

Analyzing the Duties of Employer and Employee in the Nigerian Law

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Abstract

The paper examines the duties of an employer and employee in the Nigerian law. The relationship between employer and employee or what is traditionally referred to as the master and servant relationship constitutes the very foundation of labour law; and the relationship has its basis in the contract of employment. A contract of employment is any agreement where one person agrees to employ another as an employee or worker and that other person agrees to serve the employer as an employee. An “employer” is one who employs another as a worker either for himself or for the service of any other person, and includes the agent of that first-mentioned person and the representatives of a deceased employer. An “employee” is one employed by an employer under a contract whether on a continuous or temporary apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the local, state or federal governments. The relationship between employer and employee gives rise to duties which are recognised and enforceable in law. Some of the duties of the employer include: to pay wages, to provide work and to take reasonable care of employee against workplace injury while that of the employee involve, obedience and faithfulness.

Keywords

Employer, Employee, Duties, Employment, Nigeria

1. Introduction

This research is on the duties of employer and employee in the Nigerian law. This is important so that parties in the employment relationship can be informed of some of their obligations and follow it. One characteristics of the employment contract is that its terms sometimes avoid details of the duties to be

performed by either of the parties (that is the employer and the employee). And this gives the employer the power to fix details of the performance of the work through further instructions to the employee Collins, Ewing and Mccolgan, (2012). As a result of this, the employment contract creates a power relation in which employer within limits direct the employee to obey lawful orders Collins, Ewing and Mccolgan, (2012). In this power relation, the parties will usually expect trust worthy conduct, fair treatment and good faith Collins, Ewing and Mccolgan, (2012). The following unique features of the employment contract: its incompleteness, its expectations of trustworthy conduct and surrounded by a relation of subordination makes it important for the relationship to be regulated beyond the rules of contract Collins, Ewing and Mccolgan, (2012). These regulations can be found in either legislations or subsequent agreements of the parties. The duties of parties in the employment relationship arise from the contract of employment between the employer and the employee. The duties are recognized and enforceable. A Contract of employment means any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker (section 91 Labour Act 2004). At common law, an express contract of employment does not have to be in any special form, unless there is no consideration for the contract in which case a deed is required to make it enforceable. Therefore, a contract of employment may be wholly or partially in writing or completely oral. But there are exceptions: 1) Contracts made by and with corporations have to be made under seal whether the contract is executory or executed (Nigeria Advertising Service Ltd. v Nigerian Broadcasting Corp 1968). But by virtue of S.71 of the Companies and Allied Matters Act, companies incorporated thereunder are placed on the same footing with individuals in respect to contracts. 2) Some statutes provide for the form of some types of contract of employments: i) S.4 of the Statute of Frauds; ii) S.5 of the Labour Act in respect of contracts of apprenticeship which have to be in writing; iii) S.59(4) of the Labour Act requires a written contract where a young person under 16 years is employed in circumstances in which it is not reasonably possible for him to return daily to his parents or guardian's home; iv) S.22 of the Merchant Shipping Act requires that every seaman employed in a ship must have a written agreement in the prescribed form duly signed by the master and the seaman which must specify some terms of the contract; and v) S.7 of the Labour Act which requires an employer to give a written statement specifying certain terms of employment to the worker not later than three months after the beginning of his period of employment. But it should be noted that Section 7 does not require that the contract of employment has to be in writing initially. All that it requires is that notwithstanding how it was initially formed, whether orally or otherwise, written particulars must be given within the specified period. The paper is divided into the following, Section 1 is introductory. Theoretical perspectives of the employment relationship is examined in Section 2 and used as a framework for the discussion herein. Section 3 analyzed

the duties of an employer. Section 4 focuses on the duties of the employee. Section 5 highlights the findings of the research. And Section 6 is the conclusion.

2. Theoretical Perspectives of the Employment Relationship

The employment relationship is the relationship between a worker or employee and his or her employer for whom the worker or employee does work for under some instructions in consideration for remuneration (ILO, 2006). It is in the employment relationship that duties, obligations and rights are formed between the employer and the employee. Also, the employment relationship is the platform through which employees access their benefits and rights connected to labour and employment law (ILO, 2006). The employment relationship arises from the contract of employment Emudainohwo (2020).

