



SPA Ajibade & Co.
Legal Practitioners, Arbitrators and Notaries Public

REDUNDANCY IN A DEPRESSED ECONOMY UNDER NIGERIA'S LABOUR LAWS

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Ojo Daniel, Esq.¹

Introduction:

In times of economic depression such as is being currently experienced in Nigeria, employers of labour, especially the private sector, always consider cost-cutting measures that will enable them remain in business. The first option that may likely be considered is to resort to redundancies, even though this may indeed not be the only course of action. This article briefly examines the issue of redundancy in a depressing economy.

We will analyse of the meaning of the concepts of redundancy and a depressing economy and also examine the different situations that may lead to redundancy; the procedures to follow in handling redundancy and possible outcomes which a poor handling may have on industrial relations in the country.

Definition and Scope of Redundancy:

There is no common definition for the concept of redundancy in labour law and relations the world over. Each nation appears to define it in line with its own

¹ Managing Associate, SPA Ajibade & Co., [Legal Practitioners, Arbitrators and Consultants], Ibadan Office, Nigeria.

jurisprudential leaning. According to the Nigerian Labour Act (“the Labour Act”), "redundancy" means an involuntary and permanent loss of employment that is caused by an excess of manpower.² Going by this statutory definition, labour redundancy in Nigerian context is brought about only when there is excess of manpower in an organisation. This condition is likely to arise due to factors such as introduction of machinery in place of manual service, thereby reducing the number of personnel required to operate the machine to only those who possess the requisite skill to man the machine. Thus, any other employee manually performing the same function or routine as the machine is to perform is regarded as excess manpower. Their service to the employer’s business becomes redundant by implication and they are liable to be affected in a decision to cut back on excess manpower.

In other words, “a redundancy occurs when the services of a worker, having been in the continuous employment of an employer, are no longer required by that employer due to no fault of the worker”³ but due to exigencies of the employer’s business not being able to accommodate the services of the employee any more. This is a fairly reasonable outcome, as an employer’s primary aim of being in business is profit making. The concept of redundancy provided above appears too wide to allow for precision and certainty in the law. It has been observed that no single measure can provide conclusive evidence of labour redundancy in an enterprise; on the contrary, several combinations need to be applied.⁴

² Section 20 (3) Labour Act, Cap L1 Laws of the Federation of Nigeria, 2004.

³ See Union of Shipping, Clearing and Forwarding Agencies Workers of Nigeria v. Management of Transaltic Nigeria Limited (1988) Unrep. Suit No. NIC/14/87, available online at: <http://judgment.nicn.gov.ng/cont-dtl.php?contC=184> accessed on 18th February, 2016.

⁴ Galenson, A., *Labour Redundancy in the Transport Sector: A Review* in INFRASTRUCTURE AND URBAN DEVELOPMENT DEPARTMENT, World Bank, 1989 p. 9.

An examination of the definition of the concept of redundancy in other jurisdictions would be helpful in order to obtain a better understanding of the term. Under Section 12 of the Guyanese Termination Employment and Severance Payments Act, 1997 (TESPA),⁵ for instance, redundancy exists where:

*termination of an employment is, or is part of, a reduction in the work force that is direct result of either (a) modernization, automation, or mechanization by the employer of all or part of the business; (b) the discontinuance by the employer to carry on all or part of the business; (c) the sale or other disposition by the employer of all or part of the business; (d) the re-organization of the business by the employer to improve efficiency; impossibility or impracticability for the employer to carry on the business at its usual rate or level or at all due to: (i) a shortage of material; (ii) a mechanical breakdown; (iii) force majeure; (iv) an act of God; or (v) a reduced operation in the employer's business made necessary by economic conditions, including a lack of a change in markets, contraction in volume of work or sales, reduced demands or surplus inventory.*⁶

Similarly, by virtue of the United Kingdom's Employment Act of 1996,⁷ redundancy occurs when:

(a) an employee is dismissed due to cessation or intent by an employer to cease carrying on the business for which the employee was initially employed; or (b) the employer has stopped or intends to stop carrying on business in the place where the employee was originally employed; or (c) the employer's business no longer has the requirements for the employee to continue to carry out his services for the benefit of employer's business or that requirement has or is expected to be diminished and may not sustain efficient utilization of the employee's skill, and (d) the employer's business have insufficient particular work for the employee, or the particular work is expected to cease or diminish.

