

**THE LIMITS OF UNFAIR LABOUR PRACTICE
CLAIMS IN NIGERIAN LABOUR COURTS**

INTRODUCTION



Miss Anita Baker, a Ghanaian national, was employed as an English teacher at Suncrest International School in Lagos, Nigeria. Her employment status was subject to confirmation following a probationary period of six months (extendable by three months based on her performance), during which she was expected to meet 80% of the performance indicators detailed in her two-year fixed-term contract. Additionally, her probationary period could be

extended by up to three months depending on her performance.

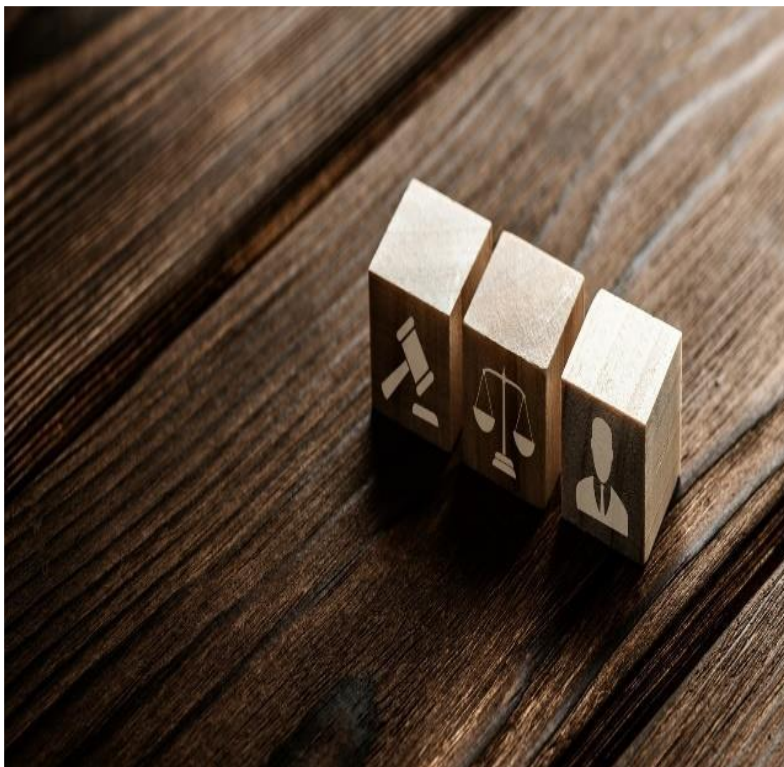
During a performance appraisal four months into her tenure, it was determined that Miss Anita's performance fell below expectations. A few weeks into the performance improvement plan she was put on, Miss. Anita experienced a medical emergency, necessitating her absence from work for over three months, during which Suncrest International School provided her medical care.

Upon her return, Miss Anita was issued a notice of termination, along with two weeks' pay in accordance with her contract. Feeling aggrieved by the timing and manner of her termination, she perceived it as unfair and contrary to international best labour practices and initiated legal action against the school, seeking various declarations and court orders to declare her termination wrongful and claim damages.

Honourable Justice M. N Esowe of the National Industrial Court of Nigeria considered issues of law arising from similar facts in **Suit No. NICN/LA/171/2021 - Mr. Thomas Francois Theron v. Hapag Lloyd Nigeria Shipping Limited (Unreported) judgment of which was delivered on February 26, 2024.** In a considered judgement of the Court, my lord dismissed the central claims of the claimant, on failure to establish the claims for unfair labour practices and due to lack of sufficient proof to show that her termination was done outside her contract of employment.

FACTS AND FINDINGS

Mr. Thomas Francois Theron (*Mr. Thomas/the claimant*), a South African, was employed as a business administration director at Hapag Lloyd Nigeria Shipping Limited (*Hapag Lloyd/the company/the defendant*). His employment, spanning a fixed two-year term, included a probationary period of three months, extendable for another three months based on performance standards. During his tenure, Mr. Thomas faced health challenges leading to absenteeism, during which the company allegedly deducted his salary. Upon his return, the company terminated his employment with one week pay in lieu of notice, prompting Mr. Thomas to pursue legal action, claiming unfair labour practices.



The Industrial court's findings reaffirmed the primacy of employment contracts in regulating employer-employee relations, and reiterated the well-established position that the burden of proof is on the employee alleging wrongful termination. Despite Mr. Thomas's claims of wrongful termination and unfair labour practices, the court ruled in favour of the company. The court emphasized that since it is customary for companies to seek profitability, with employee performance being integral to this pursuit, an employee's ineffectiveness, or failure to meet job expectations erodes trust and confidence and stops the company from achieving its fundamental profit-making goals. The court reasoned that Mr Thomas's consistent underperformance justified termination, notwithstanding the defendant's coverage of Mr. Thomas's medical expenses. The Court also found the timing of the claimant's termination which coincided with his recuperation to be unfortunate but concluded that the claimant's allegations of unfair labour practices were unfounded based on the evidence presented. While addressing the claims for wrongful salary deductions, the court considered the position of the law in *Grant Mpanugo v. CAT Construction Nigeria Limited*¹ and *Abe Adewunmi Babalola v. Equinox International Resources Limited*² on the popular principle of "no-work-no-pay" and found that the claimant's demands were for days he did not work, therefore the company's failure to pay salaries for those periods were justified.

