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ADMINISTRATIVE INJUSTICE IN NIGERIAN EMPLOYMENT LAW: THE ROLE OF FAIR HEARING IN DISCIPLINARY PROCEDURES

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Abstract

The constitutional guarantee of fair hearing under section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as altered) is the cornerstone of administrative justice in employment relationships involving public bodies and statutory institutions. Yet, in practice, the disciplinary machinery operated under the Public Service Rules, by corporate disciplinary committees and by quasi-judicial panels routinely falls short of the twin pillars of natural justice. This article interrogates the recurring patterns of administrative injustice in Nigerian employment law, locating the disconnect between the robust jurisprudence of the Supreme Court and the persistent procedural irregularities that characterise dismissals and disciplinary actions. Drawing on a doctrinal analysis of leading authorities, the Public Service Rules and the expanded jurisdiction of the National Industrial Court of Nigeria, it argues that the dichotomy between employment with statutory flavour and ordinary master–servant employment has produced uneven protection, leaving many workers vulnerable to summary and unfair termination. The article finds that the chief sources of injustice are the denial of

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notice and adequate particulars of allegations, the conflation of investigative and adjudicative roles, the prejudgment of outcomes, and the inconsistent availability of meaningful remedies. It concludes that the constitutionalisation of fair hearing must be matched by institutional reform, and recommends a harmonised statutory standard of procedural fairness applicable across the public and private sectors, anchored on international labour standards.

Keywords: *Fair hearing; natural justice; administrative injustice; disciplinary procedure; section 36; employment with statutory flavour; National Industrial Court.*

1.0 INTRODUCTION

The right to a fair hearing is among the most cherished guarantees in Nigerian constitutional law. Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as altered) provides that, in the determination of a person's civil rights and obligations, that person is 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.[1] The provision is not a mere formality. It is the constitutional embodiment of the two ancient maxims of natural justice, and it governs not only the courts but everybody, including administrative and quasi-judicial panels, whose decisions affect the rights of citizens.

[1] Constitution of the Federal Republic of Nigeria 1999 (as altered), s 36(1).

In the employment context, the practical significance of fair hearing is immense. Where a worker faces dismissal or disciplinary sanction, the procedure leading to that sanction must conform to the constitutional standard if the employment carries statutory flavour. The *locus classicus* remains *Garba v University of Maiduguri*, in which the Supreme Court held that a person facing allegations amounting to crime could not be summarily dismissed by a domestic panel without the matter being referred to a properly constituted court.[2] That decision crystallised the principle that disciplinary power, however broadly framed, is subject to the discipline of due process.

Nonetheless, a persistent gap exists between the law as declared by the appellate courts and the law as practised within ministries, parastatals, universities, banks and private corporations. Disciplinary committees are frequently convened in haste, allegations are vaguely framed, accused employees are denied the opportunity to confront adverse evidence, and panels often combine the incompatible functions of investigator, prosecutor and judge.[3] The result is administrative injustice: the systematic erosion of procedural fairness behind a facade of internal regularity.

This article examines how public service rules, corporate disciplinary committees and quasi-judicial panels often violate section 36 in dismissals and disciplinary actions. It proceeds in five parts. Following this introduction, the second part sets out the normative content of fair hearing and the doctrine of natural justice. The third part analyses the principal

[2] *Garba v University of Maiduguri* (1986) 1 NWLR (Pt 18) 550 (SC).

[3] J Hatchard, M Ndulo and P Slinn, *Comparative Constitutionalism and Good Governance in the Commonwealth* (CUP 2004) 158.

sites of administrative injustice across the public and private sectors. The fourth part summarises the findings of the analysis. The article then concludes and offers recommendations for reform.

