

**NAVIGATING PENSION COMPLIANCE: EMPLOYER'S
OBLIGATIONS AND THE REGULATORY OVERSIGHT OF
THE NATIONAL PENSION COMMISSION**



Fenthil Hub Limited (Fenthil) stands as a prominent player in the Nigerian oil and gas sector, with Godfrey Obodo serving as its Chief Executive Officer (CEO). Notably, the company's trajectory took a significant turn when it secured a substantial mining contract, resulting in a remarkable surge in revenue. Recognizing the need for expanded capabilities, Fenthil promptly initiated a hiring campaign that culminated in the recruitment of over fifty individuals across various departments. This strategic move set the stage for two years of seamless operations, marked by a

consistent upward trajectory in revenue, transforming Fenthil into a growing force within the oil and gas industry.

During one of his regular departmental check-ins, the CEO received a concerning report from his chief field worker, who had spent a year working offshore. The field worker expressed frustration over the non-reflection of his pension deductions on his account with his selected Pension Fund Administrator. He explained that his attempts to contact someone for assistance while working in the field had proven futile, compelling him to send an email directly to the National Pension Commission (NPC). Upon receiving this information and recognizing the need to prevent similar complaints from other employees, the CEO swiftly convened an urgent strategy meeting. Joining him were the Chief Financial Officer (CFO), Michael Ogedengbe, and the Human Resource Manager (HRM), Anita Ogadi. Together, they determined that henceforth, all deductions and contributions would be promptly remitted in full compliance with statutory regulations.

However, just before concluding the meeting, the company's receptionist received an unexpected call from an agent representing the NPC. The agent conveyed the Commission's intent to conduct a thorough examination of all company records. This inspection was aimed at ensuring strict adherence to the provisions of the Pension Reform Act 2014 and to verify the consistent remittance of pension contributions.

To the surprise of the Commission, Fenthil declined to comply with their request. The CEO, in response, instructed the security guard not to allow any unknown individuals into the building. He subsequently informed the Commission that his company did not operate as a Pension Fund Administrator (PFA) or Pension Fund Custodian (PFC). Therefore, Fenthil was under no legal obligation to permit any inspection or examination of its records by the Commission. Deeply



aggrieved by Fenthil's refusal and the perceived insubordination, the Commission has taken legal action against Fenthil, filing a case at the National Industrial Court.

A similar scenario was considered by Hon. Justice B.B Kanyip, PHD, OFR of the National Industrial Court (NICN) in the recent case of ***National Pension Commission v The Centagon International School Limited., Suit No: NICN/ABJ/186/2022***, the judgment of which was delivered on May 16, 2023. In this case, the Court examined the National Pension Commission's authority to compel the production of pension records and inspect same, ensure the remittances of contributions, and to pursue the recovery of interest on delayed remittances, all in accordance with the stipulations of the ***Pension Reform Act, 2014 (PRA)***, in its dispute with the defendant.

FACTS AND FINDINGS

The National Pension Commission, a federal agency saddled with the responsibility of overseeing pension-related matters in both the public and private sectors of the Federal Republic of Nigeria, engaged Centagon International School Limited (Centagon), an educational institution, to examine, and review Centagon's records concerning the fulfillment of its obligations under the enabling legislation, the Pension Reform Act, 2014 (PRA).

The Commission made several requests to Centagon, urging compliance with the PRA and the presentation of evidence thereof. Centagon declined these requests. Aggrieved by Centagon's refusal and aiming to prevent potential future occurrences with similar organizations, the Commission initiated legal proceedings in the National Industrial Court claiming inter alia, declarations that it has authority under ***sections 92(2), 93, and 94(1) of the Pension Reform Act, 2014 (PRA)*** to demand production and examination of Centagon's records to ensure compliance with the contributory pension remittances under the PRA. The Commission then prayed the court to grant the Commission access to Centagon's records and order payment of interest on remittances not made in compliance with the PRA.



