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TRADE DISPUTES RESOLUTION UNDER NIGERIAN LABOUR LAW*

Abstract

In any developed nation, the law on trade dispute is a matter of great legal, economic, social and political concern and is therefore central to the Labour Law. As a result, one of the dominant themes of Labour Law policy has become the improvement of trade disputes resolution mechanisms. This article examines the procedure or mechanism put in place to ensure speedy, fair and proper resolution of trade disputes as incorporated in the Trade Disputes Act which is one of the statutory interventions aimed at regulation of industrial relations. More importantly, the article also highlights the expansion of the jurisdiction of the National Industrial Court (NIC) in trade dispute resolution beyond the provisions of the Trade Disputes Act.

1. Introduction

In all nations and organizations, dispute is endemic. It is part of national and organizational life and its effective management is a necessity for organizational and national survival[1]. Dispute can both be constructive and destructive in nature. Managers and workers in many organizations are placed at cross-purposes, as the relationship of master/servant make them traditional adversaries. Managers often exert unreasonable level of pressure on the servants for improved performance. This in turn often leads to conflicts or disputes as employees may not meet the performance targets and issues of redundancy, proper remuneration, insurance for staff, etc arise. Resolution of such disputes is one of the primary concerns of labour law. The resolution of such disputes is often shrouded in controversy and fraught with difficulties, arising both from regulatory framework as well as operational logistics. The aim of this paper is to examine the provisions for dispute

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[1] L. Gordon, "Managing Conflict in Today Organization Management Training and Development," *Labour Law Journal*, Vol. 1 No. 1 (2007) p. 29. *See Beatham v. Trinidad Cement Ltd* (1960) A.C. 132 at 143, per Lord Denning.

resolution put in place to meet with the challenges of trade dispute matters in Nigeria. The paper is divided into three parts. Part one is the introduction which essentially deals with conceptual clarifications. Part two examines the various ways of resolving trade disputes in Nigeria highlighting the impact of current changes in the law while part three is the concluding remarks. We shall start by looking at the nature of trade disputes.

a. Meaning of Trade Disputes

S. 47 (1) Trade Disputes Act 2004 defines trade dispute as "Any dispute between employer and workers or between workers and workers which is connected with the employment or non-employment or the form of employment and physical condition of work of any person". Accordingly, whenever a difference exist between the parties, that is, employers and workers or workers and workers, in regard to "the employment or non-employment, or the terms of employment and physical conditions of work or any person", then a trade dispute exists. Therefore, a purely inter or intra-union disagreement which is unrelated to the employment or non-employment and physical conditions of any person is outside the ambit of trade disputes. Trade Dispute (Amendment) Decree 1992 assumed another dimension in respect of the meaning of Trade Dispute by its extension of exclusive jurisdiction of National Industrial Court (NIC) over trade dispute cases to inter or intra – union disputes. Perhaps, one good example of both inter and intra – union dispute concerns restraint of trade, where a union demands from an employer under pain of strike not to employ non-union members, this is a trade dispute since this relates to "the employment or non-employment… of any person.[2] This is equally so where two or more unions in one establishment are in disagreement as to whether certain workers should belong to one of them. Each of the unions may threaten to withdraw its labour if the affected workers do not belong to it. Or each of the unions may demand that the affected worker be relieved of their employments if they do not belong to it. One could take this as an inter-union dispute which falls within the definition of a trade dispute.[3] This matter was in issue in *Udoh &*

[2] G.O.S Amadi, *Legal Guide to Trade Unions* (Nsukka: Afro-Orbis Publishing Ltd, 1999) p. 45.
[3] *Ibid* p. 46.

