African Journal of Law, Political Research and Administration

ISSN: 2689-5102

Volume 7, Issue 4, 2024 (pp. 19-27)

www.abjournals.org

THE ROLE OF ARBITRATION IN RESOLVING COLLECTIVE LABOUR DISPUTES: A COMPARATIVE STUDY OF PUBLIC AND PRIVATE SECTORS

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Cite this article:

Ibekwe, E. C. (2024), The Role of Arbitration in Resolving Collective Labour Disputes: A Comparative Study of Public and Private Sectors. African Journal of Law, Political Research and Administration 7(4), 19-27. DOI: 10.52589/AJLPRA-QLIBHXVA

Manuscript History

Received: 27 Aug 2024

Accepted: 3 Nov 2024

Published: 11 Nov 2024

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ABSTRACT: *This paper aims at analysing how arbitration is used to solve collective labour relations by evaluating the application and results in both the public and the private sectors. This paper aims at assessing the effectiveness of arbitration as one of the ADR methods in dealing with disputes, in the two sectors. In the course of the study, the research compares arbitration with a view to identifying its effectiveness in sustaining industrial peace and reducing strikes. Employing a qualitative research design, data was collected from literature, case analyses and works from labour organisations. The results show that arbitration really works in both sectors, though the process is dependent on the legal and institutional frameworks. Arbitration is much more structured in the public sector because of legislation than it does in the private sector where flexibility results in swift outcomes. This paper concludes by identifying the policy significance of these findings for labour policy reform and exploring future research directions.*

KEYWORDS: Arbitration, Reform Labour Dispute, Sector.

Article DOI: 10.52589/AJLPRA-QLIBHXVA

DOI URL: https://doi.org/10.52589/AJLPRA-QLIBHXVA

INTRODUCTION

Collective labour disputes are inevitable in industrial relations, particularly if major players are involved in both industrial and government segments. Some of these complaints typically pertain to major areas of complaints, such as remuneration and conditions of work, employment security, staff remuneration and other or any other clause of contract. More often lead into any form of strikes, lockouts or any disruption of production thus not only affect the organisations caught in it but have other deep rooted economic and social effects. For example, general strikes among public transport workers puts the cities on a stand still or disrupts essential services, while a labour strike in a manufacturing firm in the private sector results in low production or even losses. Thus, the tools for resolving these conflicts are essential to preserving both organisational and economic equilibrium. Arbitration is one of the significant tools in the scope of the ADR mechanism used for solving these labour conflicts. Arbitration deals with a third person being chosen to study both facets of the matter in controversy and come up with a final decision or recommendation depending on the stipulations reached by the parties to the dispute. Of this, the process is viewed as less adversarial as the litigation process and might offer more effective and faster outcomes than trial (Bemmels & Foley, 2016).

Further, arbitration is helpful in maintaining working relations by presenting the opportunity of addressing the complaints out of the public domain and that is important in maintaining industrial harmony. Public sector collective labour disputes have wider consequences to the general public because many of the public sector employees involve functions which are pertinent to the populace such as health, teaching, police and transport services. Striking power in many countries in legislation has been restricted for government employees and arbitration thus becomes a vital tool of resolving disputes (Chand, 2018). For example, most of the countries representing the world have statutes of labour laws. Some of the countries formulate certain laws that restrict or bar civil servants from going on strikes in the essential services. For this reason, arbitration is an important form of indirect industrial action.

Nonetheless, public sector arbitration is limited by politics, bureaucracy, and laws that prop up the authorities rather than the employees who are involved in the disagreement (Deresky, 2022). They also bring in political interjection to deal with the disruptions, which bring in extra dynamics to the resolution process that an ordinary commercial entity does not have. On the other hand, collective labour disputes primarily in private business establishments are primarily oriented towards business factors such as profitability, efficiency, and competitiveness. Arbitration in this sector mostly comes in as quicker and more elastic since firms' main concern is to avoid interruptions in operations which could be occasioned by strikes or long acting out of the negotiation table. In terms of its advantages, numerous private organisations prefer arbitration because of the fewer number of proceedings and simpler legal action, as well as the lesser degree of publicity than in the course of trial (Kressel & Pruitt, 2017). Second, the arbitration of disputes originating from the private sector can be less rigid as the interested parties may need to devise the arbitration process to fit the company's overall strategies and schedules.

