



STRENGTHENING LEGAL MEASURES TO UPHOLD THE RIGHTS OF TEMPORARY WORKERS IN NIGERIA

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ABSTRACT

Casualisation, a method of employment in which people are engaged without a permanent appointment contract, is currently highly prevalent in Nigeria. This has become a social phenomenon and a cankerworm in labour relations in various industries across developing countries of the world. Many industrialised nations are experiencing an increase in non-standard casual or temporary employment. Adopting the doctrinal research methodology, this paper examined casual labour protection in Nigeria with the focus on strengthening legal measures to uphold the rights of temporary workers. The findings revealed that most unemployed people struggling to get decent jobs choose to fight poverty and inequality by becoming casual workers in either the private or public sector of the economy. Workers are often recruited at the gates and fired at will daily. The fact that these workers contribute greatly to the profits and revenue rise of the organisation they work for, they remain classified as casuals and subject to deplorable and inhumane working terms. It is further revealed that the major causes of labour casualisation include globalisation and trade liberalisation, technological changes, abundance of labour supplies (overcrowded labour market), deregulation of both product and labour market and unprecedented promotion of outsourcing practice among employers. It is recommended that the Labour Act be amended or a robust and detailed legal framework on labour relations be enacted to clearly state the tenure of a casual worker so that employers will be discouraged from keeping them permanently under precarious conditions with no rights as casual workers.

KEYWORDS: Labour, Casualisation, Rights, Employers, Employees, Labour Liberalisation

1.0 INTRODUCTION

Casualisation of workers has become a social phenomenon and a cankerworm in labour relations in various industries across developing countries of the world.¹ Many industrialised nations are experiencing an increase in non-standard casual or temporary employment. Casualisation and casual employment are not peculiar to Nigeria; it is a global phenomena.² This is as a result of the deliberate

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¹ P O Kalejaiye, 'The Rise of Casual Work in Nigeria: Who Loses, Who Benefits?' (8(1)(32)(2014) *African Research Review*, 156-176.

² C O Ajie, 'Casualisation of Workers in Nigeria: Issues and Perspectives' (17)(2)(2023) *Journal of Jurisprudence, International Law & Contemporary Legal Issues*, 104-114.



policy of the multi-nationals in productive and service companies, which created casual workers in place of permanent labour employment.³ That is, the placement of workers as temporary employees on jobs that are routine, contentious and permanent in nature.⁴

Most unemployed people struggling to get decent jobs choose to fight poverty and inequality by becoming casual workers in either the private or public sector of the economy. Casualisation as a method of employment, where people are engaged without a permanent appointment contract, is currently highly prevalent in Nigeria. The lack of decent job opportunities for uneducated and educated people in Nigeria makes it one of the most unequal societies, producing high levels of poverty.⁵ Workers are often recruited at the gates and fired at will daily. The fact that these workers contribute greatly to the profits and revenue rise of the organisation they work for, they remain classified as casuals and subject to deplorable and inhumane working terms.

The shift from permanent work to casual work arrangements is a result of employers using it to avoid the mandates and costs associated with labour laws, which are designed to protect permanent employees in standard employment.⁶ This non-standard work arrangement is a form of work arrangement occasioned by the effects of globalisation, trade liberalisation, and technological improvement in communication and information technology.⁷

Industrialisation is one of the cardinal ingredients for economic development, and that presupposes all the variables of sustainable development are in place. It also means that all the factors of production must be seen to contribute toward that expectation, and one of such factors is labour. The increasing wave of globalisation and trade liberalisation across the world has continued to have an impact on employment relationships. Globalisation knows no ideological boundary, and as such, its increasing wave continues to ravage across the world, including Nigeria. The adoption of casualisation appears to be a veritable tool in the hands of employers and entrepreneurs to achieve organisational growth in the face of greater economic conditions, such as greater economic instability and uncertainty.

2.0 APPRAISAL OF THE EVOLUTION OF CASUAL LABOUR IN NIGERIA

Casualisation of workers in Nigeria is increasing speedily. This development has raised serious concerns among major stakeholders in the labour practice in Nigeria. In fact, it is the practice now that employers of labour are recruiting casual or temporary workers to fill the various supposedly permanent positions.⁸ Casualisation of workers is therefore a common practice in Nigeria.

³ (n 1), 156.

⁴ Ibid.

⁵ Ibid.

⁶ I P Onyeonoru, 'Labour Market in the Context of Economic Sociology: Bringing Society Back to the Economy' (6)(1) (2008) *Ibadan Journal of Social Science*, 55-68.

