

A COMPARATIVE EVALUATION OF TERMINATION AND DISMISSAL LAWS IN NIGERIA VIS-À-VIS INTERNATIONAL LABOUR LAW STANDARDS

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Abstract

This research critically evaluates the inadequacy of Nigerian labour laws on termination and dismissal, especially in comparison with international labour standards such as ILO Convention No. 158. The study focuses on how Nigerian labour law principally in the private sector continues to rely heavily on common law doctrines like the master-servant principle, which allow employers to terminate employment without providing valid reasons. This mainly applies to contracts without statutory flavour as is the case with non-governmental corporations. It examines the extent to which Nigerian labour law aligns with international standards that emphasise fairness, procedural safeguards, and justifiable grounds for dismissal. The research adopts a doctrinal and comparative approach, analysing statutory provisions, judicial decisions, and international instruments, with reference to how the United Kingdom and South Africa have implemented similar standards. Findings show that while the National Industrial Court of Nigeria has made commendable efforts, Nigeria's legal framework remains fragmented and lacks the statutory force to fully protect workers' rights. The study concludes by recommending legal reforms that would bring Nigerian labour laws in line with global standards, ensure consistency in judicial enforcement, and offer more meaningful protection for employees against wrongful termination and dismissal.

Keywords: International Labour Organisation, Termination, Dismissal, Labour Law and Common Law

1.1.Introduction

Contracts of employment, whether written or oral, define the rights, duties, and obligations between the employer and the employee. Even though employers have the right to end an employee's employment, that right should be exercised within the bounds of fairness, legality, and respect for workers' rights. In Nigeria, termination laws have been influenced by common law, particularly the master-servant doctrine, which allows employers to dismiss employees for any reason, or even no reason at all, as long as the proper notice is given or payment is made in lieu of the notice.¹ This approach has remained dominant in Nigerian jurisprudence especially for employees without statutory flavour. This leaves many employees particularly those without statutory protection vulnerable to being dismissed without fair cause or due process.

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¹ *Katto v. Central Bank of Nigeria* [1999] 6 NWLR (Pt. 607) p. 390; M Babatunde, *An Assessment of the Wrongful Termination of Employment Contract under the Nigerian Labour Law* (LL.M Thesis, 2021), p. 112.

Although the National Industrial Court of Nigeria has tried to adopt international best practices,² especially since the Third Alteration Act of 2010, these changes have not been fully reflected in the law itself. Furthermore, Nigeria is yet to ratify International Labour Organisation Convention No. 158, which sets out important guidelines on termination for instance, the requirement for employers to give valid reasons and for employees to be given a chance to respond.³ On this basis, many workers are still at the mercy of employers who can terminate their employment without serious consequences, as long as they issue the notice or pay in lieu. This gap in the law affects workers tremendously. Comparatively, countries like the United Kingdom and South Africa have made some progress by adopting parts of ILO Convention No. 158 into their national laws. For example, in the UK, the Employment Rights Act 1996 is clear about unfair dismissal. It gives employees the right to challenge a dismissal they think is not fair. If the dismissal is found to be wrong, the employee might be reinstated or given compensation, depending on the situation. In South Africa, the Labour Relations Act 1995 is a bit more specific, insisting that both the reason and the process behind a dismissal must be fair. The Act also created the Commission for Conciliation, Mediation, and Arbitration (CCMA), which is there to resolve disputes between employees and employers. These countries have set up systems where workers' rights are well-protected, but employers can still make necessary business decisions.

This paper is therefore motivated by the need to evaluate how termination and dismissal laws in Nigeria align with what is obtainable in other jurisdictions, particularly in light of wrongful and unfair dismissal practices. It seeks to investigate whether existing laws sufficiently protect employees, as well as draw lessons from jurisdictions like the UK and South Africa.

2.1 Definition and Distinction between Termination and Dismissal

Although termination and dismissal are used interchangeably in the Nigerian legal landscape, they do not mean the same thing. They in fact connote different things in terms of procedure and substantive application.

Termination of employment broadly refers to the conclusion of an employment relationship, which can be initiated either by the employer or the employee. The cessation can occur for a variety of reasons and generally follows due processes as outlined in the employment contract or the Labour Act. It involves notice periods and potentially entitling the employee to certain benefits such as severance pay.⁴ An employment can be terminated by notice from either party as earlier mentioned and in this case, either the employer or employee can pay the other party an amount equivalent to the salary for that period. Termination of employment can also occur at the expiration of a fixed term contract without renewal, or by mutual agreement of the parties.

Section 9(7) of the Labour Act provides that a contract of employment can be terminated by the expiry of the period for which it was made; or by the death of the worker before the expiry of that period; or by notice in accordance with section 11 of the Act or in any other way in which a contract is legally terminable or held to be terminated. Section 11 further

² *Ebere Aloysius v. Diamond Bank Plc* [2012] 58 NLLR, p.92; *Duru v. Skye Bank Plc* (Unreported, NICN/LA/98/2014).

³ Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria (LFN) 2004 (CFRN 1999) s 12(1).

⁴ O Atoyebe, 'Termination of Employment in Nigeria: An Overview of Labour Law' (10 July 2024), p.12. <<https://omaplex.com.ng/termination-of-employment-in-nigeria-an-overview-of-the-labour-law/>> accessed 19 May 2024.

provides the following periods of notice; one-day notice for a contract of employment lasting less than 3 months, one-week notice for a contract of employment which has lasted between three months and two years, 2 weeks' notice for a contract which has lasted between two years to five years and one month for five years' service or more.³² Where the contract is silent on notice, common law implies a reasonable period depending on the specific circumstances.³³

Termination of employment is thus wrongful where the employer terminates the contract of the employee without following the procedure and process of termination. It is done in breach of the contractual terms and without the giving the required notice. In a wrongful termination, the employer commits a breach. The court in the case of *Union Bank of Nigeria PLC v Chinyere*⁵ held that 'an employment can be said to be wrongfully terminated if it was done contrary to the conditions governing the contract of service.'

Dismissal from employment is a more specific action, typically initiated by the employer as a consequence of the employee's misconduct or significant breach of the contract of employment. Unlike termination, dismissal does not require any notice or payment in lieu of notice. Simply, it is a punitive action where employees may forfeit certain benefits in cases of gross misconduct.⁶ This will be discussed more in succeeding sections.

In the case of *Union Bank of Nigeria Plc. V. Soares*⁷, the court articulated the difference between these two concepts, holding that termination provides both parties with the right to end the contract of employment at any time by giving the prescribed notice, whereas dismissal is a disciplinary measure that typically results in the loss of benefits. Similarly, in *Jumbo v Petroleum Equalisation Fund (Management Board) & Ors.*,⁸ the court highlighted that termination allows the employee to receive their terminal benefits, while dismissal is the punitive and often leads to the forfeiture of these benefits.

2.2 Laws that Regulate Employer/Employee Relationship in Nigeria

Laws regulating employer/employee relationships in Nigeria include:

2.2.1 The Constitution

The Constitution,¹² as the grundnorm, provides the foundational principles for labour rights, including those related to termination of employment. While it does not contain a complete employment code, it lays out key socio-economic and legal objectives that influence labour law. Chapter II contains the Fundamental Objectives and Directive Principles of State Policy. Though not enforceable in court, Section 16(2)(d) promotes economic security through minimum wage and welfare provisions, while Section 17(3) emphasizes fair and humane working conditions, equal pay, and protection from exploitation. These principles support arguments against unfair or discriminatory termination.