Ors v. Orthopaedic Hospitals Management Board v. Anor.[4] The issue in *Udo's* case was an intra-union dispute since it concerns the employment or non-employment of the affected workers whose membership were being claimed by both the Non-academic Staff Union of Educational and Associated Institutions and Medical and Health Workers Union of Nigeria. This was what led to the institution of the action in the high court.[5] In the light of the forgoing reasoning, the NIC's exclusive jurisdiction over trade dispute cases should be confined to differences whether between employers and workers, or workers and workers, or involving inter and intra-union disagreement, which are related to the employment or non-employment, or the terms of employment or physical conditions of work of any person.

Thus, for a dispute to qualify as trade dispute, the predominant purpose of the dispute must be to promote trade union interest and this remains a question of fact in every case resting the burden of proof on the party alleging the existence of a trade dispute. To qualify as a trade dispute, the purpose must be:

(i) Legitimate and
(ii) In furtherance of the lawful interest of the workers.
(iii) The dispute must be a present one, not a contemplated or anticipated dispute.[6]

The machinery for settling trade dispute as created by the Trade Dispute Act 1990[7] is founded on hierarchy of procedures. At the base of the hierarchy is a collective bargaining process, sometimes involving mediators and then the National Industrial Court (NIC). In between these two are the conciliator and the Industrial and Arbitration Panel (IAP). The purpose of establishing these bodies is to provide effective mechanism for ironing out differences between parties to a trade dispute without necessarily having recourse to strikes and lock-outs.[8]

2. Procedure for Trade Dispute Resolution

There are four ways of resolving trade disputes under the Trade

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[4] (1990) 4 N.W.L.R, (Pt. 142) 52.
[5] G.O.S. Amadi, *op. cit.*
[6] Bodunde Bankole, *Employment Law,* (Lagos: Libri Service Ltd., 2003) p. 20.
[7] As amended by the Trade Disputes (Amendment) Decree No. 47 of 1992.
[8] G.O.S. Amadi *op. cit.*

Dispute Act. These are:-

a. Resolution by the parties themselves
b. Resolution by a conciliator
c. Resolution by arbitration, and
d. Resolution by court.

We shall discuss of each of these briefly.

A. Resolution by the Parties Themselves

The provisions of the act is such that the employer and the trade union are expected and encouraged to always resolve for themselves whatever trade dispute that may arise between them. As a result, the parties are free to enter into collective agreement which will incorporate the method by which they can settle their disputes.[9] The Act further provides that the collective agreement be deposited with the Minister of Labour and Productivity, failure of which attracts a fine of ₦100 on conviction.[10] On the strength of the settlement clause in the collective agreement, the parties are required by law to settle their trade disputes themselves.[11] However, where the collective agreement does not contain a settlement provision, or if one exists but the parties fail to reach a settlement, the Act provides that the parties should "meet together by themselves or their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties with a view to amicable settlement of the dispute".[12] Notwithstanding the foregoing, where the minister becomes aware of a trade dispute between the parties, he may *suo motu*, inform them or their representatives in writing of his observation and of what steps he proposes to take for the purpose of resolving the dispute[13] In this regard, the minister may appoint a conciliator[14] to inquire into the causes and circumstances of the dispute and by negotiation with the parties endeavour to bring about a settlement.[15] Alternatively, the minister may refer the dispute for

[9] Trade Dispute Act, s. 2(1).
[10] *Ibid.*
[11] *Ibid*, s. 3(1).
[12] *Ibid*, s. 3(2).
[13] *Ibid*, s. 4(1).
[14] Ibid, s. 4(2a).
[15] *Ibid*, s. 7(2).

settlement to the Industrial Arbitration Panel (IAP) or to some other board.[16]

B. Resolution by a Conciliator

The minister may exercise his discretion to appoint a conciliator under two circumstances – first is where he, without allowing the parties to settle the disputes themselves, appoints a conciliator to inquire into the matter. The second, is where the parties could not resolve the dispute themselves or through their mutual mediator, then the appointment of a conciliator may become necessary. The conciliator must be a fit person whose duty is to effect a settlement of the dispute between the parties.[17] Where the request to conciliate has been accepted by the other party the dispute is then referred to a conciliation body consisting of one or three conciliators to be appointed:-

a. In case of one conciliation (jointly by the parties)
b. In case of three conciliators
    i. One conciliator by each
    ii. The third conciliator jointly by the parties[18]