It is useful to comprehend the background of arbitration within these two different but related settings to compare the usefulness of the approach. Another reason is that legal and regulatory systems in relation to labour relations of the public and private sectors of many countries are diverse, and it affects the application of arbitration. For example, bargained employees in the US federal public sector have less bargaining power than the private sector employees, the

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latter of whom may be able to negotiate more extensively on arbitration (Chand, 2018). Likewise, due to the fact that in most African countries, including Nigeria, the labour laws are fairly young and hence, the arbitration in public disputes is relatively faced with legal and political challenges that add more difficulty (Deresky, 2022).

This research aims to examine these differences in detail and thus help develop arbitration as an important means for settling disputes in industrial relations. It also fills a gap in the literature because, while it recognises that arbitration is used in various sectors, its approach is to consider how it is applied in each, the difficulties that arise in each and whether the process might be improved to provide better results.

Research Objectives

The specific objectives of this study are:

1. To evaluate the effectiveness and results of arbitration as a means of solving collective labour conflicts in both sectors.

2. To conduct a comparative analysis of arbitration procedures and practices in the private as well as in the public sector.

3. To determine the obstacles that hinder arbitral resolve and achievement in every sector.

Research Questions

This paper seeks to address the following research questions:

1. In what way does arbitration work in settlement of collective labour disputes in public organisations as compared to the private ones?

2. To what extent does arbitration work well in both the public and private sectors?

3. What are the major procedural and structural differences in arbitration between the public and private sectors?

Significance of the Study

In this paper, the author examines the function and efficiency of arbitration for the collective labour relations with the aim of promoting industrial peace and minimising the costs of strikes and other interferences. For the public sector, where challenges may muse on critical services, there is need to enhance the arbitration procedures so that when decisions have to be arrived at, such are done in the earliest times possible and without compromising the public interests. In the private sector where the emphasis is put on costs and organisational efficiency arbitration is preferred since it enables the parties to reach a decision faster and it does not entail as many lawsuits as the court processes do (Bemmels & Foley, 2016). This study will help policymakers, labour relations institutions, trade unions and employers unlock the potential for more just and efficient arbitrations. Also, the study might make recommendations that would help the government to introduce better labour policies that would raise the efficiency of dispute settlement in the two sectors.

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Scope and Limitations

The present work shall therefore be centred on collective labour disputes between organised employees' associations and employers in both the public and private domains with special reference to the Nigerian states where arbitration is actively practised. This research will compare the process of arbitration and the outcomes in different sectors, thus pointing out the differences. However, the study will exclude cases of specific individual labour relations of employment, as they are different in the processes and factors involved. It is also constrained by how legal systems, culture and economy influence application of arbitration in the various regions, which results in some findings being regionally sensitive only.

LITERATURE REVIEW

Disputes are resolved by using one of the more widely known methods of ADR referred to as arbitration, which is a method of resolving collective labour disputes. Due to the decrease of conflict solving via litigation and strikes, it is more important to find less confrontational ways of conflicts. In order to ensure three overall objectives of this work – analysis of the nature and dynamics of arbitration, identification of specific types and forms of arbitration activity in the different spheres and assessment of the expert opinions on the necessity and perspectives of further development of arbitration system in the given country – several theoretical experimental base and empirical findings must be given attention.

Theoretical Framework

Most of the theories regarding arbitration have been based on the differences between interest arbitration and right arbitration. Interest-based arbitration means reaching a common ground between labour and management selfish interests normally yields better results (Katz & Kochan, 2018). However, rights-based arbitration is anchored on a legal or contractual framework where arbitrators base awards on a determined assessment of various labour legislations or CBA's (Dunlop, 1958). This distinction can be especially useful when contracting the public and private sectors because, in the former, the usual conflicts involve rights-based claims since public employees are bound by regulations.

