

The Dictum of ‘No Work, No Pay’: The Legal Implication in Nigeria and Workers’ Protection

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Abstract

The right to any form of strike action is one of the most important possessions of trade unions and they are regarded as weapons which are used to safeguard workers against low wages or poor working conditions which employers may seek to impose on them. A very good example of a strike action can be seen in the recent play-out between the Academic Staff Union of Universities (ASSU) and the Federal Government of Nigeria. On the 14th day of October, 2022 ASSU announced the suspension of its eight months’ strike action. The strike commenced on the 14th day of February, 2022. The Federal Government of Nigeria has since maintained its position that it will not pay salaries to union members for the period they did not work. It the position of the law and labour practice that employer shall provide work to the employees, the work is expected to be done by the employees in return for remuneration based on the terms and conditions of the work provided.

Key Word: No work, No Pay, Implication, Workers, Protection

1. INTRODUCTION

In the course of employment, industrial disputes often arise between employers and the employees which often culminate in industrial actions owing to lack of consensus and understanding between the employers and the employees¹. Thus, in every modern

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¹ McFarland. L, “The Right to Strike”, Penguin Books, London, 1981, p. 11. See also, Adams R.J, ‘Labor Rights as Human Rights: Implications of the International Consensus’ , 1999 <<http://www.hartford-hwp.com/archives/26/094.htm>> accessed 3 April 2022.

economic model, it will inevitably have conflicting perspectives between the forces of labor and capital, with each side turning to various means to hammer home its demands. Strikes and collective bargaining have become crucial tools for workers to interact with employers and make their demands known in these veins². Consequent upon this, it has become ubiquitous practices of workers, especially, in public sector, to embark on strike action in order to air their grievances as to their employment contract with their respective employers.

Employment, a contract of service between an employee and an employer, is dominantly regulated by the concept of employment relations. Employment relation is based on the idea that an employee consents to give his or her efforts in form of service or skills to his/her employer in which the employee's company agrees to pay for through benefits and other factors. However, while the concept of employment relations is specific, the term industrial relations has a wider interpretation. In its most basic form, industrial relations deal with all facets of work interactions. Everything that has an impact on the interaction between employees and employers is covered, from the moment an employer joins the company until he departs his position...³.

Furthermore, industrial relations, as posited by Poole⁴, concentrates on the "conflict and accommodation and reconciliation of parties and partly divergent interests of the managers, labour and trade unions, and the state and its agencies in both production and distribution spheres". Thus, it is deducible that the term "industrial relations" focuses on the industrial relations system's three main actors who interact with one another: employers, employees (and their trade unions) and the government. While the employer engages the service of his employees and the employee in turn renders such service as may be required for a reasonable.

² Francis C. Anyim and Samuel C. Okeke, 'Post-civil War Labour Policy In Nigeria And Its Impact on Industrial Relations: A Critical Appraisal', *FUO Quarterly Journal of Contemporary Research*, Vol. 7 No. 3, October 2019.

³ Noah Yusuf, "The Democratisation Process And Industrial Relations Practice in Nigeria", *Lapai Journal of Management Science*.

⁴ Poole, M.P. (1966). *Industrial Relations: The Origin of National Diversities*, London Routledge and Kegan Paul.

Consideration, the state (which is the government) also plays an important role by setting some policies and legal instrument in motion. These policies and extant laws facilitated by the government, as an actor, are to create an enabling environment for both the employers and the employee during the course of their contract of service.

As a result, at both national and international levels, there has been a quite number of legal instruments which influence the interaction and relationship existing between an employee and his/her employer. Such legal instruments include, inter alia, Trade Union (Amendment) Act, 2005⁵, Labour Act, Trade Dispute Act⁶, International Labour Organization (ILO) etc. Thus, in Nigeria, industrial actions and collective bargaining is regulated by these aforementioned national and international instruments. Accordingly, among the industrial and action policy of an employer is the “No work, No Pay” as entrenched in the Trade Disputes Act⁷.