Section 41(1) of the Act[19] provides the conciliation body shall acquaint itself with details of the case and procure such other information, as it may be required for the purpose of settling the dispute. After the conciliation body had examined the case and heard the parties, it shall submit its terms of settlement to the parties. If the parties agree to the terms of settlements, the conciliation body shall draw up and sign a record of the settlement.[20] The conciliator shall thereafter forward to the minister the terms of settlement signed by the representatives of the parties and decision reached shall be binding as from the date which the memorandum is signed. But if the agreement is not reached and dispute not settled, the Minister shall report the case for settlement to the industrial arbitration panel.[21] The Minister is

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[16] *Ibid*, s. 4(2)(b), also see generally G.O.S. Amadi *op. cit.*
[17] Trade Disputes Act, s. 7(1).
[18] *Ibid* s. 40.
[19] *Ibid*.
[20] S. 42 (1&2).
[21] Y.A. Aauda "Employment of Independent Arbitration in the Management of Trade Disputers and Industrial Law in Nigeria," *Labour Law Journal*, Vol.

obligated on receipt of any objection to make a referral to the National Industrial Court[22] (NIC) which under the law, is the apex court on industrial dispute matters. This implies that unlike other courts where litigants can sue and be sued directly, only the Minister can refer trade disputes to the industrial court in cases other than in appeal cases where the party has the right to appeal directly to the court where he objects to the award made out either at the conciliation level or at the Industrial Arbitration Panel thereafter known as IAP.

It must however be noted that written agreement though an essential of the arbitration agreement made pursuant to the Act, does not invalidate an arbitration agreement under the Common Law and the customary law. From the foregoing, it does appear that settlement of trade dispute has a procedure. That when it fails to succeed at the level of conciliation, it is then referred by the Minister to the Industrial arbitration.

C. Resolution by Arbitration

One of the ways and the most civilized method of settling dispute is arbitration whereby those concerned agree to submit the dispute to a third party in whom both have confidence and undertake to abide by the decision of the said party.[23] Arbitration practice is as old as the history of human civilization. It is as old as mankind himself. It has a history that goes as far back as the medieval ages. In many parts of the world, forms of arbitration are known to have existed in much earlier times.

In fact, in classical Roman times, all settlements of disputes were by private arbitration with the approval and assistance of a magistrate the *pretor,* elected annually for that purpose.[24] So, what is arbitration? Ordinarily, arbitration is the use of an arbitrator to settle a dispute. An arbitrator is an independent person or body officially appointed to settle dispute that is to say that arbitration is different from going to court and asking the court to enforce a legal claim against someone or against some company, or against the state itself. So arbitration is another way of enforcing a claim. Halsbury's Laws of England

1, No. 1 (2000) p. 31.

[22] S. 13(1) *op. cit.*

[23] *Ibid.*

[24] *Ibid.*

defines arbitration as the reference of a dispute or differences of a dispute between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction.[25] So from the foregoing, arbitration must involve a reference of a dispute or difference, there must be two or more parties to the dispute, and the hearing must be in a judicial manner, by a competent person other than the court. It should however be noted that arbitration is different from mediation, negotiation and conciliation which are forms of alternative dispute resolution (ADR).

