



**RESIGNATION WITH IMMEDIATE EFFECT AND FORFEITURE
OF BENEFITS**



M.D: Bola, you cannot resign without giving notice. That's very wrong! Are you considering the needs of the Company?! Who else will take on your role to lead the IT department? This is so unfair! (The MD fumes in anger) ... In any case, if you decide to leave, you will forfeit your outstanding salaries for January and February. We had intended to pay all salary arrears at the end of this month but with your resignation without notice, you won't get anything from the company, I assure you!

Bola: With due respect MD, I earned the salaries for January and February, you cannot decide not to pay me because I resigned, after diligently serving this Company for 12 years. It is my right! This company is evil. I will take legal steps!

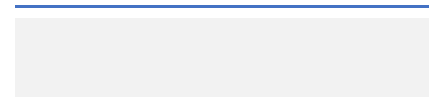
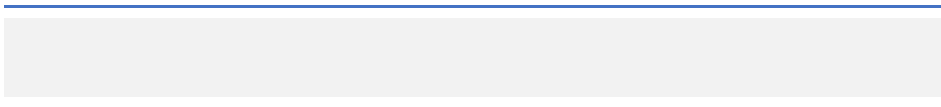
The above argument ensued between the Managing Director of Dexter Communications Limited (Dexter) and Mr. Adebola Grange (Bola), an employee of Dexter, when Bola resigned his employment with immediate effect to join another Company upon being owed salaries for two months. After the altercation with his MD, Bola cleared his desk, took his personal belongings to his car, headed to the HR's office, left a note instructing HR to deduct one month's salary in lieu notice from his terminal benefits, and left the premises.

Subsequently, Bola wrote Dexter by email requesting his outstanding salaries and terminal benefits. In response, Dexter wrote back informing Bola that he was not entitled to the outstanding salaries and terminal benefits having resigned with immediate effect. Bola is aggrieved and has consulted the law firm of Sapphire LLP for legal advice.

Interestingly, similar scenario was considered in the case of *Mr Gbenga Ogbeyemi v. Aso Savings and Loans Plc*, Suit No. NICN/ABJ/136/2019, judgment of the National Industrial Court of Nigeria (NICN) delivered by Hon. Justice B.B. Kanyip, Phd. on March 24, 2022. The NICN considered among other issues, the question of whether the claimant would be liable to forfeit all benefits including earned salary for resigning with immediate effect.

FACTS AND FINDINGS

Mr. Gbenga Ogbeyemi ("Gbenga") worked for Aso Savings and Loans Plc ("ASL") from 2001 until his resignation in 2018 with immediate effect, stating in his letter dated July 19, 2018 that his resignation was to take effect on the same day. In his resignation letter, he instructed ASL to deduct one month's pay in lieu of



notice (PILON) from his terminal benefits. Gbenga subsequently instituted an action at the NICN seeking a proper computation of his terminal benefits and payment of those benefits to him.

The Court held that Gbenga's immediate resignation carried with it the burden of immediate settlement of any indebtedness to ASL. PILON being a debt was immediately payable to ASL, and the instruction to deduct the PILON from his terminal benefits did not suffice. Nonetheless, the Court held that Gbenga was entitled to the balance of his earned outstanding salaries. The Court however denied granting non-salary compensations and other benefits, which the Court held were forfeited by Gbenga upon his resignation with immediate effect.¹



OUR COMMENTS

When an employee resigns with immediate effect, it really means that the employee chooses to terminate his/her employment with the Company on the same day the resignation letter is submitted without giving the notice stated in the employment contract. What the case under reference reestablishes, is that the immediate resignation of an employee carries with it three legal effects, which are:

1. the right to leave service automatically.
2. the employee's forfeiture of any benefits; and
3. the employee's obligation to repay any indebtedness to his employer (like the actual remittance of PILON).²

The established position of the law, as we stated in the January issue of our newsletter, is that tendering a letter of resignation by an employee carries with it the right to leave the service automatically without any benefit subject to the refund of any indebtedness to his/her employer.³ The tendering of a letter of resignation by an employee carries with it the right to leave the service automatically but disentitles the employee to the payment of any benefit, except for earned salary.⁴ This illuminating position as to the extent of benefits that are not affected- that is, non-salary compensation or non-cash payments within a compensation package- was first, or initially elucidated upon by the selfsame Court in ***Dr Dave Nwabor v. Oilflow Services Limited***.⁵ And where an employee decides to pay salary in lieu of notice, the payment must be made at the time of termination of the contract; it is not even enough to offer to pay salary in lieu of notice in the letter of termination.⁶

¹ See *WAEC v. Oshionebo* [2006] 12 NWLR (Pt. 994) 258 CA.

² See *Mr. Beloved Patrick Anokwuru v. Omatek Ventures Plc & Anor.*, unreported Suit No. NIC/LA/140/2011, the judgment of which was delivered on March 16, 2016; *Abayomi Adesunbo Adetoro v. Access Bank Plc.*, unreported Suit No. NICN/LA/293/2013, the judgment of which was delivered on February 23, 2016.

³ *supra*, note 1.

⁴ *Dr. Dave Nwabor v. Oilflow Services Limited*, unreported Suit No. NICN/LA/552/2015, the judgment of which was delivered on July 10, 2017.

⁵ *ibid.* referred to in para. 34 of the judgment under reference.

⁶ See *NNPC v. Idoniboye-Obu* [1996] 1 NWLR (Pt. 427) 655 CA; *NEPA v. Isiereore* [1997] 7 NWLR (Pt. 511) 135 CA.

The justification for having to allow the resigning employee to leave immediately and automatically is the fact that the employee forfeits any benefit he/she may be entitled to as well as the duty to pay off all indebtedness that he may have towards the employer; as such, the forfeiture of benefits inures as contractual consideration for the immediate and automatic separation of contractual relationship as per the employment in issue. So it cannot be that an employee who resigns with immediate effect is allowed to also benefit from such immediate separation by claiming benefits from the employer.⁷



Whilst an employee forfeits benefits by resigning with immediate effect, earned salaries do not qualify as such benefits and cannot be forfeited. In deciding this in the case under review, the Court defined employee benefits as *non-salary compensation that can vary from one establishment to another; often indirect and non-cash payments within a compensation package and provided in addition to salary to create a competitive package for the potential employee*. It was this definition that the Court relied upon to hold that earned salary will not qualify as benefit for the purpose of applying the rule that resignation with immediate effects implies forfeiture of benefits.

Takeaway: An employee resigning with immediate effect forfeits all accrued benefits but is entitled to earned salaries.

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⁷ Mr. Beloved Patrick Anokwuru v. Omatek Ventures Plc & Anor, unreported Suit No. NIC/LA/140/2011, the judgment of which was delivered on 16th March 2016.