Hence, this paper specifically seeks to appraise the implication of the “No work, No pay” principle in Nigeria on the prevalent industrial actions usually invoked by workers in Nigerian industrial relations system vis-à-vis extant laws and notable judicial pronouncements. To achieve this, this papers is divided into segments for clarity of purpose.

2. PRELIMINARY DISCOURSE

Effective and comprehensive evaluation of the principle of “No work, no pay” cannot be actualized without delving a little bit into other complimentary concepts. The principle of “No work, No Pay” is a consequential effect of various industrial actions and collective bargaining⁸. Hence, this segment seeks to discuss, briefly,

⁵ LFN 2004.

⁶ LFN 2004.

⁷ See Section 43(1)(a) of the Trade Dispute Act.

⁸ Collective Bargaining: “collective agreement” means, according to section 48 (1) of the Trade Disputes Act, is “any agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between-

- (a) An employer, a group of employers or organizations representing workers, or the duly appointed representative of any body of workers, on the one hand; and
- (b) One or more trade unions or organizations representing workers, or the duly appointed representative of any body of workers, on the other hand”

related concepts for optimum understanding and digestion of the entire discourse.

2.1 An overview of the Nigerian jurisprudence on industrial action and collective bargaining: Whereas the early phases of labor law were modeled by master and servant relationships, the employer (the master) unilaterally defined the music and the worker was free to either dance or leave⁹. However, “with time, it was only through their unity that they could muster the strength necessary to effectively negotiate for an improvement in their working conditions, leading to the birth of early unionism. Wage earners started to band together to counteract the oppression of the Master and to advance collective bargaining with their employers”...¹⁰

In Nigerian industrial relations system vis-à-vis the various regulatory instruments of law, voluntary collective bargaining prevailed as the main method of regulating industrial relations. With the aim of strengthening and effecting a strong and active collective bargaining system enactments. There have been provisions for effecting collective bargaining in Nigeria. For instance, pursuant to section 24 of Trade Union Act (as amended), for the purpose of collective bargaining, there has to be a representation acknowledged by the union members and to be recognized by their employer for bargaining process. The section provides:

25 (1) for the purposes of collective bargaining all registered Unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer.

(2) For the purposes of representation at Tripartite Bodies or any other body the registered Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered Federation, for the purpose of electing members who will represent them.

⁹ The famous aphorism is that “he who pays the piper calls the tune”.

¹⁰ Ahmed, A.B, “A Critical Appraisal of the Right to Strike in Nigeria”, IJHSS Vol. 4, No. 11(1); September 2014; 300.

Trade unions through collective bargaining, are opportune to achieve for their members, improved conditions of service in the varieties of areas bordering on the existing contract of employment as it affects them such as emoluments, security of tenure, welfare etc. they press home their needs through negotiations and dialogue with their employer or responsible stakeholders. The workers only turn to one form of industrial action or another when the parties have reached an unbreakable impasse in these negotiations or when agreements that have been duly reached are broken, with strike being a crucial component. In other words, the logical response is to take individual action to pressure the employer into satisfying their requests. Workers' use of industrial action is justified by the collapse of collective bargaining. In other words, commence a strike.

Strike in section 48 (1) of the Trade Disputes Act¹¹ means:

“The cessation of work by a body of persons employed acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers or body or body of persons employed, to accept or not accept terms of employment and physical conditions of work....”

Interestingly, “cessation of work includes deliberately working at less than usual speed or with less than usual efficiency and refusal to work includes a refusal to work at usual speed or with usual efficiency”¹². in the *Trump Shipping Corporation v Greenwich Marine Inc*, the court defined strike as:

A concerted of stoppage of work by men done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making

¹¹ Cap. T-8, Laws of the Federation of Nigeria, 2004)

¹² Section 48 (1) Trade Dispute Act

*a protest about something or the other, or supporting or sympathizing with the other workmen in such endeavor. It is distinct from stoppage brought about by an external event such as a bomb scare or by apprehension of danger*¹³.