Kahn-Freund (1972), expressed the view that the contract of employment creates a relationship between one who has power and another who has no power and that “in its inception it is an act of submission, in its operation it is a condition of subordination” and that the aim of labour law is to use law to control the employment relationship. In support of Kahn-Freund (1972), Collins, Ewing and Mccolgan, (2012) are of the view that the employment relationship projects a structure of power or authority and that from the employment contract the employer is given legal authority to suggest and the employee is obliged to obey lawful instructions concerning the work. Collins, Ewing and Mccolgan (2012) also hold the view that the alternative to the unilateral authority of the employer would possibly have required an agreement between employee and employer on all details of the performance of the work. They say such requirement will make production inefficient and raise production costs because employees are haggling over details of assignments in the work Collins, Ewing and Mccolgan, (2012). Perhaps this is the reason why apart from the major terms of the contract of employment, joint decisions of the by the employee and employer regarding minor details of the performance of the work is not required Collins, Ewing and Mccolgan (2012). Rather such minor terms of the contract will be implied or covered by statutes. I turn now to duties of the parties (employer and employee) to the employment relationship.

3. Duties of the Employer

3.1. Duty to Pay Wages

The wages or salary which an employer is obliged to pay will normally be the subject-matter of an express term of the contract. But where an agreement for employment leaves out the matter of payment there might arise the question whether there is a contract of employment. However, at common law, a contract may be implied from the conduct of the parties. Where one party does work on the order of another under such circumstances as that it must be presumed that he looks to be paid as a matter of right. then a contract should be implied Higgins v Hopkins (1848). A term to pay will be implied in circumstances which

clearly indicate that employment was not to be gratuitous *Way v Latilla* [1937]. Where there is an implied contract or term of a contract to pay, payment is *quantum meruit* *Bryant v Flight* (1839). In certain circumstances nothing less than the national minimum wage may be payable. Note that section 3 (1) of the National Minimum Wage Act, 2019 stipulates that it shall be the duty of every employer to pay a wage not less than the national minimum wage of N30,000.00 per month to every worker under his establishment". By section 3 (3) of the National Minimum Wage Act 2019, "any agreement for the payment of wages less than the national minimum wage shall be void and of no effect whatsoever". Section 4(1) of the National Minimum Wage Act 2019 provides for exemptions as follows: The provisions of section 3(1) of the National Minimum Wage Act does not apply to 1) an establishment in which less than fifty workers are employed; 2) an establishment in which workers are employed on casual basis; 3) an enterprise where workers are rewarded on piece-rate or commission basis; 4) workers in periodic engagement such as farming; 5) worker engaged in a ship or aircraft regulated by shipping or aviation law *Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) ors* (2012). An employee who takes part in a strike is not legally entitled to any wages or salary or any other remuneration for the period of the strike. See section 43(1)(a) of the Trade Dispute Act but, where there is a lock-out by an employer, the employees are entitled to be paid their wages or salary for the period of the lock out. See section 43 (1) (b) of the Trade Dispute Act.

3.2. Duty to Provide Work

Generally, an employer is not under a duty to provide work for his employees to do; he fulfils his duty by paying wages *Turner v Sawdon & Co* [1901]. It is true, "said Asquith J in *Collier v Sunday Referee Publishing Co.* [1940]" that a contract of employment does not necessarily, or perhaps normally, oblige the master to provide the servant with work. Provided I pay my cook her wages regularly she cannot complain if I choose to take any provide work. There are three categories of such contracts. In the contract of employment of actors and actress the need to gain publicity and enhance reputation requires that work be provided. Similarly, in contract of employment in which work done is necessary and essential for the determination of wages payable, the employer is obliged to provide work. These include a contract of employment on a piece-rate or commission basis. At common law an apprentice must also be provided with work to do in order that he may be able to learn his trade and acquire the necessary skills. Section 49(1) Labour Act (2004) now provides that any person may be apprenticed to an employer for him to be trained by him or have him trained systematically for a trade or employment in which art or skill is required.

