Employment and Labour Law

7th January 2024





Emmanuel Onele [1] Olaotan Olumilua [2]

BALANCING EMPLOYMENT AND REDUNDANCY DURING DIVESTMENT IN NIGERIA

1. Introduction

Redundancy refers to an employer's decision to discontinue utilising an employee's services because such services are surplus to requirement or because of divestment. It is an action taken by the employer to maintain business operations. Redundancy is different from voluntary or involuntary retirement, dismissal from service, resignation, or termination of appointment, as these terms are known in the public service. Instead, it is a procedure that is exclusive to a given organisation and involves the silent and legal removal of an employee from their position.

This article seeks to examine the following: definition and overview of redundancy, redundancy under the Nigerian Labour Act ("the Act")[3] and other relevant legal framework, the steps involved in carrying out a redundancy in Nigeria, international standard operating procedure, employment management under divestment, and the realigning of employee roles in divestment.

2. Redundancy: An Overview

As earlier explained, one way to legitimately remove an employee from their position is through redundancy. Section 20(3) of the Act defines redundancy as the

---

1 **Emmanuel Onele**, Associate Corporate Finance and Capital Markets Department, S.P.A Ajibade & Co., Lagos Nigeria.

2 **Olaotan Olumilua,** Associate Trainee, Corporate Finance and Capital Markets Department, S.P.A Ajibade & Co., Lagos Nigeria.

3 Cap L1 Laws of Federation of Nigeria 2004.

'…involuntary and permanent loss of employment caused by excess manpower'.[4] The court in **Peugeot Automobile Nigeria Ltd v. Oje**[5] defined it as follows: "…it is not a voluntary or forced retirement, nor is it a dismissal from service. It is not a voluntary or forced resignation; …it is rather a form unique only to its procedure whereby an employee is quietly and lawfully relieved of his post."

Although the Act contains no reference as to events that could lead to excess manpower, factors such as corporate restructuring by (for instance) acquisition, cessation of business operations, or operational requirements could be considered as valid grounds for declaring redundancy. The Act also does not list the circumstances that could result in an overabundance of labour, but it does include some reasonable grounds for declaring redundancy, including the purchase of a business, restructuring, stopping operations, or operational needs.

Thus, in the case of ***Gerawa Oil Mills Ltd v. Babura,***[6] it was held that redundancy arises where the termination of employment involves or forms part of a reduction in the workforce. Similarly in the case of ***Alexander O. Ejah & Ors v. Niger Mills Co. Ltd***,[7] the National Industrial Court of Nigeria ("NICN") reasoned that from the evidence which showed that the mass termination of employment of the Defendant's employees arose from a change from a manual to an automated process requiring fewer staff, the disengagement was necessitated by economic and technological reasons, and thus within the contemplation of the Act as a ground for redundancy.

Additionally, the Court had the chance to define redundancy in ***Peugeot Automobile Nigeria Ltd v. Oje***,[8] where it was stated as follows:

as a mode of removing of an employee from service when his post is declared 'redundant' by his employer. It is not a voluntary or forced retirement. It is not a dismissal from service. It is not a voluntary or forced resignation. It is not a termination of appointment as is known in public service. It is a form unique only to its procedure where an employee is quietly and lawfully relieved of his post. Benefits payable in a redundancy situation are governed by the employment contract.

---

4 Cap L1 Laws of Federation of Nigeria 2004.
5 (1997) 11 NWLR (Pt. 530).
6 [2018] LPELR-44720[CA].
7 NICN/CA/97/2013, 27-2-2015.
8 [1997] 11 NWLR (Pt. 530) 625.

3. A Comprehensive Overview of Redundancy Under Nigerian Labour Laws

Redundancy, as a concept within employment relations, involves the termination of employment contracts by an employer due to operational or organisational restructuring, often leading to a surplus of employees. In Nigeria, redundancy is not governed solely by the Labour Act but by a combination of legal frameworks that provide comprehensive guidance for employers and employees alike. This overview examines the Labour Act alongside other pivotal laws, such as **the Public Service Rules ("PSR")**,[9] **the Trade Unions Act**,[10] **the Trade Disputes Act**,[11] and **the Employee Compensation Act**,[12] among others. Redundancy procedures for employees not falling within the scope of the Labour Act are primarily regulated by the terms of their employment contracts. These contracts often outline specific provisions relating to notice periods, severance pay, and other entitlements that come into effect during redundancy situations. Such agreements provide a tailored framework for handling redundancy, ensuring clarity and fairness for both parties involved.

