

The Effectiveness Of The Rights And Duties Of Parties In Contracts Of Probationary Hiring Under Cameroonian Labour Code

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Abstract—Contracts of probationary hiring in Cameroon is regulated by section 28 of Law no. 92/007 of 14 August 1992 on the Cameroonian labour code and ministerial Order No. 017/MTPS/SG/CJ to sets the terms of probationary period in Cameroon. The formation of contracts of probationary hiring imposes obligations both on the employer and the employee. On the part of the employer, he has rights and obligations such as; the right to manage the worker(s), the right to discipline the employee, regulatory powers of the employer, obligations to respect fundamental rights, duty to pay wages, duty to provide work, duty to respect weekly Rest. On the part of the employee, he has rights and obligations such as, the right to privacy, the right to payment, the joint trade union, and the obligation of obedience, the obligation loyalty, skills, obligation of secrecy and more. It is a duty on both parties to respect their obligations in the contract as establish by the law. However, the weaker party in contracts of the probationary hiring which is the employee continue to see his rights been constantly violated on daily bases by the employer. Most employers violate the right to payment, good working conditions and even weekly rest of employees during period of probationary hiring. This continues to persist because a lot of worker is in vulnerable positions and needs jobs. Some workers are not even aware of the rights available to them in these contracts of employments. This research work has as objective to examine how

effective are the rights and obligations of parties respected in contracts of probationary hiring under the Cameroonian labour code. A doctrinal research methodology has been adopted where both primary and secondary sources of information haven been consulted. Our findings reveal that, most employees are the ones whose rights are constantly violated in contracts of probationary hiring on daily basis in Cameroon because of their vulnerability, ignorance and improper implementation of the law regulating contracts of probationary hiring. As a result we recommend that, the state should ensure the effective implementation of the labour legislation in Cameroon, there should be general sensitization of Cameroonians on their rights in contracts of probationary hiring in Cameroon:

Keywords—*Rights, Duties, Contracts, Probationary Hiring*

1.0.INTRODUCTION

The Cameroonian labour code¹ permits employers to recruit any worker of their own choosing and the parties can agree on the terms of contract of employment. This is in line with the fundamental freedoms in the formation of contracts of employment as defined in section 23²

¹ Law no. 92/007 of 14 August 1992 on the Cameroonian labour code

² A contract of employment shall be an agreement by which a worker undertakes to put his services under the

of the Cameroonian labour code. Generally, all employer/employee relationships arise from a contract of employment.³ Such a contract is essential to the relationship between the employer and the employee in determining the obligations of both parties to the contract of employment. The majority of labour contracts in Cameroon always start through probationary hiring. Employers sometimes use "probationary periods" when hiring new employees or promoting employees into a new position. Employers use the probationary period as a time to assess whether the new hire or newly promoted employee is a good fit for the position.⁴ It is believed that individuals have incentives to mimic good workers" during periods of employment probation.⁵ Under the Cameroonian labour code, probationary hiring is provided in section 28 which is applicable alongside side ministerial Order No. 017/MTPS/SG/CJ to sets the terms of probationary period in Cameroon. Section 28 of the Labour Code provides that: *"there shall be probationary hiring where, prior to signing a final contract, the employer and the worker agree to appraise in particular, the worker's quality of services and his output, as concerns the employer and as concerns the worker, the working, living, safety and hygiene conditions as well as the*

*climate under the employer"*⁶. Such probation period must be stipulated in writing and must be of a maximum duration of six months or exceptionally eight months with managerial staff.⁷ From the reading of the provision of section 28 of the Cameroonian labour code, it shows that for probationary hiring to be effective, certain conditions must be respected like the requirement of writing, the payment, and duration.

Notion of right and obligations of parties in contracts of probationary hiring remains paramount in Cameroon employment law. The period of probation is a pre contractual phase in which the parties must respect the obligations imposed on them by from their agreement and the law. These rights and obligations are imposed both on the employer and the employee and any violation gives the opposite party the opportunity to bring an action before the courts for breach of contracts. Thus under this article, our discussion permit us to examine the various rights and duties of the employer and the employee in contracts of probationary hiring and the consequences for violation. But the first fundamental question that comes to our mind is why probationary hiring in employment contracts in Cameroon?

