



## LABOUR & EMPLOYMENT UPDATE

EMERGING ISSUES IN THE DETERMINATION OF EMPLOYMENT CONTRACTS – WHAT EMPLOYERS NEED TO KNOW REGARDING SALARY PAYMENTS FOR EMPLOYEES TERMINATED WITHIN A CURRENT MONTH

ARTICLE SERIES —

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## INTRODUCTION

The recent decision of the National Industrial Court of Nigeria rendered on 17 June 2020 by Honourable Justice Nelson Ogbuanya in Suit No. NICN/LA/166/2015 – Mr. Abe Adewunmi Babalola vs Equinox International Resources Limited – has thrown up an issue commonly taken for granted by employers in determining the employment of an employee in periodic employment in their organisations. This is the issue of the appropriate salary to be paid to the employee where the contract of employment is terminated by the employer within a current month, without allowing the employee to work up till the time he is usually paid his monthly salary.

## SUMMARY OF THE CASE

By a letter dated 20 September 2011, Mr. Abe Adewunmi Babalola (“ the Claimant”) was employed by Equinox International Resources Limited (“the Defendant”) as Head of Human Resources and Administration with a probationary period of six months.

The Claimant averred that after the probationary period, he continued working diligently in the Defendant until his employment was terminated by a letter dated 7 September 2012. However, at the time of his termination, he was still being owed the balance of his salary for May 2012, as well as salaries for June, July and August 2012.

The Claimant also claimed pro-rated salary for the 7 days he worked in September 2012 as well as the one-month salary in lieu of notice which he was entitled to at the time of the termination. The Defendant, on the other hand, denied the Claimant’s assertions and urged the court to dismiss the suit with costs.



## THE JUDGMENT

In its judgment, the court found for the Claimant and granted the following:

a) Payment of the sum of N52,000 by the Defendant to the Claimant being the unpaid balance of the Claimant's salary for May 2012.

b) Payment of the sum of N480,000 by the Defendant to the Claimant being the cumulative sum total of the salary arrears owed to the Claimant for the months of June, July, August and September 2012.

c) Payment of the sum of N120,000 by the Defendant to the Claimant being one-month salary in lieu of notice.

d) Payment of N1 million as general damages by the Defendant to the Claimant for wrongfully withholding the Claimant's accrued salaries, thereby exposing him to financial difficulties.

e) Payment of costs in the sum of N500,000 by the Defendant to the Claimant.

The court further made an order that all the above monetary sums be paid within one month of the date of the judgment, failing which interest shall accrue on the total sum payable at the rate of 10% per annum.

It is interesting to note from the judgment that the court granted the Claimant his full salary for the month of September 2012, even though the Claimant only claimed for the 7 days he worked in that month.

The court hinged its decision in this regard on the fact that fractionalised or pro-rated payment of salaries is not applicable to periodic employments. A periodic employment therefore, in the context of the decision, is an employment where an employee's salary is paid at periodic intervals, either weekly, bi-weekly or monthly.

The principle of law enunciated in the judgment is not applicable to all employment contracts, as it is recognised that an employee can also be a temporary employee, casual employee or an employee that receives a daily wage/salary. As the court stated in the course of the judgment, "a pro-rata payment of salary is not applicable to workers in periodic employment, but only applicable to daily paid workers."

In effect therefore, whilst a daily paid worker can be paid a fraction of his salary based on the number of days worked, an employee who is paid at the end of every month cannot have his salary fractionalised by pro-rating the number of days he worked in that particular month. He is entitled to be paid a full month's salary, irrespective of the number of days worked in that month. An employer who embarks on such a course of pro-rating an employee's salary will be deemed to be engaging in an unfair labour practice if an action is instituted by an aggrieved employee on that ground.

### **OUR TAKEAWAY**

Although the decision in Babalola v Equinox was delivered on 17 June 2020, and is therefore a recent decision, it is however not the first decision on the issue of whether an employer can pro-rate the salary of a periodic employee by paying him only for the days he worked in the particular month in which his employment is terminated.

This is so because in the course of the judgment in *Babalola v Equinox*, the court made reference to its previous decision on the same point in the earlier case of Suit No. NICN/LA/660/2015 - *Grant Mpanugo v CAT Construction Nig. Ltd & Anor* (Mpanugo's case), delivered on 20 September 2019. The court merely repeated and adopted the reasoning in Mpanugo's case and applied it to the facts in *Babalola v Equinox*.

Despite the fact that the Claimant in *Babalola v Equinox* did not claim the full salary for the month of September 2012 but only claimed the September salary up to 7 September 2012, the date of his termination, the court decided to award him the salary for the full month and not the limited period he claimed for.

Going by the settled principle of law that a court is not a Father Christmas and will not grant a relief not claimed, this particular portion of the judgment might be a good ground of appeal.

Going forward, and based on the practice of Judges of the National Industrial Court to rely on decisions of other Judges of that court on novel principles of law in labour jurisprudence, it is difficult to see subsequent decisions departing from the principle in *Babalola v Equinox*, which in itself, is a restatement of the law as espoused in the earlier decision in the Mpanugo case. As such, the principle emphasised in the Mpanugo case and restated in *Babalola v Equinox* (unless and until overturned on appeal) remains the law in Nigeria today.

Employers should take notice, as held in *Babalola v Equinox*, that an employer who decides to terminate an employee within a month in a periodic employment is liable to pay for the full salary of that exit month and not a fraction of the days such an employee worked in that month.

## CONCLUSION

Employers are advised to comply with the principle enunciated in both decisions and pay the full salaries of any employee terminated within a calendar month instead of continuing with pro-rated payments for such employees (if that had hitherto been their practice) in order to avoid the consequences of litigation. As stated in this article, until the decision is set aside on appeal, the principle that there should be no fractional payment for periodic employees who are paid salaries at the end of every month remains immutable.



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