



**TRAINING BONDS –
HOW ENFORCEABLE ARE THEY AGAINST
EMPLOYEES IN NIGERIA?**

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INTRODUCTION

The major focus of most businesses is to achieve customer satisfaction by sustaining and/or improving the quality of goods and services delivered to their clients. One of the ways in which this value is achieved is by the continuous education and/or training of employees.

It is therefore not unusual that employers will cover the cost of continuous education and training for employees, with the expectation that the skill set or qualification acquired by the employee will be subsequently applied to the business.

There is usually no controversy where this arrangement goes as expected. A conflict may however arise where an employee after acquiring a new skill set or certification at the employer's cost terminates his contract of employment.

TRAINING BONDS

As a measure against losses that could arise due to employees terminating their contracts after receiving the trainings, employers often require employees to issue undertakings to remain in their service for a specified period of time after the acquisition of new skills or certificates.

This, from the perspective of the employer, guarantees that the employer will recoup the investment made in such employee.

Such undertaking is popularly called a “training bond” which is an agreement between an employer and its employee(s) that requires the employee to remain in the service of the employer for a specified length of time, in consideration of the employer paying for an acquired skill set or training of the employee.

Usually, training bonds contain a clause that offers the employee an option to repay the bond value (the sum expended in training the employee) where such employee desires to leave the service of the employer, prior to the time specified in the bond or undertaking.



ENFORCEABILITY OF TRAINING BONDS UNDER THE NIGERIAN LAW

It is the general rule that all covenants in restraint of trade are prima facie unenforceable unless they are reasonable and fair.[1]

Consequently, if it is the desire of an employer to ensure that employees, who have enjoyed continuous education at the expense of the employer, remain in the employment of the business for at least, a specified period of time, the employer must ensure that such bonds are not onerous and are enforceable under the relevant laws.

In taking this into consideration, the employer needs to examine Section 34(1)(c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) which provides as follows:

“Every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be required to perform forced or compulsory labour”.

Pursuant to the constitutional provision, section 73 of the Labour Act, Cap. L1 LFN 2004[2] prescribes the punishment for forced labour as follows:

“Any person who requires any other person, or permits any other person to be required, to perform forced labour contrary to section 34 (1) (c) of the Constitution of the Federal Republic of Nigeria 1999, shall be guilty of an offence and on conviction shall be liable to a fine not exceeding N1,000 or to imprisonment for a term not exceeding two years, or to both,”


The inference drawn from the foregoing provisions of the law is that “forced labour” is prohibited in Nigeria. Thus, taking that into consideration, as well as the position on restraint of trade, Nigerian courts have previously held that restrictive covenants are generally not enforceable[3].

However, in recent time, the courts appear to be adopting a more pragmatic approach in determining the enforceability of training bond, which is a form of a restrictive covenant, under employment law.

[1]See *Koumoulis v A.G. Leventis Motors Ltd* (1973) All N.L.R. 789; *Afropim Engineering Construction Nigeria Ltd v Jacques Bigouret* (2012) FWLR (Part 622) 1740).

[2] It should however be noted that Labour Act is limited in scope, as it applies to employees who perform manual labour and clerical works (Workers); and not employees who performs executive or professional works (Non-workers). These latter class of employees are subject to the terms in their contract of employment. See Section 91 of Labour Act.

[3]*Afropim Engineering Construction Nigeria Ltd v Jacques Bigouret* (Supra).



In other words, in determining whether a training bond is a restrictive covenant and/or amounts to forced labour, the courts will consider the circumstances of each case.

THE CASE OF OVERLAND AIRWAYS LIMITED V. CAPTAIN RAYMOND JAM


Overland Airways Limited v. Captain Raymond Jam^[4] served as a turning point on the issue of the enforceability of training bonds. In that case, the National Industrial Court considered the terms and conditions of sponsorship outlined in two training bonds executed by an aviation company and one of its employees, in determining the enforceability of training bonds in the aviation sector.

