

DISCIPLINARY POWERS OF TERTIARY INSTITUTIONS UNDER NIGERIAN LAWS: THE FAIR HEARING IMPERATIVE



OLA OREWALE FBR
*Partner & Head, Business Restructuring &
Insolvency Practice Group*

ÆLEX

SETTING UP OF TERTIARY INSTITUTIONS

➤ There are various Acts that establish the various tertiary institutions, and also empower them to carry out their various functions. These Acts also make provisions for the disciplinary powers of the tertiary institutions and fair hearing directive. Examples of these Acts include:

- Section 1 of Lagos State College of Primary Education Law No. 2 of 2001 now Lagos State College of Primary Education Law Chapter L. 17 of 2003
- Section 1 Lagos State College of Education Law 1978 now Lagos State College of Education Law, Chapter L11, Laws of Lagos State 2003
- University of Lagos Act 1967 (UNILAG) Act

SETTING UP OF TERTIARY INSTITUTIONS cont.

- University of Benin (Transitional Provisions) Act 1975, setting up University of Benin.
- University of Jos Act, 1979 setting up the University of Jos.
- University of Maiduguri Act 1979, setting up University of Maiduguri.
- University of Ibadan Act 1963 (U.I) Act.
- Obafemi Awolowo University (Transitional Provisions) Act 1975, setting up Obafemi Awolowo University.

POWERS OF THE VARIOUS INSTITUTIONS

The powers of the various institutions are provided for in the Acts establishing them and they include the power to:

- establish such colleges, faculties, institutes, schools, extra-mural departments and other teaching units within the University as may from time to time seem necessary or desirable;
- provide training to students;
- provide for the residence, **discipline** and welfare of members of the University;
- **hire** member of staff in the institutions;

POWERS OF THE VARIOUS INSTITUTIONS

- To institute professorship, readerships, lectureships and other posts and offices and to make appointments thereto;
- To do all such acts or things, whether or not incidental to the foregoing powers, as may advance the objects of the University; and
- To do anything which they are authorized to do by the Act establishing them.

POWERS OF THE VARIOUS INSTITUTIONS

- This power enables the tertiary institutions to make regulations and conditions of service setting out the conditions of service of their staff including discipline.

CATEGORIES OF EMPLOYMENT AND EMPLOYMENT WITH STATUTORY FLAVOUR

- (a) A pure master/servant relationship under the common law;
- (b) Employment where the office is held at pleasure; and
- (c) Employment protected by statute.

- See: **N.I.I. A v. Ayanfalu (2007) 2 NWLR (Pt. 1018) 246**

SPECIAL CHARACTER OF THE EMPLOYMENT OF THE TERTIARY INSTITUTIONS' STAFF

- Since the power to employ and discipline the staff of the tertiary institutions are made pursuant to the statutes including the regulations and conditions of service made pursuant thereto, therefore the employment of the staff of the tertiary institutions enjoys statutory flavor.
- An employment is said to enjoyment statutory flavor when the procedures for employment and discipline are regulated by statute. See **Olaniyan v. Unilag (1985) 2 NWLR (Pt.9) 599, Oloruntoba-Oju v. Abdul-Raheem (2009) 13 NWLR (Pt. 1157) 83, N.I.I.A v. Ayanfalu (supra).**

DISCIPLINE OF STAFF

- Discipline means punishment intended to correct or instruct, especially, a sanction or penalty imposed after an official finding of misconduct. Punishment or sanctions imposed by a disciplining agency on an attorney who has breached a rule of professional misconduct.
- See: **Black's Law Dictionary (10th Edition) page 562**
- Discipline of staff of tertiary institutions can take the form of:
 - Termination
 - Dismissal
 - Compulsory retirement

DISCIPLINE OF STAFF cont.

- The procedures of discipline of the employees are usually set out in;
 - Statutes setting up the institutions,
 - Conditions of service or,
 - regulations made pursuant to the statutes.