³²Labour Act, s 11(2).

³³*Grundy v Sun Printing and Publishing Association* [1916] 33TLR p.77.

⁵ [2012] 2 NILR 41, p.63.

⁶ U Sunday and OJ Utobo, 'Employees Contract of Employment and Wrongful Dismissal from Service' (2014) 7(1) *African Journal of Politics and Administrative Studies*, p.72.

⁷ [2012]11 NWLR (Pt.1312) p.550 at 571.

⁸ [2005] JELR (Pt.361) p.72 (SC).

¹² The Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap 23, Laws of the Federation (LFN) 2004.

Chapter IV outlines enforceable Fundamental Rights. Section 34 protects the dignity of the human person, prohibiting forced labour and inhumane treatment, which can apply to humiliating or coercive dismissals. Section 42 prohibits discrimination based on ethnicity, sex, religion, or political opinion, making any termination on such grounds unconstitutional.

Chapter VII establishes the National Industrial Court of Nigeria through Sections 254A to 254D. Section 254C(1) gives the NICN exclusive jurisdiction over employment matters and power to enforce fundamental rights in labour contexts. Notably, Section 254C(2) allows the NICN to apply international labour conventions, thereby reinforcing protections against unfair dismissal with global standards.

2.2.2 The Labour Act

The Labour Act¹³ was enacted to regulate the relationship between employers and employees. In specific terms, it focuses on the contract of employment in relation to workers as opposed independent contractors. Part 1 of the Act outlines general provisions concerning the contract of employment, and terms and conditions of employment including those related to the termination of employment.

2.2.3 Common Law Principles

The common law of England, received through the Supreme Court Ordinance of 1914, has had a lasting influence on Nigerian labour jurisprudence. One of the most enduring doctrines is the **master-servant relationship**, which views employment as a private contractual relationship that can be ended at will. The English Common Law has therefore in, influence employment contracts, employer-employee relationships, and dispute resolution mechanisms, especially in areas not explicitly covered by Nigerian statutes.

2.2.4 International Labour Standards

As a member of the International Labour Organization, Nigeria is bound by certain international conventions and recommendations, particularly where they reflect best practices. The **ILO Convention No. 158** and **Recommendation No. 166** on termination of employment promote fairness, valid reason, and procedural safeguards before dismissal.¹⁴ Although Nigeria has not ratified all ILO instruments, the NIC is empowered by the Constitution to apply international best practices where appropriate.¹⁵

2.2.5 Judicial Precedents

Case law is a crucial source of labour law in Nigeria. Courts, especially the NICN, interpret statutory provisions and clarify the rights and obligations of parties in employment relationships. Landmark decisions have shaped principles on wrongful termination, unfair dismissal, redundancy, and reinstatement. In *Katto v. CBN*,¹⁶ the court reinforced the common law position that employment can be terminated for any reason or no reason, provided due notice is given. However, more recent NICN decisions have signaled a departure toward fairness and international best practices.

Other important laws include the **Trade Disputes Act**,¹⁷ the **Factories Act**,¹⁸ the **Employees' Compensation Act**¹⁹, the **Trade Unions Act**,²⁰ and the **National Minimum Wage Act**.²¹

¹³Labour Act, Cap L1 Laws of the Federation of Nigeria 2004.

¹⁴*Termination of Employment Convention* (1982) ILO Convention No 158, arts 4–10.

¹⁵CFRN (Third Alteration) Act 2010, s 254C(1)(f)–(h).

¹⁶[1999] 6 NWLR (pt. 607) p.390.

¹⁷Trade Dispute Act 2004.

These laws provide both the procedural and substantive rules that govern employment relationships in both the public and private sectors.

2.3 Dismissal of Employment in Nigeria

In Nigeria, the most common form of dismissal is summary dismissal. A thorough knowledge of dismissal is needed and crucial for both employers and employees because it helps in preventing disputes, ensuring fair labour practices and mitigating potential legal liabilities.

2.3.1 The Nature of Summary Dismissal

Summary dismissal is a form of termination of employment where the employer brings the employment relationship to an immediate end, without giving notice or payment in lieu of notice, as a consequence of gross misconduct by the employee.⁹ Summary dismissal under Nigerian law, as established through common law principles, is recognised as the right of an employer to terminate the contract of service of an employee without providing any notice or making payment in lieu of notice.

This right is specifically exercisable only when the employee has been found guilty of gross misconduct, the severity of which is such that it strikes at the very foundation of the employment contract. This common law right is also acknowledged within the statutory framework of Nigerian labour law. Section 11(5) of the Labour Act explicitly states that the provisions regarding notice periods for termination do not affect the right of either party to treat the contract as terminated without notice due to conduct by the other party that would have justified such action before the Act came into effect. This statutory preservation is to the effect of the enduring relevance of the common law principles governing summary dismissal in Nigeria.

Summary dismissal is thus, considered lawful where the employee's actions constitute a fundamental breach of contract that destroys the confidence necessary for the continuation of the employment relationship. The grounds for summary dismissal include gross misconduct, incompetence, wilful disobedience to lawful and reasonable orders given by a superior, and breach of duty of faithful service and fidelity.

2.3.2 Dismissal in Consequence of Union Activities

Employees embark on union activities to force on employers the conditions and terms which are favourable to them. Such union activities include strikes, lock out, work-to-rule, picketing, go slow, and so on. But of major interest in this work is strike because of its recurrence in labour relations in Nigeria. Strike is defined in the Trade Disputes Act¹⁰ as: “the cessation of work by a body of persons employed acting in combination or, a concerted refusal or 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, to accept or not to accept terms of employment and physical conditions of work”.

¹⁸ Factories Act Cap F1, Laws of the Federation, 2004.

¹⁹ Employees Compensation Act, 2010.

²⁰ Trade Union Act Cap T14, Laws of the Federation, 2004.

²¹ National Minimum Wage Act, 2004.

⁹ Labour Act, s. 11.

¹⁰ Trade Dispute Act, s.48

The right to strike is an essential element of the principles of collective bargaining. It is essential element not only of the unions' bargaining itself, but also a necessary sanction for enforcing agreed rules.¹¹ A denial of this right will amount to forced labour, which is a violation of section 34 of the Constitution except in justifiable circumstances.¹² The position of law in Nigeria under the statute can be found in section 43 of the Trade Disputes Act which provides that: "Notwithstanding anything contained in this Act, or in any other law – 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 purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be judicially affected accordingly".

The position in Nigeria contrasts sharply with the position under the International Labour Organisation standards on unfair dismissal entrenched in the ILO Termination of Employment Convention which provides *inter alia* that union membership or participation in union activities outside working hours, or with the consent of the employer, within working hours shall not be valid reason for termination. It is unfair to dismiss a worker who embarks on a strike action in Nigeria. Consequently, any dismissal or termination in consequence of a union activity amounts to an unfair dismissal.¹³

2.3.3 Constructive Dismissal

Constructive dismissal is a situation where an employee terminates the contract of employment without notice because the employer has made the working conditions intolerable by committing a breach of a fundamental term of the contract of employment such that the employee has no option but to resign.¹⁴ Lord Denning M.R made an exposition of the position of the doctrine in *Western Excavating (ECC) Ltd v. Sharp*¹⁵ when he stated thus: "If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must, in either case, be sufficiently serious to entitle him to leave at once."