The Minister may refer the trade dispute to the Industrial Arbitration Panel when a mediator appointed by the parties under Section 3(2) of the Act could not resolve the matter[26] or may refer such matter to an arbitration tribunal when he becomes aware of a pending dispute between the parties.[27] This may entail his bypassing the use of a conciliator to settle the dispute.

i. Industrial Arbitration Panel (IAP)

Industrial arbitration panel is a statutory arbitration that arises out of a statute which provides that disputes of a particular class are to be settled by arbitration. Section 4 (2)(a) of the Act[28] empowers the Minister to refer the dispute to the Industrial Arbitration Panel (IAP). Note that the Minister wields enormous powers under the law as he could, by virtue of Section 32 of the Act[29] also appoint a board of inquiry when a trade dispute exists or is appointed to investigate the causes and circumstances and make a report thereon. The Minister also exercises enormous powers as to his options upon receipt of an objection from any party to the trade dispute. Under the law, he could forward such objection to the NIC or he could decide to redirect the award back to the IAP for reconsideration as in section 11(2)(d)[30] This statutory arbitration will be under such heads as hearing, award and enforcement in a matter.

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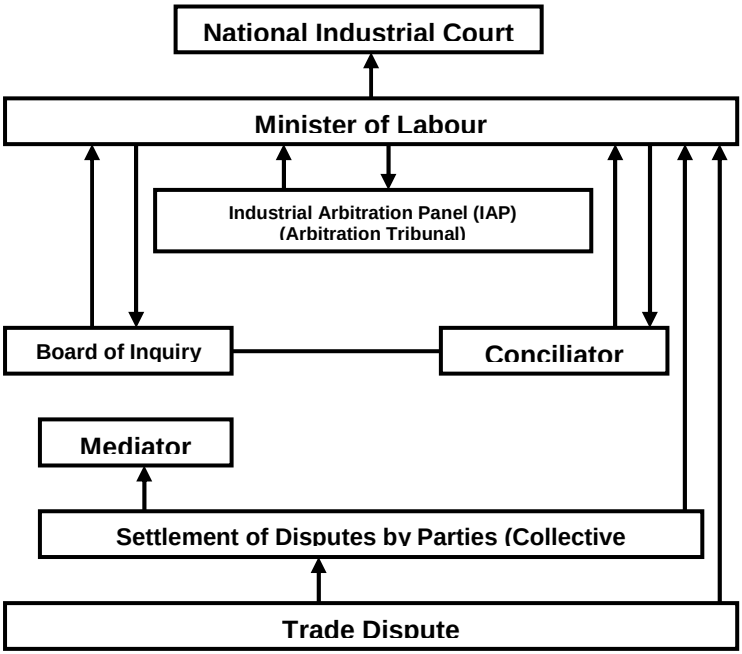
[25] *Halsbury's Laws of England*, 3rd Edition, Vol. 2 para. 2, p. 2.
[26] Trade Disputes Act, s. 8(1).
[27] Ibid, s. 4(1)(b).
[28] Cap 432, Laws of the Federation of Nigeria, 2004.
[29] *Ibid.*
[30] *Ibid.*

ii. Hearing

Hearing here entails listening to the parties in a trade dispute. This dispute as earlier stated should be between employers and employees including their respective trade union, individually or collectively. The dispute should be connected with employment or non-employment of any person and terms of employment and physical conditions of work of any person Again, the dispute should be connected with the conclusion or variation of a collective agreement and indeed any alleged dispute.[31] Hearing of trade disputes by arbitration under the Trade Disputes Act follows certain hierarchy of procedure which is graphically represented in the following diagram.[32]



[31] National Industrial Court Act (NICA) 2006, s. 54(1). The definition here is wider and supercedes the one in Trade Disputes Act 1990, as amended, S. 47(1).

[32] This is derived from analysis of ss. 2(1), 3(1), (2), 4(1), 2(a), (b), (c), 7, 8, 11, 12, 32. For further reading see G.O.S. Amadi, A legal Guide to trade Unions, presented at a workshop on Alternative Dispute Resolution Organized by Arbitration and ADR in Africa, Abuja, July 6-7, 2009 by G.O.S. Amadi.

As can be shown in the above diagram, hearing in labour dispute begins at Industrial Arbitration Panel (IAP). This is a body which the Minister of Labour sets up[33] to arbitrate in trade disputes. The composition of the Panel for the purpose of adjudication consists of the chairman, vice-chairman and not less than ten other members, all appointed by the Minister,[34] albeit two members appointed, are each nominated by the parties representing their individual interest.