3.3. Character Testimonial or Reference

There is no legal duty on an employer to provide an employee with a testimonial or character or to answer questions from interested parties concerning an em-

ployee's character *Carrol v Bird* (1801). However, nothing precludes an employer from doing so, and in practice many employers give references and testimonials. But an employer who opts to give a reference may be exposed to any of three possible actions for damages. An action for deceit will lie where an employer makes a statement or representation which he knows to be false or which he makes recklessly not caring whether or not it is true and from which loss has resulted to the party to whom it was made and who acted upon it as was intended. In *Wilkin v Reed*, (1854), where the employee was dismissed owing to decrease in business and that was asserted by the plaintiff who employed him, the plaintiff's action based on the ground that the defendant employer knew that the employee had been dishonest while in his employment failed.

After the House of Lord's decision in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1964), it has become possible for an action for negligent misstatement which causes or results in financial loss to lie. In *Mutual Life & Citizens, Assurance Co v Evatt* (1971) the Judicial Committee of the Privy Council held, by majority, that the necessary duty of care required to sustain such an action arises only where the maker of the statement carries on a business or profession which involves the giving of advice which calls, for special skill and competence or where a person let it be known that he possesses skill and competence in the subject-matter of the inquiry. The House of Lords has now held that an employer possesses special knowledge derived from his experience of an employee's character and as such he owes a duty of care in the preparation of a reference under the *Hedley Byrne* principle. An action for defamation lies against an employer where he makes a statement to another which statement holds an employee to ridicule or contempt by reasonable persons or makes such persons shun him. However truth, or justification as it is usually called is a defence to an action for defamation. Thus, an action will fail where an employer gives a true but damaging reference. It is submitted that it is not justification to state that an employee has stolen merely because he was suspected of stealing. A conviction by the courts is necessary. But it is unclear whether it is justification to state that he is or was under suspicion. Newspaper disclaimers which merely state that the named ex-employee is no longer in the employer's employment are probably safe. An employer may also rely on the defence of qualified privilege being a person who is making a communication in discharge of a moral duty *Stuart v Bell* [1891]. However, proof by the employee of malice in the employer destroys the defence. Malice may be proved by a number of ways, including proof of the fact that the employer knew the statement was false.

3.4. Duty of Recognition of Trade Union and Collection of Check-Off Dues

An employer has a duty to accord recognition to a trade union and collect check off dues for the Union *Mix and Bake Flour Mill Industries Ltd v National Union of Food, Beverage and Tobacco Employees* (NUFBTE) (2004). The National Industrial Court of Nigeria in *Management of Tuyil Nigeria Limited v National*

Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Product Employee (2008) noted that by section 16A of the Trade Union Act, eligibility of being a member of a trade union is the yardstick, test or standard for determining deductibility of check-off dues for which the employer has no choice in the matter. The duty to deduct check-off dues is mandatory and no employer is permitted to choose whether or not to deduct. Also, the Employer has duty to grant a recognised union access to eligible members of the trade union in its employment *Management of Tuyil Nigeria Limited v National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Product Employee (2008)*. The question of recognition of a trade union or deduction of check-off dues is one that is connected with the employment or non-employment or terms of employment or conditions of work or service, so too is the question as to what deductions to make from a worker's wages or salaries which is statutorily provided for under section 5 of the Labour Act. Recognition of a trade union by an employer is compulsory and automatic by the combined effect of sections 5 (7) and 24 (1) of the Trade Unions Act (as amended) and by Section 5 (3) (a) and (b) of the Labour Act *Management of Tuyil Nigeria Limited v National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Product Employee (2008)*.

3.5. Duty of Employer to Keep Workers' Attendance

It is the duty of a Company (Employer) and not its workers to keep workers' record of attendance *Vincenti Engineering Ltd v Civil Service Technical Workers Union (1978)*. An employer has a duty to ensure that the employee is punctual to work. An employee's unauthorized absenteeism and poor attendance can lead to disciplinary action against him or her. Employers are to remind employees to turn up for their work. Employees who are always late to work or who are always absent without reason put their jobs at risk. High absenteeism is damaging to businesses *Chandler (2003)*. An Employee's or a worker's attendance is very important to business organizations as it has impact on the performance of the employee and also on the organization. Employees of various organizations have been found involved in fake leaves that affect adversely the organization's performance. This has led to work attendance management by most business concerns. Attendance management is a way of managing an employee's work attendance to ensure both the employee and organization's performance is good. Attendance control has been done using time clocks and timesheets, automation machines etc. *Obansola, Makinde, Adeshina, and Adebayo (2016)*.