⁷ E E Okafor, 'Emerging Non-Standard Employment Relations and Implications for Human Resources Management Functions in Nigeria' (6)(26) (2011) *African Journal of Business Management* 7612-7621.

⁸ O P Kalejaiye, 'The Rise of Casual Work in Nigeria: Who Loses, Who Benefits?' (2014) (8)(1) *African Research Review*.



Nonetheless, the emergence and spread of casual workers in Nigeria can be traced to the oil and gas industry, banking sector and multinational corporations.⁹ The menace of casual work is such that in some companies in Nigeria, 1500 out of every 2000 workers are casual workers. In some local industries, in the informal sector, one could find a situation where virtually all the employees are temporary workers with professional or administrative skills.¹⁰ These are various qualifications that would have warranted permanent jobs, certificates, diplomas and degrees in such areas as engineering, computer science, telecommunication and accounting.

According to Okafor, in 2001, there were an estimated 14,559 casual/contract workers, as against 23,065 junior workers on permanent job positions in the oil industry. In the oil and gas sector alone, there were over 1000 casual workers who unionised against the wishes of management and, as a result, were discriminated against by management. Clerical positions, plant operations, computer services, rig drilling operations, maintenance services, transportation, flow station operations, flow station guards, deck-hands, forklift operators, typists are fire service men are some of the jobs where casual workers were engaged.¹¹ Adenugba, continued that in 1980, Mobil Oil Nigeria Limited (Marketing Unit) had 195 permanent junior employees. And by 1991, however, there were only 28 permanent junior employees. This author narrated that Mobil Producing Nigeria (Production Section) had over 400 permanent junior employees in 1980. However, this figure declined to 80 by 1991, with most of the jobs being undertaken by casual workers. Again, in the Western Division, comprising Warri Area, Shell operations alone had 110 labour contractors in 1991 employing 1,329 casual workers. By 2002, there was no single junior staff member who was a direct employee of Mobil Oil Plc. This ugly trend violated extant labour laws at the time.¹² This ugly labour practice has continued to eat deep into the annals of employment relations in Nigeria.

One of the reasons for the continuous growth and rapid spread of casualisation of workers in Nigeria is the high rate of unemployment among young people. The Nigerian labour market is not only saturated but also characterised by massive youth unemployment of various forms, such as seasonal, frictional, cyclical, and structural unemployment.¹³ These various forms of unemployment can be categorised into the older unemployed and the younger unemployed. The former comprises older unemployed who lost their jobs through retrenchment, redundancy, or

⁹ E E Okafor, 'Sociological Investigation of the Use of Casual Workers in Selected Asian Firms in Lagos, Nigeria' (2010) (8)(1) *Ibadan Journal of Social Science*.

¹⁰ (n 9).

¹¹ A A Adenugba, *Economic Globalisation and Trade Unionism in Nigeria: A Case Study of the Nigerian Labour Congress (NLC)* (Unpublished PhD Thesis Submitted to the Department of Sociology, University of Ibadan, 2006).

¹² Uvieghara 2000, E Okougbo, *Strategic Issue on the Dynamic of Industrial Relations: Theory and Practice* (Lagos: Wepoapo Enterprises 2004); I P Onyeonuru, 'Globalisation and Trade Union Resistance' (2004) (7) *African Journal for the Psychology Study of Social Issues*; Adenugba (n 4).

¹³ A Adebayo, 'Youth Unemployment and National Directorate of Employment Self-Employment Programme' (1999) (41)(1) *Nigerian Journal of Economic and Social Studies*; R A Damachi, *Non-Standard Work Arrangements and the Right to Freedom of Association in Nigeria* (IIRA Regional Conference, Lagos 2011).



bankruptcy and the latter comprises younger unemployed, most of whom have never been employed in their lifetime.¹⁴

Therefore, a large number of Nigerians stayed in casual jobs because it had not been very easy to secure a permanent job. They stay on that temporary job not because they lack skills and qualifications, but because of the competition for the few available jobs, poor economic conditions, and corruption, including bad leadership. Employers of labour who are concerned about profit maximisation leveraged upon the bloated labour market and offer jobs on a temporary or casual basis to cut costs. Such casual workers suffer abysmally low wages, absence of medical care allowances, no job security or promotion at work, no gratuity and other service benefits, no leave allowance and freedom of association is often jeopardised in the face of the absence of collective bargaining, among other losses.