The IAP now constitutes as *Arbitration Tribunal*[35] either of a *Sole Arbitrator*[36] or *Single Arbitrator*,[37] which will arbitrate between the parties. Either of the Arbitrational Tribunal is selected by the chairman from among members of the IAP. Constitution on Arbitration Tribunal of either a Sole or Single Arbitrator depends on the nature of dispute and at the discretion of the chairman While a Sole Arbitrator consists of a one-person, a Single Arbitrator is assisted by assessors to constitute the Arbitration Tribunal.[38] On the issue of hearing, there are usually no technicalities as one would find in a formal Court, for the purpose of dealing with any trade dispute, the Arbitration tribunal may:

- require any person to furnish any such matter relating tot he dispute referred to it as it requires,
- require anybody to attend before it and give evidence, on oath, or affirmation, or otherwise.
- compel the production before it of books, papers etc for the purpose of enabling them to be examined or referred to,
- proceed in the absence of a party who has been duly summoned, or served with a notice to appear
- admit or exclude the public, or the press, from any of its sittings.
- Generally give all such direction and do all such things as are necessary or expedient for dealing speedily and justly with the matter referred.

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[33] TDA, s. 8 (2)
[34] *Ibid*, s. 8(7)
[35] *Ibid*, s. 8(7)
[36] *Ibid*, s. 8(4)(a)
[37] *Ibid*, s. 8(4)(b)
[38] For further reading, see G.O.S. Amadi, *op. cit*, pp. 50-52.

Summarily, the hearing is subject to the rules of natural justice. This means that the Arbitration Tribunal must act fairly, in good faith and without bias, and must afford each party the opportunity to adequately state his case.[39]

The absence of fair hearing may vitiate the proceedings of an Arbitration Tribunal. But an irregularity in constituting an Arbitration Tribunal will not be a valid ground for questioning its act, proceeding or determination of the matter.[40] But that does not prevent the aggrieved party from appealing to the Minister. This necessarily happens after the tribunal has published the award before it becomes gazzetted.

iii. Award

The decision or judgment of the tribunal is called an award- The award must be in writing and must address the issues referred to the tribunal. The IAP is expected to consider and make its award on a matter before it within 21 days or such longer period as the Minister may allow in a particular case.[41]The award of a single arbitrator assisted by assessors is made by the arbitrator only. If the Arbitration Panel is made up of two or more arbitrators, the award is made by the majority in the event of a disagreement.[42]The IAP is expected to send its decision to the Minister and shall not communicate the award to the parties.[43]

The TDA enables the Minister to examine the award and, if he finds it desirable to do so, refer the decision back to the tribunal for reconsideration.[44] Unless and until the tribunal reconsiders the award, the Minister may not exercise his power to communicate same to the parties or their representatives as well as publish it as required by the statute.[45] The danger here is that if the Minister enjoys the sole right of determining whether an award is

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[39] *Osborn's Concise Law Dictionary*, 8th ed., p. 225.
[40] TDA, s. 11(4).
[41] *Ibid*, s. 12(1)(a).
[42] *Ibid*, s. 8(b).
[43] *Ibid*, s. 12(1)(b).
[44] *Ibid*, s. 11(3).
[45] *Ibid*, s. 11(3)(a).

wrongly or rightly made ingredients such as bias or favouritism will definitely be displayed.