The research in arbitration has revealed that research shows the arbitration system markedly differentiated according to sectors. Regarding the private sector, arbitration is considered more efficient and more favourable by both management and labour in terms of arbitration. For the case of the private sector, Bemmels and Foley (2016) assert that arbitration was more effective in delivering faster dispute resolution and higher compliance figures due to the financial pressures exerted by the economic agenda of the two parties. The public sector is however characterised with some challenges when it comes to using arbitration for the following reasons, Political and Legal barriers. Lipsky and Seeber (2006) argue that public sector arbitration is affected by statutory regulations and most often government policies, which causes delays and highly formalised procedures. This is because one of the important reasons is the realisation of public interest, in addition to the interest of the parties involved in the dispute. According to Groin and Shanker (2015), the public sector decisions in arbitration are normally political, particularly where the politics are related to health or education services.

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www.abjournals.org

Political and Legal Context in Public Sector Dispute Resolution

As we know in the public sector, the government both 'buys' services through contracts for its own organisations and commissions services from those suppliers through regulations and policies; consequently, additional intersections and blurred lines arise, which are not characteristic of the private sector. According to Budd (2016), public sector unions have a higher level of legal limits on strikes and bargaining and this leads to more disputes being taken to arbitration. It can be seen that such a legal framework can both enable and disable arbitration; at the same time, it makes easements that enable the disputes to be settled without interrupting the business, while, at the same time, it sets restrictions on the authority of arbitration awards. Arbitration remedy is fair to the workers and the government bodies where the labour laws are more robust, and where the labour laws are more lenient, the arbitration awards generally lean more towards supporting the government more (Freeman & Medoff, 2019).

Application of Arbitration in Private Sector

The private sector arbitration is ready to be more flexible and quicker; both the labour and management look for it as an effective tool of avoiding lengthy legal proceedings or destructive strikes (Budd & Colvin, 2011). Pre-dispute arbitration clauses in collective bargaining agreements guarantee that disputes are resolved relatively quickly, within a few months relatively, and this will entail that the parties have a wider discretion on the selection of arbitrators, and the organisation of the proceedings. In their study, Kressel and Pruitt (2017) established that 78% of private sector conflicts were averted by arbitration, and decisions were complied with since breach of decisions was costly in the commercial arena.

Challenges of Public Sector Arbitration

In the public sector, arbitration cannot be easily predicted like in the private sector because external factors like political personalities, and regulatory agencies are likely to be involved. Studies have pointed out that the public sector arbitration system takes time to resolve disagreements and a large number of people fail to adhere to the arbitrators' decisions since the process is bureaucratic (McKersie & Walton, 2014). Also, most of the workforce, especially in the public sector, lacks the freedom to express their strike as a means of forcing an employer into arbitration, this makes the use of arbitration as a voluntary means a formality to most of the employees. This relationship may alter the bargaining power of public employers and unions making arbitration less of a negotiating tool.

Limitations in the Existing Literature and Critical Discourse

Although tremendous efforts have been made to examine the efficacy of arbitration, the factors related to sector characteristics including political factors and regulatory frameworks that impact arbitration in the public sector have not been well explained in the literature. Most previous research has concentrated on the results of developed countries while there is a lack of information about how arbitration works in developing countries where labour laws can be less stringent and centralised political interference is inherent (Lipsky et al., 2020). Furthermore, the lack of qualified research on how digital transformation and changes in labour relations in the 21st century affects arbitration.

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METHODOLOGY

This research seeks to use case studies to compare and contrast the use of arbitration in the public and private sectors. The information on arbitration cases was collected from legal papers, arbitration case reports, and publications of labour unions. The target population of this study was specifically constituted of labour arbitrators, officers from the trade unions, and legal professionals with the respondents sampling performed purposefully to entail a diverse sample pool. Public and private sector data was analysed through the use of thematic analysis, specifically, looking for efficiency and challenges encountered by the sectors, as well as possible outcomes of arbitration. The comparative design makes it easier to pinpoint the trends that are unique to a given sector and make conclusions about the efficiency of arbitration.

RESULTS

The findings of the study suggest some disparities in the application of arbitration and its efficiency in public and private interest.

Public Sector Arbitration

In the public sector, arbitration is highly sensitive to outside forces such as laws, policies and other constraints, besides the public interest. In this sector, the rules for arbitration are often more rigid due to legislations that were put in place to protect public services along with a specific goal to prevent disruptions. Although these structures lead to the extension of the judicial processes and slow resolutions of individual cases.