Similarly, Black's Law Dictionary defines the term "strike" as:

*An organized cessation or slowdown of work by employees to compel the employer to meet the employees' demands; a concerted refusal by employees to work for their employer, or to work at their customary rate of speed, until the employer grants the concessions that they seek*¹⁴.

Accordingly, the writer¹⁵ noted that:

*To constitute a strike in this sense, there must be a common cessation of work and the work stoppage must be deliberate. It follows that a cessation of work by a single worker cannot be a strike, nor does it amount to a strike if a group of employees stopped working due to an external event, such as a bomb scare or apprehension of danger. A work-to-rule or the so called "go slow" or "work to contract" will not qualify as a strike generally since it does not amount to stoppage of work. However, a politically induced protest or sympathy strike still qualifies as a strike.*¹⁶

¹³ (1975) 2 All ER 989. In *Crofter Harris Tweed Co Ltd v Vetch* (1942) 1 All ER 142 at 157, Lord Wright noted that "the right of workmen to strike is the essential element in the principle of collective bargaining. It is, in other words, an essential element not only for the union's bargaining power, which is for the bargaining process itself; it is also a necessary sanction for enforcing agreed rules."

¹⁴ Bryan A Barber (Ed), *Black's Law Dictionary* (9th edn, West Publishing Co 2009) 1558.

¹⁵ Chris C. Wigwe and et.al, "The Extent of the Right to Strike in Nigerian Labor Law", (2014) (15) (1) UBLJ 12.

¹⁶ In *Federal Motor Industries (Division of United African Company Ltd) v. Automobile Boatyard Transport Equipment and Allied workers Union* (1995) All ER 340, the Court held that: "A "go-slow" action constitutes a strike action. "go-slow" the workers deliberately work at a slow pace and it results in maximum loss to the employer, whereas in "work to rule" the workers work according to an archaic rule by insisting on actually working strictly in accordance with the rules (which they do not usually obey) in such a way that it slows down production.

3. IS THERE A RIGHT TO INDUSTRIAL STRIKE IN NIGERIA?

The working class, as represented by trade unions, fought the government and their employers for nearly two centuries before achieving the right to strike¹⁷. The background of the movement is marked by ongoing class conflicts, ruthless government retaliation against strikes, bloodshed and laborers' misery. It may be recalled that during the past 20 years, Nigeria as a country has seen numerous strikes affecting the health care industry, the education sector, labor relations, and other areas, with consequently detrimental social and economic effects on the nation¹⁸.

As earlier noted, the right to strike, as a form of industrial action, is a key tool in the organized labor movement's Arsenal. The working class has fought for the right for many years. The chronology of this movement is characterized by ongoing class conflicts, ferocious retaliation by management and the government against strikers, who were had to make selfless sacrifices. Trade unions all around the world use the right as a crucial weapon to protect and advance the interests and wants of their individuals members¹⁹. The right to strike is viewed as an essential countervailing force to the strengths of capitalism, which make this truer²⁰.

Fortunately, or unfortunately, under the Nigerian extant legal instruments, before an employees' trade union can start any strike, there are laid down guidelines that must be strictly obeyed. That is, without complying with those statutory requirements, it will be

¹⁷ Bobbi, P.A, *The Right to Strike in Nigeria: An Appraisal*, (2013) (15) (3) BUKJ 265.

¹⁸ Yu7ri Divan,k *'State Capitalist Monopoly and Labour Law* (1985) 52.

¹⁹ According to a writer, "strike is a weapon of last resort that the union resorts to in order to compel their employer or management to accede to their demands, just as the employer has the right to lock out their employees. If you deny the workers such a right then what will they be left with? It is the knowledge that the workers can withdraw their services when the terms and conditions of employment are not favourable that keeps the employer on his toes." See Danes R.A, "The Trade Union (Amendment) Act 2005 and Labour Reform in Nigeria: Legal implications and Challenges" (2006) (1) *Nigerian Journal of Law and Industrial Relation*, 109.