2.0 THE NORMATIVE CONTENT OF FAIR HEARING IN DISCIPLINARY PROCEEDINGS

2.1 Natural Justice and its Constitutional Anchorage

The doctrine of natural justice rests on two complementary pillars. The first, *audi alteram partem*, requires that no person be condemned unheard; the second, *nemo judex in causa sua*, requires that no person be a judge in their own cause.[4] These principles, developed at common law and famously reaffirmed in *Ridge v Baldwin*, form the substratum of administrative fairness.[5] In Nigeria, they enjoy constitutional entrenchment through section 36, which elevates what was once a rule of common law into a justiciable fundamental right.

The constitutional text is deliberately broad. It speaks of the determination of 'civil rights and obligations', a phrase wide enough to capture disciplinary determinations by administrative bodies that affect a person's livelihood, status or reputation.[6] As Obaseki JSC observed, the right to fair hearing is a fundamental constitutional right which, where breached, renders the resulting decision a nullity, irrespective of how convincing the

[4] ED Onyeabo, *Administrative Law in Nigeria* (Spectrum 2018) 211. The principles are conventionally rendered as *audi alteram partem* and *nemo judex in causa sua*.

[5] *Ridge v Baldwin* [1964] AC 40 (HL).

[6] Constitution (n 1) s 36(1). See also s 36(2) on determinations by administrative bodies.

case against the affected party might appear.[7] The vitiating effect of a breach is therefore total: it is not cured by the merits.

The content of fair hearing in disciplinary proceedings is not rigidly fixed; it varies with the gravity of the allegation and the nature of the body. At a minimum, however, it requires that the affected employee be informed of the precise allegations, be given adequate time and facilities to prepare a defence, be allowed to respond to the case against them, and be judged by an impartial tribunal.[8] The test, as the Supreme Court has repeatedly stressed, is objective: whether a reasonable person present at the proceedings would conclude that the tribunal was fair and impartial.

2.2 The Statutory Flavour Dichotomy

A defining feature of Nigerian employment law is the distinction between three categories of employment: pure master–servant relationships, employment protected by statute, and employment held at pleasure. The category into which a relationship falls determines whether the constitutional fair hearing guarantee applies to disciplinary action. Where an employment is governed by statute or regulations made under statute, it is said to possess 'statutory flavour', and any purported termination must comply strictly with the prescribed procedure.[9]

In *Olatunbosun v Nigerian Institute of Social and Economic Research Council*, the Supreme Court held that the appellant's appointment was governed by the institute's enabling instrument and could not be

[7] *Adigun v Attorney-General of Oyo State* (1987) 1 NWLR (Pt 53) 678 (SC) 720 (Obaseki JSC).

[8] *Kotoye v Central Bank of Nigeria* (1989) 1 NWLR (Pt 98) 419 (SC) 448.

[9] Public Service Rules 2021 (Federal Republic of Nigeria) rr 030301–030402.

terminated without adherence to the statutory procedure, including a fair hearing.[10] Earlier, in *Shitta-Bey v Federal Public Service Commission*, the Court emphasised that a public servant whose appointment enjoys statutory protection is entitled to be heard before removal.[11] The same reasoning underpins *Eperokun v University of Lagos*, where dismissals effected in disregard of the governing statute were declared void.[12]

By contrast, in ordinary master–servant employment, the traditional common law position is that an employer may terminate for good reason, bad reason or no reason at all, provided the contractual notice is given, and the remedy for wrongful termination is damages rather than reinstatement.[13] This was reaffirmed in *Longe v First Bank of Nigeria Plc*, although the Court there found a breach because the company's own articles required notice to the affected director.[14] The dichotomy, however, has increasingly been destabilised by the expanded jurisdiction of the National Industrial Court of Nigeria and by the influence of international labour standards.[15]

The constitutional alteration of 2010 conferred on the National Industrial Court exclusive jurisdiction over labour and employment matters and empowered it to apply international best practices and ratified

[10] *Olatunbosun v Nigerian Institute of Social and Economic Research Council* (1988) 3 NWLR (Pt 80) 25 (SC).

