NIGERIAN EMPLOYEES' COMPENSATION ACT 2010: ISSUES ARISING*

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Abstract
Apart from motivation of employees in the workplace, another factor that ensures commitment and maximum production in a workplace is the knowledge by an employee that his life is protected against workplace injuries and other hazards that may occur in the course of official duty. An employee, being in the know that there is a social security scheme put in place to address workplace injuries and hazards, is likely to put in his best for his employer. The provision of this social security scheme was the essence of the Workmen's Compensation Act which was enacted in 1987. However, the Act was largely unsuccessful in meeting the social security objective, and this gave rise to agitations for another statutory intervention. These agitations resulted in the enactment of the Employees' Compensation Act, 2010. The 2010 Act has made comprehensive provisions for compensation for death, injury, mental stress, occupational disease and other hazards arising in the course of employment. However, since the enactment of the Act, some issues have arisen in the course of interpretation and application of the Act which may likely hamper a smooth and successful operation of the Act. The objective of this paper, therefore, is to appraise these issues. The writers adopt analytical approach with the use of statutes, case law, textbooks, journal articles and Internet materials. At the end, the writers found that, though the 2010 Act made laudable improvements in the employees' compensation dispensation, there are still a lot of shortcomings that need to be addressed vide a statutory intervention. The writers then recommend amendment of the relevant Nigerian labour statutes to correct the statutory lapses highlighted in the paper.

Key Words: Act, Compensation, Employees, Labour and Industrial Relation, Social Security

1. Introduction

The Employees Compensation Act, 2010 (hereafter referred to as the 2010 Act) was enacted by the National Assembly and signed into law by the then President of Nigeria, Goodluck Jonathan on the 17th day of December, 2010. The Act repealed the erstwhile Workmen's Compensation Act[1] which as at then had been in operation for about 26 years. The 2010 Act made comprehensive provisions for compensation for injury, death, compensation for mental stress, compensation for occupational diseases and other workplace hazards arising out of or in the course of employment.

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[1] Cap W 6 Laws of the Federation of Nigeria (LFN), 2004. See section 72 of the 2010 Act which repeals Cap W6, LFN, 2004.

The 2010 Act is a result of the efforts by the National Assembly to address the shortcomings inherent in the hitherto legislation, i.e the repealed Workmen's Compensation Act, regulating workplace compensation. Most labour statutes in Nigeria before the 2010Act empowered employers to exert great powers and discretion to the detriment and discomfort of their employees. The repealed Workmen's Compensation Act[2] was one of those employer-friendly Acts, as compensation under the Act was largely efficient and totally employer- friendly. The insurance provisions of the repealed Act were held more in disobedience or breach than in compliance due to the weak enforcement machinery in Nigeria. [3]

The shortcomings of the repealed Act gave rise to agitations for new compensation regimes vide statutory intervention.[4] The statutory intervention finally came on the 17th day of December, 2010 when the then President, Dr. Goodluck Ebele Jonathan signed into law the Employees' Compensation Bill. Since the Act was enacted, the interpretation of the provisions and their applications has also been surrounded with issues. Some of the issues touch on the weakness of the provisions of the Act; some highlight the strength of the provisions of the Act. However, minute these issues may look, it is expedient to highlight them and suggest possible ways of tackling them for and engendering an improved operation of compensation regime in Nigeria. This is what this paper sets out to do.

2. Objective of the Act

The primary purpose of the Act may be gleaned from the Long Title to the Act which provides:

> An Act to repeal the Workmen's Compensation Act Cap 6 LFN, 2004, and to make provisions for compensations for any death, injury, disease or disability arising out of or in the course of employment and other related matters.

It is very clear from the foregoing that the primary objective of the Act is to first and foremost repeal the hitherto Act regulating workplace compensation which was the Workmen's Compensation Act and also to make provisions to address issues of compensation in the event of death, injury, disease or disability arising out of or in the course of employment. It did not stop there. The Act included other related matters. What then amounts to other related matters was not explained by the Act. Apart from this, section 1 of the 2010 Act enumerates other objectives of the Act. The section provides that the objectives of the Act are to –

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[3] Ogeregho & Associates, 'Employees Compensation Act, 2010' available at http:www.jdsupra.com/legal/news/employees.compensation.act.93089/ (last accessed on 23 March, 2017.