3.6. Duty to Take Reasonable Care of Employee in the Workplace

An employer is under a duty, at common law, to take reasonable care to ensure that his employee is not exposed to risk of injury at his work. Where, therefore, an employee suffers injury at his work as a result of the neglect or default of his employer to take reasonable care for his safety, the employer is obliged to pay

damages in respect of the injury to the injured employee. In this connection, it is necessary that an employer must insure himself in respect of vicarious liability for injuries caused by his employees to their colleagues, though insurance is not compulsory with regard to injuries to third parties who are not in his employment. Also, S. 12 of the Labour Act, 2004 provides that it shall not be a defence to an employer who is sued in respect of personal injury caused by the negligence of one employee to another that, at the time the injuries were caused, they were both in common employment. Any such provision in the contract of employment shall be void, because an employer is under a duty to select fellow employees who will not injure their colleagues. He will, therefore, be liable for damages caused by his failure to do so. Therefore, in *C & C Construction Co. Ltd. and Augustine Ofumade v. Samuel Tunde Okhai* (2004), the second appellant was an employee of the first appellant, a construction company. The respondent was also an employee of the first appellant. They were both employed by the first appellant as industrial electricians. The respondent was under the supervision of the second appellant in the employment of the first appellant. On 6th July, 1993, the respondent, the second appellant and four other co-employees of the first appellant were servicing the first appellant's crane at the latter's Abuja premises. The sling wire of the lift was faulty and needed to be corrected. While the respondent did this, the second appellant applied the button or knob of the crane machine without signal. The crane machine suddenly mobilised and it rolled and hit the respondent's left ankle. He fell unconscious and was taken to different hospitals. The respondent's leg, below the knee, was amputated at the hospital. In a suit brought against the appellants, the Supreme Court held the employer liable for negligence. In its judgement, the court stated: if a defendant denies negligence, he may give evidence of inevitable accident but such defence must be pleaded specifically to rely on it *C & C Construction Co. Ltd. and Augustine Ofumade v. Samuel Tunde Okhai* (2004). In *Lovell v. Blundells and Crompton and Co. Ltd* (1944), Lovell was told by the defendants who were his employers to carry out overhaul of a ship boiler tubes. He could not reach certain parts of the tube so he procured some planks for himself and from there made up his own staging.⁷ The planks were unsound and therefore collapsed, causing injury to Lovell. It was proved on trial that the defendants had not provided any form of staging nor had they laid down any system of working. Delivering his judgement, Mr. Justice Tucker held that the employers were liable in negligence because they failed to supply planks in a situation where there was an obvious need for them.

Also, in the case of *General Cleaning Contractors Ltd. v. Christmas* (1952), where Christmas, an experienced window cleaner was engaged in cleaning windows at the Caledonian Club in London. His employers provided safety belts but the club's premises had no fittings to which belts could be attached. Christmas therefore carried out the work by getting hand and foothold from window frames and sills. A defective sash allowed a window to drop on his hand and,

consequently, he lost his hold and fell, suffering serious injuries. The House of Lords held that the employers were liable for failing to provide wedges to keep sashes from closing, thereby making the system of work unsafe. Similarly, in the case of *Paris v. Stepner Borough Council (1951)*, where the plaintiff lost one of his eyes and became blind and sued the defendants for not providing him with goggles, the House of Lords said the employer was held liable *Paris v. Stepner Borough Council (1951)*.

3.7. Employer's Duties under the Factories Act

The *Factories Act (2004)* imposes the following duties on the employer:

- 1) to fence flywheels and dangerous part of equipment (sections 14 - 19).
- 2) not to put new machinery into use in a factory without prior compliance with the preconditions (section 23).
- 3) duty to protect employees from contact with dangerous liquid (section 21).
- 4) duty to provide and maintain in proper condition such equipment and appliances as hoists, lift, pipes, lifting tackles and chains used for lifting workers (sections 24 - 26.)
- 5) duty to take measures to safeguard employers and other persons from fumes, exposure to dangerous fumes, explosives or inflammable dust, gas vapour and substance (sections 29 - 30.)
- 6) duty to install and use only such steam boilers, steam receivers as meet with the prescribed requirements (sections 21 - 34).
- 7) duty to install equipment that alert employees of fire and extinguishing same (sections 35 - 36).
- 8) the Act prescribes health (sections 7-12, 40 - 48).