[11] *Shitta-Bey v Federal Public Service Commission* (1981) 1 SC 40.

[12] *Eperokun v University of Lagos* (1986) 4 NWLR (Pt 34) 162 (SC).

[13] *Garba* (n 2) 583 (Bello JSC).

[14] *Bernard Ojeifo Longe v First Bank of Nigeria Plc* (2010) 6 NWLR (Pt 1189) 1 (SC).

[15] Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004; Constitution (n 1) s 254C, inserted by the Constitution (Third Alteration) Act 2010.

conventions.[16] Drawing on the International Labour Organisation's Termination of Employment Convention, the Court has begun to require a valid reason and fair procedure even in private employment, signalling a gradual erosion of the unfettered right to dismiss.[17] In *Aloysius v Diamond Bank Plc*, the Court held that an employer can no longer terminate without a justifiable reason where the relationship is governed by considerations of fairness, a marked departure from the orthodox master–servant rule.[18]

3.0 THE PRINCIPAL SITES OF ADMINISTRATIVE INJUSTICE

3.1 Denial of Notice and Adequate Particulars

The first and most common violation is the failure to give the employee proper notice of the allegations. Fair hearing begins with knowledge: a person cannot answer a charge they have not been told of, nor defend against evidence they have not seen.[19] In *Baba v Nigerian Civil Aviation Training Centre*, the Supreme Court invalidated a dismissal where the appellant was neither informed of the specific allegations nor afforded an opportunity to defend himself, holding that the requirement of fair hearing had been comprehensively breached.[20]

Oputa JSC captured the principle vividly when he explained that the essence of fair hearing lies in the opportunity to be heard, and that a hearing can only be fair when all the parties to the dispute are given an

[16] *Skye Bank Plc v Iwu* (2017) 16 NWLR (Pt 1590) 24 (SC).
[17] ILO, *Termination of Employment Convention 1982* (No 158) art 7.
[18] *Aloysius v Diamond Bank Plc* (2015) 58 NLLR (Pt 199) 92 (NICN).
[19] *Ridge* (n 5); *Cooper v Wandsworth Board of Works* (1863) 14 CB (NS) 180.
[20] *Baba v Nigerian Civil Aviation Training Centre* (1991) 5 NWLR (Pt 192) 388 (SC).

opportunity to present their respective cases.[21] Vague or generalised allegations, such as accusations of 'misconduct' or 'insubordination' without particulars of date, place and conduct, deprive the employee of any real chance to respond. The defect is not technical; it strikes at the root of the adjudicative process.

Equally objectionable is the practice of confronting an employee with a *fait accompli* a query issued and answered within hours, followed immediately by a letter of dismissal already prepared. In *Hart v Military Governor of Rivers State*, the Court underscored that a sham hearing, conducted merely to satisfy the appearance of procedure, is no hearing at all.[22] The constitutional guarantee demands substance, not ceremony.

3.2 The Conflation of Investigative and Adjudicative Roles

The second site of injustice is the breach of the rule against bias. Disciplinary committees in the public service and in corporate settings are frequently composed of officers who initiated the complaint, investigated it, and then sat in judgment over it. This conflation of roles offends *nemo judex in causa sua* and taints the proceedings with a reasonable likelihood of bias.[23]

In *Federal Civil Service Commission v Laoye*, the Supreme Court reaffirmed that a tribunal must not only be impartial but must be seen to be impartial, and that participation by an interested party in the decision

[21] *Garba* (n 2) 617 (Oputa JSC).

[22] *Hart v Military Governor of Rivers State* (1976) 11 SC 211.

[23] *Adeniyi v Governing Council of Yaba College of Technology* (1993) 6 NWLR (Pt 300) 426 (SC).

vitiates the outcome.[24] The principle was applied robustly in *Yusuf v Union Bank of Nigeria Ltd*, where the involvement of a person with an interest in the matter in the disciplinary process was held to constitute a denial of fair hearing.[25] The mischief is structural: where the same body accuses and condemns, the safeguards of independent adjudication collapse.

