

**AN APPRAISAL OF THE PROCEDURE FOR DISMISSAL OF AN EMPLOYEE UNDER THE ANAMBRA STATE PUBLIC SERVICES RULES 2014\***

**Abstract**

*The administrative procedure for the dismissal of an employee in the public service is an important aspect of employment law, balancing the rights of employees with the need for administrative discipline. This article critically appraises the procedure for the dismissal of an employee under the Public Service Rules of Anambra State, 2014. It examines the legal framework governing dismissal, the procedural safeguards in place, and the extent to which these rules comply with constitutional right to fair hearing. The study examined the meaning of gross misconduct, dismissal of an employee, issuance of query, constitution of board of inquiry and the role of the Civil Service Commission in ensuring compliance. The paper found that the procedures contained in the Anambra State Public Service Rules makes adequate provisions for fair hearing for employees facing disciplinary action. The paper adopted the doctrinal research methodology and utilized both the primary and secondary sources of data including statutes, journal, textbook and subsidiary legislations. The paper recommends that the Anambra State Public Service Rules be amended to increase the timeframe for commencing and concluding disciplinary proceeding to 90 days in circumstances where a board of enquiry is constituted. The Rule should also allocate specific timeframe for answering of query, investigation by the board of inquiry and taking of decision by the Commission.*

**Keywords:** Dismissal, Anambra State Public Service Rules, Gross Misconduct, Query, Board of Inquiry

**1. Introduction**

Two of the ways in which a contract of employment may be brought to an end are through termination of contract of employment and dismissal of an employee.<sup>1</sup> Lawful termination of contract of employment may be at the instance of either the employee or the employer through the issuance of the appropriate notice to that effect. Dismissal on the other hand is usually carried out by the employer except in case of constructive dismissal where the wrongful act(s) of the employer forces the employee to resign.<sup>2</sup> Dismissal means to 'send away' particularly, 'from one's employment' or 'from service' to relive from duty or to release or discharge from employment.<sup>3</sup> Dismissal means rejection, discarding.<sup>4</sup> The Employer must give reasons for dismissal of an employee. In *Savannah Bank Plc v Fakokun*<sup>5</sup> the Court held that: 'While an employer is not bound to give any reason for lawfully terminating a contract of service, he must give reason for summarily dismissing the servant' An employer has a right to dismiss his employee even if no provision was made for dismissal in the contract of employment<sup>6</sup>. To entitle an employer to so treat a contract of employment as at an end, of course there must be a deliberate fundamental breach of the provision of the contract or the employee's duties to the employer.<sup>7</sup>

While the employer usually dismisses the employee summarily, the employee's resignation in certain circumstances may be deemed to be constructive dismissal by the employer. There are therefore two aspects of dismissal viz: summary dismissal and constructive dismissal. An employer reserves the right to dismiss his employee summarily for gross misconduct.<sup>8</sup> Constructive dismissal arises where an employer provokes an employee to resign either by creating or tolerating a hostile work environment or by unilaterally changing (or proposing to change) the nature of the employment, the place of employment or important terms in the contract such as those relating to pay. Once any of the above-mentioned acts occurs on the part of the employer, he is deemed to have repudiated the contract of employment and even though the employee in turn resigns, he in fact accepts the employer's repudiation and he is deemed to have been dismissed by the employer. In a constructive dismissal, an employee resigns either because he was actually asked by the employer to do so or the employer merely provokes him to resign by creating a hostile work environment or by unilaterally changing the nature of employment.<sup>9</sup> The Anambra State Public Service Rules 2014 states that the ultimate penalty for serious misconduct is dismissal. An officer who is dismissed forfeits all claims to retiring benefits, leave or transport grant etc subject to the provisions of the extant Pension Law.<sup>10</sup> What then qualifies as serious misconduct or gross misconduct to warrant the penalty of dismissal?