The doctrine is rooted in common law, adapted across jurisdictions, and has gained significance through statutes addressing unfair dismissal. In *Miss Ebere Ukoji vs. Standard Alliance Life Assurance Co. Ltd*¹⁶ the court in answering the question of what constructive dismissal is and relying on the earlier decision in *Western Excavating case*¹⁷, had this to say;

Globally, and in labour/employment law, constructive dismissal, also referred to as constructive discharge, occurs when an employee resigns because his/her employer's

¹¹ *Goofier Harris Tweed Co Ltd v Veitch* [1942] ALL ER (Pt. 42)59

¹² G, Otuturu, 'The Right of workers To Strike in Nigeria: A Critical Appraisal' (2009) 3(2) *Nigerian Journal of Labour Law and Industrial Relations* 38.

¹³ *ibid.*

¹⁴ Patreli Partners, 'The Doctrine of Constructive Dismissal in Employment Contracts' (15 September 2023) p.16. <<https://www.patrelipartners.com/the-doctrine-of-constructive-dismissal-in-employment-contracts/>> accessed 19 May 2025.

¹⁵ [1978] 1 All ER p.713.

¹⁶ [Unreported] Suit No. NICN/LA/48/2012p. 133.

¹⁷ [1978] 1 All ER p.713.

behaviour has become so intolerable or heinous, or such behaviour has made life so difficult that the employee has no choice but to resign. Given that the resignation was not truly voluntary, it is in effect a termination. In an alternative sense, constructive dismissal or constructive discharge is a situation where an employer creates such working conditions (or so changes the terms of employment) that the affected employee has little or no choice but to resign. Thus, where an employer makes life extremely difficult for the employee, to attempt to have the employee resign, rather than outright firing of the employee, the employer is trying to create a constructive discharge. The exact legal consequences differ from country to country, but generally a constructive dismissal leads to the employee's obligations ending and the employee acquiring the right to seek legal compensation against the employer. The employee may resign over a single serious incident or over a pattern of incidents.

To succeed in a claim for constructive dismissal, the employee must prove a fundamental breach of the employment contract by the employer. Fundamental breaches include the following unilateral reduction of the employee's salary,¹⁸ insisting upon the employee working beyond the contractually obliged hours¹⁹ unilaterally changing the employee's duties,²⁰ requiring the employee to work where they are not contractually required to work,²¹ breach of the implied term of trust and confidence.

In a constructive dismissal claim, the onus rests on the employee to prove, with a balance of probabilities, that the working conditions were intolerable and that the employer could have rectified the situation but failed to do so. Thus, constructive dismissal is wrongful and unfair because it fundamentally breaches the contract of employment.

2.4 Wrongful and Unfair Termination in Nigeria

Wrongful termination connotes a breach of the implied or express method or procedure for the determination of the contract of employment. It occurs where an employer terminated the employee without giving a notice which is shorter than the required notice. It also arises where a procedure is breached especially where one is statutorily provided or where the employment contract states clearly the procedure to be followed. It happens in the case also where the employer terminates a contract with a fixed term before the expiration of that term without any justified reason.

In Nigeria, wrongful termination can be discussed in four headings which will be enumerated below.

2.4.1 Termination of an Employment Contract with Statutory Flavour

The general rule since the decision of the Supreme Court in *Shitta Bey v Federal Public Service Commission*,²² is that an employment has statutory flavour where the appointment is protected by statute and can only be terminated in accordance with the provisions of that

¹⁸ *Industrial Rubber Products v. Gillon* [1977] I.R.L.R p.389.

¹⁹ *Derby City Council v Marshall* [1979] I.C.R. p.731.

²⁰ *Coleman (DA) v. S&W Baldwin* [1977] I.R.L.R p.342.

²¹ *Courtaulds Northern Spinning v. Sibson* [1988] I.C.R. p.451.

²² [1981] LPELR-3056(SC)p.345.

statute. Thus, such employment can only be terminated when it follows the procedure of the enabling statute creating it otherwise the termination will be declared null and void and the employee will be reinstated.

Thus, it will be a case of wrongful termination and dismissal where an employee with statutory flavour is terminated without following the rules and procedures laid down by the enabling statute. In such cases, the employer is not at liberty to dismiss at will; the process must follow laid down procedures, including service of disciplinary queries, investigations, and the right to be heard. Where these are not complied with, the employee is entitled not just to damages but to reinstatement and all accrued entitlements.²³ The statute dictates the precise steps that must be taken by the employer to validly bring the employment to an end. This might include specific requirements regarding the issuance of notices, the holding of disciplinary hearings, and the involvement of particular bodies or committees in the decision-making process. Fundamental to these procedures is the importance of due process and ensuring a fair hearing for the employee, especially in cases involving disciplinary matters that could result in dismissal.²⁴ The principles of natural justice, such as the right to be heard and the right to an impartial decision-maker, are often implied or explicitly stated in the statutory procedures. Any failure to comply meticulously with the procedures prescribed by the statute renders the termination legally invalid, null, and void.

The justification for this strict position is that employment with statutory backing is not purely contractual. It carries with it public interest considerations and constitutional protections, particularly the right to fair hearing under section 36 of the Constitution.²⁵

2.4.2 Termination of An Employment Contract without Statutory Flavour

In contrast, employment without statutory flavour refers to relationships governed solely by contract. This is the most common type in Nigeria's private sector. The rule here is that either party may terminate the contract by giving the appropriate notice or payment in lieu of notice, as stipulated in the agreement or under the Labour Act.²⁶ Therefore where notice is not given, or inadequate notice, it constitutes wrongful termination. The termination of employment may also be wrongful where it was based on alleged malpractice that was not justified. In *Omoniyi Osusanya v E-Motion Advertising Ltd*,²⁷ the National Industrial Court found that though the defendant(employer) acknowledged that the termination of the claimant's employment was wrongful for failure of required notice or payment in lieu, it was clear that the termination of the claimant's employment was based also on an alleged malpractice and not just on failure to give notice or payment in lieu of notice.

The courts have consistently held that in such contracts, an employer does not need to give any reason for termination, so long as the correct procedure is followed. The position was reaffirmed in *Chukwumah v Shell Petroleum*,²⁸ where the court held that a master has the

²³ [1985] 2 NWLR (Pt 9) p.599 (SC).

²⁴ B Nwabueze, 'Dismissal of Employees in Nigeria: Substantive and Procedural Safeguards' (2014) 2(1) *Nigerian Labour Law Review* 45, p.48.

²⁵ CFRN 1999, s. 36(1).

²⁶ Labour Act, s. 11.

²⁷ Suit No. NICN/LA/457/2013 [Unreported].

²⁸ *Chukwumah v Shell Petroleum Development Co Ltd* [1993] 4 NWLR (Pt 289) p.512 (SC).

right to terminate the contract for good reason, bad reason, or no reason at all, provided that the terms of the contract are observed. The employee's remedy in such a case lies in damages for breach of contract, not reinstatement or nullification of the termination.

2.4.5 The Place of Motive and Reason in Termination of Employment

The position of the law in Nigeria is that the motive for terminating a contract of employment is irrelevant provided the employer complies with the terms of the contract of employment or statutory provisions regulating the contract of employment. What this means is that an employer who is actuated by malice or bad faith can just comply with the provisions of a statute regulating an employment in the case of employments with statutory flavour or terms of the contract of employment in the case of contract of employment without statutory protection.