[4] B, Umukoro, 'Workmen's Compensation Act; The Need for a Different Statutory Approach' (2009) Vol. 3, No. 2 *NJLIR* pp. 19-36.

a. provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment;
b. provide rehabilitation to employees with work-related disabilities as provided in the Act;
c. establish and maintain a solvent compensation fund managed in the interest of employees and employers;
d. provide for fair and adequate assessments for employers;
e. provide an appeal procedure that is simple, fair and accessible, with minimal delays; and
f. combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

From the above objectives of the Act, it can be seen clearly that the Act sets out from the outset to revolutionalise the statutory compensatory regime in the workplace in Nigeria which the repealed Workmen's Compensation Act could not achieve. However, whether the interpretation and application of the provisions of the Act have achieved this objective is yet to be seen.

3. Scope and Application of the Act

By virtue of section 2(1), the 2010 Act applies to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. This means that, ordinarily, once a person qualifies as an employee or employer under the Act, the person becomes covered by the Act and thus becomes entitled to benefit from the compensation provisions of the Act in the event of any of the workplace disabilities. However, by section 3 of the Act, the Act does not apply to any member of the Armed Forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity[5]. What this depicts is that, apart from an employee employed in the Armed Forces of the Federation other than in a civilian capacity, the Act applies to every other employee whether the employee is employed in a purely master-servant relationship or in a public sector employment that is protected by statutes.[6] It then becomes expedient to ascertain the meaning of employer as well as employee under this Act.

The Act defines an employee to mean:

> A person employed by an employer under oral or written contract of employment, whether on a continuous, part-

[5] See also E.A, Oji & O.D, Amucheazi, *Employment* & *Labour Law in Nigeria*. (Lagos: Mbeyi & Associates Nig. Ltd, 2015) p. 165.

[6] See the following cases on the distinction between master-servant employment relationship and employment protected by statutes – *Adeniyi v Governing Council of Yaba College of Tech;* (1993) 6 NWLR (pt. 300) 426; *Idoniboye-Obu v NNPC* (2003) 2 NWLR (pt. 805) 589 at 652; *Iserhienrhieh v Okomo Oil Palm Plc* (2010) 6 NWLR (pt. 710); *Olaniyan v Unilag* (1985) 1 NWLR (pt. 4) 755

> time, temporary, apprenticeship or causal basis and includes a domestic servant who is not a member of the family of the employer, including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy.[7]

The implication of the above definition of employee is that the Act has given the term "employee" a wider coverage than can be seen in any other labour legislation. The Act tries to cover every person who is engaged in a paid employment in Nigeria. Employer is also defined to include:

> Any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice.[8]

The meaning of employer under the Act shows also that once a person engages another in a paid employment, that person is an employer irrespective of the nature and status of the supposed employer. The provisions of sections 2 and 73 of the 2010 Act, when read together, show that every person who engages or is engaged in a paid employed is covered under the Act as employer or employee.

One point that also needs to be emphasised is that, while the Act gives a closed or definitive definition of "employee" by the use of the word "means", the categories of who an employer is, is not closed. This is because the Act uses "includes", rather than "means" in its definition of "employer", thus suggesting that the word can still admit of other meanings under than those mentioned in section 73 of the Act.

4. Issues Arising from the Operation of the Act

There is no gainsaying the fact that the 2010 Act is a laudable step in the right direction, as long as workplace compensation is concerned under Nigerian labour and industrial relations jurisprudence.

According to Atilola,[9]

> The New Employees' Compensation Act, 2010 is a watershed in the history of employee compensation schemes in Nigeria in that it ushered in a new regime of compensation for workplace injuries or disabilities. The Act opened new frontiers in employees' compensation

[7] See section 73.

[8] *Ibid*

[9] B, Atilola, 'Right of Appeal Under the Employees Compensation Act, 2010' (2010) *NJLIR*, Vol. 8 No. 1, p. 1

> schemes and extended the scope of compensable injuries including the quantum of compensation for workplace injuries, diseases and related hazards.

Notwithstanding this applause, there are issues surrounding the interpretation, application and/or operation of the Act 2010 that call for a discussion, in order to suggest possible ways of further improving the compensation regime in Nigeria labour jurisprudence. Some of those issues will be taken *seriatim*.