3.0 CAUSES OF CASUALISATION IN NIGERIA

Casualisation of workers in Nigeria could be attributed to the following factors;

3.1 Deregulation of the Labour Market

The increase in capital mobility and deregulation of the labour market is a major cause of casualisation in Nigeria. Deregulation is a measure that tends to remove institutions of labour market regulation, in addition to reducing legal interventions in the relationships between employers and individual employees to a minimum.¹⁵ Deregulation of the labour market and flexibility in terms of working conditions, and no special consideration and follow-up of labour laws and the like, make companies and organisations recruit workers who are more casual.

3.2 Globalisation and Trade Liberalisation

Regular practice of this concept of trade and capital liberalisation led to the growth of the informed sector with peculiarity for informed employment under abhorrent conditions.¹⁶ In most advanced economies, the practice of globalisation and trade liberalization have made many enterprises to resort to the engagement of contract labour, part-time, temporary work and others in order to cut costs and remain competitive in the global market. Employers argued that the growth is influenced by demographic changes in the composition of the labour force.

3.3 Vague Labour Legal Regime

Motivating casualisation is the lack of clarity in some legal framework concerning employee categories. The stagnation of labour laws, with increasing inability of labour to flow or migrate to other work organisations or other parts, created room for consistent practice of this concept.

¹⁴ National Bureau of Statistics (2009: 238; 2010:2).

¹⁵ C O Ajie, 'Casualisation of Workers in Nigeria: Issues and Perspectives' (17)(2) (2023) *Journal of Jurisprudence, International Law & Contemporary Legal Issues*, 104-114.

¹⁶ Ajie (n 15), 111.



However, until recently, the Workmen Compensation Act 2010, Section 73 provided a nearly conceptual meaning of labour to also mean casualisation.

3.4 Innovation in Technology and Abuse of Labour

The introduction of technology in the workplace has drastically reduced the number of workers needed in a work environment. The saturated labour market is filled with graduates and non-graduates, retrenched workers who daily compete for a few positions and desperately jump at a poor form of employment.¹⁷ The abundance of labour supply and the inability of the employers to pay decent remuneration have led employers to be tempted to adopt cost-cutting measures, including downsizing, cutting back on employment, and the result is the current predominance of casual workers.

3.5 Demographic Changes in the Composition of Labour Forces

Most women now seek employment and, in fact, work part-time to complement their traditional homekeeping roles, which employers readily exploit. Unregulated childbirth in some parts of the country, which considers polygamy as a form of custom to be subscribed to, has consequently created a multiple labour force, and the absence of child/human development from the parents and guardians has led to multiple childbirths with no means of capacity development. Hence, an abundance of child and casual labour and an increase in criminal vices.¹⁸

3.6 Payment of Terminal Benefits and Allowance to Permanent Workers

Oftentimes, extant labour laws require that employers should pay decent remuneration, allowances and other terminal benefits to permanent workers or employees who are employed on more permanent terms and conditions. In a bid by employers to cut costs and avoid such weighty payments, including pension benefits, most employers resort to the hiring of temporary or casual workers.

3.7 Absence of a Conducive Environment for Business to Thrive

The continuous absence of a more conducive and enabling environment with substantial infrastructure and safety measures has necessitated the engagement of casual workers.¹⁹ Since temporary workers are generally denied the right to join a trade union and to collectively bargain for favourable terms and conditions for their employment, including a good and conducive environment and safety measures, employers are comfortable hiring casual workers instead of using their resources to provide necessary infrastructures and a healthy environment. This way, employers are faced with less agitation for improved working conditions from workers.

¹⁷ E A Madekoromo, 'Labour in Nigeria Urban Centre' (2004) (9) *Journal of Social Science*, 207-213.

¹⁸ Ajie (n 15), 111.

¹⁹ Ibid.



4.0 ADOPTION OF CASUAL LABOUR AND ITS EFFECTS ON ECONOMIC GROWTH IN NIGERIA

Under the Nigerian labour jurisprudence, there is no accrued benefit for casual workers contemplated by the law. The privileges and benefits available to permanent employees are not available to casual workers in Nigeria. The law does not recognise casual workers, and thus, they are not afforded equal opportunity with the permanent workers. Although they are actually paid their wages but not receive the same remuneration and benefits as permanent employees, such as annual leave, personal leave, paid days off on a public holiday and redundancy pay. Instead, they are typically paid a casual loading in lieu of these entitlements. Its continuity exposes the governments and corporate concerns' pursuit for maximisation of profits as against their responsibility to provide an enabling environment for economic activities to thrive.²⁰ Specifically, the effects of the adoption of casual workers on the economic growth of Nigeria include;

4.1 Absence of the Right to Join a Trade Union

Casual workers lack the statutory right to join a trade union. Existing labour laws stripped them of their right to join trade unions. The effect of this is that they may not be able to effectively negotiate with employers for improved working conditions and better terms and conditions of employment. They may equally not be in a position to access or secure other rights or any form of social protection, from either employers or the state. Casualisation threatens the direct or indirect replacement of permanent workers by casual workers. The negative consequence for individual employees readily extends to a negative effect on families and society. Through casualisation of employment, job security is reduced, and workers are forced to negotiate their positions on their own, which makes them vulnerable to exploitation. In addition, instability leads to economic insecurity for the workers and their families. Such a precarious situation affects a worker's experience at work, how he or she makes decisions about work and political issues and how such an individual relates to the broader labour environment.