This position is rooted in common law as employers can terminate a contract of employment at will for any reason or no reason at all as you cannot force an unwilling employer on a willing employee. However, the above position is not in line with international fair labour practices and with contemporary constitutional amendment has made the above position bad law.²⁹ A distinction must be made between when an employer has a bad motive but follows appropriate procedure but gives a true reason for the dismissal and when he gives an untrue reason for his dismissal. In *Mariam v University of Illorin Teaching Hospital*,³⁰ the court reinstated an employee where it was found that she was fired due to bad motive and untrue reason.

2.4.6 International Labour Standards

The primary means through which the International Labour Organisation pursues its objectives is the development of International Labour Standards (ILS). These standards lay down the basic principles guiding how workers should be treated in employment, focusing on fairness, respect for human rights, workplace safety, fair wages, and proper procedures for termination and dismissal. They are rooted in principles of good sense and governance, not complex legal interpretations, and are vital for ensuring equitable labour relations globally.

To be enforceable, ILO Conventions must often be domesticated in national legal systems. In countries like Nigeria, ratification alone does not suffice for enforcement unless the treaty relates specifically to labour matters, which sometimes receive automatic recognition. Notably, key instruments such as the Termination of Employment Convention 158 (1982) and the 1966 Recommendation,³¹⁶ provide foundational guidance on how dismissals and terminations should be justly handled.

3.1 International Labour Organisation Standards on Termination and Dismissal

International Labour Organisation in its efforts to set standards of practice in the work place particularly relating to termination and dismissal of employment fashioned out recommendations concerning termination of employment and Convention on Termination Employment. These are;

- a. The Termination of Employment Convention, 1982 (No. 158)
- b. The Termination of Employment Recommendation, 1982 (No. 166)

²⁹ E Ntekim, 'Summary Breach of Applicable Procedure' 2023 9 *ULJ*, 6, 11.

³⁰ [2013] 35 *NLLR* (Pt. 103) p.40.

³¹ International Labour Organisation, 'International Labour Standards' <<https://www.ilo.org/international-labour-standards>> accessed on May 10 2025.

3.1.1 The Termination of Employment Convention, 1982 (No. 158)

The International Labour Conference adopted the Termination of Employment Convention, 1982 (No. 158) to establish minimum global standards against unjustified dismissal. It builds on the earlier 1963 Termination of Employment Recommendation (No. 119), which laid the groundwork for regulating termination practices internationally.³²

Article 2 of the Convention applies to all employed persons across all sectors, thereby abolishing distinctions between workers with statutory protection and those under purely contractual arrangements. This broad coverage contrasts with Nigeria's dualist labour regime, where a clear distinction exists between statutory employment and ordinary contracts, a divide that limits the protection available to many private sector workers.

Nonetheless, Article 2(3) permits member states to exempt specific categories, such as workers on fixed-term or casual contracts, or those on probation.³³

The core of the Convention is Article 4, which prohibits termination without a valid reason related to conduct, capacity, or operational needs. This diverges from Nigeria's traditional "at-will" doctrine, where private employers may terminate employment without reason provided proper notice is given. Article 4 mandates substantive fairness by invalidating arbitrary dismissals.

Article 5 prohibits terminations based on union membership, legal action against the employer, pregnancy, religion, or race. Article 7 introduces procedural fairness, requiring employers to give the employee a chance to defend himself before termination, echoing the Nigerian constitutional right to fair hearing.

Further, Articles 8 to 10 ensure access to an impartial body to contest terminations, with the burden of proof assigned according to national law. Article 11 requires reasonable notice or compensation in lieu, except in cases of serious misconduct, while Article 12 mandates severance pay or income protection based on service length.

Articles 13 and 14 cover redundancy, requiring employer consultation with worker representatives and notification of relevant authorities to reduce job losses and their impact. Although Nigeria has not ratified or domesticated Convention No. 158, its provisions represent a robust international framework for fair termination. The Convention exposes the inadequacies of Nigeria's labour system, particularly its failure to extend equal protection to private sector workers. It calls for urgent reforms that incorporate international best practices to enhance job security and ensure both procedural and substantive fairness in employment termination.

3.1.2 The Termination of Employment Recommendation, 1982 (No. 166)

The Termination of Employment Recommendation, 1982 (No. 166), is a soft-law instrument that supplements ILO Convention No. 158. It provides practical guidance to member states on ensuring fairness in employment termination, replacing the earlier 1963 Recommendation No. 119.

³² WR Corbett, 'Firing Employment at Will and Discharging Termination Claims from Employment Discrimination: A Cooperative Federalism Approach to Improve Employment Law' (2002) 46(6) *Cardozo Law Review* 1821-1867.

³³ H Waldock, 'Second Report on the Law of Treaties', (1963) 2 *Year Book of the International Law Commission* p.36, (United Nations, New York, 1964).

Paragraphs 2 and 3 allow limited exclusions for workers on probation or fixed-term contracts but caution against the abuse of such arrangements to avoid legal obligations. The Recommendation insists that fixed-term contracts must be genuinely necessary, not a means to circumvent protection. A central principle is that no employee should be dismissed without a valid reason. Paragraphs 5 and 6 list invalid grounds for dismissal, including age, religion, race, gender, political opinion, pregnancy, family responsibilities, union membership, maternity, and temporary illness. These protections advance equality and job security.

In cases of misconduct or poor performance, the Recommendation promotes progressive discipline starting with warnings and allowing the employee a chance to improve. Employers are advised not to delay action, as this may imply waiver of the misconduct. Due process is strongly emphasised. Workers should be given a chance to defend themselves and receive written reasons for dismissal upon request. Additional protections in paragraphs 19 to 26 include time off during notice periods, appeal rights, and certificates of employment. For economic dismissals, employers are encouraged to consult workers' representatives and consider alternatives to termination.

3.2 Enforcement of ILO Standards on Unfair Termination of Employment in Nigeria

As stated above, ILO standards are directly applicable in Nigeria in dealing with matters of unfair dismissal and termination and the National industrial Court is vested with the power and jurisdiction to adjudicate on these matters in accordance with international best practices. In *Ejike Maduka v Microsoft Nigeria Ltd & Ors*,³⁴ the claimant's employment was terminated after she reported an allegation of sexual harassment. Although the Nigerian Labour law has no specific provisions for sexual harassment in the workplace, the NIC held that it had jurisdiction under section 254C(1)(g) of the Constitution to entertain civil matters related to discrimination. Furthermore, by virtue of section 254C(2), the court applied relevant international conventions to determine the claim, showing that ILO standards can supplement gaps in Nigerian domestic legislation.

A landmark case, *Ebere Aloysius v Diamond Bank Plc*,³⁵ highlighted a deviation from the traditional common law rule that an employer can terminate a contract without stating any reason, provided notice is given or payment in lieu is made. The NIC ruled that termination without a justifiable reason related to the employee's conduct or the employer's operational needs amounts to an unfair labour practice, aligning with ILO Convention No. 158 which prohibits arbitrary dismissal.

In *Bello Ibrahim v Ecobank Plc*,³⁶ the claimant was dismissed without reason after raising ethical concerns. The NIC held the termination was wrongful, emphasising Article 4 of ILO Convention No. 158, which requires valid reasons for termination. Additionally, the failure of Ecobank to pay salary in lieu of notice at the time of termination rendered the process procedurally defective. The court reiterated its constitutional power to apply international best practices under section 254C and the National Industrial Court Act 2006.