3.1 The Nigerian Labour Act[13]

The Labour Act is Nigeria's principal legislation on employment, setting the minimum standards for labour relations. Section 20 of the Act addresses redundancy, requiring employers to consult with trade unions, particularly regarding selection criteria.[14] It also requires that a fair criterion be adopted in the form of standards such as "last in, first out" (LIFO) are recommended,[15] considering operational needs. Entitlements must be paid in line with employment contracts, collective agreements, or industry practices. However, the Labour Act applies primarily to "workers," and that law defines the term 'worker' as "any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical work or is expressed or implied, oral or written, and whether it is a contract of service or a contract personally to execute any work or labour."[16] This definition excludes professional, technical, and administrative employees, placing them outside the scope of the Act. As a result, redundancy processes for such employees are typically governed by other legal instruments, the specific terms of their employment contracts, or collective

---

9 See, Public Service Rules (PSR) 2021.
10 Cap T14 LFN 2004.
11 Cap T8 LFN 2004.
12 See, Employee Compensation Act (ECA) 2010.
13 Cap L1 Laws of Federation of Nigeria 2004.
14 Labour Act, section 20 (1) (a).
15 Labour Act, section 20 (1) (b).
16 Labour Act, section 91 1).

agreements, which provide tailored provisions to address their particular employment conditions.

3.2 The Public Service Rules (PSR) 2021

The Public Service Rules govern employment in Nigeria's public sector and provide guidelines on redundancy. These include notification requirements. Employers must issue formal notices to affected employees.[17] The rules also outline severance benefits, including pensions and gratuities.[18]

The PSR ensures procedural fairness in workforce reductions, protecting public servants from arbitrary dismissals.

3.3 The Trade Unions Act[19]

The Act highlights the critical role of trade unions in redundancy cases. This involves ensuring consultation with employers during redundancy exercises. It also provides for enforcement of collective agreements that often specify redundancy procedures and severance benefits.[20]

Trade unions also serve as a vital intermediary, advocating for fair treatment of employees during layoffs.

3.4 The Trade Disputes Act[21]

The Trade Disputes Act establishes mechanisms for resolving redundancy-related conflicts through mediation and arbitration, allowing employers and employees to address disputes amicably with the assistance of neutral panels. Where such efforts fail, the National Industrial Court (NIC) serves as the ultimate arbiter, handling cases involving allegations of unfair dismissal or inadequate compensation, ensuring that both parties are treated fairly under the law.

3.5 The Employee Compensation Act (ECA)

Though primarily focused on workplace injuries and diseases, the Employee Compensation Act ensures that employees are compensated for job losses related to health issues caused by their work. Employers must also contribute to employee compensation schemes, which provide financial support for affected workers.

---

17 See 020801 to 020806 of PSR 2021.
18 See 030601 to 030614 of PSR 2021.
19 Cap T14 LFN 2004.
20 Section 25, Trade Unions Act.
21 Cap T8 LFN 2004.

4. The Procedures Involved in Performing a Redundancy in Nigeria.

In the event of a layoff, it is crucial to recognise that relying solely on the Labour Act will only address the rights of workers who fall within its statutory definition. Administrative, managerial, and skilled employees are typically excluded unless a collective agreement exists between the employer and the affected employees to outline procedures for seeking compensation during redundancy. The Act mandates that employers notify workers about their intention to implement redundancy, engage in negotiations for a fair disengagement package, and maintain transparency throughout the process. Additionally, the Trade Disputes Act provides mechanisms for resolving disputes through mediation and arbitration. Should these efforts fail, the National Industrial Court (NIC) is empowered to adjudicate cases, addressing issues such as claims of unfair dismissal or inadequate compensation to ensure fairness in redundancy practices.