**2. Gross Misconduct**

The terms gross misconduct and serious misconduct are often used interchangeably. Gross misconduct is defined as a serious misbehavior in workplace.<sup>11</sup> *U.B.N. Plc v. Soares*<sup>12</sup> the court defined gross misconduct as:

---

\*By Echezona Emmanuel NWANKWOR, PhD, Deputy Chief Registrar, Anambra State High Court, Awka, Anambra State. Email: echezonanwankwo79@gmail.com, Tel No: 08037974822

<sup>1</sup> E.A Kenen, 'Determination of Contract of Employment through Termination and Dismissal: The Current Trends in Nigeria' *Benue State University Law Journal* [2022] 11 at 146

<sup>2</sup> Ibid

<sup>3</sup> Sam Erugo 'Introduction to Nigerian Labour Law: Contract of Employment and Labour Practice' (Lagos, Princeton Associates Publishing Co. Ltd 2019) 167

<sup>4</sup> *Odunlami v. Nigerian Navy* [2013] 11 NWLR (Pt. 1367) 20

<sup>5</sup> [2002] 1 NWLR (Pt. 749) 544 at 560

<sup>6</sup> *Ansambe v Bank of the North Ltd* [2005] 8 NWLR (pt 928) 50

<sup>7</sup> Sam Erugo (n 3) 194

<sup>8</sup> E.A Kenen (n 1) 154

<sup>9</sup> Ibid at 155

<sup>10</sup> Rule 030407 Anambra State Public Service Rules 2014

<sup>11</sup> *Adewunmi v. Nig. Eagle Flour Mills* [2014] 14 NWLR (Pt. 1428) 443

<sup>12</sup> [2012] 11 NWLR (Pt. 1312) 550

Gross misconduct is a conduct that is of a grave and weighty character as to undermine the confidence which should exist between an employee and the employer. Working against the deep interest of the employer amounts to gross misconduct entitling an employer to summarily dismiss an employee. [Olaniyan v. Unilag (1985) 2 NWLR (Pt. 9) 599; Sule v. Nigerian Cotton Board (1985) 2 NWLR (Pt. 5) 17 referred to.] (P. 575, paras. D-E) Per OKORO, J.C.A. at page 575, paras. E-G: In the instant case, I think the conduct of the respondent of forming an illegal association and using same to paralyze the work of his employer in spite of several pleas including that of the main and recognized union, and the respondent himself, being a Senior member of Staff and not being entitled to belong to this union, was a grave act of misconduct which attracted summary dismissal without any benefits at all.

It is not every misconduct that warrants the dismissal of an employee. It must be a conduct of grave and weighty character as to undermine the confidence which should exist between the employee and his employer, or working against the deep interest of his employer.<sup>13</sup> The Anambra State Public Service Rules 2014<sup>14</sup> defined serious misconduct as: 'Serious Misconduct is a specific act of very serious wrongdoing and improper behaviour which is inimical to the image of the service and which can be investigated and if proven, may lead to dismissal.' The Anambra State Public Service Rules 2014 provides that serious acts of misconduct include:

- (a) Falsification of records;
- (b) Suppression of records;
- (c) Withholding of files;
- (d) Conviction on a criminal charge (other than a minor traffic or sanitary offence or the like)
- (e) Absence from duty without leave;
- (f) False claims against Government Officials;
- (g) Engaging in partisan political activities;
- (h) Bankruptcy / serious financial embarrassment;
- (i) Unauthorised disclosure of official information;
- (j) Bribery;
- (k) Corruption;
- (l) Embezzlement;
- (m) Misappropriation;
- (n) Violation of oath of secrecy;
- (o) Action prejudicial to the security of the state;
- (p) Advance Fee Fraud (Criminal Code 419)
- (q) Holding more than one full time paid job;
- (r) Nepotism or any other form of preferential treatment;
- (s) Divided loyalty;
- (t) Sabotage;
- (u) Wilful damage to public property;
- (v) Sexual Harassment; and
- (w) Any other act unbecoming of a public officer.