²⁰ J.G.Getman and F.R.Marshall, *The Continuing Assault on the Right to Strike*, *Texas Law Review*, Pt. 79 VI.3

illegal for such trade union to embark on any strike. Although there is no law in Nigeria that guarantees a worker's right to engage in industrial strike action, the law does acknowledge the occurrence of strikes during trade disputes but restricts or limits workers' ability to take part in such industrial actions. The Trade Disputes Act basically outlines the requirements that must be met before a strike action may be regarded as legal in sections 3 to 14.

Sections 4, 18, and 42 of the Trade Disputes Act LFN 2004 as modified, as well as Section 31 (6) of the Trade Unions Act LFN 2004 as amended by the Trade Unions (Amendment) Act 2005 provided conditions for lawful industrial action.

Section 31 (6) of the Trade Unions Act, as amended, states that::

31 (6) No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a trade dispute unless-

- (a) The person, trade union or employer is not engaged in the provision of essential services;*
- (b) The strike or lockout concerns a labour dispute that constitutes a dispute of right;*
- (c) The strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;*
- (d) The provisions for arbitration in the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004 have first been complied with; and*
- (e) In the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.*

From the above provisions, "there are four important conditions that workers in Nigeria must fulfill before they can embark on a lawful strike. These are: 1. The workers and their union

must not be engage in the provision of essential services; 2. The Strike must be in contemplation or furtherance of a labour dispute that must constitute a dispute of right; 3. The provisions for arbitration in the Trade Disputes Act, Cap T8, LFN 2004 must be complied with; 4. The union must have conducted a ballot at which a simple majority of all registered members voted to go on strike²¹”

In addition, there must be an effort made to settle the conflict amicably. In the event that mediation is unsuccessful, a mediator must have been appointed with the intention of resolving the conflict. If mediation is unsuccessful, the Minister of Labor could then appoint a conciliator. The matter is then moved to the Industrial Arbitration Panel if the first attempt fails.

The Minister will then send any dispute regarding the Panel’s decision to the National Industrial Court. Workers are expressly forbidden from going on strike under Section 18 if the amicable settlement procedure has not been followed, a conciliator has been appointed, the dispute has been referred to the Industrial Court has issued a decision on the reference. Therefore, any strike that is being considered in defiance of the aforementioned rules is illegal.

3.1 *Appraising the Doctrine of “No Pay, No Work” in Nigeria:*

One of the areas of great concern to the government, employees of labour, investors, and trade unions in any industrial community is the maintenance of industrial peace and harmony for the sustenance growth and development of the economy and the nation. This is so because industrial disputes disrupt both the process of production and the free flow of goods and services²². Work stoppages in sectors of the economy cause great inconvenience to the community as well as pose actual danger to life and health of citizens. A very serious and dangerous development in the current labour/management

²¹ Gogo George Otutur, “Trade Unions (Amendment) Act 2005 And the Right To Strike In Nigeria: An International Perspective”, Labour Law Review NJLIR Vol. 8 NO. 4, 2014. The Supreme Court in National Union of Electricity Employees v Bureau for Public Enterprise (2010) 41 NSCQR (Pt 1) 611, following its earlier decision in National Union of Road Transport Workers v. Ogbodo (1998) 2 NWLR (Pt 537) 189 held that in determining the existence or otherwise of trade dispute, all the ingredients mentioned in Section 47(1) of Trade Dispue Act must exist.

²² Shabi Olawale, “Trade Dispute and Collective Bargaining in Nigeria’, (2014) NJLLIR 8(3).

relations in the country is the increasing use of the strike weapon by employees in both the public and private sectors of the economy on the slightest provocation or disagreement with employers of labour²³.