However, casual workers, who ordinarily should be able to unionise if they were permanent workers, are not allowed to belong to unions and have no collective body to advocate for their rights. The implication is that they can be retrenched based on redundancy at any time without being notified of the reason or the extent of the intended redundancy. The workers are sometimes not even given any redundancy payment before they are laid off. Casual workers not fully protected by some universal codification

4.2 Absence of Living Wages

It is worthy to note that, though there are no specific international provisions protecting casual workers, various international conventions advocate for decent work and the rights of employees. For instance, the Universal Declaration of Human Rights²¹ makes provision for the right to work

²⁰ R Hall, 'Outsourcing, Contracting Out and Labour Live, Implications for Human Resource Development in Australian Organisation' (2000) (38)(2) *Asia, Pacific Journal of Human Resources*, 23-41.

²¹ Universal Declaration on Human Rights (UDHRs) 1948.



and receive wages that contribute to an adequate standard of living, the right of freedom of association, the right of protection from forced labour, the right to adequate working conditions, a clean and safe environment, the right to education, and the right to freedom from discrimination based on race and sex. Employee shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. The law also provides for equality of opportunity and treatment in employment, including equal remuneration for men and women for work of equal value and prevention of discrimination in respect of employment and occupation.²²

From the above, it can be seen that even though a casual employee is not a permanent staff member, he or she is still protected by several international treaties. However, several benefits are accruing to, and issues associated with, a permanent staff that a casual worker does not enjoy. Such benefits as severance packages, and most forms of paid leave (annual leave, public holidays, sick leave and so on).

4.3 Absence of Job Security

There is no gainsaying that casual workers do not enjoy any form of job security at all. A casual worker is not even entitled to prior notice of termination or even a severance package, unless it is explicitly agreed in the contract of employment. The employer also does not need to adduce any reason for terminating the casual employee's employment before the stipulated period.

It can be deduced from the above that the casual worker has little or no job security. Most employers might want to go down the route of employing casual workers to escape certain responsibilities that come with full-time employment. This may have accounted for some countries to check such whims, and as such have various prohibitions on the nature and duration of casual employment. For instance, France, Brazil, Angola and Belgium have a range of between 2 – 5 years duration for casual employment to terminate and transit to full employment.²³ As a result of the absence of job security, casual workers are not fully motivated to be maximally productive. Their inability to give their best in terms of production adversely affects the economic growth of the country. Casualisation may have negative effects on important aspects of national economic performance, such as skill formation and development. Within such a framework, the labour force of the nation will continue to suffer and be greatly affected.²⁴ Anti-labour practices such as casualisation can derail advancements in economic progress because there would always be agitations, industrial actions and breakdown in production and services. Casualisation may also increase the rate of brain drain and capital flight in the country, since the nation's labour force will begin to run to other countries with perceived better employment conditions and working environment, as has been witnessed in Nigeria. Moreso, it renders the citizens who are supposed to be the major beneficiaries

²² International Labour Organisation Convention, 98 of 1949, art 1.

²³ M Alesynaka and A Muller, 'Nothing More Permanent than Temporary?' Understanding Fixed-Term Contract' <<http://www.ilo.org/wcmspa/group/public/...ed/document/publication>> accessed 10 October 2024.

²⁴ (n 20), 167.



of economic investments impoverished and completely hopeless. Again, it leads to disparity among households over time.

