disciplinary procedure and letters of the contract of employment, failure of which will ground the suspension without pay as wrongful.⁴ The position now is that where any suspension without pay spans unreasonably beyond a month, even if the contract provides for it, same will be declared unreasonable, invalid and unlawful as it is unconscionable to deprive an employee of his job, stop his salary, and

¹ See *Imonikbe v. Unity Bank Plc* [2011] 12 NWLR (Pt. 1262) 624 SC at 649 C.

² See *Udemah v. Nigerian Coal Corporation* (1991) 3 NWLR (Pt. 180) 479 at 486 and *Miaphen v. University of Jos Consultancy Limited* (2013) LPELR-21904(CA).

³ See *Mrs. Lola Rachael Badaru v. Cardinalstone Securities Limited* (unreported) Suit No. NICN/LA/413/2014, judgement delivered on January 30, 2022, per Hon. Justice I.G. Nweneka. Available at <https://nicnadr.gov.ng/judgement/details.php?id=7620>.

⁴ See *Jessica Akaa v. Sterling Bank Plc* (unreported) Suit No. NICN/KN/34/2016, judgement delivered on April 19, 2018, per Hon. Justice K. D Damulak. Available at <https://judgement.nicnadr.gov.ng/details.php?id=1711>. See also *Mr. Bisiriyu Adegoke Sheu v. Lagos NURTW (First BRT) Cooperative Society Limited* (unreported) Suit No. NICN/LA/532/2013 the judgment of which was delivered on July 1, 2015.

prevent him from securing another job. Validating such provisions in the employment contract through the Court is to encourage a worse form of enslavement.

In the case under review, the Court suggested alternatives to suspension without pay in industrial relations, including transfer or redeployment of the employee to another department where the employee cannot interfere with the course of investigation, suspension with pay, where the employee would be asked to report to the office daily without being given any work to do, and interdiction, where the employee is suspended and placed on half pay pending investigation of serious misconduct that could lead to dismissal.



As noted earlier, suspension does not equate termination or dismissal, given that it must not be unnecessarily prolonged.⁵ Therefore, upon completion of the term of suspension, an employer is duty bound to recall or dismiss the disciplined employee according to the contract of employment to avoid exposures from claims arising from employers' liability (i.e., payment of accumulated arrears of salary) and unfair labour practice.⁶ However, where the employer chooses to dismiss the employee, the employer is required to give a valid and justifiable reason for such dismissal.⁷

Employers should understand that failure to recognize the categories of suspension, either as a precursor to seamless investigation of a misconduct or a disciplinary or punitive measure, might result in a situation where an employer might suspend an employee to aid its investigation, meanwhile the effect of the suspension may be punitive and disciplinary. Likewise, suspension should not protract over a long period of time and where same will be without pay, it must be within a reasonable time. Upon completion of the suspension period, employees should not be left without remedy. They should either be recalled or terminated in accordance with the contract of employment.

Conclusively, whilst in the decision under review, the Judge stipulated one month as sufficing for a reasonable period within which suspensions can span, this is the first time the NICN will reach such a finding, and as such, the case under review is a stand alone decision. It is not clear whether subsequent cases will uphold the same timeline. The circumstances of each case and the nature of investigation required to ground culpability of any employee should determine the length of time required for suspension. Suspension can be extended if the employer is willing to pay the salaries of the employee for the entire period of the suspension.

⁵ See *West African Cotton Co. Ltd v. Oscar Amos* (unreported) Suit No. NICN/YL/10/2015, judgment delivered on June 13, 2018, per Hon. Justice Ogbuanya. Available at <https://www.nicnadr.gov.ng/judgement/details.php?id=2851>. See also *Mrs. Abdulrahman Yetunde v. University of Ilorin Teaching Hospital Management Board & Anor* (2013) 35 NLLR (Pt. 103) 40, where it was held that prolonged suspension is vindictive and an unfair labour practice.

⁶ See *Victor C. Enyidede v. Roche Construction Nigeria Limited* (unreported) Suit No. NIC/EN/105/2013, judgment delivered on February 10, 2015 per Hon. Justice O.Y. Anuwe. Available at <https://www.nicn.gov.ng/view-judgment/789>.

⁷ See *Mr. Valentine Nkomadu v. Zenith Bank Plc* (unreported) Suit No. NICN/LA/206/2015, judgment delivered on May 9, 2019 per Hon. Justice N.C.S Ogbuanya. Available at <https://www.nicnadr.gov.ng/judgement/details.php?id=3517>.

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