Similarly, in *Yaroe v Nigerian Stock Exchange*,³⁷ the NIC found that the dismissal of a senior executive without compliance with internal procedures and denial of fair hearing was

³⁴ [2014] 41 N.L.L.R (Pt. 125) p.67.

³⁵ [2015] 58 N.L.L.R (Pt. 199) p.92.

³⁶ Suit No. NICN/ABJ/144/2018[Unreported].

³⁷ [2013] 35 N.L.L.R (Pt. 103) p.40.

unlawful. Mr Yaroe was dismissed without council approval or the opportunity to defend himself, both of which breached the NSE Employee Handbook and the constitutional right to fair hearing under section 36 of the 1999 Constitution. The court ruled in favour of the claimant, declaring the dismissal wrongful and procedurally flawed.

These cases show a gradual but clear departure from the rigid common law position that an employer need not provide reasons for termination. The NIC's readiness to invoke international instruments, especially those ratified by Nigeria, reflects a growing alignment of Nigerian employment law with global labour standards.

This shift is particularly critical in a system where many employment relationships lack statutory flavour, and common law rules have historically tilted in favour of employers. By integrating ILO standards and principles of fairness, the NIC enhances employee protection and promotes justice in the workplace and reinforcing the view that dismissals in Nigeria should not only comply with legal technicalities but must also be substantively and procedurally just.

3.3 Challenges in the Domestic Application of International Labour Organisation Standards

Nigeria's dualist legal system requires formal domestication of international treaties before they can become enforceable as part of Nigerian law. While Nigeria has ratified many ILO Conventions, a critical one **Convention No. 158 on Termination of Employment, 1982** remains un-ratified. As a result, it has no binding legal effect in Nigerian courts, except when the NIC invokes it as a guide to international best practices under **Section 254C of the Constitution**. However, reliance on best practices is largely discretionary and not enforceable with the weight of domesticated legislation.

There is also a clear clash between traditional **common law principles** of termination and the ILO's standard, which requires a **valid reason** for dismissal. Historically, Nigerian courts upheld the hire and fire doctrine that permits employers to terminate contracts for any reason provided due notice or payment in lieu is given. This idea, rooted in common law, remains influential in many appellate decisions despite efforts by the NIC to embrace a more rights-based and fair labour practice approach. For instance, In *Ajuzie v. FBN Plc*,³⁸ the **Court of Appeal** restated the employer's right to terminate employment for any or no reason, provided the contractual terms are followed. Similarly, in *Dangote Cement Plc. v. Peter Asom Ager & Anor*,³⁹ the **Supreme Court** affirmed that an employer can lawfully terminate an employee without giving reasons, as long as notice or payment in lieu is given. These decisions reinforce the strict contractual view of employment relationships.

In *Oak Pensions and Ors. v. Mr. Michael Oladipo Olayinka*,⁴⁰ the Court of Appeal emphasised that *pactasunt servanda, that is*, the sanctity of contract must prevail. The court held that invoking international best practices cannot override express terms voluntarily agreed upon by parties in an employment contract. This clearly contrasts with the NIC's broader interpretation of fairness in employment matters.

4.1. A Comparative Analysis on The Gaps and Inconsistencies in Nigerian Labour Law

³⁸ [2016] LCN/8402 (CA).

³⁹ [2024] JELR (Pt 111) p.722 (SC).

⁴⁰ [2017] JELR (Pt 375) p.59 (CA).

The comparative analysis of Nigerian, UK, and South African labour laws on employment termination and dismissal reveals significant gaps and inconsistencies in Nigeria's framework, despite the transformative efforts of Section 254C the Constitution.⁴¹ These gaps and inconsistencies include the following.

4.1.1 Requirement of a Valid Reason

Inspired by International Labour Organisation⁴², the National Industrial Court holds that termination must be based on a valid reason, particularly where misconduct or redundancy is alleged. This progressive approach is exemplified in *Aloysius v Diamond Bank Plc*,⁴³ where the National Industrial Court deemed a termination without valid reason as unlawful and unfair.

This progressive stance by the National Industrial Court, however, faces substantial resistance from appellate courts. In *UBN Plc v Toyinbo*,⁴⁴ the Court of Appeal ruled that since ILO Convention⁴⁵ has not been formally ratified or domesticated into Nigerian law, it is not enforceable, thereby preventing the National Industrial Court from relying on its application of international best practices. This creates a direct contradiction within the Nigerian legal system, establishing a profound legal schism. The fundamental disagreement lies not merely in interpretation but in the very source and applicability of employment law principles. The legislature's inaction in domesticating International Labour Organisation Convention directly contributes to the appellate courts' rejection of the National Industrial Court's reliance on international standards. This, in turn, perpetuates the common law at-will doctrine for private sector employment. The consequence is a two-tiered system of justice within Nigeria, where public sector employees enjoy statutory flavour employment with enhanced protections, while private sector employees face significant legal uncertainty.

In South Africa, The Labour Relations Act mandates that all dismissals be both substantively and procedurally fair. Dismissals must fall within the recognised categories of misconduct, incapacity, or operational requirements. The Code of Good Practice on Dismissal further provides specific criteria for determining fairness.⁴⁶

While the Act generally provides strong substantive protection, a persistent tension exists with attempts by some employers to use contractual automatic termination clauses to bypass the Act's fairness requirements.⁴⁷ These clauses purport to end employment *ex lege* (by operation of law) without triggering the Act's definition of dismissal. However, the South African judiciary has consistently resisted such circumvention. The *Biyana v National Consumer Commission*⁴⁸ case serves as a critical illustration, where the Commission summarily terminated an employee's contract based on a clause providing for automatic termination upon discovery of material misrepresentation (the employee had been struck off the roll of attorneys). The employer argued that the contract had self-terminated, negating the

⁴¹ Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.

⁴² International Labour Organization, *Termination of Employment Convention*, 1982 (No. 158), art. 4.

⁴³ [2015] 58 N.L.L.R. (Pt 199) p.92.

⁴⁴ (2022) JELR (Pt 109) p.885 (SC).

⁴⁵ International Labour Organization, *Termination of Employment Convention*, 1982 (No. 158), art.4.

⁴⁶ Labour Relations Act, s. 188.

⁴⁷ HR Future, 'Automatic Termination Clauses do not Trump the Labour Relations Act: The Biyana Case' (28 May 2025) <<https://www.hrfuture.net/strategy-operations/leadership-talent-management/automatic-termination-clauses-do-not-trump-the-lra-the-biyana-case/>> accessed 28 May 2025.

⁴⁸ [2018] ZALCJHB 197.

need for a disciplinary process or Labour Relations Act safeguards. The Commission, however, held that "no contractual provision can override the Labour Relations Act's requirement of fairness when terminating an employment relationship".⁴⁹

The Labour Relations Act's definition of dismissal⁵⁰ encompasses terminations "with or without notice," making no exception for automatic clauses. This dynamic demonstrates that while the Act's strength is tested by employer ingenuity, it generally prevails due to active judicial enforcement. However, it is important to note that separate "deemed dismissal" provisions for public sector employees, discussed in a later section, represent a statutory circumvention, posing a different kind of challenge to the Act's universal application of requiring a valid reason.