5.0 CASUALISATION OF WORKERS AND ITS EFFECTS ON THE RIGHTS OF TEMPORARY WORKERS

The conditions of casual work have structural tendencies to undermine casual workers' well-being in Nigeria in several ways. First, the lack of rights and minimal legal status of casual work threatens not only these workers' access to resources and entitlements, but also to the type of self-respect that equal rights supports.²⁵ This is especially problematic in those industries where casual workers are performing the same tasks as workers on more standard employment contracts, because this expansion of dual employment systems within the one workplace tends to formalise unwarranted hierarchies of (dis) respect, and hierarchies which workers will confront on a daily basis. Such ongoing misrecognition, especially for workers in the oxymoronic category of long-term casuals, may in turn threaten workers' conceptions of themselves as sharing a basic equality with other workers on these terms.²⁶

Similarly, Okafor notes that losses suffered by casual employees include: abysmally low wages, absence of medical care allowances, no job security or promotion at work, no gratuity and other severance benefits, no leave or leave allowance, freedom of association, which is often jeopardised, no death benefits or accident insurance at work, and no negotiation or collective bargaining agreement.²⁷ This treatment extends to job allowances, canteen services, pension plans, health and life insurance schemes, transportation and leave entitlements.²⁸ Sadly, the trend now is that casual workers work for many years without promotion and necessary entitlements, and sometimes they do what normal employees should do, but are not compensated for such.²⁹

Second, the process of casualisation means that casual workers increasingly lack access to career paths, because much casual work lacks possibilities for career progression comparable to standard employment relationships; for example, a corollary of casualisation in universities is that casual positions that may once have been stepping stones into tenured positions are increasingly long-term experiences. Yet casual positions typically have little opportunity for career progression within this employment type; for instance, casual teaching positions in universities include only two employment categories: (a) workers with a doctorate, and (b) workers without a doctorate. Such a lack of career progression for casual workers has obvious material costs; however, it is

²⁵ D Tweedie, *What's Wrong with Casual Work?* (Working Paper-Centre for Research on Social Inclusion, Macquarie University, Sydney, Australia, 2011).

²⁶ (n 25).

²⁷ E E Okafor, 'Emerging Non-Standard Employment Relations and Implications for Human Resource Management Functions in Nigeria' (2000) (6)(26) *African Journal of Business Management*, 7612-7621.

²⁸ Fapohunda T M, 'Employment Casualisation and Degradation of Work in Nigeria' (2012) (3)(9) *International Journal of Business and Social Science*.

²⁹ Okafor, E E, 'Sociological Investigation of the use of Casual Workers in Selected Asian Firms in Lagos, Nigeria' (2010) (8)(1) *Ibadan Journal of the Social Sciences*.



important to note that in contemporary —work societiesll a career path is not simply a determinant of income. Rather, a career path also designates a progression from less to more demanding work, and career progression is (still) one significant form of social esteem. By limiting access to career paths, casualisation thus tends to undermine both the development of skills and capacities and workers' access to legitimate esteem for the work that they perform.³⁰

Third, casual work also tends to undermine workplace esteem through the typically smaller presence or voice that casual workers have in the workplace.

6.0 CASUALISATION OF WORKERS IN THE UNITED STATES OF AMERICA

In the United States, current labour laws and the design of social security insurance programmes were based on the traditional industrial relations notion that most workers have regular full-time employment with a single employer.³¹ In 2021, the concept of casual employment was different to the purist idea that started with *ad hoc* work, no promises or expectation that it would continue, with a modest premium on the hourly rate. It is now not unusual to hear stories about casual employees engaged consistently over many years by the same employer and later claiming permanent employee entitlements. The passage into law in 2021 of the Fair Work Act makes three major changes by introducing the following, namely;

- (i) Statutory definition of “casual employee” into the Act, which gives primacy in the parties’ relationship when the employment commences.
- (ii) Limited entitlement to convert from casual employment status to permanent employment under the National Employment Standard (NES).
- (iii) Statutory power obliging a court to offset any casual loading paid against any shortfall amount being claimed by an employee where it is later determined that the employee should have been treated as permanent.
- (iv) It amends provisions relating to notice of termination and severance entitlements to clarify that service as a casual before converting to Permanent employment does not count toward the employee’s length of service.³²

In the United States, current labour laws and the design of social security insurance programmes were based on the traditional industrial relations notion that most workers have regular full-time employment with a single employer. However, in the present economy, as many as 36 per cent of

³⁰ (n 25).

³¹ A Ibekwe, ‘Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison’ (2016) (13) *Nnamdi Azikiwe University Journal*, 85.

³² *AMWU v Donau Pty Ltd* (2016) FWCFR 3075.



Americans are said to work in nonstandard employment as temporary, part-time, contract and independent workers.³³

Nonstandard workers are excluded from protections given to traditional workers in terms of pay, benefits, overtime premiums, unemployment and disability insurance, health insurance, pension and legal protections regarding employment discrimination because they are not considered employees under the law. In addition, they had little expectation of job security, training, upward mobility and benefits. However, court decisions have shown that the Fair Labour Standards Act (FLSA) could be applied to temporary workers. An employee, according to the Act, is ‘any individual employed by an employer.’³⁴ In other words, the onus of proof lies on the temporary worker to show that he or she is an employee and not an independent contractor. In *Rutherford Food Cop. V McComb*,³⁵ the Supreme Court has held that the definition of an employee in the Act should be construed broadly and the status of an employee should be determined by an ‘economic reality test’ rather than the narrower common law master-servant test.