1.1. Why probationary hiring in employment contracts in Cameroon

For the fact that an employee has academic qualifications, does not automatically means an employer should give him or her post available

authority and management of an employer against remuneration.

³ Charlotte Quay, (2019), "Contracts of employment", *Employment law guideline*., P. 1.

⁴ Regina T. R. & Anja T., (1999), Behavioral Effects of Probation Periods: An Analysis of Worker Absenteeism, IZA Discussion Paper No. 67, p. 3.

⁵ Ibid, P. 4.

⁶ Section 28 (1) of the Labour Code.

⁷ Section 28 (2) of the Labour Code.

without having the opportunity to verify if the worker can actually performed the required job in question. The employee on the other hand should be capable of testing the hygienic and security condition of the employer he or she intends to work for. One of the reasons of probationary period is for the employer to determine whether the employee is suitable for the job, before entering into a formal employment relationship.⁸ Section 28 of the 1992 Labour Code clearly outlines the purpose of probationary period. Based on Section 28 (1) of the Code, probationary period is a period during which both the employer and the employee can appraise the employee's quality of service and output.⁹ During the probationary period, the worker can also appraise the working, living, wage, safety and hygiene conditions as well as the climate under the employer.

More still, the purpose of the trial period is to allow both parties of the contract to find out how well the reality of the contract corresponds to their expectations before entering into the contract. However, employers at times turn to ignore the poor performance of workers during probationary period by going further to employ them. This more often than not, turns to work against the employer. A clear example of this can be seen in the case of *MC2 Fundong v Ndi Kenneth Ndi*.¹⁰ A synopsis of the facts leading to the case flows as follows: The appellant is a

category one micro finance institution while the respondent is an accountant by profession. The employer employed the employee on a contract of specified duration for two years and placed him under a probationary period of three months. It was agreed that upon the expiration of the two years contract, a permanent contract of employment would be entered into depending on the performance of the employee. In other to beef up the managerial skills of the employee, the employer embarked upon a systematic training of the employee during the probationary period. At the end of the training and probation period, the performance of the employee was mediocre. His poor performance notwithstanding, he was nevertheless retained as the manager on a contract of specified duration from 5th May 2012 to 5th May 2014. The employers in the court below maintained that when the employee took over office, it did not take long to discover his inability to perform his duties as the manager. He was unable to appraise the loan situation. He could not manage the loan portfolio and could not give technical advice to the credit community. He could not make entries of accounting data in the software and as the manager he had to control accounting entries and give a fine validation at the end of every day. Furthermore, he was unable to respond to correspondences and to make declarations at the level of taxation. The employer maintained that the gross professional deficiency of the employee led to the sealing of their office and payment of penalties of 900.000 FRS at a given moment. Again, between the years 2012 and 2013, they suffered a drastic drop in

⁸ Regina T. R. & Anja T., (1999), Behavioral Effects of Probation Periods: An Analysis of Worker Absenteeism, op. cit. p. 3

⁹ Section 28(1) of the Labor Code.

¹⁰ Suit No. CANWR/14ASE/2016.

their profit margin. So during the fiscal year 2014, the Board of Directors held an evaluation meeting in which it was observed that the overall performance of the respondent was below average and as per their Internal Regulations, this warranted his termination. He was accordingly served with a letter of termination on the 27th of March 2015. The employer rather turned around and claimed the sum of 35,255,418frs from the employer being special and general damages for wrongful dismissal. The Bamenda Court of Appeal dismissed the claim for lack of proof. However, the loss suffered by the employer because of the employee incompetence is as a result of the employer's carelessness in employing the employee despite the fact that he proved incompetent after probation period and systematic training.

In view of the foregoing the purpose, probationary period is increasing labour market flexibility, lowering information costs and protecting the contract entered into by the employer and the employee. The goals are thus to avoid inefficient employment contracts, promote employment and employability. As such, parties to the contract are not expected to cancel the contract for any or no reason. What therefore are the rights and obligations of parties in contracts of probationary hiring?