What constitutes gross or serious misconduct is not limited to the above list. It is a question of fact in each case. In *Olaniyan v University of Lagos*<sup>15</sup> Oputa JSC held 'what constitutes dismissal in any particular case will ever remain a question of fact. The conduct of an employee which constitutes gross misconduct, without much ado, attracts summary dismissal.<sup>16</sup> The employer may decide to condone the employee's misconduct, the rule is getting established in a long line of cases that where an employer who upon becoming aware or having knowledge of an infraction, misconduct or wrongdoing by an employee, chose to condone same, he may be stopped from relying on same in future to dismiss the employee.<sup>17</sup> In *ACB Plc v Nbisike*<sup>18</sup> the Court of Appeal held:

The law gives the master the right to terminate the employment of a servant on his discovering that the servant is guilty of fraud. He is not bound to dismiss the servant and if he elects after knowledge of the fraud to continue with him in his service, he cannot at any subsequent time dismiss him on account of that which had been condoned. In other words, if the employer does know of the misconduct of the employee and thereafter continues the employment, he may be taken to have waived his right to dismiss the employee on that ground. [*Electricity Corporation of Nigeria v. Nichol* (1969) NMLR 265 at 269 referred to.] The emphasis is on full knowledge or awareness of the irregularities or misconduct. Undoubtedly, the appellant was aware of the 1983 report of dishonesty of the respondent and other staff. It took no step to dismiss him besides the warning given to him and thereafter he was allowed to earn his annual increment of his salaries for the subsequent years which according to evidence is subject to satisfactory service. Clearly, the appellant cannot rely on that misconduct that had been condoned to dismiss the respondent. But the misconduct discovered in 1985 is on

---

<sup>13</sup> *Ningi v. F.B.N. Plc* [1996] 3 NWLR (Pt. 435) 220

<sup>14</sup> Rule 030401 Anambra State Public Service Rules 2014

<sup>15</sup> [1985] 2 NWLR (Pt. 9) 599

<sup>16</sup> *U.B.N. Plc v. Soares* [2012] 11 NWLR (Pt. 1312) 550

<sup>17</sup> *Sam Erugo* (n 3) 198

<sup>18</sup> [1995] 8 NWLR (Pt. 416) 725

a different footing. No act of waiver could have been imputed to the appellant. It is my respectful view that since the appellant bank had not become aware of the respondent's misconduct in respect to the year 1984 until 1985 when the D.W.I sent another report to the appellant's Head office in Lagos by which time the respondent had left for the University, the question of waiver could not have arisen.

A distinction is often made where the gross misconduct complained of amounts to a crime. It has been settled by recent cases that the employer need not wait for the prosecution of the crime before commencing disciplinary action against the employee. In *Arinze v. First Bank (Nig.) Ltd*<sup>19</sup> Olagunju, JCA, held - 'It seems to me from the perspective of the decisions on the powers of an employer to dismiss summarily his employee for gross misconduct that the propelling keystone is the preservation of the constitutional right of fair hearing. Whether the employee was first prosecuted for the criminal offence arising from his acts of misconduct pales into insignificance once the court is satisfied that the employee was given a fair hearing in the sense of being confronted with the allegation against him and afforded the chance to make representation in his own defense. In sum, contrary to the argument of learned counsel for the appellant, the principle that where the act of misconduct by an employee also amounts to a criminal offence, the criminal offence must first be prosecuted before the employee can exercise his power of summary dismissal of the employee is not intended as law of the Medes and Persians. It is not an immutable principle'. In *Musa v Federal Ministry of Tourism and Culture*,<sup>20</sup> the Court of Appeal held that the prosecution of an employee before the law court is not a sine qua non to the exercise of the power of summary dismissal by an employer of his employee for gross misconduct. Where a person is facing allegation of misconduct with criminal flavor and he opted out of submitting to the disciplinary trial by the administrative body, he has himself to blame as he cannot claim denial of fair hearing<sup>21</sup>

An officer under the Anambra State Public Service must under the pain of disciplinary action, promptly report to his/her Permanent Secretary/Head of Non-Ministerial office whenever he/she is charged of criminal offence and must report the outcome of the charge.<sup>22</sup> Nothing shall prevent disciplinary action being taken or continued against an officer whether or not criminal proceedings have been instituted with respect to such a person in any court of law in Nigeria or elsewhere or about to be instituted or are contemplated: or the grounds upon which any criminal charge are based or are to be based are substantially the same as those upon which the disciplinary proceedings were or are to be instituted.<sup>23</sup> An officer acquitted of a criminal offence shall not be penalized for any charge of which he/she has been acquitted, but nothing in the rule shall prevent him/her being dismissed or otherwise punished on any other charge arising out of his/her conduct in the matter, provided that such charges do not raise substantially the same issues as those of which he/she has been acquitted.<sup>24</sup>