When the Minister finally receives the award from the tribunal, he shall forthwith publish and give the parties or their representatives a notice setting out the award.[46] The notice shall specify the time, not more than seven days from its publication, to enable any aggrieved party to give notice of objection to the award to the Minister.[47] If the notice of objection to the award is not made within the prescribed time, the Minister will then publish it in the Federal Gazettee. This legally confirms the award[48].The probing question before us is, who actually determines the case of parties at the IAP.Is it the Minister or IAP itself? Again, as earlier noted, the Minister has the discretion to determine whether the award is reasonable or not. This has the negative effect of impinging or curbing the independence of the IAP to do their work effectively. Prof Agomo while describing the procedure at the IA Pascircuitous stated that:

> The IAP does not make an award but a recommendation since it is the Minister alone who has power to confirm an award and thus make it binding upon the parties. This reduces the effectiveness of an award and makes the IAP look like an arm of government or university[49].

iv. Enforcement

The enforcement of the award made by the IAP against the party in breach is very weak. This is because unlike the formal Court that has an organized and practical method of enforcing any judgment of the court, that is not the same with the award made by an IAP. This observation is made in the face of the fact that failure to comply with the terms of an IAP award do not usually result in criminal liabilities against the party in breach.

Another disadvantage of the situation is that sometimes the party who has had an award made in his favour is at the whims

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[46] *Ibid*, s. 12(a).

[47] *Ibid*, s. 12(2)(b)

[48] *Ibid*, s. 12(2)(c), see *Federal Ministry of Health v. National Association of Nigerian Nurses and Midwives* (1980-81) NICLR 18.

[49] C.K. Agomo, The Report on the Evaluation of the IAP and NIC, October, 1998, p. 18.

and caprices of the losing party. As a matter of fact, we see this exemplified in this country in cases where the Federal government and the trade Unions are at logger heads over certain issues More often than not, the awards are usually made against the Federal government and the trade unions in whose favour the award is made have no means of enforcing it. It degenerates to the unions getting frustrated as they are subjected to a long period of waiting hoping that the Federal government will abide by the terms of the award. Oftentimes, it becomes an indefinite wait which births the succession of the Government by another. And if the successor has a human face, it may refer to the award and comply to its terms.

However, when an award is made by the court in respect of an appeal before it, the terms therein contained become binding on the parties The award is like any other judgment of a court of competent jurisdiction and must be enforced It is contempt of court if the decision is not obeyed by the parties. Enforcement can be carried in the following ways:

(a) By cooperation of the parties, in particular the party who initiates the action. The judgment is enforced if he does everything he is required to do by the right of appeal, if he so desires to challenge the judgment.

(b) If the defeated party, say the defendant, refuses to abide by the judgment, then the victorious party i.e. the plaintiff, is required to obtain leave of court to enforce the judgment under the Sheriff and Civil Processes Act (Law). Here the court bailiff will be involved to levy execution on the defendant. The latter, may even be charged with contempt of court for his failure to obey the judgment of the IAP.[50]

D. Resolution by the Court

The TDA does not specifically provide that an aggrieved party can appeal against an award either as made by the Tribunal or as considered by the Minister. What the law provides is that an aggrieved party who has objection can do so after the Minister has published a notice of the award, and within seven days of its publication. The Minister seems to be the final arbiter here.

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[50] *Ibid.*

However, the Minister can exercise his discretionary power and refer a disputed award to the National industrial Court (NIC). For this to be done, the aggrieved party must have given his notice of objection within the seven-day stipulated time and in the manner[51] specified in the publication.[52] The Minister becomes *functus officio* once the NIC is seized of the dispute. Once such disputes get to the NIC, it ceases to be arbitration. It becomes a judicial hearing.

The National Industrial Court was established in 1 January, 1976 by virtue of section19(1) of the Trade Disputes Decree No. 7 of 1976. In 1992, the Trade Disputes Act (TDA) was amended by the Trade Disputes (Amendment) Decree No 47 of 1992 which later became the Trade Disputes Act (TDA) Cap 432 laws of the Federation 1990. In order to raise the status of the Court and to expand its jurisdiction to meet emerging challenges in industrial relations, the National Assembly in the exercise of its statutory duties enacted new National Industrial Court Act (NICA) on 14th June 2006 which was assented to by the then Nigerian President, Chief Olusegun Obasanjo. The Act therefore, takes its root from the powers derived by the legislators who made it from the constitution[53]. It was intended to be the "ultimate"[54] and "final"[55] court for the settlement of trade dispute in Nigeria.