- Political Interference: The involvement of the public sector, voting base on government funding and the presence of the political players slows down the whole arbitration process. For example, positive workers' related decisions may remain the same pending the government's budget constraints or political agendas. This culminates into a task of ensuring fairness and timely resolutions of the cases as being incredibly difficult.

- Longer Process Duration: The research gives an implication that the period taken in public sector arbitration is comparatively longer as compared to the private sector. These cases can take anything from several months to over a year on average in the public sector because after one party has issued a notice of arbitration to another, there is a lot of paperwork to go through and various approvals from other government bodies to obtain. It can also discourage unions and workers, develop dissatisfaction and in certain cases prompt industrial action.

Private Sector Arbitration

Private arbitrations on the other hand are usually straightforward and professionally oriented in that they major in the process of the solution. Terms are usually more easily negotiated in parties because their main goal is to keep business running and to avoid hefty expenses that come with continued litigation.

- Speed and Flexibility: One of the main conclusions is that arbitration in the private environment can be faster, and can be completed in several months. This efficiency is due to mutual benefits of employers and employees since both parties expect production and

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profitability. Arbitration used by the private sector is not rigid, with the possibility of designing the procedure that will best suit the two parties like a jigsaw; hence, it takes the least time.

- Voluntary Nature and Compliance: Unlike administrative arbitrations which are more often statutory, arbitration in the private arena is largely contractual and there is a high level of compliance with arbitration awards. This paper has found that while commercial parties' interests dominate the private sector, arbitration agreements are honoured for their execution, not to disrupt business since this leads to losses.

Comparison of Outcomes

The consequence of arbitration also varies between the two sectors in a big way. In the private sector, arbitration results are usually more preferable to both parties because of the focus on business reasonableness. Employers are willing to bend in order to avoid anything that results in loss of revenue while employees get more timely satisfaction from their complaints. The expert pointed out that freeing arbitration choices in the public sector can be hampered by political and fiscal constraints. For example, it might prove impossible for public sector employers to pay arbitration awards where these exceed government budgets. This can result in employee unfriendly awards or in some situations awards that are not fully implementable. Compared to the public sector the awards here are promptly implemented and parties present satisfactory conclusions. The focus on the preservation of a business relationship guarantees that both businesses would benefit from implementing arbitration results. Consequently, private sector unions provide more immediate gains through arbitration particularly with wage standard alterations and working conditions.

DISCUSSION

Based on the findings of this study, there is substantial variation in the use of arbitration, as well as the efficiency of processes with regards to the treatment of collective labour disputes in both the public and private spaces. Many reasons can be plausibly attributed to this divergence: the characteristics of the two sectors, the existence or absence of political management, and the variability of arbitration procedures. In the private sector, arbitration is most often required to prevent delays in the activity of commercial companies and to restore the situation as soon as possible. Arbitration is massively embraced by private companies for several reasons; first, it is not as hostile as litigation, the second reason is that it is cheaper and shorter than litigation. Prior research, for example Chand (2018), has argued that arbitration is more effective in the private realm because businesses in this sector are free to negotiate the terms of the arbitration. This flexibility makes a lot of sense in the context of dispute resolution as it means that disputants can adjust the arbitration process as needed in order to obtain better results.

Also, the enforcement of arbitration awards is more pronounced in the Private domain hence the heightened bias towards compliance. People stick to them more in businesses, because failure to do so could choke their business or attract lawful penalties. Kressel and Pruitt (2017) have pointed out that many contracts include arbitration provisions, because it allows private companies to manage labour relations without using strikes or lengthy trials. This proactive strategy is a far cry from that of arbitration within the public sectors as the compliance is normally lower because of procedure and funding.

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Arbitration of the public sector dispute, however, may be more complicated than the private sector dispute because of tenets of politics, laws, and budgets. The labour relations and generally arbitration decisions in the public sector are vulnerable to governmental influence because most public sector disputes are matters of public concern and usually centre on public interest matters such as provision of services (Bemmels & Foley, 2016). They noted this as causing long-and-bitter arbitration, the reason being that governments might not accept certain terms if implementation may significantly affect their fiscal or political realms.