4.1 Appeal Procedure under the Employees' Compensation Act, 2010

The Nigerian Social Insurance Trust Fund Management Board is established under section 2(2) of the 2010 Act with the responsibility of implementing the provisions of the Act and the Employees Compensation Fund established under section 56 of the Act. The officers of the Board are also given the powers to enforce the provisions of the Act.[10] The enforcement regime empowers such officers to enter into any workplace, demand for the production of documents, examine or inspect such document and remove such documents where the occasion warrants, make copies or extracts from the documents, or make enquiries of any person in the workplace. In the process of enforcing the Act, an officer of the Board may take any decision in accordance with the provisions of the Act[11] which may affect the rights of a citizen. In order to provide redress for a citizen that may be aggrieved in the process of enforcing the Act by an officer of the Board, the Act provides that:

> A person aggrieved by any decision of the Board may appeal to the Board for a review of such decision.[12]

An appeal under subsection (1) of section 55 above shall be made in writing to the Board within 180 days of the date of the decision, otherwise the aggrieved person shall lose his or her right to appeal the decision[13].

Furthermore, the appeal shall be disposed of in the manner to be determined by the Board within a period of 180 days.[14] An appeal shall lie from any decision of the Board under subsection (1) of section 55 to the National Industrial Court.

Notwithstanding the simplicity in the appeal procedure of the Act, it is the writers' view that appealing to the Board over its decision is not in *tandem* with the tenets of justice. Appealing to the Board over its decisions that affects a citizen may well mean that the Board is a party and at the same time a judge in his own case. This is because, the officer

[10] See section 54
[11] *Ibid*
[12] See section 55 (1).
[13] See section 55 (2).
[14] See section 55 (3).

of the Board who takes a decision for the Board and which said decision affects a citizen is acting in the capacity of his being a member of the Board and another officer who will sit over the appeal is also acting in the capacity of the Board. In other words, the Board is a party and at the same time a judge in his own case. In the case of *Adebesin v The State*,[15] the Nigerian Supreme Court held that one cannot be a Judge in one's case. This will no doubt lead to partiality or likelihood of bias in the determination of the appeal by the Board. This position is supported by the fact that the appeal is to be disposed of in the manner to be determined by the same Board. When the same Board that inflicts injury on an employee citizen by its decision is also given power to sit over complaint of the employee, one can reasonably conclude that the provision on the initial or first right of appeal is a statutory waste of legislative time. In the words of Atilola,[16]

> It appears that the initial appeal against the decision of the board is unnecessary. It is futile to have an appeal considered and determined by the same body whose decision is being appealed against. To make the Board sit on appeal over its own decision is in my view, illogical and time wasting.

We entirely agree with Atilola that, instead of the initial right of appeal under the Act, the aggrieved employee should have been required to issue a statutory pre-action notice to the Board. This may afford the Board the opportunity to reconsider its decision in respect of which the employee feels aggrieved and redress the affected employee accordingly.[17] Also the Act provides that the appeal to the Board must be made within 180 days from the date of the decision of the Board. This provision will likely cause injustice to an aggrieved employee. The issue that is likely to arise from this subsection is as to when time will start running for purposes of an appeal to the Board under the Act.

The implication of section 55(2) of the 2010 Act is that an aggrieved employee must complain to the Board against the Board's decision within 180days from the day the Board takes the decision he or she is complaining about otherwise, he will automatically lose his right to complain, not minding when he gets wind of the decision. By this provision, where the Board takes a decision, say in June, and communicates the decision to an affected employee in July or August, time will start running from June when the decision was taken. This will be highly prejudicial, unjust and harsh to the right of an employee affected by the decision of the Board. Though there is no judicial authority on

[15] (2014) LPELR – 22694 (SC). See also *Onigbede v Balogun* (2002) FWLR (pt. 99) 1062; *L.P.D.C v Fawehinmi* (1985) 2 NWLR (pt. 310).

[16] B, Atiola, op. cit., p.3.

[17] See *Gbadamosi v Nigerian Railway Corporation (2006)* LPELR – 11668; *Amadi v N.N.P.C* (2000) 6 SC (pt. 1); *N.N.P.C v Fawehinmi* (1998) 7 NWLR (pt. 559) p. 558 on the jurisprudence behind the requirement of pre-action notice.

this point, the Court is enjoined to employ a liberal interpretation to obviate the harsh effect of the Act.

Moreover, section 55(4) of the Act provides that:

> An appeal shall lie from any decision of the Board under subsection (1) of this section to the National Industrial Court.