Section 51(1) provides that notice in a given form, with the particulars attached, is sent to the head of the appropriate district by the employer, when any accident occurs in a factory which either: there was death, disabled or severe injury results in the employee not being able to perform his duties. Section 51(2) provides that when an accident which caused impairment is notified, and after notice death occurred to the impaired, written notice of the death will be by the employer to the district head of where the factory is situated. When an accident applicable to this section occurs to a worker employed and the employer of the person injured or killed is not the real employer, the person who is not the real employer shall be held liable if he fails to notify the real employer of the accident immediately (section 51(3)). An employer who contravenes the foregoing subsection could be fined an amount not above N 1000 on conviction (section 51(4)). Regarding occupational disease, section 53(1) stipulates that an employer of a factory who suspects that disease has broken out in the factory, must send notice of such disease cases, to the appropriate authority. The responsibility for administering the provision of the Factories Act is placed on the Minister of Labour who is authorized to inspect factories and compel compliance. Where he notices noncompliance or breach of the duties, he is empowered to commence criminal

action against the offending employer. S. 71 of the Factories Act imposes a fine of N 5000 on an employer whose breach leads to injury or death of a workman except where the injury resulting is too remote. The injury resulting will be too remote if there are other intervening causes of the injury. In addition to the fine, the injured party is free to bring civil action against the employer for damages.

3.8. Employer's Duties under the Labour Act

Section 7 provides that a statement specifying certain terms of employment must be delivered to the worker within three months of the period of employment. The Act in the following sections then goes on to make specific provisions regarding terms of employment. These are the barest minimal below which descent is not possible but above which there is absolute freedom. Therefore, the parties, either individually or collectively, are at liberty to negotiate terms which are superior to the statutory minimal.

Section 16 governs sick leave: a worker is entitled to be paid his wages for up to 12 working days in any one calendar year during absence from work caused by temporary illness. Other employees/workers not covered by the Act have to fall back on the Common Law position in so far as their contracts do not expressly provide for the matter. It is therefore convenient to outline the Common Law position here. It is now settled and beyond argument that absence from work owing to illness does not normally put an end to the contractual relationship, so that the contract of service continues throughout the period of incapacity until it is determined by proper notice. What has generated controversy is whether an employee should be allowed his wages in periods of absence through illness. Before 1940, the courts were almost unanimous in their view that wages were payable, but the current trend is to deny that there is such a general principle of common law and such issue is referred to the courts to ascertain what the contractual terms, implied or expressed were and that this must depend upon the facts of each case. *Marrison v. Bell* [1939]. It is however now usual to stipulate the position in the “conditions of employment handbook.”

Duty to provide work is stipulated by section 17(1); this duty is subject to the four conditions stipulated by the subsection. An employer is obliged to grant annual holiday with pay to his employees under section 18. Also, in effecting redundancy, the employer has to inform the union or workers' representative of the reasons for and the extent of the anticipated redundancy; and the principle of “last in first out” has to be adopted. This is however subject to factors such as merit, including ability skill and reliability Labour Act (2004) section 21.

50(1) requires every contract of apprenticeship to be in writing and such writing must be attested to be valid. An employer who contravenes this provision would be liable to a fine of not more than N200 or imprisonment not exceeding six months or both Labour Act (2004) section 50(1)

Section 62 requires every employer of young persons in an industrial undertaking to keep a register of; all such persons in his employment with particulars

of their ages, the dates of employment and the conditions and nature of that employment and other particulars that are necessary.