In the United Kingdom, for an ordinary unfair dismissal claim, an employer must demonstrate that the reason for dismissal falls within one of five statutorily defined potentially fair categories. One of those categories is the "Some Other Substantial Reason" (SOSR) category which is a broad, catch-all provision designed to encompass dismissals that do not neatly fit into the other categories but are nonetheless substantial enough to justify termination. Examples include personality clashes causing significant disruption in the workplace, a conflict of interest for the employer, an employee's refusal to accept changes to terms and conditions of employment, or pressure from a third party (such as a client threatening to withdraw business unless an employee is dismissed). For a dismissal under Some Other Substantial Reason to be fair, the employer must act reasonably in treating the reason as sufficient for dismissal and must follow a proper process. The case of *Alexis v WDP*⁵¹ illustrates the application of this. In that case, the Employment Appeal Tribunal upheld a dismissal where there was an irretrievable breakdown in the relationship due to the employee's unmanageability and inability to accept grievance outcomes. The Tribunal held that in such circumstances, there was no requirement to consider the employee's length of service or alternative sanctions, provided the employer had a genuine and reasonable belief in the breakdown and followed a reasonable inquiry process. This broadness, coupled with judicial interpretations, allows for dismissals based on subjective assessments like irretrievable breakdown without deep scrutiny of alternatives, potentially leading to a lack of objective clarity for employees on what constitutes a fair reason beyond the more defined categories, thereby undermining the predictability of dismissal outcomes.

A significant historical gap in UK law has been the requirement for employees to have at least two years of continuous service to bring an ordinary unfair dismissal claim. This effectively meant that employees with less than two years' service could be dismissed without a fair reason or fair procedure, unless the dismissal was for an automatically unfair reason. This two-year rule historically created a *de facto* "at-will" period for short-service employees, allowing employers significant discretion during this initial phase of employment. Although the upcoming Employment Rights Bill proposes to replace this with a statutory probationary period of around 9 months, it shifts the arbitrary power rather than eliminating it, creating a quasi-at-will window with reduced procedural demands.⁵²

⁴⁹ Ibid.

⁵⁰ Labour Relations Act, s.186(1)(a).

⁵¹ [2024] EAT 188.

⁵² Matthew Izuchukwu Anushiem and Victor Obinna Chukwumah, 'Termination of Employment Without Reason: Determining the Locus of the Burden of Proof' (2020) 7 *Nnamdi Azikiwe University Journal of Commercial and Property Law* (1) 1.

4.1.2 Procedural Fairness

In Nigeria, the Constitution⁵³ guarantees the right to a fair hearing in the determination of an individual's civil rights and obligations. In the context of employment, this translates into a requirement that an employee must be given an opportunity to respond to any allegations made against them before dismissal. The International Labour Organisation Convention⁵⁴ reinforces this principle, stating that a worker should not be dismissed without being provided an opportunity to be heard. The International Labour Organisation Administrative Tribunal, in *ILOAT Judgment*,⁵⁵ annulled a dismissal where an employee was not given an opportunity to defend himself, underscoring the necessity of adhering to procedural fairness.

These procedural requirements include the right to be informed of the nature of the allegations with sufficient details to prepare an adequate defence, and the right to representation (by a legal practitioner, union representative, or a person of the employee's choice), especially where the allegations are serious. An impartial investigation, a hearing, and a structured decision-making process are required, particularly for instances of misconduct not explicitly defined in the employment contract.

However, a significant procedural gap arises from the common law distinction between termination of employment and summary dismissal. While the principles of natural justice are strictly applied to summary dismissals for gross misconduct, termination (effected with notice) generally requires no inherent reason or detailed disciplinary procedure beyond what the employment contract specifies. The common law's emphasis on the form of disengagement (that is, whether notice is given) rather than the substance of the employer's underlying reason creates a significant loophole. Employers can choose to terminate an employee with notice, even if the underlying reason is misconduct, thereby circumventing the procedural requirements and the need to prove gross misconduct associated with summary dismissal. This means that an employer might disengage an employee for reasons that would typically warrant a full disciplinary process, but by simply giving notice and paying in lieu, they bypass the obligation to provide a fair hearing or a stated reason. This ability of employers to choose between termination and dismissal based on the form of notice leads to a situation where they can circumvent the obligation to provide a valid reason or follow due process for misconduct.

Consequently, a practical lack of clarity for employees arises, as their rights (for example, to benefits, to a hearing) depend on the employer's chosen label, rather than the actual circumstances of their departure. This formalistic approach provides employers with an easy avenue to disengage employees without accountability for the underlying reasons, particularly in the private sector where the "at-will" doctrine persists, thereby undermining the spirit of natural justice and fair labour practices.

South Africa's Labour Relations Act mandates procedural fairness, with detailed requirements for notification, investigation, representation, and a hearing. In *Biyana v National Consumer Commission*,⁵⁶ even where the employer had strong substantive grounds, the failure to conduct a hearing rendered the dismissal procedurally unfair.

⁵³ Constitution of the Federal Republic of Nigeria 1999, Cap. C23 Laws of the Federation of Nigeria (LFN) 2004 (CFRN 1999) s.36(1).

⁵⁴ ILO, *Termination of Employment Convention*, 1982, art. 7.

⁵⁵ No. 3576 (2016).

⁵⁶ [2018] ZALCJHB 197.

However, a notable inconsistency within South Africa's otherwise robust procedural framework lies in the deemed dismissal provisions applicable to certain public sector employees. Specific statutes governing the public service, such as the Public Service Act, allow for deemed dismissal or dismissal by operation of law in circumstances like prolonged unauthorized absence or conviction of a crime leading to direct imprisonment. These terminations occur *ex lege* (by operation of law) and are explicitly not classified as dismissals.⁵⁷ This means that public sector employees subjected to deemed dismissal cannot challenge the fairness of their termination based on the unfair dismissal provisions of the Act, potentially circumventing the Act's procedural obligations. While there might be an opportunity for a written submission to explain absence, this does not equate to the full mandated disciplinary hearing.⁵⁸ This legislative choice creates a less procedurally protected class of employees within the public sector, despite the Act's general intent to apply broadly. The existence of these "deemed dismissal" provisions represents a significant inconsistency, as certain public sector employees can be terminated without the full due process safeguards afforded to other employees under the Act, raising questions about the consistency of "fair labour practices" across all employment sectors. This suggests a policy tension between administrative efficiency in the public sector and comprehensive employee protection.

In the United Kingdom, the Advisory, Conciliation and Arbitration Service Code of Practice on disciplinary and grievance procedures provides comprehensive guidance for employers on how to conduct fair procedures, particularly for dismissals related to misconduct and capability. Key steps outlined in the Code include, conducting an investigation to establish the facts; issuing an initial letter to the employee detailing the problem and potential consequences; holding a dismissal meeting where the employee can defend themselves, with reasonable time to prepare and the right to be accompanied by a colleague or trade union representative; providing a written decision; and offering a chance to appeal the decision.⁵⁹ During an investigation, if an employee is suspended, it should typically be with pay. The appeal should ideally be decided by a different person than the original decision-maker to ensure impartiality.⁶⁰

However, a critical gap in the UK's procedural fairness framework is that failure to follow the Advisory, Conciliation and Arbitration Service Code does not automatically provide an employee with a standalone legal remedy for breach. While the Code sets out best practices, its status as a code of practice rather than a strict statutory procedure limits its direct enforceability. The primary consequence for an employer's unreasonable failure to comply with the Code is that an employment tribunal has the power to increase any compensation awarded by up to 25 percent if an unfair dismissal claim succeeds. This means that procedural flaws impact the remedy rather than necessarily invalidating the dismissal itself, unless the flaw is so egregious that it renders the dismissal substantively unfair. The legislative decision to make the Advisory, Conciliation and Arbitration Service Code a code of practice rather than a strict statutory procedure directly contributes to its limited enforceability. Employers might perceive the potential 25 percent uplift in compensation as a

⁵⁷ Labour Relations Act, s. 186.