Concerning freedom of association, the US National Labour Relations Act (NLRA) provides that employees have the right to form or join unions of their own choice and bargain collectively with their employers.³⁶ The National Labour Relations Board (NLRB) is the body that determines the appropriate unit for collective bargaining purposes and also conducts an election in order to determine whether a majority of the employees in the unit want to be represented by the union.³⁷ In a ruling in 1990, the NLRB declared that long-term temporary employees could not be included in a bargaining unit with regular employees of a user-employer unless both the provider agency and the user-employer consented.³⁸ This decision was said to have made it impossible for temporary workers to organise. However, the NLRB reversed itself in 2000 in the case of *Sturgis v Textile Processors*³⁹ and held that both regular and temporary employees could be in the same bargaining unit as long as ‘they shared a community of interest.’ It also held that temporary employees could unionise in a bargaining unit of all the employees of a single temporary work agency. This resulted in the NLRB permitting the inclusion of temporary employees in bargaining units that comprised of temporary and regular employees of a single employer, or employees of a single temporary agency. This ruling was hailed as having expanded the possibilities for temporary workers to claim the protection offered by the labour law.⁴⁰

³³ S Horowitz, ‘New Thinking on Worker Groups: Role in a Flexible Economy’. in F Carre and others (eds), *Nonstandard Work: The Nature and Challenges of Changing Employment Arrangements* (University of Illinois at Urbana-Champaign: Industrial Relations Research Association Series, 2000) 393.

³⁴ Horowitz, (n 33), 394.

³⁵ 331 U.S. 722, 728-29 (1947); *Nationwide Mut. Ins. v Darden*, 503 U.S. 381, 326 (1992).

³⁶ KVV Stone, ‘Legal Protections for Workers in Atypical Employment Relationships in the United States’, (UCLA School of Law: Law & Economics Research Paper Series, Research Paper No. 06-12, 2006),15.

³⁷ Stone (n 36).

³⁸ *Lee Hospital Case*, 300 N.L.R.B. 150 (1991).

³⁹ 331 N.L.R.B. 1298, 165 L.R.R.M. (BNA) 1017 (2000).

⁴⁰ Stone (n 36).



Four years after the above ruling, the NLRB reversed itself again in the case of *Oakwood Care Centre v N & W Agency*.⁴¹ and reinstated its earlier ruling of a dual consent requirement from both the user employer and the provider-agency for temporary workers to organise. This ruling has therefore brought to an end the practice of temporary workers being able to organise in a bargaining unit with the permanent workers they work hand in hand with, as they can only unionise in the same union with the workers employed by their temporary agency. This, in the true sense of the word, has curbed the right to freedom of association of temporary employees in the United States.

6.1 LESSONS FROM THE UNITED STATES OF AMERICA

Under American law, employees have the right to form or join unions of their own choice and bargain collectively with their employers.⁴² However, following court rulings, the practice of temporary workers being able to organise in a bargaining unit with the permanent workers they work hand in hand with appears to have been taken away. The practice now is that temporary workers can only unionise in the same union as the workers employed by their temporary agency. This position demonstrates that there is no significant difference between the rights and protection of casual workers in Nigeria and the United States

7.0 CASUALISATION OF WORKERS IN GHANA

Ghana is a developing country in the western part of Africa with a similar economy to Nigeria's. They also share the same history of British colonisation and became independent at about the same time. Recently, crude oil was discovered in commercial quantities, and exploration has already begun, which has attracted foreign direct investment (FDI) to the country, like in Nigeria's oil and gas industry. The bulk of its workforce can also be found in the informal sector, like that of Nigeria, where there is a race to the bottom in terms of labour standards.

The legal framework of NSWAs in Ghana is important here because it will help to propose a framework that could work in Nigeria, since it has a similar economy and level of development. All its various legislations on labour law were harmonised in 2003 into one Act known as the Labour Act No. 651 of 2003. Ghana, as a signatory to the ILO Convention, reflected its provisions in the new Act. The Act covers all employers and employees except those in sensitive positions such as the Armed Forces, Police Service, Prisons Service and Security Intelligence Agencies. Major provisions of the Act include establishment of public and private employment centres, protection of the employment relationship, general conditions of employment of persons with disabilities, employment of young persons, employment of women, fair and unfair termination of employment, protection of remuneration, temporary and casual employees, unions, employers' organizations and collective agreements, strikes, establishment of a National Tripartite Committee,

⁴¹ 179 LRRM (BNA) 1033 (2004).