BRIEF FACTS OF THE CASE

Overland Airways Limited (“Overland”), an airline operating in Nigeria, sponsored one of its pilots, Captain Raymond Jam (“Raymond”), to undergo trainings in the United States of America.

Raymond executed two training bonds and committed himself to remain in Overland's employment for 36 months and 12 months, respectively. Upon completion of the trainings, Raymond acquired new licences and certifications. While the bonds were still subsisting, Raymond resigned from the employment of Overland. Dissatisfied with this development, Overland instituted an action against Raymond at the National Industrial Court seeking to enforce the terms of the training bonds against him.

In his defence, Raymond contended that the training bonds were void and unenforceable under Nigerian law, as they constituted unreasonable restraint of trade; unfair labour practice and were contrary to public policy. He also argued that the training bonds contradict the practice in the aviation industry wherein pilots were bonded only for the period within which their licences are valid.




Overland countered this claim and argued that the training bonds were not contracts in restraint of trade; they were freely entered into by the parties; and were necessary for the protection of its business interests. It submitted that training bonds are enforceable not only in Nigeria, but also in other jurisdictions.

DECISION OF THE COURT

In reaching its decision, the court considered the custom of training bonds in line with international best practices, particularly the practice in the aviation industry in India

It rejected Raymond's contention that Overland's training bonds contradict the practice in the aviation industry in Nigeria where pilots are allegedly only bonded for the duration of the validity of their licence(s), as Raymond failed to adduce evidence in support of this contention. It held, inter alia, that although training bonds are prima facie not enforceable as they are restraints to trade, it will however enforce such bonds where it can be shown that it has been freely entered, subject to the overriding condition of fairness and reasonableness with respect to the duration and sum to be repaid by the employee in the event of his breach.




While the court did not lay down the test for what is "fair" and "reasonable", it appears that the court applied the "reasonable man test". The court therefore held that the training bond between Overland and Raymond were reasonable in the circumstance and fair; thus, they were enforceable against him under Nigerian law. However, it limited the cost to be recovered by Overland to the cost of the training pro-rated for the remainder of the bond period. Raymond was therefore ordered to pay the costs accordingly.

COMMENT

A training bond is a contract and the court will consider the general principles of contract: i.e., is it fair and reasonable? Is there evidence of duress? Is there evidence of fraudulent misrepresentation? Is it common industry practice? Will the enforcement of the contract violate public policy? etc.

As seen in *Overland v. Raymond*, in order to determine what is fair and reasonable, the court would consider the following:




a) whether the specified period for which the employee must remain in the service of the employer is reasonable;

b) the estimated training cost must not be unduly exaggerated as to render the employee incapable of repaying it; and

c) whether the employer has offered the employee something extra (and not just the employment) as consideration for the employee's covenant to remain in the service of the employer for the specified period.

Thus, there is no hard and fast rule to this, as what apply to each case will depend on the terms of the bond and the circumstance of each case.

Notwithstanding the diverse reactions to this decision, it serves to benefit all the stakeholders in the labour and employment sector.



It may not only encourage employers to invest more in the professional development of their employees without fear of losing their investment in this regard, but it may also afford employees the opportunity to garner skills and qualifications required to compete favourably in the labour market, even after leaving the service of the employer. Finally, it may foster mutual trust and respect between employers and employees in the workplace environment.

CONCLUSION

The decision of the National Industrial Court in the case of *Overland v. Raymond* (Supra) which has been re-affirmed in the more recent judgment of the National Industrial Court on 15 November 2018 in **NICN/AK/49/2015- Dr. Victor F. Balogun & 2 Ors. v. Federal University of Technology Akure & Anor.**, emphasises that training bonds may be enforceable if the terms are fair and reasonable.

Employers and employees are however advised to seek legal advice before drafting and executing training bonds, to ensure that they will be enforceable in the event of a conflict.



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