Universities have been a recurrent theatre for this form of injustice. In *Olaniyan v University of Lagos*, the dismissal of senior academic staff by a council acting without due process was set aside, the Court insisting that the elaborate procedural safeguards in the governing statute were mandatory and not directory.[26] The Public Service Rules themselves prescribe detailed steps for discipline query, response, referral to a disciplinary committee, and recommendation but these steps are too often observed in the breach or compressed into a perfunctory ritual.[27]

3.3 Prejudgment and the Predetermined Outcome

Closely related to bias is the vice of prejudgment, where the disposing authority approaches the matter with a closed mind. In *Iderima v Rivers State Civil Service Commission*, the Supreme Court stressed that dismissal must follow, not precede, a fair determination of the allegations, and that the affected officer is entitled to the full benefit of the procedure laid down in the relevant regulations.[28] Where the decision is taken before the hearing, the hearing is a charade.

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[24] *Federal Civil Service Commission v Laoye* (1989) 2 NWLR (Pt 106) 652 (SC).
[25] *Yusuf v Union Bank of Nigeria Ltd* (1996) 6 NWLR (Pt 457) 632 (SC).
[26] *Olaniyan v University of Lagos* (1985) 2 NWLR (Pt 9) 599 (SC).
[27] Public Service Rules 2021 (n 9) r 030402.
[28] *Iderima v Rivers State Civil Service Commission* (2005) 16 NWLR (Pt 951) 378 (SC).

The point was sharpened in *Bamgboye v University of Ilorin*, in which the Court reiterated that the right to fair hearing is breached where a body acts on a predetermined conclusion.[29] Administrative convenience, institutional embarrassment or the desire to make an example of an employee cannot displace the constitutional requirement of an open and genuine inquiry.[30] The independence of mind required of a disciplinary panel is not satisfied by the mere observance of outward forms.

In *Sofekun v Akinyemi*, the Supreme Court invalidated the determination of a person's professional fate by an administrative panel rather than a properly constituted tribunal, holding that the power to determine guilt in a matter affecting livelihood and reputation cannot be exercised by a body that prejudges the issue.[31] These authorities collectively establish that prejudgment is fatal, however meritorious the underlying complaint.

3.4 Summary Dismissal and the Allegation of Crime

A distinct and serious category of injustice arises where an employer dismisses an employee summarily on the basis of an allegation that discloses a crime. The settled rule, following *Garba*, is that where the misconduct alleged constitutes a criminal offence, the employee is entitled to be tried by a court of competent jurisdiction before any disciplinary sanction founded on that allegation can be imposed.[32] A domestic panel lacks the competence to make a finding of criminal guilt.

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[29] *Bamgboye v University of Ilorin* (1999) 10 NWLR (Pt 622) 290 (SC).

[30] MA Akanbi, *Selected Essays in Administrative Justice* (Lexis 2009) 77.

[31] *Sofekun v Akinyemi* (1981) 1 NCLR 135.

[32] EO Ekundayo, 'Fair Hearing and the Dismissal of Public Servants in Nigeria' (2019) 10 NJLS 44, 51.

This principle protects the constitutional presumption of innocence and prevents employers from usurping judicial functions. It was applied in *Wilson v Attorney-General of Bendel State*, where a dismissal grounded on uncharged criminal conduct was struck down,[33] and reinforced in *Dongtoe v Civil Service Commission, Plateau State*, in which the Court reaffirmed that the procedural safeguards attaching to a public office may not be circumvented by the device of summary dismissal.[34] The rule does not preclude discipline for misconduct that is not criminal; it simply insists that criminal accusations be adjudicated by criminal courts.