This subsection has been interpreted to mean a condition precedent to the activation of the right of action of an aggrieved employee to appeal to the National Industrial Court. In *Iro Okonkwo v Doyin Group Investment & Anor*.,[18] the defendant/respondent challenged the jurisdiction of the National Industrial Court on the ground that an appeal to the Board is a condition precedent to the institution of action before the Court under the Employees' Compensation Act without which the action will be incompetent. The Court held that, a claimant must not first pursue a claim for compensation for workplace injury under the Employees' Compensation Act before coming to the National Industrial Court.

His Lordship, Abali, J., held further that:

> The provision of section 55 of the Employees' Compensation Act 2010 only provides and gives parties the right of Appeal (First against the decision of the Board of the Nigerian Social Insurance Trust Fund and secondly against the review of the decision of the Board, where a party appealed for review of the Board's decision and still came out displeased.

From the foregoing decision, the court has settled the controversy surrounding section 55(4) of the Act which created the impression that the provision created a condition precedent to the institution of action in the National Industrial Court over a claim for compensation under the Employees Compensation Act.[19]

4.2 Compensation for Mental Stress

By section 8 of the 2010 Act,[20] an employee shall be entitled to compensation for mental stress not resulting from injury for which the employee is otherwise entitled to compensation, only if the mental stress is –

a. An acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment; or

[18] *Iro Okonkwo v Doyin Group Investment & Anor*, Unreported, Suit No: NICN/EN/225/2013, delivered on 28/06/2016 by His Lordship Abali J of the N.I.C.N Awka Judicial Division

b. Diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employee's employment.

This provision is novel to the compensation regime in Nigeria since it did not exist in the previous legislation regulating compensation at workplace. However, the Act did not expressly define what constitutes mental stress; it only gives a rather descriptive and sweeping statement which showcases the extent of mental stress that is worth compensating for, in section. One therefore ponders about how claims for compensation for mental stress can be enforced in practical situation since the Act did not clearly define what constitutes mental stress.

Where claims are made by employees for mental stress arising out of or in the course of employment, the Board may appoint a Medical Board of Inquiry consisting of relevant specialists to review the situation to determine whether or not the employee is entitled to compensation for mental stress.[21] The implication of this is that though the provision of compensation for mental stress is commendably provided for, the Act however leaves the determination of what amounts to mental stress to the whims and caprices of the Board and its cronies. To our mind, this procedure is purely ridiculous and legislatively reviewable.

4.3 Compensation for Occupation Diseases

Section 9(1) of the Act provides that compensation and health care benefits shall be paid under the Act to an injured employee or his beneficiary where:

a. the employee has suffered occupational disease;
b. the occupational disease suffered has either caused the death of the employee or disabled the employee from earning full remuneration at workplace;
c. the disease is shown to be due to the nature of any employment the employee must have been engaged; and
d. the disease is listed in the first schedule to the Act.

By section 73 of the National Industrial Court Act, 2010, occupational disease means a disease arising out of or in the course of exposure to risk factors at work. We opine that such occupational disease could either come on gradually or suddenly. For example, a welder may lose his sight gradually or suddenly as a result of his being exposed to risk factor of welding equipment or material. It is further submitted that the risk factor may be apparent or latent, depending of the circumstances surrounding each case.

[21] Section 8 (2)

The Act did not make it clear whether the statutory provision requires conjunctive or disjunctive interpretation.[22] In other words, must the conditions stated in section 9 be present conjunctively or disjunctively? From the punctuation (semi-colon) used in the provisions of section 9, one can say that a conjunctive approach is intended. In other words, where any of the conditions stipulated is missing, an aggrieved employee loses his right to compensation for workplace occupational disease. However, a careful examination of section 9 of the 2010 Act would reveal that the word "or" is used between section 9 (1) (c) and section 9(1)(d) which talks about occupational diseases listed in the First Schedule to the Act. What this means is that while the conditions in section 9(1)(a)-(c) must be cumulatively present to engender a right of action, section 9 (1)(d) on the other hand is independent and exclusive of section 9 (1)(a)-(c). Hence, once it is established by an employee that his disease is one of those listed in the First Schedule to the Act, he would not be required to prove the other conditions as to disability of earning full remuneration, death or disease being due to the nature of employment, before he can validly claim under this head.