Regarding the process, Section 20 (1) (a)–(c) of the Act states that in the event of a redundancy:

> *The workers to be affected are to be informed through their representative or union of the reasons for and extent of the proposed redundancy exercise (this will only seem to apply if they have a union).*
>
> *The employer must adopt the principle of 'last in, first out' in discharging the categories of workers, subject to such factors as relative merit, skill, reliability and ability.*
>
> *The employer is expected to use its best endeavours to negotiate redundancy payments with any discharged worker who is not covered by any regulation made by the Minister of labour for compulsory payment of redundancy allowance.*[22]

5. International Standard Operating Procedure

The National Industrialization Council (NIC) has embraced and declared upon the terms of the International Labour Organisation Conventions in accordance with section 12 of the 1999 Constitution,[23] even if these conventions may not have been formalized and domesticated. Sections 254C(f) and (h) of the Third Amendment to the 1999 Constitution and Section 7(6) of the National Industrial Court Act provide[24] the basis

---

22 Ibid, section 20(1) (a-c).

23 Constitution of the Federal Republic of Nigeria 1999, section 12.

24 National Industrial Court Act, section 7(6).

for the adoption of certain international accords. A good or international best practice in labour or industrial relations must be taken into consideration by the Court when it exercises its jurisdiction or any other powers granted to it by this Act, according to section 7(6) of the National Industrial Court Act. In the case of ***Bello Ibrahim v Ecobank Plc***,[25] the Court employed the Termination of Employment Convention 1982 ("Convention No. 158") as a basis to determine what amounts to "international best practice" for dismissal under Nigerian employment and labour law.

There are some salient provisions of the International Labour Organisation Convention (hereafter referred to as "Convention No 158") as they relate to redundancy. Articles 13 and 14 of Convention No. 158 outline the redundancy procedure. Article 13 of Convention No 158 provides that; when the employer contemplates terminations for reasons of an economic, technological, structural, or similar nature, the employer shall:

> *Provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;*
>
> *Give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimize the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.*[26]

Article 14 of Convention No 158 provides that; "When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out".[27]

The aforementioned indicates that notification, consultation, and information are among the duties an employer has under the convention. The mandate that the employer wishing to implement a redundancy engage in consultations regarding ways

---

25 Suit No. NICN/ABJ/144/2018.

26 International Labour Organisation Convention 1982, Art. 13.

27 International Labour Organisation Convention 1982, Art. 14.

to minimize job losses is a significant enhancement of the Act's position. Given the absence of regulations by the Ministry of Labour on redundancy compensation, the protection of workers' rights and privileges under a redundancy procedure will be decided by the National Industrial Court.

6. Redundancy and Employment Management under Divestment

In cases when there is excess labour because of a divestment, redundancy would be warranted. Redundancy must have a valid cause. This rationale is clear in the context of a divestiture, since the personnel in the impacted divisions might no longer be needed by the company following the sale of a business unit. A decision to change the management of a company due to a change in control of the company or to change the workforce to meet the vision of the new directing minds of the business will not qualify as redundancy. Moreover, redundancy cannot be justified by dismissing underperforming employees after an acquisition. However, removing employees that are unnecessary is a legitimate justification for redundancy, as is combining two job responsibilities into one within its job duties. Redundancies may also be justified in situations where an organisation is losing assets and is unable to fulfill its commitments to its workers. In some cases, there is an overabundance of labour, which results in a permanent loss of work. Additionally, the rationale behind the redundancy must be one that is readily verifiable by financial records, board and annual general meeting minutes, and other company records.

The process for conducting a redundancy is outlined in Nigerian labour legislation. The courts have ruled that, in the absence of any agreement or policy to the contrary, the labour law serves as the minimum standard for employee relations, even though it is not applicable to all categories of workers in Nigeria. The following is the statutory process for conducting a redundancy:

a. Notify the trade union of any impacted employees of the layoffs.

b. Implement the "last in, first out" rule, taking into account all relevant relative merit considerations.

c. Bargain and compensate impacted employees for layoffs.

The workforce restructuring phase is the exercise itself and will include communication made to the employees or the Union on the exercise, negotiation of redundancy pay, and even the mode of termination of employment. The post-restructuring exercise involves the management of fallouts, to ensure minimal exposure. Sequel to the above, the first step a company takes upon discovery that a

redundancy is inevitable, is to examine its employment documentation in a bid to determine if a redundancy procedure is provided. Where the redundancy procedure is provided in the employment documentation of the company, it must be complied with.

When addressing redundancy, companies must carefully analyse the process, assess employment contracts of affected employees, and categorize them appropriately to determine their inclusion in layoffs. Not all affected employees should automatically be part of the redundancy exercise, and specific considerations apply based on their employment terms.

7. Outsourcing Agreements and Contract Staff

For outsourced staff, the employment relationship exists between the outsourcing company and the employee, not the company utilising the outsourced labor. Thus, the company cannot terminate their employment directly. Instead, it must notify the outsourcing company of its intention to discontinue the services of the outsourced workforce as per the terms of the outsourcing agreement. This position was supported in **Nestoil Plc v. National Union of Petroleum and Natural Gas Workers (2012)**,[28] where the court clarified that the responsibility for managing and compensating outsourced employees lies with the outsourcing company.