The National Industrial Court has, however, refined this position in the private sphere, holding that an employer who genuinely and reasonably believes, after a fair internal inquiry, that an employee has committed gross misconduct may act on that belief without awaiting a criminal conviction, provided the procedure is fair.[35] In *Pepsi-Cola International Ltd v Olufemi*, the Court applied the 'reasonable employer' standard drawn from comparative jurisprudence, illustrating the evolving and more nuanced approach to private employment.[36] The tension between the *Garba* rule and this emerging standard remains unresolved and is a fertile source of uncertainty.

3.5 The Problem of Remedies

Even where a breach of fair hearing is established, the injustice may persist at the remedial stage. The available remedy depends once more on

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[33] *Wilson v Attorney-General of Bendel State* (1985) 1 NWLR (Pt 4) 572 (SC).

[34] *Dongtoe v Civil Service Commission, Plateau State* (2001) 9 NWLR (Pt 717) 132 (SC).

[35] ILO (n 17) art 7; *Aloysius* (n 18).

[36] *Pepsi-Cola International Ltd v Olufemi* Suit No NICN/LA/293/2013 (NICN, 2016).

the nature of the employment. Where the employment enjoys statutory flavour, a dismissal effected in breach of fair hearing is void, and the proper remedy is a declaration that the employee remains in service, with consequential reinstatement and arrears of salary.[37] In *Esiaga v University of Calabar*, the Court affirmed that an officer wrongfully removed from a statutory office is entitled to be restored to that office as though the purported removal had never occurred.[38]

In ordinary employment, by contrast, the traditional remedy is damages limited to salary in lieu of notice, on the reasoning that the courts will not impose an employee on an unwilling employer.[39] This remedial asymmetry means that two employees suffering identical procedural injustice may receive radically different vindication depending solely on the legal character of their employment a distinction that often has little to do with the gravity of the breach or the needs of justice.

The remedial gap is compounded by delay. Disciplinary disputes may take years to resolve through the courts, during which the dismissed employee bears the full burden of lost income and reputational harm.[40] Although the National Industrial Court was established in part to provide a swifter and more specialised forum, congestion and procedural complexity continue to attenuate the practical value of the fair hearing guarantee. A right without a timely and adequate remedy is, in substance, a hollow right.[41]

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[37] *Ziideeh v Rivers State Civil Service Commission* (2007) 1 NWLR (Pt 1024) 1 (SC).

[38] *Esiaga v University of Calabar* (2004) 7 NWLR (Pt 872) 366 (SC).

[39] Onyeabo (n 4) 240; *Garba* (n 2).

[40] *Sofekun v Akinyemi* (n 31); *Denloye v Medical and Dental Practitioners Disciplinary Committee* (1968) 1 All NLR 306 (SC).

[41] *Garba* (n 2) 597.

4.0 SUMMARY OF FINDINGS

The foregoing analysis yields several findings. First, the constitutional guarantee of fair hearing under section 36 is, on the authorities, robust, justiciable and capable of nullifying any disciplinary decision tainted by procedural unfairness, regardless of the apparent merits of the case against the employee.[42] The jurisprudence of the Supreme Court has been consistent and principled in defending the twin pillars of natural justice.

Secondly, despite this strong doctrinal foundation, administrative injustice persists at the operational level. The recurring violations are identifiable and patterned: the denial of notice and adequate particulars; the conflation of investigative, prosecutorial and adjudicative functions within a single body; prejudgment of the outcome; the unlawful assumption of criminal jurisdiction by domestic panels; and the inadequacy or delay of remedies.[43] These are not isolated lapses but structural features of how discipline is administered.

Thirdly, the statutory flavour dichotomy generates uneven protection. Employees in the public service and statutory bodies enjoy the full constitutional guarantee and the prospect of reinstatement, while those in ordinary private employment have historically been confined to the meagre remedy of damages in lieu of notice, even where the procedural breach is egregious.[44] This bifurcation produces results that are difficult to defend on grounds of principle or fairness.