### **3. Dismissal of Employee's Under the Public Service Rules of Anambra State 2014**

The employees on the Public Service of Anambra State are on employment with statutory flavour. An employment is said to have statutory flavor when the appointment is protected by statute and an employment is protected by statute when statutory provisions govern the appointment and termination. Except in employment governed by statute wherein the procedure for employment and discipline of an employee are clearly spelt out, any other employment outside the statute is governed by the terms under which the parties agreed to be master and servant. Where an appointment is not governed by any statutory provision, it does not enjoy statutory protection and cannot be said to have statutory flavor.<sup>25</sup> Two of the vital ingredients that must co-exist before a contract of employment may be said to import statutory flavor include the following: (a) the employer must be a body set up by statute; and (b) the stabilizing statute must make express provisions regulating the employment of the staff of the category of the employee concerned, especially in matters of discipline. Thus, there is an employment with statutory flavor when the appointment and termination of the employment is governed by statutory provisions. It is accepted that where the contract of service is governed by the provisions of statute or where the conditions of service are contained in regulations derived from statutory provisions, they invest the employee with a legal status higher than the ordinary one of master and servant. They accordingly enjoy statutory flavor.<sup>26</sup> Employment with statutory backing must be terminated in the way and manner prescribed by that statute, and any other manner of termination inconsistent with the relevant statute is null and void and of no effect<sup>27</sup> Public servants in Anambra State Public service are on employment with statutory flavor. The Anambra State Public Services Rules provides that: 'It shall be the duty of every officer to acquaint himself/herself with the public Service

Rules, other regulations and extant circulars. These Public Service Rules apply to all officers except where they conflict with specific terms approved by the State government and written into the contract of employment or letters of appointment'<sup>28</sup> Where the employee is allegedly involved in misconduct, the rule of fair hearing or natural justice implicates a disciplinary process before the determination of the contract. This could be implied where it is not specified, dictated in a disciplinary handbook, or

<sup>19</sup> [2000]1 NWLR (Pt. 639) 78

<sup>20</sup> [2013] 10 NWLR (Pt. 1363) 556

<sup>21</sup> Ibid at 584

<sup>22</sup> Rule 030409 Anambra State Public Service Rules, 2014

<sup>23</sup> Rule 030411 (a) Ibid

<sup>24</sup> Rule 030411 (b) Ibid

<sup>25</sup> *Azenabor v. Bayero University, Kano* [2009] 17 NWLR (Pt. 1169) 96

<sup>26</sup> *P.H.C.N. Plc v. Offoelo* [2013] 4 NWLR (Pt. 1344) 380

<sup>27</sup> *Banke v. Akure North Local Govt.* [2015] 6 NWLR (Pt. 1455) 400

<sup>28</sup> Rule 010101 Anambra State Public Service Rules, 2014

in the case of public servants, the Public Service Rules.<sup>29</sup> The common process includes the issuance of query and suspension pending investigation, investigation and final decision.<sup>30</sup>

#### 4. Query

The Anambra State Public Service Rules provides that 'as soon as a superior officer becomes dissatisfied with the behaviour of any officer subordinate to him/her, it shall be his/her duty so to inform the officer in writing giving details of unsatisfactory behaviour and to call upon him/her to submit within a specific time such written representation as he/she may wish to make to exculpate himself/herself from disciplinary action. After considering such written representations as the officer may make within the specified time the superior officer shall decide whether:

- (a) The officer has exculpated himself/herself in which case, he/she shall be so informed in writing and no further action shall be necessary or
- (b) The officer has not exculpated himself/herself but it is considered that he/she should not be punished in which case the appropriate formal letter of advice shall be issued to him/her and he/she shall be required to acknowledge its receipt in writing, or
- (c) The officer has not exculpated himself/herself and deserves some punishment, in which case Rule 030304 shall apply'<sup>31</sup>