Since the beginning of the strike action in February, 2022 till this moment, public varsities have been closed. Students as well have been the victim with respect to the time they eventually spend while pursuing their degree. Workers refuse to work throughout the period in which the strike action lasted. Strikes and struggles are undoubtedly bad winds that are detrimental to both companies and employees. Strikes affect more than just the employers' business. The workers lose money because of it. The state's economy and, in some situations, the social order are invariably disrupted. The industrial sword called strike has two edges. A significant amount of wage-earning man hours are lost, in addition to the impact on the country's economy, and the employer also loses monthly income.

Conversely, the extant provisions of law regulating the industrial relations in Nigeria gives room for the principle of "No work, no pay". While the workers/employees are not disallowed to embark on industrial relations. The philosophy is simply that when a person is employed, it is expected that the work assigned will be carried out. When this is not done, the employee is not eligible for payment of any salary²⁴.

Morgan v. Fry²⁵, it was held, succinctly, that: " to a layman, the position is quite clear: in a strike, the men do not work, and the employees pay no wages²⁶."

The idea is considered as a result of a labour dispute that took the shape of strikes, and it is a tool used by employers to discipline workers who skip work for that reason. Hence, under the Nigeria extant laws regulating industrial relations, the sanction provided in section 43 (1) (a) of Trade Disputes Act is loss of wages for the period of strike as follows:

²³ Ibid.

²⁴ Hilary Ekpo, "Relevance of no work, no pay rule in curbing incessant labour unrest in Nigeria's public Sector", available at <https://guardian.ng/features/relevance-of-no-work-no-pay-rule-in-curbing-incessant-labour-unres-in-nigerias-public-sector/> accessed 26 June 2022.

²⁵ (1968) 2 QB 710 at 729

²⁶ Ibid

43. Special provision with respect to payment of wages during strikes and lock-outs

(1) Notwithstanding anything contained in this Act or in any other law-

(a) where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike, and any such period shall not count for the employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly;

The pith and substance of the above provision from an ordinary construction is that, an employer is entitled to withhold or refuse to pay an employee for the period in which an industrial action occurs. However, the Law on this is not cast in immovable mountains as a departure from this principle may apply. On this we call in aid the decision of the National Industrial Court in the case of *Senior Staff Association of Nigeria (SSAN) v Federal Government of Nigeria*²⁷. In this case, the Court opined that it is not contrary to section 43(1)(1) of the Trade Dispute Act if an employer decides not to invoke the machinery of “no work, no pay rule” if employees are paid even while they embark on strike.

The principle has assumed a proportionate approval as “the Committee of Experts on the Application of Conventions and Recommendation (CEACR) of the ILO has refrained from criticizing the legislation of member States which provide for wage deductions in the event of strike action and has indicated that, as regards strike pay”. They also emphasized that, “in general the parties should be free to determine the scope of negotiable issues²⁸”.

3.2 *The Rationale behind the Policy:* Because employers’ objectives are typically at odds with those of employees, both sides strive to use their influence and resources to advance their own goals. Conflict unavoidably results from the techniques they employ

²⁷ Suit No: NIC/8/2004.

²⁸ Bernard Gernigon, Alberto Qdero and Horacio Guido-ILO principles concerning the right to strike’ (1998) *International Labour Review* Vol. 137 No. 4 at p. 471,

clashing²⁹. As stated above, strike is part of the instruments employed by trade unions to drive home their demands. However, it is also trite that, if left unchecked, strikes could become out of hand and have negative effects on the political system. Hence, the common law doctrine of “no work, no pay” which has been incorporated as part of statutory regulations on industrial relations.