4. Duties of the Employee

4.1. Duty to Obey

The rule at common law is that an employee is under a duty to obey the orders of his employer *Linford v Stephen* (1819). “It has long been part of our law that a servant repudiates the contract of service if he wilfully disobeys the lawful and reasonable orders of his master” *Pepper v Webb* [1969]. Wilful disobedience is sufficient ground for summary dismissal of an employee *Turner v Mason* (1845). But an order must be lawful and proper for it to be obeyed. An employee is not under a duty to obey an order which is against any statute or even the common law. Such an order is unlawful. Nor is an employee under an obligation to obey an order which will expose him to danger either to his life *Turner v Mason* (1845) or health. In *Turner v Mason* (1845) a domestic servant’s request for permission to go and visit her sick mother was refused by her employer, she nonetheless did so and her disobedience was held to be sufficient ground for her dismissal. But Alderson B. said that there “may undoubtedly be cases justifying a wilful disobedience of such an order, as where the servant apprehends danger to her life”.

4.2. Faithful Service

An employee is under a duty to serve his employer with good faith and fidelity. “good faith” “fidelity” “faithful service” means that he or she must be loyal, trustworthy and committed to the work. In this regard the employee should not disclose the trade secrets of his employer to any unauthorized organization or person or disclose information about the employer’s business that can be used by a competitor to the business *Chandler* (2003). However, an employee is not under any duty to cover crime or unlawful acts done by his or her employer. He or she is to report such unlawful acts to the appropriate authorities *Chandler* (2003). It is important to note that this employee’s duty of faithful service is implied in every contract of employment *Robb v Green* [1895]. “Good faith” “fidelity” “faithful service” evolved from the common law. Under the common law the duty is considered as important to the employment relationship *Batty* (2012). The key prohibition in the duty of fidelity is the misappropriation of the employer’s property by the employee. The prohibition replicates the policy of safeguarding the economic concerns of the employer and this can be found in the earliest cases concerning faithful service or fidelity. *Robb v Green* [1895] is useful in explaining “faithful service” or “fidelity”. In that case, the employee copied secretly a list of names and addresses of his employer’s customers with the purpose of using it in competition once he left the employer’s business. It was held that an employee has an obligation to honestly and faithfully serve his employer and to protect matters confided in him *Robb v Green* [1895].

In *Wessex Dairies Ltd v Smith* [1935], Greer J emphasized that during the

continuance of his employment, the employee must act in his employer's interests. During the employer's time he has to look after, not his own interests, but those of his employer. In *Sinclair v Neighbour* [1967], an employee engaged as manager of a pool betting shop, took some money from the till to place on a bet elsewhere without the knowledge or consent of his employer. The court held his conduct was incompatible with his employment. Spare-time work will normally not, in the absence of a contractual prohibition, express or implied, be in breach of faithful service. An employee is free to use his spare time as he wishes provided this does not interfere with his duties to his employer. Employees who worked in their spare time for a rival company of their employer were held to be in breach of faithful service on the ground that "if those employees continue to work for the defendants, they will put at the disposal of the defendants any confidential information which, in the course of their work for the plaintiffs, they may obtain" *Hivac Ltd v Park Royal Scientific Instruments Ltd* [1946]. In other words, there was danger of the employer's secret being divulged. An employee must not make or accept secret profits or bribe or use his position to obtain a reward.

In the public sector of employment, the acceptance of bribes and secret profits, as well as the use of spare time, are also regulated by statute. The code of conduct for public officers contained in the fifth 'schedule of the Constitution provides, inter alia, that a public officer must not put himself in a position where his personal interest conflicts with his duties and responsibilities. He must not receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office or engage or participate in the management or running of any private business, profession or trade. public officer must not ask for or accept any property or benefits of any kind for himself or any other person on account of anything done or omitted to be done by him in the discharge of his duties. The Constitution established both a Code of Conduct Bureau and a Code of Conduct Tribunal to administer the code of conduct. See the Fifth Schedule of the Constitution.

There is implied in the contract of employment of every employee a term that he will not disclose the trade secrets and confidential information of his employer. In *Robb v Green* [1895] the employee copied a list of his employer's customers and their addresses with the intention of using the list after leaving the employer's service and setting up on his own. This was held to be a breach of fidelity. The duty not to disclose an employer's trade secret or confidential information continues even after the employment has ceased. In *Amber Size & Chemical Co v Menzel* [1913], the employer manufactured what was called amber size by a secret process comprising a secret mixture added to resin size at the critical moment. The employee acquired a material pan of this secret process which he sought to make available to a competitor of his former employer. The court held he could be restrained by injunction from doing so although there was no express contractual term restraining him from doing so. However, an employer may seek to protect himself by express provision. And the law allows him to do

so. In *Herbert Morris Ltd v Saxelby* [1916], Lord Atkinson said an employer: is entitled to have his interest in his trade secrets protected such as secret processes of manufacture which may be of vast value.

