

Resolving COVID -19 Induced Employment Disputes

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Arbitrability of employment disputes

- Choice of parties to arbitrate employment dispute – is it qualified?
Giuseppe Francesco E. Ravelli v Digitsteel Integrated Services Limited
- Does the Arbitration and Conciliation Act govern arbitration of labour disputes?



Resolving trade disputes, and the role of the Industrial Arbitration Panel

- Resolving trade disputes under the Trade Disputes Act
 - Resolution by parties in line with existing agreements, or through a mediator (Collective Bargaining Agreements)
 - Resolution by a conciliator where the mediator is unable to resolve the dispute, the minister may appoint a conciliator
 - The minister may apprehend a dispute and notify parties of the reference of the dispute to conciliation, the Industrial Arbitration Panel or Board of Inquiry
 - Resolution by the Industrial Arbitration Panel (IAP)– may consist of a sole arbitrator, single arbitrator supported by assessors, a panel (arbitrators appointed by disputing parties, presided over by the chairman or vice-chairman of the IAP)
 - Resolution by the National Industrial Court – where IAP award is objected to; Section 14 TDA, direct reference from the Minister – Section 17 TDA

▫ **Awards delivered by the IAP**

- Awards are first communicated to the minister, but not the parties
- Minister may exercise the power to send award back to the tribunal for reconsideration
- Where this power is not exercised, parties will be notified of the award, timelines for entering objections, and timeline for confirmation of the award by the Minister in the absence of any objection
- Where objection is received, the Minister refers the dispute to the NIC and the award of the NIC becomes binding on the employers and workers to whom it relates to.
- Application for interpretation of an award made by the IAP or the NIC is to be made before the NIC

The effect of COVID-19 and frustration on the doctrine of legitimate expectation in labour and employment relations

- Legitimate expectation would occur where an employer expressly or impliedly, creates a state of affairs that gives an employee an expectation that is legitimate and reasonable
- Avoidance of unfair labour practice
- Courts in Nigeria recognize that a contract is frustrated where after the contract was concluded, events occur which make performance of the contract **impossible, illegal or something radically different from that which was in the contemplation of the parties at the time they entered into the contract.**
- Can employers rely on the doctrine of frustration to defeat the doctrine of legitimate expectation? – Situations will be treated on a case by case basis - *employers and public bodies are required by law, at all times, to act in good faith, reasonably and fairly towards people and matters under their charge in all circumstances; and that the law does not permit employers to act arbitrarily.*

Liability of employer where employee contracts COVID-19 in the workplace; liability of employer for injuries in the remote workplace

- Workplace includes any premises or place where a person performs or needs to be or is required to be in the course of employment.
- An employer has a duty to take reasonable care for the safety of employees so as not to expose them to unnecessary risk.
- Employers are required to comply with existing guidelines on safety and limiting the spread of COVID-19 in the workplace.
- Employers are liable for injuries suffered out of and in the course of employment, which occurs in the workplace. Any contract between employers and employees to waive liability, is null and void.
- How can employers limit liability for work place injuries?

*Thank
you!*