The doctrine of ‘no work, no pay’ is a principle of equity and natural justice. It offers a solid groundwork for long-term industrial unity and tranquility. Because it protects the foundation of industrial peace, advancement, and prosperity, it is just and sacred. Krishan Kumar Tyagi claims that the “no work, no pay” tenet is not punishing. When an employee invests his time and effort in a worthwhile activity, his performance is rewarded by a set salary; it is not a punishment. In a wonderful way, the American term “compensation” comes to our aid. People receive payment in exchange for their labor contributions. In the absence of a contribution, there is no compensation. It is an agreement between two parties that establishes reciprocal accountability on an equal footing. In other words, the notion of not paying salaries to workers while they are on strike is known as “no work, no pay,

3.3. Judicial Pronouncement on the Principle of “No Work, No Pay”: There have been plethora of judicial decisions as to the principle of “no work, no pay” both within our corpus juris and outside. However, this section shall basically evaluate some of our Courts’ pronouncements on the principle as entrenched in section 43 (1) (a) of the Trade Dispute Act.

In the case of *Dr. Onyebueze John Ugochukwu & ors V Minister Of Health, Federal Republic Of Nigeria & 1 Ors*³⁰, the National Industrial Court through Per. Arowosegbe held as follows:

Arising from the above, I am of the view that, there is nothing in section 43(1)(a) of the TDA that is repugnant to section 40 of the 1999 Constitution and all the other statutes mentioned in relation to right

²⁹ Human R, 'A Marxist, 'Introduction to Industrial Relations, (1975) Macmillan, London, P. 183

³⁰ Suit No. NICN/EN/49/2017

to strike and the purported wrongful implementation of the 'no work, no pay' rule in the health sector of the economy. Having shown that the claimants herein lacked the right to go on strike in the first instance and that, by failing to issue the requisite notices, the strike was doubly illegal.

In the referral case of *SSANU v. Federal Government of Nigeria*³¹, from the Labour and Productivity Minister, Hon. Justice Adejumo, held that:

“Section 42(1)(a) of the TDA is self-executory. Its implementation, without more, does not depend on a further enquiry in the manner that the appellant canvasses. A strike, whether legal or not, falls squarely within the ambit of the said section and for which the strikers are disentitled from wages and other benefits envisaged by the section. This statement of principle accords with the International Labour Organization (ILO) jurisprudence on the matter where at para. 588 of the Freedom of Association: Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO, Fourth (revised) edition, Geneva, the norm is that ‘salary deductions for days of strike give rise to no objection from the point of view of freedom of association principles’.

In *Oyo State Government v Alhaji Bashir Apapa and 30rs*³², the matter arose due to disagreement between the parties over salaries, incomes and wages increase. It all started when the Federal Government approved a new structure for the Federal public service. The respondents succeeded in their agitation through negotiation, giving rise to an agreement reached with the government on October 2, 2007. Part of the agreement was that the workers would be paid

³¹ (2008) 12 NLLR (Pt. 33) 407

³² Unreported. Suit no: NIC/36/2007.

the wage increase and the arrears of the remuneration during the strike. However, the Labour Union had embarked on strike during the agitation, which was called –off after the agreement. Hence, the applicant's contention as to the unlawful request of the arrears during the strike period by the Labour Union. The Court, in ex tenso in resolving the issue the issue had this to say:

:..... Section 42 (1) (a) of the TDA is self-executory. Its implementation, without more, does not depend on a further enquiry in the manner that the appellant canvasses. A strike, whether legal or not, falls squarely within the ambit of the laid section and for which the strikers are disentitled from wages and other benefits envisaged by the section. This statement of principle accords with the International Labour Organization (ILO) jurisprudence on the matter where at para. 588 of the Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, fourth (revised) edition, Geneva, the norm is that salary deductions for days of strike give rise to no objection fm the point of the view of freedom of association principles. And to the learned authors, Bernard Gernigon, Alberto Otero and Horacio Guido- ILO Principles Concerning the Right to Strikes (1998) International Labour Review Vol. 137 No. 137 No. 4 at P. 471, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) of the ILO has refrained from criticizing the legislation of member states which provide for wage deductions in the event of strike action and has indicated that, as regards strike pay in general the parties should be free to determine the scope of negotiable issues. It is in this light and given the self-executory nature of the said section 42(1)(a) that it is perfectly lawful for an employer to choose to dispense with the 'no work, no pay rule', In other words, strike pay is lawful if an employer chooses to pay same and not to penalize the strikers in any other way for the strike. In the same vein, it is lawful for workers to agree

with their employer that wages will be paid and no other detriment suffered even when strike actions are embarked on³³”