And that protection may be secured by restraining the employee from divulging these secrets or putting them to his own use. He is also entitled not to have his old customers by solicitations or such other means enticed away from him *Herbert Morris Ltd v Saxelby* [1916]. So, an employer can, by introducing suitable and appropriate clause in the contract, protect only his trade secret; he is not allowed to prevent competition from the former employee.

A contract in restraint of trade is prima facie void and unenforceable as being against public policy *Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd* [1894]. However, where a restraint is reasonable, that is reasonable in the interest of both parties and the public, it will be enforced against the employee. In resolving the issue of reasonableness, it may be said that the law is concerned, on the one hand, to give protection to the business secret of the employer and, on the other, to ensure that an employee is able to use whatever additional skill and experience he may have gained or acquired in his employment, for his own benefit and the benefit of the general public. Note that only trade secrets and confidential intonation may be protected. Other factors which the courts take into consideration in determining whether restraint clause is unreasonable and so void are: the scope of the restraint relative to the employer's business or trade, the period of time it covers and the geographical area over which it extends. A restraint clause which seeks to give protection to the employer's business beyond the actual scope of the business may well render the contract void and unenforceable.

4.3. Duty of Cooperating with Safety Measures in the Workplace

The cooperation of employees in the workplace is important for the prevention of diseases and accidents ILO (2008). An organization's safety policy must therefore ensure employees take part in this important role, which is that employees are given sufficient information on safety steps taken by the employer. The policy is required to outline the duties of an employee concerning safety in the workplace. In this regard employees have a duty to: take care of their safety and others who may be injured by their acts; follow safety instructions; use safety equipment correctly; report any situation that can lead to hazard; and report any injury or accident in the workplace ILO (2008). Employees also have certain rights with respect to occupational safety. They have: right to get away from danger, and to discontinue any work which poses threat to their health or life. Also, employees could request the employer to carry out inspections for safety of the organization, to know about hazards, safety and health in the workplace, and to collectively choose a safety representative ILO (2008).

5 Findings of the Research

The research shows that the duties imposed on the employer in the employment

relationship are more than that of the employee. This is so both under the common law and statutes. Although the reasons why more duties are imposed on an employer in the employment relationship are not usually stated in court decisions and labour statutes, scholars and judges of labour courts understand the reasons to include the following:

1) advancement of industrial peace between employees and employers, in the work place, the labour courts being aware that dispute between them can undermine the economic stability of a nation Adejumo (2007).

2) "... to counteract the inequality of bargaining power which is inherent ... in the employment relationship." Kahn Freund (1972). The principal purpose of labour law, then, is to regulate, to support, and to restrain the power of management and the power of organized labour. Kahn Freund (1972).

With these reasons in view both statutes and court decisions relating to labour and employment will usually impose more duties on the employer.

6. Conclusion

The paper examined the duties of both employer and employee in the employment relationship. The duties are both at common law and statutes. The duties of the employer include: to pay wages, to provide work and to take reasonable care of employee against workplace injury. The wages or salary which an employer is obliged to pay will normally be the subject-matter of an express term of the contract. But where an agreement for employment leaves out the matter of payment there might arise the question whether there is a contract of employment. However, at common law, a contract may be implied from the conduct of the parties. Where one party does work on the order of another under such circumstances as that it must be presumed that he looks to be paid as a matter of right, then a contract should be implied. The employee's duties are: obedience and faithfulness.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Adejumo, B. A. (2007). The Role of the Judiciary in Industrial Harmony. *The All-Nigeria Judges Conference*, Abuja.
- Amber Size & Chemical Co v Menzel [1913] 2 Ch.239.
- Attorney General, Osun State v Nigeria Labour Congress (Osun State Council) ors (National Industrial Court) Suit No: NICN/LA/275/2012.
<https://nicn.gov.ng/view-judgment/422>
- Batty, R. (2012). Examining the Incidence of Fiduciary Duties in Employment. *Canterbury Law Review*, 18, 187-212.
- Bryant v Flight (1839) 5 M&W 114.
- C & C Construction Co. Ltd. and Augustine Ofumade v. Samuel Tunde Okhai (2004) 2