¹ (Unreported) Suit No. NICN/LA/660/2015, judgment delivered on 20.09.2019

² (Unreported) Suit No. NICN/LA/166/2015, judgement delivered on 17.06.2020

In addressing the claimant's contention that his termination lacked a valid reason, the Court acknowledged the provision of Article 4 of the International Labour Organization Termination of Employment Convention 1982 (No. 158), as cited by the claimant and found that despite the defendant's initial failure to specify a reason for termination, evidence presented during cross-examination revealed that the claimant's unsatisfactory work performance prompted a request for an improvement action plan, which the claimant failed to provide. Consequently, the Court determined that the defendant's termination of the claimant was justified based on valid reasons related to his performance.

The Court further acknowledged the importance of a probationary period in fixed-term employment and emphasized that in fixed-term employment, confirmation of employment following a probationary period is crucial, as without it in this instance, the fixed-term employment was not activated.

Despite the setbacks on other claims, the court eventually ruled in favour of Mr. Thomas regarding flight ticket reimbursement and leave allowance, holding the defendant accountable for contractual obligations. However, claims for aggravated damages and mental health-related costs were dismissed due to insufficient evidence.

COMMENT



It is generally implied that parties to a contract of employment are expected to be bound by the provisions of the contract, and it is the duty of the Court to enforce the intention of parties as shown in the contract devoid of all ambiguities. See the case of **Stadhard v. Lee**³. However, where the contractual relationship fails to accommodate principles of international best practices in labour and employment relations, the Nigerian Industrial Courts, pursuant to the Nigerian Constitution, are empowered to enforce same and in promotion of fairness, hold such non-compliance as an unfair labour practice.

³ 3 B & S 364 at P. 372



The push against unfair labour practices seeks to ensure fairness and equity in employment relationships, ensuring that all parties in employment relationships adhere to agreed obligations and ethical standards. At its core, courts, through the unfair labour claims, attempt to maintain balance and fairness in labour relations, while ensuring adherence to established standards of conduct.

However, it is also crucial to recognize the fact that claims for unfair labour practices stem from various legal, contractual, and practical considerations in an evolving world of work. This is because while the concept of fairness in labour disputes is context-dependent, making it challenging to delineate clear boundaries for unfair labour claims, it is not altogether subjective. Unfair labour practice claims are still in consonance with valid and current legal labour principles and practices and must be established by credible evidence. This means that while employees, and in some instances, employers, have the right to challenge perceived injustices, their claims must be substantiated by facts, leaving unsupported allegations or grievances based only on personal biases to fail at the Industrial Court.

For instance, on fixed term of employment, the recognized position proposes that an employee is typically entitled to benefits and entitlements up to the end of their contract term unless terminated prematurely by the employer. However, the decisions of courts are based on the specific facts of each case. The case of **Okafor v. Nnaife**⁴ highlights this principle as the court held that the ratio of any case should be determined by considering the unique factual circumstances and not on indiscriminate application of legal principles. In the case of Mr. Thomas, his employment was evidently fixed, contingent upon satisfactory performance during a three-month probationary period. Despite Mr. Thomas's underperformance resulting from illness, the Court could not award damages for unfair labour practices on termination of his fixed employment contract because his incomplete probation meant the fixed employment period had not been finalized. Thus, his termination, though regrettable, was deemed acceptable under the circumstances.

In another instance, the prevailing position as established by case law and international best law practices on termination of employment is that employers are expected to terminate the employment of an employee with valid reasons - **First Bank v. Momoh**⁵; **Isheno v. Julius Berger Nig Plc**⁶; **Patrick ziideeh v. R.S.C.S**⁷. However, in Mr. Thomas's case, while the termination notice lacked a reason, it was revealed during proceedings that underperformance due to illness led to his termination. Despite the perceived unfairness of his termination, the company's actions remain valid, particularly for profit-driven companies. Consequently, the Court did not find grounds for unfair labour practices, despite Mr. Thomas's perception of the situation.

In conclusion, the examination of unfair labour practice claims, as evidenced in Mr. Thomas's case, highlights the intricate nature of employment disputes. While unfair labour

⁴ (1987) 4 NWLR (pt. 645) 129

⁵ [2020] LPELR-51517(CA)1@ 22-23 paras. B

⁶ [2008] 6 NWLR (PART 1084) 582@609-610(SC)

⁷ [2007] 3 NWLR (PART 1022) 554@577, Paras B – C (SC)



practice claims address a spectrum of factual grievances, their validity and success hinges on factors such as credible evidence and adherence to agreed legal standards based on fairness and protection of all parties in the workplace.

Employers must therefore give consideration to fairness in the current world of work in all employment dealings, whether in their contractual obligations or unwritten practices to mitigate the risk of unfair labour practice claims. Employees, on the other hand, must also recognize that while the balance often leans in their favour, the courts also take into account what is fair to the employer in cases involving claims of unfair labour practices. Employees must therefore understand that fairness is a two-way street, and a balanced approach is necessary to ensure equitable outcomes for both parties involved.

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