The crux of the Court’s holding is that, an employer is at liberty to invoke or dispense with the principle of “no work, no pay” for the period of the industrial strike pursuant to section 43(1)(a) of the Trade Dispute Act. On the construction of section 43 of the Trade Dispute Act, the court referred to its case of *Senior Staff Association of Nigeria (SSAN) v Federal Government of Nigeria*³⁴, Where it had held that it is not out of place nor unlawful for an employer to choose to dispense with the “no work, no pay rule” under section 43(1)(a) of the Trade dispute Act.

4. THE LEGAL IMPLICATION

The legal implication of “no work, no pay” principle is predicated on equity as highlighted above. The principle thereby implies that, for the period in which workers embark on strike action, their respective employers bear no responsibility as to their entitlement for those period salary inclusive. This is simply due to the fact that, pursuant to the Trade Disputes ct which gave effect to the principle of “No work, no pay” policy, the law thus presume that when workers are on strike, the obligations and responsibilities of both the workers and employers suspended equally- in the interim. Put different, the effect is that striking workers may not qualify to remuneration during the currency of the strike. The statutory provision favors employers with the latitude choice of adopting or dispensing with the principle of “no work, no pay rule”, thereby disintitling striking workers from wages and other benefits envisaged by section 42(1)(a), Trade Dispute Act³⁵.35

However, beyond this implication, there are other salient implications of the principle of “no work, no pay” which has been subjected to intellectual discourse. The principle of “no work, no pay” which has enjoyed the force of law in Nigeria amounts to

³³ (Emphasis supplied)

³⁴ Suit No: NIC/8/2004.

³⁵ See *Abdulraheem v. Olufeagha* (2006) 17 NWLR (pt 1008) 28 CA

giving Trade Unions the right to strike with one hand, and withdrawing it with another hand. This, while reading the provisions of the Trade Union Act in conjunction with relevant sections of the Trade Disputes Act, is discernible that, the statutes do not bar employees from embarking on strike in so far as all the stipulated requirements have been complied with. However, with the clause as contained in section 43 (1) (a), the respective trade union who resolve to strike action is made to bear the brunt of forfeiting the right to their employment entitlement for the period of the strike. Thus, employees have no positive right to embark on a strike no matter how justified it is.

Notwithstanding the above, a critical look at the intention of the legislature would reveal that, the provision of section 43 (1)(a) is inserted so as to limit the frequent resort to an attempt to curb the menace attached to industrial action by employees. Looking at the requirement provided in section 4,6 and 8 of the Trade Unions Act and sections 18, 41, 42 and 42 of the Trade Dispute Act, if applied *stricto sensu*, it would increase the resort to collective bargaining over industrial strike action.

5. CONCLUSION

Flowing from the above, a catholic but undisputable fact is that- trade disputes are inevitable. However, trade disagreements between employers and employees are inevitable, how these disagreements are resolved becomes a challenge. With the enactment of various statutory instruments, there have been a number of steps in regulating industrial disputes through delineation of the rights of both the employer on one hand and employees on the other hand. Among the various mechanisms favourable to the employer is the resort to the principle of “no work, no pay”, pursuant to section 43 (1) (a) of the Trade Disputes Act, which gives the employer the liberty to either withhold the salary of workers who engage in any strike action for those period or to dispense with such statutory right. In any case, this depend on an individual employer’s compassion.