1.2. The rights of obligation of parties in contracts of probationary hiring

These are generally the rights and responsibility which the parties in the contracts of probationary hiring have towards each other. The employer on

the one hand, has rights and obligations towards the employee while the employee on the other hand has rights and obligations towards the employer.

1.2.1. Right of the Employer towards the Employee in contracts of probationary hiring

This refers to the power which is given to the head of the enterprise to ensure the success of the enterprise. As the head of the enterprise, the employer has three basic rights in contracts of probationary hiring towards the employee in contract of employment. This is because, some rights are already in existence before the contract of employment is formed like the right to create the enterprise, where the enterprise will be located, the legal structure of the enterprise and the nature of activity. Once the contract of employment of probationary hiring has been concluded between the employer and employee, the employer has the following rights;

A. The right to manage the worker(s)

It is the right of the employer as the head of the enterprise or owner of the company to manage the workers¹¹ of his company. The definition of the worker by virtue of section 1(2) gives the employer to control the employee in the performance of his duties since the employee is

¹¹ Section 1(2) of the labour code defines a worker as any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the "employer". For the purpose of determining whether a person is a worker, non-account shall be taken of the legal position of employer or employee.

subordinated to the employer. The employer can change the working post of a worker if he finds that the original post is not useful during periods of probationary hiring. If this is to be done, the employer must ensure that the grade of the employee is not reduced, that the employee continues to maintain his professional qualification and that his remuneration shall not change¹². The employer can change the working hours of the employee without asking the consent of the employee on the condition that he respects the required legal rule. For example respecting the total number of working hours, respect the fact that women are children are not supposed to work in the night, respecting the supplementary hours. Since the change of working hours is not a substantial modification¹³, the employer can change working hour without asking the consent of the employee. However, if it was stipulated in the employment contract that the change of working hours is an essential element in the contract, then for the employer to change the working hour of the employee, he must ask the consent of the employee¹⁴. A change in working hours can also mean a reduction of the working hours and hence reduction of salary. This can be done only when the enterprise is facing economic difficulties and it must respect the provisions of

¹² Achu Ruth, (2024), Power of discipline in employment contracts in Cameroon, Master's Dissertation, FSJP, University of Dschang, P, 5.

¹³ A substantial modification of employment contract according to section 42 of the Cameroonian labour code can be defined as the amendment of main contractual terms in an employment contract. The person who initiated such modification must ask the consent of the other party to that contract of employment

¹⁴ Section 42 of the labour code

article 40 of the Labor Code and arrête number no. no.021 of 26 May 1993 dealing with the modalities of dismissal for economic reasons. Thus, it is the right of the employer to manage the worker he recruits in his enterprise without asking any authorization from anyone but the management of the worker must strictly be in accordance with the law.

B. The right to discipline the employee

This is provided in section 30 of the labour code. This power permits the head of the enterprise to punish the employee with the disciplinary measures which are found in the internal rules and regulations of the company¹⁵. For the head of the enterprise to exercise his disciplinary powers, there must be a fault. However, the legislator has not defined and has not given a list of disciplinary fault. It is therefore left for the head of the enterprise to determine what a disciplinary fault is.¹⁶ But some examples of disciplinary faults are: coming to work late, none respect of the procedure to execute the work, execution of the work in a bad manner, non-respect of sanitation rules in the enterprise, abandonment of the post of

¹⁵ Section 30 of the labour code provides that;

- (1) Employers shall be prohibited from imposing fines.
- (2) The only disciplinary penalty entailing loss of wages which an employer may inflict shall be suspension from work with loss of benefits.
- (3) Suspension from work shall be null and void unless the following conditions have been met simultaneously ;
 - (a) that it shall be for a maximum period of eight working days as from the time the penalty is inflicted ;
 - (b) that the worker shall be notified in writing of the suspension and the reasons therefor.
 - (c) the the Labour Inspector of the area shall be informed of the suspension within forty-eight hours. Where the reasons for the suspension are found to be insufficient by the court, the worker against whom the suspension was pronounced shall be paid a compensatory allowance

¹⁶ Achu Ruth, (2024), Op, Cit, P. 6

work without a justified reason, insults, initiation of strike in the enterprise corresponding to the lost wages, and where applicable, damages, if he adduces proof that as a result of the suspension, he suffered further damages, in addition to his lost wages. Thus, the employer has the right to discipline a probationary hirer if he violates the rules and regulation governing his enterprise as established in the internal rules and regulation found in section 29 of the Cameroonian labour code.