⁴² KVV Stone, 'Legal Protections for Workers in Atypical Employment Relationships in the United States', (UCLA School of Law: Law & Economics Research Paper Series, Research Paper No. 06-12, 2006),15.



forced labour, occupational health and safety, labour inspection and the establishment of the National Labour Commission.⁴³

Part X.⁴⁴ The Labour Act provides a legal framework for the regulation and protection of the employment of casual and temporary workers in Ghana. It defines the two concepts and prescribes the remuneration that should accrue to them as well as the procedure to follow in the event of a breach by the employer.

Casual Worker: A casual worker is defined as ‘a worker engaged on work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated daily.’⁴⁵ The Act also provides that the contract of a casual worker need not be in writing and must be employed continuously or intermittently for less than 6 months per year.⁴⁶ A casual worker must be given equal pay for work of equal value.⁴⁷

Temporary Worker: A temporary worker, on the other hand, is defined as someone who works continuously for 6 months per year. Where, however, she is employed for a continuous period of 6 months or more for the same employer, she shall be treated as a permanent worker.⁴⁸ If an employer breaches these provisions, the temporary or casual worker may present a written complaint to the Commission for determination, and its decision shall be binding on both parties.

As regards freedom of association, the Ghanaian policymakers have shown through the reform in the labour laws in the country that they are deeply committed to the protection and promotion of workers’ rights in the workplace. Part XI of the Labour Act covers freedom of association of both employers and employees and the right to form or join a union. It provides that ‘Every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker’s economic and social interests.’⁴⁹ It provides further in compliance with the ILO that ‘two or more workers employed in the same undertaking may form a trade union. This is in sharp contrast to the Nigerian Trade Unions Act, which requires up to 50 workers to form a trade union, and the amendment of 2005 did not correct the previous provision.’⁵⁰

Going by Ghanaian law, casual work ought not to be permanent employment, just as temporary employment is not meant to be permanent either. Despite the law, many studies and critics have shown that casual and temporary employment in Ghana has taken on a permanent form, like the

⁴³ Ghana National Labour Law Profiles –Information Resources. International Labour Organisation < <http://www.ilo.org/public/english/dialogue/ifpdial/info/national/ghana>> accessed 19 November 2025.

⁴⁴ Special Provisions Relating to Temporary Workers and Casual Workers of the Ghana Labour Act 2003.

⁴⁵ Ghana Labour Act 2003, s 77.

⁴⁶ Ibid, s 74(1).

⁴⁷ Ibid, s 74(2)(a).

⁴⁸ Ibid, s 75.

⁴⁹ Ghana Labour Act 2003, s 79(1).

⁵⁰ Nigerian Trade Union (Amendment) Act 2005, s 3(1).



situation in Nigeria. Many of these categories of workers have been in employment for more than a year continuously without their status being regularised as permanent employees, as provided by the law.⁵¹

Most casual workers are employed in the informal sector under deplorable conditions and low wages, which are usually lower than the minimum wage of the country. The argument for the employment of casual workers in Ghana is the same as what obtains everywhere it exists. Entrepreneurs are concentrating on their core business and contracting out the arms they believe are not core to their business to contractors, and the result of this is casualisation, which has resulted in the race to the bottom of labour standards. And as was stated earlier, the need of the casual worker to remain in employment and earn a living supersedes the need to make a complaint to the Commission for fear of losing the job completely. From the foregoing, it can be seen that casual and temporary workers in Ghana are most vulnerable despite the protection offered by the Labour Act. Employers observe the law more in breach than in compliance. What is obvious here is that although Ghana has a more detailed legal framework for the protection of its nonstandard workers, there is a lack of enforcement of the provisions of the law and these workers, to remain employed and earn an income, would rather receive low wages and work under precarious conditions than to seek a remedy through the Commission as provided by the law.

7.1 LESSONS FROM GHANA

Casualisation appears to be a global labour practice in every jurisdiction. However, the approach and practice vary according to legal or statutory backings and state control. In 2003, Ghana commenced a holistic reform of its labour jurisprudence following the enactment of the Labour Act.⁵² This piece of legislation harmonised the various labour legislation and codified them into a single legislation. This affords it one of the most comprehensive and holistic pieces of legislation on labour law globally.