⁵ ACT No. 19 of 1997.

⁶ Ogwuche A.S., *Compendium of Laws Under Nigerian Legal System*. 2nd ed. 2008, Vol. 1 Lagos: Maiyati Chambers. p. 591.

⁷ 1996 c. 18.

The definitions of labour redundancy in other jurisdictions examined above have one common feature. They examine different situations that may give rise to labour redundancy in industrial relations. These definitions have attempted to cover every imaginable situation that may lead to termination of an employee's employment due to economic or business and operational exigencies. This provides some certainty and definitiveness in the law on the issue. This cannot be said of the Nigerian Labour Act on the matter. At best, Section 20 of the Labour Act only provides a definition that is so broad that only the Court is left with the function of providing appropriate interpretation whenever a dispute arises.

In as much as there is the need for judicial interpretation to be consistent in the dispensation of justice, it is our considered opinion that it is more desirable for laws to be certain as to leave litigants and the practitioners of law with no doubts as to their meaning and intendment. On the basis of this reasoning, it is recommended that Section 20 of the Labour Act, be amended to allow other practical situations that may account for labour redundancy to be readily read into its statutory definition.

Redundancy in a Depressing Economy:

Underlining every contract of employment is the obligation on the employer to provide work and the employee's corresponding duty to put in the best of his skills and competencies in the services of the employer. In keeping with this, Section 17 (1) of the Labour Act obliges an employer to provide work that is suitable to the worker's capacity on every day (except rest days and public holidays) on which the worker presents himself and is fit for work. Except for disciplinary reasons, failure by

the employer to provide work, entitles the employee to wages or salary he would ordinarily have earned if he had been presented with work to do.

However, the ability of the employer to always provide work for his employee will always be dependent upon factors, some of which may be beyond his control. In fact, these factors may make it imperative on the employer to restructure his business, diversify his production, or even take measures to cut his overhead costs to meet his output and allow him remain in business. In realization of such exigencies, sub-section (a) to Section 17 (1) of the Labour Act provides:

(a) where, owing to a temporary emergency or other circumstances beyond the employer's control (the period of which shall not exceed one week or such longer period as an authorized labour officer may allow in any particular case), the employer is unable to provide work, the worker shall be entitled to those wages only on the first day of the period in question....

An employment situation envisaged under Section 17 above is referred to as 'labour redundancy'. Many reasons could be responsible for this situation. These include economic factors such as growth or decline in national economy and change in terms of trade etc.,⁸ technological change, a general decline in the demand for the employer's products or services, 'operational requirements' of the employer's business, among other numerous reasons. Examples of situations that may lead to labour redundancy are where the employer's business could no longer source for foreign currency for importing raw products and high production costs, which consistently results in the employer incurring a loss. Other examples include where

⁸ Op. cit., Galenson, A., p. 6.

the employer acquires new machinery thereby reducing the number of manual labour required to perform necessary tasks, or where the new machines require new skills to operate but which the existing employees' skills could not provide, merger, consolidation, or even acquisition with other independent but similar business concerns, where organisational restructuring of the staff is carried out.

Labour redundancy could result in industrial conflicts which could have far reaching consequences on the already depressed economy. This is because its occurrence gives rise to some statutory rights and benefits in favour of the affected employees on the one hand and certain corresponding obligations on the employer, on the other. Failure by the employer to observe these obligations, especially in the procedure for handling the redundancy situation and payment of monetary compensations such as severance or redundancy allowance, in jurisdictions where such payments are applicable could lead to substantial industrial impasse. The affected employees may opt for court intervention. At worst, it may be a basis for industrial action by the organised labour union.

Whichever dimension the impasse arising from it may take; incidence of labour redundancy has the potential to worsen the already dwindling fortunes of the national economy if it is not well handled.

For further information on this article and area of law please contact Ojo Daniel, Esq., at S. P. A. Ajibade & Co., Ibadan by telephone (+234 1 472 9890), fax (+234 1 4605092) mobile (+234 815 979 4233) or email (odaniel@spaaajibade.com).

www.spaaajibade.com