
A Newsletter on Labour Law and Emerging Trends



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“I WASN’T PROMOTED. I QUIT. NO, I WAS CONSTRUCTIVELY DISMISSED.”

“I dedicated seven good years of my career to my employer. In all my years of service, I provided excellent service, worked hard, yet I have not been promoted nor appreciated enough.....” Those were probably the thoughts of the disgruntled employee as he prepared his resignation letter, possibly with the hope of securing a better job elsewhere. *“On second thought, perhaps the alternative is to quit my job and sue my employer for constructive unfair dismissal”*. With those final thoughts, Joseph tendered his resignation letter and instituted the action now reported as ***Suit No: NICN/LA/291/2016 - Joseph Okafor v. Nigerian Aviation Handling Company Plc.***

FACTS

Mr. Joseph Okafor (“*Mr. Okafor*”) was employed by Nigerian Aviation Handling Company Plc (*the “Company”*) as a Senior Legal Officer in 2007. According to Mr. Okafor, he had a thriving corporate legal practice prior to his engagement. By a letter dated November 2, 2015, Mr. Okafor notified the Company of his intention to resign effective from December 31, 2015. In his resignation letter, he stated several reasons for his resignation, including non-appreciation of his service by the executive management, repeated victimization, stagnation in grade since 2009, derailment of his career in an unjustified manner, amongst other things. The management accepted his resignation without admitting or denying any of the allegations. Shortly after his resignation took effect, Mr. Okafor instituted an action against the Company, claiming amongst other things: a declaration that the actions and inactions of the Company led to his constructive unfair dismissal, as well as damages and compensation.

FINDING/DECISION

In delivering its judgment the National Industrial Court (NIC) dismissed Mr. Okafor’s case and held as follows:

1. The concept of *constructive unfair dismissal* is unknown to law. It is either constructive dismissal or unfair dismissal. Whilst unfair dismissal is often used to determine the quality of the dismissal where it is the employer who dismissed the employee, constructive dismissal is used where it is the employee who left the services of the employer on grounds of the employer’s conduct towards him.
2. With regards to the allegation of denial of promotion and entitlement, the NIC held that promotion is neither automatic nor as of right; it is at best, a privilege. It held that promotion may only be litigated where the denial was mala fide, unfair, vindictive or a clear case of victimization; Mr. Okafor failed to prove that any of these factors were present in this case, neither did he prove an entitlement to the promotion in the first place.

3. On whether Mr. Okafor was constructively dismissed, the NIC held that Mr. Okafor failed to prove that he was constructively dismissed. He ought to have shown that he resigned shortly after the occurrence of the act, or series of acts committed by the employer. The foregoing in view, the NIC found that, in the instant case, the acts which Mr. Okafor complained of occurred between 2009 and 2014, whereas, his resignation took effect in 2015. Consequently, Mr. Okafor's delay for a year before resigning is tantamount to a condonation or a waiver. Furthermore, upon a careful review of the resignation letter, his resignation was found to be planned and not an immediate consequence of the alleged misconduct of his employer.



COMMENTS

Generally, constructive dismissal occurs when an employee resigns because his/her employer's conduct has become intolerable, heinous, or has made life so difficult that the employee has no choice but to resign. This can also be where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Given that the resignation was not truly voluntary, it is in effect, a termination. Whilst the actions which constitute constructive dismissal vary from case to case, the above decision appears to streamline the conducts that may be deemed as such. For example, the Court rightly confirmed that the denial of a promotion in itself is not sufficient to sustain an action for constructive dismissal. In some organizations, employment contracts or Staff Handbooks are drafted to state clearly that whilst a promotion is not a right, the issue of promotion and increase of salary shall be at the sole discretion of the employer. This must however be weighed carefully, as in past cases, the NIC has estopped employers from hiding under this notion, where there was a promise of promotion which was not honored.

Furthermore, a mere variation of job descriptions cannot be said to amount to constructive dismissal. However, it is important for this to be stated in the employment contract or Staff Handbook. In this case, Mr. Okafor alleged that the Company unjustly derailed from his career path, thus breaching his contract. In response, the Company showed that the Employee Handbook provided that an employee may be required to work in other stations away from that which they were ordinarily employed. It is settled law that Employee Handbook forms part of the employment contract between an employer and employee. Therefore, parties are bound by the terms therein.

Thus, it behooves the employer to ensure that its contracts, handbook and policies contain adequate provisions; any conduct of the employer that is contrary to the terms therein will be deemed as a breach of contract.



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