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[42] Constitution (n 1) s 36(1); *Kotoye* (n 8).

[43] *Legal Practitioners Disciplinary Committee v Fawehinmi* (1985) 2 NWLR (Pt 7) 300 (SC).

[44] *Sketch Publishing Co Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678 (SC).

Fourthly, the expanded jurisdiction of the National Industrial Court and the incorporation of international labour standards are steadily narrowing this gap, requiring valid reasons and fair procedure even in private employment.[45] The trajectory of the law is therefore towards a more uniform and substantive conception of procedural fairness, although the transition remains incomplete and the governing principles are not yet fully settled.

5. CONCLUSION

The right to fair hearing is the constitutional conscience of Nigerian employment law. The appellate courts have, over decades, fashioned a coherent and demanding body of doctrine insisting that no employee may be condemned unheard, that no interested party may sit in judgment, and that disciplinary power must yield to due process.[46] The problem is not the inadequacy of the law on the books but the gulf between that law and the practice of disciplinary bodies.

Administrative injustice in disciplinary procedure is, at bottom, a failure of institutional design and culture. Disciplinary committees treat fair hearing as an obstacle to be circumvented rather than a value to be served; queries are issued as formalities; panels are constituted without regard to impartiality; and outcomes are settled in advance. The constitutionalisation of fair hearing, while indispensable, has not by itself transformed this culture.[47]

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[45] Ekundayo (n 32) 58.

[46] *Imonikhe v Attorney-General of Bendel State* (1992) 6 NWLR (Pt 248) 396 (SC).

[47] *Arinze v First Bank of Nigeria Ltd* (2004) 12 NWLR (Pt 888) 663 (SC).

The way forward lies in closing the gap between doctrine and practice. This requires both the continued convergence of the public and private employment regimes around a common standard of procedural fairness, and the institutional embedding of that standard within the disciplinary machinery itself. The expanded mandate of the National Industrial Court, anchored on international labour standards, offers a promising vehicle for this convergence.[48] What remains is to translate the constitutional promise into a lived reality for the ordinary Nigerian worker.

6. RECOMMENDATIONS

i. A harmonised statutory standard of procedural fairness should be enacted, applicable across both the public and private sectors, prescribing as a minimum the right to written particulars of allegations, adequate time to respond, an oral hearing where the allegation is serious, and an impartial decision-maker. This would dissolve the indefensible asymmetry produced by the statutory flavour dichotomy.

ii. The Public Service Rules and corresponding corporate disciplinary codes should be amended to require the structural separation of investigative, prosecutorial and adjudicative functions, so that no officer who initiates or investigates a complaint may sit on the panel that determines it.

iii. Disciplinary panels should be required to furnish reasoned decisions in writing, identifying the allegations, the evidence considered, the response of the employee and the basis for the conclusion, thereby enabling meaningful review and deterring prejudgment.

[48] Skye Bank (n 16); Constitution (n 1) s 254C.

iv. Where an allegation discloses a criminal offence, internal panels should be expressly barred from making findings of criminal guilt, consistent with the rule in *Garba*, while a clear and fair internal standard should govern discipline for non-criminal misconduct.[49]

v. The National Industrial Court should continue to develop, and the legislature should codify, a substantive requirement of valid reason and fair procedure for all terminations, in line with the International Labour Organisation's Termination of Employment Convention, together with a flexible remedial regime that includes reinstatement and adequate compensation.[50]

vi. Procedural reforms should be matched by capacity-building and sustained sensitisation of administrators, human resource officers and members of disciplinary committees, so that fair hearing is internalised as a substantive value rather than observed as an empty formality.

[49] National Industrial Court of Nigeria (Civil Procedure) Rules 2017, O 14.

[50] ILO (n 17) arts 7–9; C Okpaluba, 'Reinstatement and the Contract of Employment' (2015) 3 ALR 1, 14.