



EMPLOYEES' ABSCONDMENT FROM WORK: LEGAL IMPLICATIONS



AZ Group is an international food processing company with its head office in Sweden and subsidiaries in different parts of the world. The company carries out its operations in Nigeria as AZ Nigeria Limited (AZNL). Recently, AZ Group took over the controlling equity interest in Oxy Food Limited (OFL), thereby making OFL one of its subsidiaries in Nigeria. In a bid to utilize and maximize the resources of its subsidiaries, some employees of AZNL were transferred to OFL, but an employee, Anabel Zamani (Anabel), a managerial staff of AZNL, challenged the right of her employer to transfer her from one company to another without

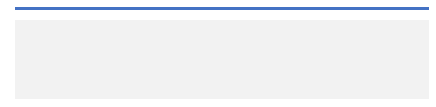
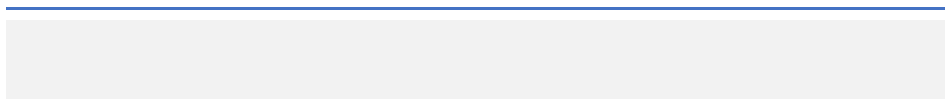
seeking her consent nor that of a labour officer as provided in *Section 10 of the Labor Act*. Given her displeasure about her transfer from AZNL to OFL, Anabel absconded from work; that is, she refused to report to work, without prior authorization, nor made any representation giving reasons for her absence from work. Upon Anabel's abscondment, she was terminated. Anabel has now sued AZNL and OFL.

The foregoing was the crux of the recent decision of the National Industrial Court of Nigeria (NICN), Kano Judicial Division, per Hon. Justice E.D.E. Isele, in ***Alh. Adeyemi Liasu Olalere v. Olam Nigeria Limited and Crown Flour Mills Limited (Suit No: NICN/KN/08/2019)***, judgment delivered on March 25, 2021, on whether the transfer of the claimant from the 1st defendant to the 2nd defendant was valid, and whether the claimant's failure to resume duties qualifies as an abscondment from work, as well as other related issues.

Facts and Findings

Alh. Olalere (claimant) was employed by Olam Nigeria Limited (ONL/1st defendant) in 1997 on probation. Upon his confirmation as a full staff of the company in 1998, he progressed career-wise and was promoted sequentially, till he became a Procurement Manager for ONL. As a managerial staff, and in compliance with the internal policies of ONL, duties could be assigned to Alh. Olalere within any department of the company, and he could be relocated to any branch of ONL within Nigeria as the need arises.

Subsequently, Alh. Olalere was transferred to Crown Flour Mill Limited (CFML/2nd defendant), a subsidiary of ONL on August 8, 2016 where he worked in the Animal Feeds Division and was paid his entitlements according to his managerial status in continuity of his employment contract with ONL under CFML's payroll.



Later on, Alh. Olalere was redeployed to the Brewery Dried Products and Cassava Procurement department of CFML in 2018. Dissatisfied with his redeployment, the claimant challenged the company on his redeployment as a form of victimization and that engaging in Brewery Dried Products procurement is contrary to his Islamic faith. He contended that ONL did not have the power to validly transfer him to another entity without his consent. However, ONL clarified that Alh. Olalere's transfer was not borne out of discrimination, oppression, or ill-treatment, but that he was transferred based on the demands and exigencies of business, and in line with his role and job description as a procurement manager.



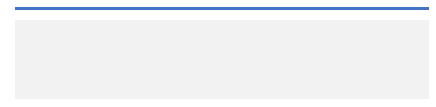
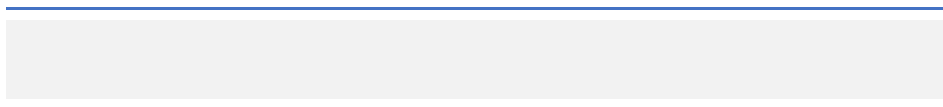
Being dissatisfied with his new role, Alh. Olalere deliberately refused to report to work without authorization, nor gave any notification or presented a relevant medical certificate to the company on what could have justified his absence for more than three consecutive days, in breach of ONL's handbook. Given the claimant's willful refusal to report to work, CFML invoked relevant disciplinary provisions of its handbook to the end that Alh. Olalere was not paid salaries within the period of his abscondment, having breached the terms of his employment contract.

Alh. Olalere subsequently instituted this action at the NICN praying the Court to hold that ONL and CFML cannot hold him to be in abandonment of his duties while he was away, and also, for the payment of his emoluments in accordance with his contract of employment among other reliefs sought. He also sought for the invalidation of his transfer from the ONL to CFML.

In dismissing his claims, the Court stated that the claimant's willful refusal to report to his assigned duty without authorization amounts to abscondment from work. More so, nothing in fact or law entitles the claimant to allowances and salaries for the year he did not work for ONL and CFML. The Court however partly upheld the counterclaim of the defendants, and held that the claimant abandoned his duties and his employment was terminated in accordance with the terms and conditions of the employment, and the claimant was ordered to return all the properties of the defendant in his possession to the defendant.

Our Comments

A contract of employment comprises the offer of employment, employee handbook, and internal policies and guidelines of a company relative to employees. A breach of any of the provisions of these documents amounts to a breach of the employment contract, with attendant consequences. An employee's contractual obligations in employment include the duty to report to work and carry out assigned roles. Where an employee willfully fails to report to work for consecutive days without authorization or any reason to justify that absence from work, such an employee will be deemed to have absconded from work and breached the terms of his employment contract.



Abscondment from work occurs when an employee fails to report to his work or duty post for a specified length of time as provided in his contract of employment without authorization or any excuse to justify his absence, thereby allowing the inference that such employee is not willing to resume work. The act amounts to a breach of the terms of the contract of employment and also, a breach of the fundamental duty of the employee to co-operate and carry out his duties in obedience to the reasonable and lawful order of his employer.¹



Abscondment from work is unethical and unprofessional on the part of an employee and it comes with harsh consequences such as loss of pay, termination, dismissal, or a criminal action against the absconding employee, where that employee absconds with properties belonging to the employer. In the case under review, the Court carefully held that nothing in fact or law entitles the claimant to any allowances and salary for the year he absconded from his duty, and upheld the termination of the claimant's employment.

In conclusion, in any case where abscondment from work is established, an employer is entitled to commence disciplinary proceedings against the erring employee, give the employee an opportunity to enter his defence, and then take disciplinary actions on the findings reached. An employer has the right to discipline any erring employee in the interest of the organization.²

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¹ See *Law v. London Chronicle Ltd* (1959) 2 All ER, 386.

² *Imonikhe v. Unity Bank Plc* [2011] 12 NWLR (Pt. 1262) 624 SC at 649.