Here the NICA creates a superior court of record which has exclusive jurisdiction in civil causes and matters relating to trade disputes.[56] This later Act seems to have now rendered nugatory the powers of the Minister under the TDA to determine an award from an Arbitration Tribunal or refer same to the Court. The new Act provides that an appeal shall lie from the decisions of an arbitral Tribunal to the Court as of right in matters of disputes as specified in Section 7(1)(a).[57] These matters relate to labour, including trade union and industrial relations as well as

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[51] *Ibid*, s. 12.
[52] *Ibid*, s. 13(1).
[53] The History of the National Industrial Court as posted on the court website: http://nicgov.ng/history.html last accessed on May 8, 2008.
[54] Trade Disputes Act, 1976
[55] Ibid, ss. (11)(2), 15(2)
[56] NICA, s. 7(1).
[57] *Ibid*, s. 7(4).

environment and conditions of work, health, safety and welfare of labour and matters incidental thereto[58].

The court is the final arbiter of matters within its exclusive jurisdiction, but this is subject to the constitution of the Federal Republic of Nigeria 1999[59] as amended. However, appeal shall lie as of right of the court of Appeal only on question of fundamental right as contained in chapter IV of the constitution[60]. In other words, once a party, apparently, alleges a breach of his fundamental right in the hearing of his matter, then that is the ground of appeal against the decision of the court. In this regard, the Court of Appeal is the final arbiter of the trade dispute.[61]

It should be recalled that the diagram above, showing the hierarchy of procedure of arbitration of trade disputes is based on the provisions of the TDA. Now, when we compare this old Act with NICA, the new Act, it seems that the parties themselves can now appeal straightaway from the tribunal to the court.[62] It seems that the Minister can no longer exercise the power of considering the award and determine whether to publish or refer it to the court. This seems implicit in the NICA which provides that for the purposes of an appeal, "… a party to an arbitral award shall be entitled to obtain a copy of the records of the arbitral proceedings and the award from the arbitral tribunal.[63]

Under the TDA, the arbitral tribunal sends the award to the Minister who then, after all consideration, publishes it in a federal Gazette confirming the award.[64]

But NICA does not seem to remove the powers of the Minister to apprehend disputes between the parties and refer then to the arbitral tribunal for settlement. However, any aggrieved party may appeal without any form of intervention by the Minister, to the court. However, it is worthy to note the significant improvement in trade dispute resolution generated by the

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[58] *Ibid*, s. 7(1)(a)(i)and(ii).
[59] *Ibid*, s. 9(1).
[60] *Ibid*, s. 9(2).
[61] G. O.S. Amadi, *op. cit*, above n. 12, also, see *Reuben O. Bashorum v. IAP & Ors* (1971) LD/105/71.
[62] See p. 6, s*upra*.
[63] NICA, s. 7(4).
[64] NICA, s. 7(5).

amendment made by the Constitution of the Federal Republic of Nigeria (CFRN) (Third Alteration) Act No.3, 2010. It has invariably taken trade dispute to another level. To start with, in the composition of the court it constitutes a president and such number of judges as may be prescribed by an act of National Assembly.[65] By Section 254(c)[66], most of the controversies surrounding the status and jurisdiction of the National Industrial Court have been laid to rest. The court is vested with extensive powers over "labour"[67] and can "make appropriate "orders decision, ruling, as well as enforcement of the award[68]," and also "interpretation and application of amongst others any – term of settlement of trade union dispute…"[69]

