

LABOUR & EMPLOYMENT LAW

A Practitioner's Guide

Enforceability of Employment Bonds in Nigeria





ENFORCEABILITY OF EMPLOYMENT BONDS IN NIGERIA

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Introduction

Employment bond, sometimes called training bond, is a device by which employers secure their investments on staff training and development. Training and capacity development is an important business investment, and like all investments, employers expect returns on training investments. This is a legitimate expectation and same is recognised in law. The returns are basically in form of optimal utilisation of the skills acquired from the training for the growth and development of the company and transfer of the acquired knowledge to the other workforce. This work examines the law and practice of employment bonds in Nigeria. It focuses on the enforceability of employment bonds under the Nigerian labour and employment law, and offers useful guide to employers of labour.

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What is an Employment Bond?

Employment bond is created where an employee enters into an agreement to remain in the employment of his employer for a particular length of time in consideration of the training investment on the employee. It is a specie of contract of indemnity where an employee undertakes in writing, in consideration of a training opportunity to be funded by his employer, to remain in the employment of such employer for an agreed period or indemnify the employer of the training cost in the event of breach on his part.



Thus, by this agreement, the employee undertakes to refund the training cost (usually on prorated basis) in the event that he chooses to leave the service of the employer before the agreed time. In **Dr Victor Balogun & Ors v Federal University of Technology, Akure & Anor¹**, the Court defined a training bond in the following words:



“... a training bond is an agreement that seeks to compel an employee who has been sponsored for a training by the employer to work for an agreed number of years for the benefit of the employer's investment on the staff. Alternatively put, it is the service compulsorily rendered by an employee for training sponsored by his employer....”

Enforceability of Employment Bonds in Nigeria

Employment bonds are generally legitimate and enforceable but subject to meeting some conditions². It is a legitimate device by employers of labour to secure the benefits of their expenditure on staff training and development.

Conditions for Enforceability

To be enforceable, employment bonds must satisfy the following conditions:

- The employment bond must be voluntary. Like any contract, a bond may be vitiated by duress (including economic duress), undue influence, material misrepresentation and fraud. The Court must be satisfied that the bond agreement was freely and voluntarily entered into by the employee. It is not uncommon to see cases of economic duress, undue influence and misrepresentation especially in bond agreements executed by fresh graduates who are not only desperate to secure employment but are also naive and ignorant of their rights. Economic duress occurs where a party to a contract threatens (usually subtle) to cancel a contract unless the other party agrees to their demands or terms considered unfavourable by that other party. In this context, economic duress occurs where an employer uses economic pressure to coerce an employee to sign a bond agreement he would otherwise not agree to.

¹ Suit No. NICN/AK/49/2015 Judgement delivered on 15th November, 2018.

² See *Overland Airways Ltd v Oladeji Afolayan & Anor*, unreported Suit No. NICN/LA/19/2011 Judgement delivered on the 2nd May, 2014, *Overland Airways Ltd v Captain Joseph Gamara* unreported Suit No. NICN/LA/141/2011, judgement delivered on the 7th January, 2016. See also *Overland Airways v Captain Raymond Jam* (2015) 62 NLLR (Pt. 219) 525.



Thus, for instance, where an employer threatens termination of employment unless the employee signs the bond agreement, such bond agreement will be nullified by the Court. Undue influence refers to a situation where a person is induced to act otherwise than by his own free will or without adequate consideration to the potential consequences of their actions. It refers to a situation where a person in power or authority uses the position to take advantage of the other, usually a weaker party. Employer - employee relationship is one of unequal bargaining powers such that an employee might not have exercised his independent free will in signing the bond agreement. Economic duress and undue influence are however, question of facts which must be proved by the party who alleges it. Regrettably, while cases of economic duress and undue influence in the execution of bond agreement are common in work places, it is often not easy to prove as in most times, it is often a case of “my words against yours”. In determining the question of voluntariness in bond agreements, the Court will consider the age, education, work experience and economic status of the employee including other surrounding circumstances. Misrepresentation is another element which may vitiate a training bond. A training bond may be nullified by Court on the ground of fraudulent misrepresentation .

Misrepresentation refers to a false statement of fact made by a party with the intention of inducing the other party to enter into a contract. A training bond signed by an employee based on the material misrepresentation of his employer may be voided if challenged in Court by the employee. As noted earlier, a training bond agreement must state all the material facts relevant to the agreement. Misrepresentation including material non - disclosure may render a bond agreement void and unenforceable.

- The terms of the bond must be reasonable especially the duration of the bond. The Court will also nullify a bond agreement that is replete with unconscionable provisions or clauses. The duration of the bond must be seen to be fair and commensurate with the training cost. The Court will nullify a bond agreement where the duration or length of the restraint is unreasonable, or where the bond agreement contains unfair terms.

³ Suit No. NICN/LA/484/2012, judgement delivered on the 19th May, 2017.