⁵⁸ A Kroukamp, 'The Validity of Automatic Termination Clauses in Employment Contracts' (LLM thesis, University of Pretoria 2013), p.56.

⁵⁹ Fitzgerald HR, 'Disciplinary Procedure: Step by Step', p.13 <<https://www.fitzgeraldhr.co.uk/disciplinary-procedure/>> accessed 28 May 2025.

⁶⁰ Citizens Advice, 'Check if your employer's dismissal process is unfair' p.22 <<https://www.citizensadvice.org.uk/work/dismissal/check-your-rights-if-youre-dismissed/check-if-your-employers-dismissal-process-is-unfair/>> accessed 28 May 2025.

manageable risk, rather than a strong deterrent against procedural shortcuts. This lack of direct enforceability means that while the Code provides a framework, it does not guarantee that employers will always adhere to best practices, as the primary consequence is financial (a potential increase in compensation) rather than a nullification of the dismissal itself. This approach, while offering flexibility to employers, can leave employees feeling that procedural justice is secondary to the employer's substantive reason for dismissal. It might incentivise employers to prioritize getting the reason right over meticulous adherence to procedure, as the latter carries a lower legal risk.

4.1.3 Disparity in Protection between Public and Private Sector Employees

In Nigeria, employment in the public sector is often described as having statutory flavour, meaning it is governed by specific statutes, rules, and regulations, such as the Public Service Rules. Where employment is protected by statute, its termination must strictly comply with the procedures prescribed by the relevant statute; any termination inconsistent with the statute is considered null and void and of no effect. Public servants, therefore, enjoy enhanced rights, including the right to a fair hearing (rooted in natural justice principles), notice of the cause for termination, and a full opportunity to defend themselves. Such employment can only be terminated in the manner prescribed by the enabling statute, and any deviation renders the termination invalid.⁶¹ Crucially, if unlawfully dismissed, public sector employees may be entitled to remedies such as specific performance, mandamus, and, most significantly, reinstatement to their position. In stark contrast, private sector employment in Nigeria is largely governed by the terms of the individual employment contract and common law principles, with the Labour Act providing only basic minimums.

South Africa's Labour Relations Act generally applies to all employees, regardless of whether they are employed in the public or private sector, establishing a universal right not to be unfairly dismissed. The Act⁶² entrenches this right, ensuring that the requirements for substantive and procedural fairness apply broadly across both sectors. This broad application is a hallmark of South African labour law, aiming for a consistent standard of protection.

However, a significant exception to this universal application arises from specific provisions within the Public Service Act, which allow for deemed dismissal or dismissal by operation of law for public sector employees in certain circumstances. These circumstances include prolonged absence without authorization for a period exceeding one calendar month, or conviction of a crime leading to direct imprisonment. This type of termination is considered to occur *ex lege* and is explicitly not classified as a dismissal. The consequence of this legislative choice is that employees who are deemed dismissed cannot challenge the fairness of their termination based on the unfair dismissal provisions of the Act, potentially allowing for the circumvention of obligations.⁶³

In the United Kingdom, employment law, primarily the Employment Rights Act of 1996, generally applies uniformly to all employees, irrespective of whether they are employed in the public or private sector. The core rights related to unfair dismissal, discrimination, and statutory minimum notice periods are broadly consistent across both sectors. There is no

⁶¹ *Olaniyan & Ors. v. University of Lagos* [1985] 2 NWLR (Pt. 9) 599; *Shitta-Bey v. Federal Public Service Commission* (1981) 1 SC, p.40.

⁶² Labour Relations Act, s.185.

⁶³ De Rebus, 'Deemed dismissal and Reinstatement' p.32 <<https://www.derebus.org.za/deemed-dismissal-reinstatement/>> accessed 28 May 2025.

explicit legal framework that fundamentally differentiates the grounds or procedures for unfair dismissal between public and private sector employees in the same manner as Nigeria's statutory flavour or South Africa's deemed dismissal provisions. The five potentially fair reasons for dismissal and the guidance provided by the Advisory, Conciliation and Arbitration Service Code of Practice apply equally to both sectors. While public sector bodies in the UK may operate under more elaborate internal disciplinary procedures or have greater trade union involvement, these are typically additional layers of protection or contractual terms rather than a separate legal regime that overrides the Act.⁶⁴

4.1.1 Limited Scope of Automatically Unfair Dismissals

Nigerian Labour law currently lacks a broad, statutorily defined concept of automatically unfair dismissals that is comparable to the comprehensive categories found in South Africa or the United Kingdom. While terminations can be deemed wrongful (a breach of contract) or unlawful (a breach of statute, primarily applicable to public sector employment), there is no comprehensive list of reasons that automatically render a dismissal unfair, irrespective of procedural compliance or the employer's motive. This absence means that dismissals for discriminatory reasons (or example, based on gender, religion, or whistle blowing in the private sector) may not have specific, enhanced legal recourse under a defined automatically unfair category. Employees in such situations would likely have to rely on proving a general breach of contract or, if applicable, a constitutional right, which can be significantly more challenging than pursuing a specific statutory automatically unfair claim. The lack of such a category is highlighted by observations that virtually every dismissal and termination situations in Nigeria amounts to unfair dismissal when tested against International Labour Organisation standards on unfair dismissal, underscoring a significant legislative gap.

In South Africa, The Labour Relations Act⁶⁵ provides a comprehensive list of automatically unfair reasons for dismissal (such as, pregnancy, union activity, whistle blowing), with enhanced remedies like reinstatement or compensation up to 24 months. While the substantive protection against automatically unfair dismissals is robust, a procedural nuance exists concerning the jurisdiction of the Commission for Conciliation, Mediation and Arbitration. Disputes regarding automatically unfair dismissals are typically referred to the Labour Court for adjudication. However, the Commission for Conciliation, Mediation and Arbitration can only arbitrate such disputes if both parties consent in writing. If an employer refuses consent, the employee must pursue the matter in the Labour Court, which can be a more complex, time-consuming, and costly process than arbitration. This procedural requirement for consent for Commission for Conciliation, Mediation and Arbitration creates a potential barrier to swift and accessible justice for employees claiming automatically unfair dismissal.⁶⁶

UK law defines numerous grounds for automatically unfair dismissal, including whistle blowing and maternity. However, employees must prove the main or principal reason for dismissal was unlawful, a high evidentiary burden that employers can often circumvent by asserting alternative justifications. While the upcoming reforms aim to enhance protections,

⁶⁴ Altitude Employment Solutions, 'Unfair Dismissals, Unfair Labour Practices, Limits on Compensation. Disputes About Unfair Dismissals and Unfair Labour Practices' <<https://www.altitudeemploymentsolutions.co.za/unfair-dismissals-unfair-labour-practices-limits-on-compensation-disputes-about-unfair-dismissals-and-unfair-labour-practices/>>accessed 28 May 2025.