C. Regulatory powers of the employer

This is referred to as the right to establish the internal rules and regulations of the enterprise. It is a right found in section 29 of the labour code¹⁷ and completed by arret no. 007 of 17 June 1968. It is the right of the owner of the enterprise to put in place rules and regulations which shall govern his enterprise and these rules

¹⁷ Section 29 of the cameroonian labour code provides that;

(1) The internal regulations shall be drawn up by the company head. They shall deal exclusively with rules relating to the technical organization of work, disciplinary standards and procedure, safety and hygiene at work which are necessary for the proper functioning of the company.

(2) If any other regulations are included (in particular, regulations respecting remuneration) they shall be deemed to be null and void, subject to the provisions of Section 68 (4) of this law.

(3) Before enforcing the internal regulations, the company head shall be communicate them to the staff representatives (if any) for their opinion and for endorsement to the Labour Inspector of the area who may order the deletion of or amendment to any provisions which may be repugnant to the laws and regulations.

(4) An order of the minister in charge of labour issued after consultation with the National Labour Advisory Board shall prescribe the procedure for communicating, registering and posting up the internal regulations as well as the number of company workers above which the existence of such regulations shall be compulsory.

must be respected by the employee. If they are no rules governing the enterprise, everyone will become a master of him own self. It is is the document in which the head of the enterprise shall state the rules which deals with the good functioning of the enterprise. The rules must be limited to those rules which deals with the technical organization of work in the in the enterprise, rules which deals with hygiene and those that deals with discipline in the enterprise. In the part of the internal rules and regulation which deals with disciplinary measures, we have the sanction which can fall on a worker who fails to respect these rules and regulations. These sanctions in order of gravity is as follows: verbal warning, written warning, blame, blame which is noted in the document of the employee, disciplinary suspension, retrogation and dismissal. If any rule is noted in the internal rules and regulation which does not constitute one of the above rules, then the rule is null and void. For example if a rule relating to remuneration is written in the internal rules and regulation, the rule shall be considered to be null and void¹⁸. A rule relating to remuneration can be placed in the internal rules and regulation only on the condition that the rule is stating the moment or days when the employee was absent from work. The internal rules and regulation makes it possible for the head of the enterprise to reduce the normal rules given by the law in the domain of an enterprise so that the rules can adapt to those of his enterprise. This is a right which can only be exercise by an

¹⁸ Section 30(2) of the labour code

employer in contract of employment including during period of probationary hiring.

1.2.2. Obligations of the employer

These are the responsibilities of the employer towards the employee in contracts of probationary hiring. They include;

A. obligations to respect fundamental rights

Like any other worker, the probationer has fundamental rights which must be respected by the employer in contract of employment. This refers to the rights which protect the employee as an individual and not as an employee in a labor contract. It protects the human personality of the employee. This obligation ensures that the human rights of the employee should be respected the same way the human right of any individual is been respected like the right to dignity and human treatment, right to political opinion, right to life, right to privacy. These are basically the fundamental rights guaranteed under the Cameroonian constitution¹⁹. The employee does not abandon his fundamental rights when he is entering the enterprise. The International Labor Organization in 1998, adopted a declaration dealing with the dealing with the fundamental rights of the employee like liberty of association, the right to collective negotiation, the elimination of all forms of forced or obligatory labor, the effective abandonment of child labor, the elimination of all forms of discrimination as far as employment is concern. These conventions and

declarations have been ratified in Cameroon and must be respected by employers.