After a comprehensive analysis of the provisions of ***section 254C (1), section 251(1)(p) and (r) of the 1999 Constitution (3rd Alteration Act) ('Constitution')***, and the PRA, the Court dismissed the preliminary objection filed by Centagon and affirmed the jurisdiction of the National Industrial Court to adjudicate on pension related issues between a federal agency and an employer. It also established that Centagon is indeed one of the bodies over which the Commission has regulatory authority.

The Court rejected the Commission's specific claim for the payment of remittance and the interest on contributory pension remittances and found that the Commission's pleadings were insufficient to support this claim. The Court emphasized that the claims related to remittances are considered as special damages, necessitating specific pleading and strict proof. The affidavit supporting the



Commission's claim did not meet these requirements, leading the Court to conclude that those claims could not be granted, as it cannot make orders in vain.¹

However, the Court held that the Commission was indeed empowered and entitled under the PRA to request the production, inspection, and examination of the defendant's pension records. This was necessary to ensure compliance with the PRA's provisions regarding pension contributions and remittances. As a result, Centagon was ordered to grant the Commission access to its pension records for the necessary inspection, examination, and investigation. This access covered the period from January 2005 to the date of delivery of judgment.

OUR COMMENTS



The realm of pension and retirement benefits falls squarely under the purview of the National Pension Commission, a federal agency imbued with the authority to oversee and enforce compliance within both public and private organizations, as stipulated in the Pension Reform Act (PRA)².

In line with this, the PRA confers authority on the Commission to examine or investigate, through its agents, any aspect of the activities of a Pension Fund Administrator (PFA), Pension Fund Custodian (PFC), Federal Government

Pension Transitional Arrangements Directorate, Federal Capital Territory Pension Transitional Arrangements Directorate, any pension department, board of trustee, employer or body relating to pension funds or assets³. This authority also includes request for information, access to records, accounts, and other essential documents for retirement benefits and contributions⁴. The PRA also emphasizes that in exercising these powers, the Commission must exercise reasonable care to avoid causing undue disruption to the day-to-day operations of Pension Fund Administrators, Pension Fund Custodians, or any individuals or entities connected with pension funds⁵.

In the instant case, Centagon erred in its interpretation of **section 251(1)(p) and (r)** in isolation of **section 254C(1) of the Constitution**, as well as that of the PRA. This narrow reading of the statutes led to a misunderstanding and subsequent opposition to the jurisdiction of the National Industrial Court (NICN). Furthermore, Centagon's misinterpretation of the law also resulted in their refusal to comply with the Commission's demands and gave rise to legal action against them.

In adherence to the PRA, employers must therefore ensure the timely provision of accurate information when requested. Failure to do so may expose the employer to potential legal consequences

¹ NNPC V Clifco Nigeria Ltd (2011) LPELR-2022(SC)

² Sections 24, 92(2), 94, 120 of the Pension Reform Act, 2014 (PRA)

³ Section 92(2) of the Pension Reform Act, 2014

⁴ Section 94(1) of the PRA

⁵ Section 94(2) of the PRA



under the PRA. Non-compliance is considered an offence by the PRA, punishable by a fine of no less than Two Hundred Thousand Naira (~~N~~200,000.00) or imprisonment of not less than three years, or both, if found guilty⁶.

The PRA also understands the concerns and data protection responsibilities of employers in safeguarding sensitive employee data such as personal identification information, financial details, and contribution histories, related to pensions. As such, the PRA imposes the obligation of confidentiality on the Commission or any of its officers, accessing same⁷.

In the intricate realm of regulatory compliance, employers must exercise diligence in adhering to the stipulations of the PRA. While the spotlight is often on the remittance of the pension deductions, there's a vital backstage responsibility that often goes unnoticed but is equally critical. This is the maintenance of meticulous records of those remittances and the preparedness to give access to the Commission when necessary.

Employers are therefore advised to accurately record the deductions made, as this showcases both their adherence to the PRA and their dedication to ensuring the financial security and trust of their employees on their path to retirement. This harmonious approach fosters a sense of security and confidence among employees as they progress toward their retirement goals.

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⁶ Section 104 of the PRA

⁷ Section 114 of the PRA