Query is the first step in disciplinary action which may eventually lead to dismissal under the Anambra State Public Services Rules. The officer shall be notified in writing of the grounds on which it is proposed to discipline him/her. The query should be precise and to the point. It must relate the circumstances of the offence, the rule and regulation which the officer has broken and the likely penalty. In serious cases which are likely to result in dismissal, the officer should be given access to any such document(s) or report(s) used against him/her and she/he should be asked to state in his/her defence that he/she has been given access to documents. The officer shall be called upon to state in writing, within the period specified in the query any grounds upon which he/she relies to exculpate himself/herself.<sup>32</sup> In *Musa v. Fed. Min., Tourism, Culture & Nat. Orientation*<sup>33</sup> the Court of Appeal on Power of superior officer to issue query to subordinate under the Public Service Rules and duty to afford him fair hearing before any disciplinary action held 'Rule 030302 of the Public Service Rules provides for issuance of query as soon as a superior officer becomes dissatisfied with the behavior of any officer subordinate to him. It shall be his duty to inform him of the unsatisfactory behavior and call upon him to submit within a specific time written representation as he may wish to exculpate himself from disciplinary action. It is after reception of the explanation that the superior officer will decide on what to do. It is indisputable from the construction of the words in rule 030302 that the attributes of fair hearing are embedded in rule 030302.'

An employee cannot be removed or dismissed for a specific misconduct in the absence of adequate opportunity afforded him to justify or explain same. Before an employer can dispense with the services of his employee, all he needs to do is to afford the employee an opportunity of being heard before exercising his power of summary dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime.<sup>34</sup> An employee whose employment has been determined on the ground of misconduct after he has been given a written query to which he has also replied in writing regarding the issue forming the basis of his termination cannot be heard to complain that he has not been afforded the right of fair hearing.<sup>35</sup>

#### 5. Board of Enquiry

The civil service Commission may set up a board of inquiry to investigate an allegation of gross misconduct of an employee. Where necessary, the commission may set up a board of inquiry which shall consist of not less than three persons one of whom shall be appointed chairman by the commission. The members of the board shall be selected with due regard to the status of the officer involved in the disciplinary case and to the nature of the complaint which is the subject of inquiry. The head of the officer's department shall not be a member of the board.<sup>36</sup> The officer shall be informed that, on a specific day, the question of his/her dismissal shall be brought before the board and he/she shall be required to appear before it to defend himself/herself and shall be entitled to call witnesses. His/her failure to appear shall not invalidate the proceedings of the board.<sup>37</sup> Where witnesses are called by the board to give evidence before it, the officer shall be entitled to put questions to the witnesses and no documentary evidence shall be used against the officer unless he/she has previously been supplied with a copy thereof or given access thereto.<sup>38</sup> If during the course of the inquiry further grounds for dismissal are disclosed, and the civil service commission thinks it fit to proceed against the officer upon such grounds, the officer shall, by the direction of the commission, be furnished with a written statement thereof and the same steps shall be taken as prescribed above in respect of the original grounds.<sup>39</sup> The board having inquired into the matter shall make a report to the commission. If the commission considers that the report should

---

<sup>29</sup> Sam Erugo (n 3) 199

<sup>30</sup> Ibid

<sup>31</sup> Rule 030302 Anambra State Public Service Rules, 2014

<sup>32</sup> Rule 030307 (i) Anambra State Public Service Rules, 2014

<sup>33</sup> [2013] 10 NWLR (Pt. 1363) 556 at 585-585

<sup>34</sup> *U.B.A. Plc v. Oranuba* [2014] 2 NWLR (Pt. 1390) 1

<sup>35</sup> *Gukas v. Jos Int. Breweries Ltd* [1991] 6 NWLR (Pt. 199) 614

<sup>36</sup> Rule 030307 (v) Anambra State Public Service Rules, 2014

<sup>37</sup> Rule 030307 (vi) Ibid

<sup>38</sup> Rule 030307 (vii) Ibid

<sup>39</sup> Rule 030307 (viii) Ibid

be amplified in any respect or that further inquiry is desirable, it may refer any matter back to the board for further inquiry or report. The commission shall not itself hear witnesses.<sup>40</sup>