Again, Part IV of the Trade Disputes Act relating to the National Industrial Court has been repealed[70], and if any provision of the Trade Dispute Act is inconsistent with the provisions of the [National Industrial Court], provisions of the [latter] Act shall prevail[71]. Also for the purpose of exercising any jurisdiction conferred upon it by the Constitution or as may be conferred by an act of the National Assembly, the National Industrial Court shall have all the powers of the High Court.[72] The powers enjoyed by the NIC are so wide that section 254(d)(2)[73] further confers on it powers additional to those conferred by this section as may appear necessary. The jurisdiction of the court as provided under the Principal Act extends to the whole country, and accordingly, the president of the court is empowered to create by instrument judicial divisions of the court in any part of the federation and "may designate any such judicial division or part thereof by such name as he deems fit.[74] Also unlike under the Trade Disputes Act,

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[65] S. 6 CFRN (Third Alteration Act), 2010.
[66] *Ibid.*
[67] *Ibid*, s. 254c(1)(a) –(d).
[68] *Ibid*, s. 254c(4).
[69] *Ibid*, s. 254c(1)(j)(i – vi).
[70] NICA s. 36(1) – On Practice and Procedure.
[71] *NICA*, s. 53(2). also see Akintunde Emiola, *Nigerian Labour Law*, 4th edn., (Ogbomosho: Emiola Publishers Ltd, 2008) p. 517.
[72] S. 254(d)(i) CFRN (Third Alteration) Act No. 3 of 2010.
[73] *Ibid.*
[74] NICA, s. 21.

the court "shall be bound by the Evidence Act", though it may depart from it in the interest of justice.

Most importantly, the court has been pulled out of the Trade Dispute Act and integrated into Nigeria regular court system. This means that the scope of the operation of the court is no longer limited to that provided under the Trade Dispute Act but expanded far beyond it to meet with the multiple challenges of trade dispute.

3. Conclusion

Finally, trade disputes will always occur. The IAP in its present constitution is seriously handicapped to discharge its function effectively. The body lacks the independence required and expected of an adjudicatory body more so with the overbearing influence of the Minister on the duties of the IAP. However, it should be noted that though the IAP is bedeviled with enormous challenges, it should be noted that the simplicity of procedure at the arbitration is one of the major advantages which arbitration has over litigation in the regular courts particularly as they have a time frame within which to discharge any dispute before it. The procedure in the regular courts is governed by established standards which must be followed and this, in most cases, leads to unnecessary bureaucracy; speed is usually "crucified by unnecessary long standard procedure".

Again the parties under arbitration have a wider choice of procedure than in litigation, and each can represent himself or be represented by anyone of his choice who is not even a lawyer. The only snag in the discharge of their duty lies basically in the enforcement of award as earlier stated. In any case, the expansion of the powers of the NIC is quite apt at this point in time and a landmark under the Nigerian Labour Law. This would help prevent industrial anarchy, as the court would impact positively on the nation's security, socio-economic development, growth and stability The NIC of Nigeria has been put in place to effectively enhance the Nigerian dispute resolution mechanism and it is so far doing well.

To buttress the relevance of the NIC, it was held in the case of *National Union of Hotels and Personal Services Workers vs. (1) National Union of Food Beverages and Tobacco Employees (2) UAC of Nigeria Plc (Owners of Mr. Biggs*

Restaurants)[75], that the Industrial Arbitration Panel has original jurisdiction to entertain inter-union and intra-union disputes and that in inter-union disputes and intra-union disputes, the jurisdiction of the National Industrial Court (NIC) is appellate and not original. The NIC dismissed the application.

NIC in its report further held that the decision of the Ministry of Labour or Industrial Arbitration Panel (IAP) is not final and conclusive. If mediation fails, there is conciliation. If conciliation fails, there is arbitration and if arbitration fails, there is adjudication in the NIC. Even if adjudication fails, there is appeal to the Court of Appeal. The relevance and importance of the NIC to the people lies more on the leverage they have to institute proceedings directly in the court. The fact however remains that enforcement of the law is the cornerstone of any legal system. It is therefore the duty of the Government to see that laws, including court judgments, are enforced. That is the hall mark of the rule of law.

[75] (2004) 1 NWLR (Pt. 2) 286.