In **Isicare Nig Ltd v Victoria Omotayo Akinsanya & Anor**³, The 1st defendant was an employee of the claimant and on salary of N540,000 Per Annum. In consideration of a 7 day training in India, which total cost was N569, 108.00, the 1st defendant was made to sign a bond under which she was to remain in the service of the employer for at least 3 years or pay N5,000,000 (Five Million Naira) only as compensation, in addition to the total cost of the training to the employer if she leaves the employment either by way of resignation or dismissal before the expiration of the bond period. The 1st defendant was dismissed shortly after returning from the training in India and the company filed a suit against her to recover the N5, 000, 000 including the cost of the said training. The National Industrial Court dismissed the suit and awarded damages against the employer. The Court held that the bond agreement (especially the clause requiring her to pay N5, 000, 000) is inhumane, unconscionable and that same also amounts to unfair labour practice. The Court further noted that the clause is contrary to public policy and against the International Labour Organization (ILO) Decent Work Agenda.

Generally, and going by decided judicial authorities, it is very unlikely that the Court will enforce any bond that is for a period more than 2 years⁴

- The bond must have also been entered into prior to the training and not afterwards otherwise, same amounts to a past consideration which is not enforceable in law⁵.
- A bond agreement must state clearly all the material terms of the contract. These material terms will include the duration of the training, the total cost of the training, and the duration of the restraint. This disclosure is important to enable the employee make an informed decision as to whether he wants to sign the agreement or not. Being a restrictive covenant, no material term will be implied and any ambiguity in the agreement will be resolved against the employer. Thus, the Court may not imply into the agreement any term not expressly provided in the agreement especially a term that is unfavourable or prejudicial to the employee.

⁴ See [Overland Airways v Captain Raymond Jam \(supra\)](#).

⁵ [Northern Thunderbird Air Inc v Van Haren \(2011\) BCSC 837](#).

⁶ See [Overland Airways v Captain Raymond Jam \(supra\)](#), see also [Overland Airways Ltd v Joseph Gamra \(supra\)](#).



- The bond value must be a fair pre-estimate of the total cost of the training. To be enforceable, the stated bond value must genuinely represent a fair estimate of the training cost. A bond sum that is inflated or which operates as a penalty clause will not be enforced by the Court⁶. Thus, in the *Isicare Nig Ltd's* case (Supra), the Court held as unconscionable a bond agreement which imposes a penalty of N5,000,000 (Five Million Naira) only in consideration of a 7 day training which total cost was N569, 108.00.
- The employer must not be guilty of a fundamental breach of the bond agreement or the contract of employment between the parties. A fundamental breach occurs where a party to a contract fails to keep an important or essential part of the deal. In law, a fundamental breach on the part of a party entitles the other party to resile from the agreement. Thus, a bond agreement will not be enforceable by the employer where he commits a fundamental breach, for instance, where the training was not completed due to the failure of the employer to pay the full course fees, or where the salaries or allowances due to the employee during the course was not paid⁷ or the employer otherwise fails to discharge any of his own obligations under the training bond agreement.

Similarly, while wrongful termination or wrongful dismissal of an employee on bond may operate as a fundamental breach to discharge the employee of his bond obligations, it is unclear whether a validly terminated or validly dismissed employee is not discharged from his bond obligations.

Does training bond agreement amount to forced labour, inhuman or degrading treatment?

The question has also arisen as to whether employment bond is not a violation of Section 34(1)(C) of the 1999 Constitution of Nigeria which provides that 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. See also Section 73 of the Nigerian Labour Act which also makes provision for the prohibition of forced labour. The answer is NO, the employee on bond has a choice. He has the option to refund the bond value; so it's not really a forced labour *stricto sensu*.

⁷ In *Overland Airways v Oladeji Afolayan (supra)*, the Court held that failure to pay the salaries due to an employee while the bond agreement subsists constitutes a fundamental breach on the part of the employer.



Practical Guides for Legal Advisers and HR Managers

While training bond agreements are legitimate, and generally valid and enforceable in law provided certain conditions are met, sufficient care must be taken by the employers of labour to avoid common mistakes that may vitiate the agreement. Below are some useful practice guides:

1. A training bond must be in writing, signed by both parties, and preferably witnessed by another party.
2. The employee must be advised of his right to seek legal advice before executing the agreement. It is a good practice to have the employee endorse this fact on the execution page.
3. The bond agreement must be executed prior to the training and not afterwards.
4. The employer must diligently keep to his own side of the deal.
5. It is a good practice, where practicable, to request for a contract of indemnity from a 3rd party guarantor to be provided by the employee. This helps to secure the bond sum especially where the employee may not be in a position to pay the bond sum in the event of a breach by him. The guarantor must be a man of means.
6. Employers of labour are advised to consult their legal advisers in drafting employment bonds.

Conclusion

Employment bonds are valid and enforceable provided certain conditions are met. It is a useful device in the hands of employers of labour to secure their investments on staff training and capacity development.