However, the First Schedule to the Act containing list of occupational diseases falls short of the international standards[23] in that it leaves about thirty-three (33) categories of internationally recognised occupational diseases such as health conditions relating to mental and behavioural disorders.[24]

The implication of the above is that in the event of a dispute for compensation on grounds of occupational disease not listed in the First Schedule to the Act, or not satisfying the provision of section 9 (1)(a)-(c) as an alternative, the court will find against the employee. Thus, in the case of *Adetona v Edet*,[25] the court held that there was no reasonable cause of action disclosed by the claimant in his statement to satisfy the provisions of sub-section 26 (b) of the Workmen's Compensation Act. The inference from the above is that no cause of action can arise for compensation for any occupational disease not recognised by the Employees Compensation Act, 2010.

To ascertain the particular occupational disease, the Board may appoint a Medical Board of Inquiry, consisting of relevant specialists to determine the entitlement of the employee.

4.4 Liability Evading Provisions Relating to Uncomplicated Diseases

Commendably, the 2010 Act, apart from providing compensatory regime for mental stress and occupational diseases as seen above, also provides in section 9(3) that an employee who becomes disabled, as a result of an uncomplicated disease in the course

[22] M Dugeri, 'The Employees' Compensation, Act 2010; Issues, Prospects and Challenges' , available at http://mikedugeri.wordpress.com (accessed on 23 March, 2017)..

[23] See the Workmen's Compensation (Occupational Diseases) Convention (Revised) No. 42 of 1934.

[24] M, Dugeri, loc. cit.

[25] (2003) 2 NWLR (pt. 889) 133.

of his employment shall be entitled to compensation. However, and unfortunately, section 9 (4) (a)&(b) of the Act imposes some conditions that the employee must fulfill, i.e., he must show that he has been in the employment in a workplace associated with exposure to an agent (s) leading to the uncomplicated disease and that he was free from the disease and complicating before being first exposed to the agent causing the disease in the workplace.

There is no legally justifiable ground for this provision since the employer has a duty to examine the employee before commencement of employment or as soon as possible thereafter at the expense of the employer.[26] The employer ought to have found out such disease if he had carried out the duty to examine the employee before commencement of employment. Where he fails to discharge the duty, he cannot rely on his failure to evade liability. Moreover, there is no statutory definition of "agent(s)" referred to in the section under consideration. Though one can assume that the agents intended are biological, chemical or gaseous agents, there is however the need to expressly define what amounts to agent in this regard.

4.5 Tax Implication

There is no provision on whether the statutory deductions under the Act qualify as deductible expenses in the computation of tax liabilities of the employee. Also, it has been argued by employers that the Act is an additional financial burden on them.[27]

5. Conclusion

After an analytical appraisal of the issues arising from the operations of the Employees' Compensation Act, 2010, the writers conclude that the Act is an improvement on the erstwhile Workmen's Compensation Act. The writers discovered that the Act has been commended by authors[28] as being a radical departure from the legal regime of the repealed Act that was in existence and regulating workplace compensation in Nigeria before 2010. The Act has been commended both locally and internationally for several improvements contained in it which have been discussed in this work. As a matter of fact, the provision of the 2010 Act, when compared with the repealed Workmen's Compensation Act, show a drastic and radical move from the old regime and as it is an attempt to conform with international labour standards on workmen's compensation. [29]

[26] See Section 28 of the Labour Act, Cap LI LFN, 2010.

[27] M, Dugeri, *loc. cit.*

[28] CK., Agomo, *Nigerian Employment and Labour Relations Law and Practice*, (Lagos: Concept Publications, 2011) pp. 246-247.

[29] Such International Labour Organisation Standards include the Workmen's Compensation (Agriculture) Convention 1921 Vocational Rehabilitation and Employment of Disabled Convention No 159 of ---------- Workmen's Compensation (Accidents) Convention of 1925 No 17; Equality of Treatment (Accident) Compensation Convention No 19 of 1925 and Workmen's Compensation (Occupational Disease) Convention (Revised) No. 42 of 1934.

However, the Act is still with some controversial provisions that require another legislative look for a better and improved compensation regime for the Nigerian worker.

6.0 Recommendations

Further to the foregoing critical appraisal of the relative strengths and weaknesses of the Employee's Compensation Act 2010, the writers recommend the following:

a. Removal of the initial right of appeal under section 55(2) of the Act and replacement of same with a requirement of pre-action notice to be served on the Board.
b. Expansion of the list of occupational diseases in the First Schedule to the Act to be in conformity with the list of occupational disease in the International Labour Standards as contained in the Workmen's Compensation (Occupational Diseases) Convention. [30]
c. Statutory definition of mental stress, agent and other undefined terms in the 2010 Act.

[30] *ibid*