⁶⁵ The Labour Relations Act, s.187.

⁶⁶ The Labour Relations Act, Chapter VIII.

including for fire and rehire practices, the requirement to isolate the principal reason remains a key limitation.⁶⁷

4.1.4 No Clarity in the Definition of Termination as Opposed to Dismissal

Nigerian labour law traditionally draws a clear distinction between termination of employment and summary dismissal. Termination of employment is considered a right enjoyed by both the employer and the employee, typically effected by providing the specified notice period or payment in lieu, as outlined in the Labour Act.⁶⁸ Crucially, no reason is required for such termination, and certain benefits, such as gratuity, may still accrue to the employee. The motive of the party terminating the contract is deemed irrelevant, provided the contractual notice provisions are met.

In contrast, summary dismissal is presented as the sole right of an employer, effected instantly without notice or payment in lieu, on account of gross misconduct that fundamentally undermines the employment contract. It is considered a disciplinary measure that generally carries no entitlement to benefits. This distinction has been affirmed by Nigerian courts, as seen in *Union Bank of Nigeria Plc v. Soares*,⁶⁹ where the court held that termination gives the parties the right to determine the contract at any time by giving the prescribed period of notice. Dismissal on the other hand, is a disciplinary measure which carries no benefits. Employers are explicitly advised to ensure proper wording in their disengagement letters to clearly distinguish between the two forms of cessation.

This common law distinction, with its emphasis on the form of disengagement (that is, whether notice is given) rather than the substance of the employer's underlying reason, creates a significant loophole. Employers can choose to terminate an employee with notice, even if the underlying reason is misconduct, thereby avoiding the procedural requirements and the need to prove gross misconduct associated with summary dismissal.⁷⁰

South Africa's Labour Relations Act provides a broad statutory definition of dismissal in Section 186, which fundamentally reclassifies various ways employment relationships end. This comprehensive definition aims to bring a wide array of employer-initiated cessations under the Act's fairness regime, regardless of their common law characterization. The Act's definition of dismissal encompasses not only direct termination by the employer (with or without notice) but also non-renewal of fixed-term contracts where an employee had a reasonable expectation of renewal, and constructive dismissal (where an employee resigns due to the employer making continued employment intolerable).

The statutory regime for dismissal can only be invoked if the employer is held responsible, either directly or constructively. Specifically, Section 95(1) (a) of the Act defines dismissal as termination by the employer, with or without notice. While dismissal with notice aligns with common law, summary dismissal (without notice) by the employer presents a divergence. If a summary dismissal is not justified by the employee's fundamental breach (that is, it's a repudiatory breach by the employer), the contract is not terminated under common law unless the employee accepts the repudiation. Despite this, the statute explicitly states that such an

⁶⁷ De Rebus, 'Deemed dismissal and Reinstatement' <<https://www.derebus.org.za/deemed-dismissal-reinstatement/>> p.24, accessed 28 May 2025.

⁶⁸ Labour Act, Cap. L1, Laws of the Federation of Nigeria 2004 s.11.

⁶⁹ (2012) LPELR-8018 (CA).

⁷⁰ *ibid.*

unjustified summary dismissal is a dismissal within the meaning of the statute. This means a dismissal can exist under the statute even if the employee has the common law power to affirm the contract and prevent termination.

Section 95(1) (b) further reclassifies the expiration of fixed-term or limited-term contracts as dismissal, which contradicts common law notions of contract expiration or discharge by performance. Section 95(1) (c) covers constructive dismissal, where an employee resigns in response to a fundamental breach of contract by the employer. While the effect of case law like *Western Excavating v Sharp*⁷¹ aligned this with common law repudiatory breach, the development of the implied term of mutual trust and confidence has broadened the types of incidents constituting a fundamental breach, making statutory constructive dismissal closer to a test of reasonableness than the general law of repudiatory breach.

This complex interplay, where the statutory concept of dismissal is seen as a graft onto the common law stem, taking nutrients but producing different fruit, leads to inconsistencies. Judicial reliance on common law principles for interpreting statutory dismissal can lead to absurd results, particularly concerning terminations without notice. For example, if an employer accepts an employee's summary resignation (without notice), common law would view this as the employer terminating the contract by accepting a repudiation, which could then imply it falls under statutory dismissal.⁷²

The inconsistencies and gaps in termination and dismissal laws across Nigeria, South Africa, and the United Kingdom arise from differing levels of statutory development, judicial interpretation, and historical legacies. Nigeria presents the most structurally problematic regime, marked by judicial disunity, non-domestication of international standards, and sectoral inequality. South Africa offers statutory coherence but suffers from legislative exceptions and procedural access barriers. The UK, while procedurally moderate and broadly uniform, is constrained by doctrinal complexity and enforcement limitations.

5.0 Conclusion

This paper notes that Nigerian labour law on termination and dismissal is fragmented and poorly aligned with international labour standards. The National Industrial Court has shown willingness to modernise the law through its interpretation of global norms, but its efforts are often undermined by higher courts. The system's failure to provide clear, enforceable protections and meaningful remedies undermines both employee confidence and the development of a reliable legal framework. Strengthening judicial coherence, aligning national law with international standards, and reforming statutory provisions are essential for establishing fairness and predictability in Nigeria's employment relations.

This paper finds that Nigerian labour law provides limited protection for employees, particularly in the private sector. The dominance of the master-servant doctrine and the absence of a requirement for valid reasons or fair procedures leave many workers exposed to arbitrary dismissal, undermining job security and enabling employer impunity.

In addition, the National Industrial Court has increasingly applied principles from ILO Convention No. 158 and other international labour standards, emphasizing valid reasons for dismissal, procedural fairness, and employee rights. However, without clear statutory

⁷¹ [1978] ICR 221.

⁷² Employment Relations Act, 1999, s.95(1) (a).

support, these judicial interpretations remain vulnerable to reversal by higher courts. **Furthermore**, the NICN's progressive approach is often contradicted by appellate courts, which uphold a strictly contractual framework. Such judicial inconsistencies generate legal uncertainty, discourage employees from seeking justice, and hinder the formation of a stable body of labour law.

Lastly, that Nigeria's labour law lacks substantive justification and procedural safeguards for dismissal, unlike more developed systems in the UK and South Africa. Those countries have statutory mechanisms ensuring fairness and accessible dispute resolution, which Nigeria's outdated framework does not match, placing Nigerian workers at a disadvantage.

5.1 Recommendations

This paper recommends legislative reforms in that, the legislature should enact a comprehensive Unfair Dismissal Act or Amend the Labour Act that will explicitly provide that employment cannot be terminated without a valid reason connected to the employee's capacity, conduct, or the operational requirements of the undertaking, thereby abolishing the common law principle of termination for no reason. The proposed law should also provide a clear statutory definition of unfair dismissal, encompassing both substantive and procedural fairness, just as is done in South Africa. Furthermore, it should enumerate specific grounds for dismissal that are automatically unfair, such as those based on union membership, pregnancy, discrimination (race, gender, religion, etc.), whistle blowing, or lawful industrial action, and prescribe higher penalties for such dismissals. Also, it should state that the burden of proving the fairness (both substantive and procedural) of a dismissal rests squarely on the employer. Lastly, The National Assembly should take urgent steps to domesticate the International Labour Organization's Convention No. 158. Although Nigeria has not ratified this Convention, its provisions reflect best practices in employment termination.