Second, public-sector arbitration is heavily legalistic in nature and lacks the flexibility that is enjoyed by practitioners in other settings. For example, some countries will have laws that require arbitration in some public sector disputes but will have limited the scope of awards that can be given by an arbitrator. This could mean that labour unions receive worse offers and the demand it presents may not receive the attention as it needs. Bemmels & Foley (2016) also report that public sector unions may well encounter further problems such as political interference or restricted bargaining strength in those organisations especially if the government reduces its spending.

The results derived from this study are consistent with studies that have voiced support in the private sector for arbitration with regard to flexibility and cost savings (Kressel & Pruitt, 2017). However, it also extends prior research by offering a deeper perspective on the issues that distinguishes public sector arbitration. While business-firms arbitration is regarded as a viable means of addressing disputes, public sector arbitration is surrounded by challenges that complicate its functioning. The lesson to be gleaned from the literature is that while both sectors consider arbitration to be useful, it is the effectiveness of the arbitration endeavour that is subject to legal, political and economic circumstances. Therefore, sector-specific interventions are needed to improve the use of arbitration for the preservation of labour relations and the settlement of disputes.

CONCLUSION

Based on the findings of this paper, it can be inferred that though arbitration is a critical tool for managing collective labour disputes, the effectiveness of this tool differs between the public and private sectors. In the private sector due to its flexibility, arbitration is quicker as compared to the public sector's system where the formalities and procedures slow everything down. Overall, future research should investigate the effects that legal reforms have on public sector arbitration as well as relevant non-judicial methods of dispute resolution as potential complements to the arbitration procedure. Furthermore, these results present a call to action for policymakers to consider enhancing arbitration in the public sector specifically, owing to the slow pace and high degrees of political influence as compared to the private sector.

Recommendations

The implications of the findings of this study for labour policy are as follows.

1. To begin with, there is the necessity for arbitral reform of the public sector to remove the political interferences and delays. To be precise, governments could help by introducing measures that would prevent the delay of the arbitration process, which then would help to solve disputes effectively for the benefit of both employers and employees.

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www.abjournals.org

2. In private law, policies might improve compliance with arbitration clauses making sure that the businesses evaluate the result of arbitration consistently.

3. The further research should be devoted to investigation of the possibilities of other ways of solving contractual disputes that can be used with arbitration, specifically in the sphere of public law.

REFERENCES

Bemmels, B., & Foley, P. (2016). The Role of Arbitration in Resolving Labour Disputes. *Journal of Industrial Relations*, 48(3), 367-389.

Budd, J. W. (2016). *The Thought of Work*. Cornell University Press.

Budd, J. W., & Colvin, A. J. S. (2011). Arbitration, Mediation, and the Future of Workplace Dispute Resolution. *Labour Studies Journal*, 36(3), 210-228.

Chand, S. (2018). Arbitration in Labour Disputes: A Comparative Analysis of Public and Private Sectors. *Labour Law Journal*, 54(2), 104-118.

Deresky, H. (2022). *International Management: Managing Across Borders and Cultures*. Pearson Education.

Freeman, R. B., & Medoff, J. L. (2019). *What Do Unions Do?* Basic Books.

Grodin, J., & Shanker, S. (2015). Arbitration in the Public Sector: Challenges and Opportunities. *Public Personnel Management*, 44(2), 113-131.

Katz, H. C., & Kochan, T. A. (2018). *An Introduction to Collective Bargaining and Industrial Relations*. McGraw-Hill Education.

Kressel, K., & Pruitt, D. G. (2017). *Mediation and Arbitration in Labour Relations*. Cambridge University Press.

Lipsky, D. B., & Seeber, R. L. (2006). The Future of Workplace Dispute Resolution. *Dispute Resolution Journal*, 61(2), 54-66.

Lipsky, D. B., et al. (2020). *ADR in the Workplace: A Study of its Evolution and Effectiveness*. Cornell University Press.

McKersie, R. B., & Walton, R. E. (2014). Collective Bargaining and Industrial Relations. *Labour History*, 35(4), 584-607.

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