8. Case Law Supporting Employment Categorisation

Contract staff and probationary employees require distinct approaches. Probationary employees may be disengaged without verification of employment if allowed by the terms of their employment. For contract staff, the employment contract dictates termination procedures. The expiration of a fixed-term contract, for instance, does not constitute redundancy. In **Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN) v. Schlumberger Anadrill Nigeria Ltd (2008)**,[29] the court reinforced that redundancy does not apply to the natural expiration of fixed-term contracts.

9. Redundancy Pay and Judicial Metrics

Redundancy pay is a pivotal aspect of the redundancy process. Where the employment contract or collective agreement does not specify redundancy pay, the courts have held that employees should receive fair compensation.

---

28 [2012] 29 NLLR (Pt. 84) 221 NIC.

29 [2008] 11 NLLR (Pt. 29) 164 NIC.

In **Chemical and Non-Metallic Products Senior Staff Association v. Benue Cement Company Plc (2006)**,[30] the court determined that redundancy pay could be calculated using metrics such as a fixed sum or one month's salary for each year of service. This calculation ensures equity while considering the company's financial capability.

Scholars argue that while the court's metrics aim to achieve fairness, they may not always reflect economic realities. Some suggest that redundancy pay should incorporate inflation rates, job replacement timelines, and the employee's contribution to the company. However, others believe the current metrics strike a reasonable balance between employee compensation and the employer's financial constraints, fostering sustainability.

10. Realignment of Employee's Role in Divestment

Staff transfers and position realignments may be necessary as a result of a divestment. Sometimes, instead of disengaging an employee, role realignment and transfer are suggested or should be taken into consideration. In the event of redundancy, the organisation must honestly explore other choices. The employment contract needs to be reviewed before making any changes to an employee's function or transferring them. The Nigerian courts have addressed role alignment in the context of employment. In **Adeniran v. NEPA**[31], the court held that any alteration to an employee's role must align with the terms of the employment contract. Where a change significantly deviates from the original terms without the employee's consent, it may constitute a breach of contract or constructive dismissal. This emphasizes that organizations must act within the bounds of existing agreements and consult affected employees when considering role realignment as an alternative to redundancy. An employment role shift is known as role realignment. A downgraded role, which is a demotion, or a transition from one employment role to another of the same grade could be the result. An upgraded role could entail a promotion. Employee approval would be needed for a role realignment. When it comes to transfers, this could entail moving to a different branch, state, nation, subsidiary, or unaffiliated business. The agreement of the impacted employees would also be necessary, according to the terms of the employment contract. If employees consent to a position realignment or a transfer to a subsidiary or unaffiliated company, it is safer to negotiate and agree on the terms in a new employment contract.

---

30 [2006] 5 NLLR (Pt. 10) 1 NIC.

31 [2002] 14 NWLR (Pt. 786) 30.

11. Conclusion

In the context of redundancy and employment management during divestment in Nigeria, it is crucial for employers to navigate the complexities of labour laws with diligence and integrity. The Nigerian Labour Act provides a framework that outlines the procedures and rights of employees during redundancy, ensuring that terminations are handled fairly and legally. As businesses undergo divestment, the necessity for transparent communication, adherence to statutory guidelines, and consideration of international best practices becomes paramount.

Employers must recognise that redundancy should not merely be a means to cut costs but rather a thoughtful process aimed at minimising workforce disruption and supporting affected employees. This includes exploring alternatives to layoffs, such as role realignment and transfers, which can preserve talent and maintain morale. Furthermore, thorough documentation and clear agreements are essential in safeguarding the rights of all employees involved.

Ultimately, effective management of redundancy not only fosters a culture of respect and fairness within the organization but also enhances the overall stability and reputation of the business in a competitive market. By prioritising ethical practices and compliance with legal standards, companies can navigate the challenges of divestment while ensuring the well-being of their workforce.

For further information on this article and area of law,
Please contact **Emmanuel Onele or Olaotan Olumilu**a
At S. P. A. Ajibade & Co., Lagos by
Telephone (+234.1.270.3009; +234.1.460.5091)
Fax (+234 1 4605092)
Mobile (+234.8151191 865, +234.8097904768)
Email: eonele@spaajibade.com,
oolumilua@spaajibade.com
www.spaajibade.com