A board of enquiry established pursuant to the Anambra State Public Service Rules must observe the principles of fair hearing and natural justice. An employee cannot be removed or dismissed for a specific misconduct in the absence of adequate opportunity afforded him to justify or explain same. Before an employer can dispense with the services of his employee, all he needs to do is to afford the employee an opportunity of being heard before exercising his power of summary dismissal, even where the allegation for which the employee is being dismissed involves accusation of crime.<sup>41</sup> In *Akinola v. V.C. Unilorin*<sup>42</sup> the Court of Appeal held that 'a party cannot complain of a breach of his right to fair hearing where he was given an opportunity to defend himself against allegations which were reduced into writing before a panel whose members' integrity he did not challenge during the proceedings. In the instant case, the appellant was given an opportunity to be heard by the disciplinary panel in respect of the allegations which were made against him. He did not challenge the impartiality of the panel's members and no other person was heard in the course of the proceedings. In the circumstance, the Appellant could not complain assert that his right to fair hearing was breached by the Respondents'

## **6. Dismissal by the Commission**

The ultimate penalty for serious misconduct is dismissal. The power to dismiss an employee of the Public Service of Anambra State is vested on the State Civil Service Commission. If upon considering the report of the board together with the evidence and all material documents relating to the case, the commission is of the opinion that the officer should be dismissed, such action shall immediately be taken.<sup>43</sup> If the commission does not approve the officer's dismissal and does not consider that any penalty should be imposed, the officer shall be reinstated forthwith and be entitled to the full amount of salary denied him/her if he/she was interdicted or suspended.<sup>44</sup> If upon considering the report of the board, the commission is of the opinion that the officer does not deserve to be dismissed but that the proceedings disclosed grounds for requiring him/her to retire, the commission shall, without further proceedings, direct accordingly.<sup>45</sup> An officer who is dismissed forfeits all claims to retiring benefits, leave or transport grant etc subject to the provision of the extent Pensions Law.<sup>46</sup> Where an officer is dismissed, no notice of emolument in lieu shall be given to him/her and his/her dismissal shall take effect from the date on which he/she is notified thereof. This date shall be notified by the Permanent Secretary/Head of Non-Ministerial Office concerned to the Civil Service Commission and to the Office of Establishments and Pension as soon as possible.<sup>47</sup>

It is to be noted that there is a timeline for disciplinary action for employees of the Anambra State public service. Rule 030307(xiii) provides as follows: 'All disciplinary procedures must commence and be completed within a period of 60 days except where it involves criminal cases, or where special circumstances of the case justify an extension.' The time frame provided above may not be enough in cases of disciplinary action which may result to dismissal especially in circumstances where a board of inquiry is constituted to investigate allegations of gross misconduct. The rule also failed to indicate what may constitute special circumstances to justify an extension of the 60 days within which disciplinary procedure must commence and complete.

## **7. Conclusion**

The *Public Service Rules of Anambra State, 2014* provide a legal framework for the dismissal of employees within the state's civil service, emphasizing procedural fairness and administrative discipline. The paper critically analyzed the procedure for the dismissal of an employee under the *Public Service Rules of Anambra State, 2014*. It examines the legal framework governing dismissal, the procedural safeguards in place, and the extent to which these rules comply with constitutional right to fair hearing. The study examined the meaning of gross misconduct, dismissal of an employee, issuance of query, constitution of board of inquiry and the role of the Civil Service Commission in ensuring compliance. The time frame provided for the commencement and completion of disciplinary proceedings in the Anambra State Public Service Rules may not be enough in cases of disciplinary action which may result to dismissal especially in circumstances where a board of inquiry is constituted to investigate allegations of gross misconduct. The rule also failed to indicate what may constitute special circumstances to justify an extension of the 60 days within which disciplinary procedure must commence and complete. It is recommended that the Anambra State Public Service Rules be amended to increase the timeframe for commencing and concluding disciplinary proceeding to 90 days in circumstances where a board of enquiry is constituted. The Rule should also allocate specific timeframe for answering of query, investigation by the board of inquiry and taking of decision by the Commission.

---

<sup>40</sup> Rule 030307 (ix) Ibid

<sup>41</sup> *U.B.A. Plc v. Oranuba* (Supra)

<sup>42</sup> [2004] 11 NWLR (Pt. 885) 616

<sup>43</sup> Rule 030307 (x) Anambra State Public Service Rules, 2014

<sup>44</sup> Rule 030307 (xi) Ibid

<sup>45</sup> Rule 030307 (xii) Ibid

<sup>46</sup> Rule 030407 Ibid

<sup>47</sup> Rule 030408 Ibid