One of the achievements of the Act is its definition of a “worker” to mean a person employed under a contract of employment, whether on a continuous part-time, temporary or casual basis. The legal implication of this definition is that casual and temporary workers are eligible to enjoy any benefit or protection offered to permanent workers by the Labour Act or any other relevant legislation. Therefore, a Ghanaian employer, unlike her Nigerian counterpart, cannot lawfully discriminate against workers in casual or temporary employment. Every worker, whether part-time and temporary workers and as such these endangered and vulnerable species of workers are entitled to the legal protection offered by the right of the Act. Holistically, the Act covers all employers and employees except those in sensitive positions such as the Armed Forces, Police Service, Prisons Service and Security Intelligence Agencies. There is, therefore, no dichotomy between a permanent worker

⁵¹ J Barrientos and others, ‘Social Protection for Migrant Labour in the Ghanaian Pineapple Sector’, Working Paper T- 30 September 2009, 5 and 31.

⁵² Labour Act, No. 651 of 2003.



and a temporary worker. Hence, the absence of unnecessary agitations, which hampered productivity and the nation's economic growth, as is the case in Nigeria.

On freedom of association and joining of trade unions, the Ghanaian policymakers have shown through the reform in the labour laws in the country that they are deeply committed to the protection and promotion of workers' rights in the workplace. The Act provides that 'Every worker has the right to form or join a trade union of his or her choice for the promotion and protection of the worker's economic and social interests.'⁵³ It provides further in compliance with the ILO that 'two or more workers employed in the same undertaking may form a trade union. This is in sharp contrast to the Nigerian Trade Unions Act, which requires up to 50 workers to form a trade union, and the amendment of 2005 did not correct the previous provision.'⁵⁴

8.0 CONCLUSION

The practice of Labour casualisation posed a major challenge for workers' welfare, commitment to organisational goals and survival, workers' right to join a union, and productivity. The current state of the economy (with a high level of unemployment) has brought a major obstacle to stopping casual work in Nigeria. Since jobs are hard to find, casual workers prefer staying with employers in order to meet up with their daily bread. The Neo-liberal and Equity theories also lead us to the background factors and situation in the place of work, which will more likely influence the attitude and behaviour of workers to engage in such jobs. Nigeria has gone a long way in her attempt at economic development and social advancement, hence what she needs now is hardly such a depleting virus as the proliferation of casual employment, but rather, good terms and conditions of employment for all Nigerian workers.

The issue is not only a lack of local legislation or international instruments guaranteeing the freedom of association and the right to organise, but a general lack of enforcement of labour laws by the government and its agencies and by extension, failure to extend these rights to casual workers. Therefore, the main problem is in the area of enforcement, as employers are allowed to breach labour laws with impunity while the Government turns a blind eye. Another major problem is the need for balance between the government's employment policy and its desire to attract foreign direct investment. The government's employment policy is to ensure that more jobs are created through the process of attracting foreign direct investments (FDI). Its concern with economic growth and development is often prioritised above compliance with global labour standards.

⁵³ (n 52), s 79 (1).

⁵⁴ Trade Unions Act Cap 437 LFN 1990, s 3 (1)(a).



9.0 RECOMMENDATIONS

The following recommendations are proffered:

1. One of the foremost causes of Labour casualization in Nigeria, as revealed by the study, is the current high level of unemployment in the country. So long as this unchecked high level of unemployment exists, society will find it difficult to control casualisation. Therefore, it is recommended that the country should prioritise efforts towards the creation of decent employment opportunities for its employable populace. It is believed that when gainful employment is provided across all the economic sectors, many fewer people will accept casual employment.
2. Employers of labour in all sectors of the Nigerian economy should be urged to adopt the six (6) month probation period for confirmation of employment. Thus, regularisation of casual workers should come into effect after six months of the first appointment, except where certain casuals are found not worthy of full-time engagement. This will eliminate all forms of defects and ineffectiveness that casual workers are characterised by in organisations where they exist.
3. Casual staff whose employers have been prohibited from joining or forming trade unions or who are being victimised/discriminated against because of union activities have recourse to the National Industrial Court. Once again, the Industrial Court is urged to step into its role as the last bastion of hope for the common man to vigorously condemn exploitative labour practices.
4. A robust legal framework on labour laws and an urgent review of the Labour Act in Nigeria need concerted efforts from all stakeholders. As a matter of national interest, there is a need for more detailed legislative protection of casual workers. The new legislation should state clearly the tenure of a casual worker so that employers will be discouraged from keeping them permanently under precarious conditions with no rights as casual workers. We can draw from the example of Ghana, where the new Labour Act of 2003 clearly defines the status of casual and temporary workers and the remuneration they are entitled to, as well as remedies for breach of their terms and conditions of service.