DISCIPLINE OF STAFF cont.

These procedures as can be gleaned from some selected statutes are;
 (See **sections 32 & 33 of the Lagos State College of Education Law 2003, 24 & 25 of the Lagos State College of Primary Education Law No. 2 of 2001 now Chapter L. 17 of 2003, 18(1)(c) of the University of Lagos Act 1967 and 15(1) of the University of Ilorin Act**)

➤ Notice in writing to the affected staff stating the reasons for his removal

- ❑ a notice or a letter to the staff inviting him to appear before the investigating committee of the institution without more will not meet this requirement. See: **Adeniyi v. Governing Council of Yabatech (1993) 6 NWLR (Pt. 300) 426, U.N.T.H.M.B v. Nnoli (1994) 8 NWLR (Pt. 363) 376.**

DISCIPLINE OF STAFF cont.

- The employee in question must be afforded an opportunity of being heard before the investigating committee with respect to the matter, if he so desires with his witness(s) and relevant documents.
- ❑ Appearance of the affected employee as a witness will not satisfy this requirement, See: **U.N.T.H.M.B v. Nnoli (supra), Olaniyan v. Unilag, (supra), Adeniyi v. Governing Council of Yabatech (supra).**

DISCIPLINE OF STAFF cont.

- The Council after considering the report of the investigating committee, if satisfied that the employee in question should be removed, may so remove him by an instrument in writing signed on the directions of the Council.
- ❑ It must be pointed out that whilst the recommendation of the investigating committee will not violate the rule of fair hearing, the acting on such recommendation by the Council, without affording the affected employee an opportunity of fair hearing before his removal does.

DISCIPLINE OF STAFF cont.

- ❑ See **Oloruntoba-Oju v. Abdul-Raheem (supra)**, where 5 Professors of the University of Ilorin were dismissed by the Council based on the recommendation of the investigating committee, without the Council affording the Professors an opportunity of fair hearing before they were removed on the basis of the recommendation of the investigating panel. The Supreme Court declared the dismissal null and void. At page 145 of the report, the Supreme Court held;

“Whereas the recommendation of the panel will not affect the civil rights and obligations of the person whose act or omission is being investigated like the appellants in this case, the acting upon such recommendation does”

DISCIPLINE OF STAFF cont.

➤ The Acts also provide that notice should be given to the party to whom it relates as soon as it is reasonably practicable. The letter must take effect from the date it was written. **New Nigeria Bank Limited v. Obevudri (1986) 3 NWLR (Pt. 29) 387**

- Notice of dismissal, termination and retirement with retrospective effect will render same null and void. See **Onakoya v. WAEC Unrep. judgment of Court of Appeal (CA/L/648/09) delivered on 20th March 2014**

DISCIPLINE OF STAFF cont.

- Where the Act requires 3 months notice before retirement, the payment of 3 months salary in lieu of notice will not satisfy the requirement of the notice.- See **PHCN V. Offoelo (2013) 4 NWLR (Pt. 1344) 380 at 418-419 & Psychiatric Hospital Management Board v. Ejitagha (2000) 11 NWLR (Pt. 677) 154.**
- If a staff has been charged to court for an offence and subsequently discharged and acquitted, he can no longer be dismissed, terminated or retired on the same allegation/offence.
- **See Ayanfalu v. N.I.I.A, supra**

FAIR HEARING

- The principle of fair hearing is derived **from section 36(1) of the 1999 Constitution (as amended)**.
- *“In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, **a person shall be entitled to a fair hearing within a reasonable time** by a court or other tribunal established by law and **constituted in such manner as to secure its independence and impartiality.**”*

FAIR HEARING

Application

- The provisions of the constitution apply to everyone including the administrative bodies of the institutions. See **U.N.T.H.M.B v. Nnoli (Supra)**.
- More so, the provisions on fair hearing are contained in the Acts establishing the institutions.
- Examples of these are found in **sections 31 and 32 of LACOED Law, 18 of the UNILAG Act 1967** and **section 10 of the U.I Act 1963**.