- MJSC 154.
- Carroll v Bird (1801) Esp.201.
- Chandler, P. (2003). *An A-Z of Employment Law: A Complete Reference Source for Managers* (4th ed.). London: Kogan Page Limited.
- Collier v Sunday Referee Publishing Co. [1940] 2KB 647,650.
- Collins, H., Ewing, K. D., & Mccolgan, A. (2012). *Labour Law* (p. 7). Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781139227094>
- Emudainohwo, E. (2020). The Importance of an Industrial Court in the Interpretation of Labour Statutes. *Commonwealth Law Bulletin*, 46, 300-313. <https://doi.org/10.1080/03050718.2020.1781675>
- Factories Act (2004). *Cap F1 Laws of the Federation of Nigeria*.
- General Cleaning Contractors Ltd. v. Christmas (1952) 2 All ER 1110.
- Hedley Byrne & Co Ltd v Heller & Partners Ltd (1964) AC 465.
- Herbert Morris Ltd v Saxelby [1916] 1 AC 688.
- Higgins v Hopkins (1848) 3 Exch 163, 166, see Park B.
- Hivac Ltd v Park Royal Scientific Instruments Ltd [1946] Ch 169, 173, per Lord Greene M.R.
- ILO (2006). *The Employment Relationship, International Labour Conference, 95th Session, Report V(1), Fifth Item on the Agenda*. Geneva: International Labour Office. <https://www.ilo.org>
- ILO (2008). *Fundamental Principles of Occupational Health and Safety* (2nd ed., p. 47). Geneva: International Labour Office.
- Kahn-Freund, O. (1972). *Labour and the Law* (pp. 1, 8). London: Stevens and Sons.
- Labour Act Cap L1, Laws of the Federation of Nigeria 2004, Section 91.
- Linford v Stephen (1819) 69.
- Lovell v. Blundells and Crompton and Co. Ltd (1944) 2 All ER.
- Management of Tuyil Nigeria Limited v National Union of Chemical, Footwear, Rubber, Leather and Non-Metallic Product Employee, Unreported Suit No: NIC/9/2003, Judgment Delivered by Justice B A Adejumo (Presided) on 23rd of January 2008.
- Marrison v. Bell [1939] 12 K.B. 187 at 198.
- Mix and Bake Flour Mill Industries Ltd v National Union of Food, Beverage and Tobacco Employees (NUFBTE) Unreported Suit No: NIC/4/2000, Judgment Delivered by Justice B A. Adejumo (Presided) on 2nd of April 2004.
- Mutual Life & Citizens, Assurance Co v Evatt (1971) AC 793.
- Nigeria Advertising Service Ltd. v Nigerian Broadcasting Corp [1968] L.L.R. 143.
- Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd [1894] AC 535.
- Obansola, Y., Makinde, O., Adeshina, A. H., & Adebayo, O. B. (2016). Development of Staff Attendance Management System Using Fingerprint Biometric Identification Technique. *Greener Journal of Social Sciences*, 6, 55-56. <https://doi.org/10.15580/GISETR.2016.3.101916185>
- Paris v. Stepner Borough Council (1951) AC, 357.
- Pepper v Webb [1969] 2 ALL ER 216,248, per Karminsk J.
- Robb v Green [1895] 2 QB 1 at 10-11.
- Sinclair v Neighbour [1967] 2 QB 279.
- Stuart v Bell [1891] 2 QB 341.

Turner v Mason (1845) 13 M& W 112.

Turner v Sawdon & Co [1901] 2 KB 653.

Vincenti Engineering Ltd v Civil Service Technical Workers Union Unreported Suit No: NIC/23/78, Judgment Delivered by Justice P.A. Atilade (Presided) on 16th November, 1978.

Way v Latilla [1937] 3 All ER 759, 763 *per* Lord Akin.

Wessex Dairies Ltd v Smith [1935] 2 KB 80,84.

Wilkin v Reed (1854) 15 CB 192.