FAIR HEARING

Requirements

- Institutions must give employee reasons or grounds for the termination, dismissal or retirement.
- Institutions must give adequate time for the employee or staff to make written representation on the reasons for his termination, dismissal or retirement.
- Where a panel is set up to hear allegations, the staff must be given opportunity to appear before the panel with his witness(s).

FAIR HEARING

- Administrative bodies must therefore observe the fair hearing provisions while deciding the rights and discipline of the staff of the tertiary universities.

EFFECT OF NON-COMPLIANCE WITH FAIR HEARING PROVISIONS

- The only recognized method of terminating an appointment with statutory flavor is by compliance with the procedure laid down in the Constitutive Act of the institution in question.
- The court would usually intervene where there is a breach of the required procedures, particularly a breach of the inviolable principles of fair hearing.
- The decision reached in breach of the principles of fair hearing is null and void. See **Adigun v. A.G Oyo State (1987) 1 NWLR (Pt. 53) 678 at 709**

EFFECT OF NON-COMPLIANCE WITH THE DISCIPLINARY PROCEDURES

- Renders the termination, dismissal and retirement null and void - see **Olaniyan v. University of Lagos (1985) 2 NWLR (Pt.9) 599.**
- Re-instatement of the Staff/Employee- see **Olaniyan v University of Lagos (supra), Oloruntoba-Oju v. Abdul-Raheem (supra) and Adefemiwa v. OSCE (2007) LPELR-8760(CA).**
- Payment of salary and emoluments due to the employee during the unlawful termination, retirement or dismissal – see **Adefemiwa V. OSCE (supra), N.I.I.A v. Ayanfalu, (supra).**

EFFECT OF NON-COMPLIANCE

- Promotion which the employee would have earned during the termination - see **Adefemiwa V. OSCE (supra)**.

LESSONS TO LEARN

- From the cases and the provisions of the statutes already provided, it is clear that tertiary institutions cannot exercise their disciplinary powers arbitrarily.
- They must follow the essential principles of fair hearing and the disciplinary procedures provided in their respective statutes.
- Otherwise, tertiary institutions would be compelled to pay huge sums of money as salaries and other allowances for **WORK NOT DONE** arising from unlawful termination, dismissal and compulsory retirement which sums would have been channelled into the running and management of the institutions - **Adefemiwa v. O.S.C.E (supra), N.I.I.A v. Ayanfalu (supra) & Onakoya v. WAEC (supra).**

THANK YOU!

ÆLEX

LAGOS, NIGERIA

4th Floor, Marble House,
1 Kingsway Road, Falomo
P.O. Box 52901, Ikoyi
Lagos, Nigeria

Telephone: (+234 1) 279 3367
(+234 1) 279 3368
(+234 1) 461 7321-3
Facsimile: (+234 1) 461 7092
E-mail: lagos@aelex.com

PORT HARCOURT, NIGERIA

2nd Floor, Right Wing
UPDC Building
26 Aba Road
P.O. Box 12636, Port Harcourt
Rivers State, Nigeria

Telephone: (+234 84) 574 628
(+234 84) 574 636
Facsimile: (+234 84) 574 628
E-mail: portharcourt@aelex.com

ABUJA, NIGERIA

4th Floor, Adamawa Plaza
1st Avenue, Off Shehu Shagari Way
Central Business Area
FCT Abuja, Nigeria

Telephone: (+234) 709 880 8416
(+234) 705 029 1874
(+234) 806 931 3453
Facsimile: (+234 1) 523 0276
E-mail: abuja@aelex.com

ACCRA, GHANA

7th Floor, Suite B701
The Octagon
P.M.B CT72 Cantonments
Accra, Ghana

Telephone: (+233 302) 224 828
(+233 302) 224 845-6
Facsimile: (+233 21) 224 824
E-mail: accra@aelex.com