In addition to the above rights which have been listed by the International Labor Organization, the employer must respect the other fundamental rights of the employee which are contained in other legal documents. For example, the employer must not violate the physical integrity of the employee and he must not put the life of the employee in danger. The employer is not supposed to use his employer's power to humiliate the employee. For example the employer is not supposed to force a sectary to sign a letter of blame which is to be given to the sectary. Also, the employer is not supposed to throw a good on the floor and then force the employee to pick the goods.

However, the fundamental rights of the employee can be violated when this is done for the interest of the enterprise. It can also be violated because of the nature of the work and because of the post of work. Also there can be a legal violation to the private life of the citizens or the personal life of the citizen when the enterprise in question is an *enterprise de tendance*. This refers to that enterprise in which everybody in the enterprise is expected to share the same ideology. For example, an enterprise which is formed by a political party, an enterprise formed by a religious group.

B. Duty to pay wages

When the employee has done his work as provided in the employment contract, the

¹⁹ Law no 96/06 of 18 January 1996 as amended by law no 2008/001 of 14 April 2008 on the Cameroonian constitution

employer shall in return be obliged to pay the salary of the employee. Salary is an amount which is attributed to the work which has been done. Sections 1(1) and 23(1) of the Cameroonian Labour Code place an obligation on the employer to remunerate anybody who has accepted to place his/her services under the employer's management and control²⁰. Article 4(a) of the 1993 arret on the conditions and modalities of probationary hiring, permit the employee to be entitled to payment by the employer, this means the employer is under the duty to pay the employee during period of probationary hiring. Equally worthy of note is the fact that wages shall be payable in legal tender only²¹. Any other form of payment is void. In this light, it is imperative for an agreement on pay to be expressly stated in all employment contracts. Where such a term does not exist, the law will step in to insist on one. In establishing such a wage, the Court or Labour Inspector at the conciliation stage, shall ensure that it is comparable to what is normally paid in similar employments subject to the fact under no circumstances should what is fixed fall below the minimum wage of XAF 42000 monthly. Generally, workers' wages may be fixed or determined through negotiations within the framework of a collective agreement or company agreement.²² The above principle was affirmed by the South West Court of appeal *in Société UCB*

*v. Allianhu Fidelle.*²³ These provisions are intended to protect ignorant workers who may be otherwise exploited by unscrupulous employers. The emphasis on minimum wage is particularly significant because the payment of extremely low wages to workers has been judicially criticized as amounting to a violation of a country's treaty obligation. Since the ILO and contemporary thinking extremely low wages to workers as a "cause of forced labour and debt bondage. Workers under probationary hiring are entitled to payment as provided by the Cameroonian labour code.

C. Duty to provide work

The most basic obligation of employer is to provide work for his/her employee²⁴, although he is not under a duty to provide such work so long as he pays him his wages. The employer is obliged to provide to the employee the work which he said he shall give to the employee. The work must correspond to the qualification of the employee. The employer must give the employee the means to do the work. He must also give the employee the necessary instructions. Although undeniably, section 61(1) of the Cameroon Labour Code defines and relates wages to "work done or services rendered or to be rendered", this in no way suggests that the employer is compelled to give the worker actual work to do. In *Lacore Jean v. Alubassa*²⁵ the Supreme Court appears to have suggested that there could be an

²⁰ Sama-Lang, (2014), "The Security of Private Sector Employment in the Post-Economic Crisis Period: The Case of Cameroon", Doctorate Thesis, University of Buea, p.99.

²¹ Section 67 of the Labour Code.

²² *Ibid.*, sections 62(1) & (2) of the Labour Code.

²³ Suit No . CASWP/L20/2003.

²⁴ 2 Sama-Lang, *op.cit*, p, 100.

²⁵ Appeal No . 177 of 25/4/1961.

obligation to provide work to a worker which is normally suspended during the period of leave²⁶. The principle requiring the scrupulous respect for benefits and protection prescribed by the Labour Code was classically illustrated by the Supreme Court of Cameroon in **Guinness Cameroun v. Mbiaffeu Jacques**.²⁷ This principle was also followed in **Enongene Williams v. University of Buea**²⁸ where the court in Kumba awarded to the plaintiff special damages representing the extra hours he worked in excess of the statutory prescribes period. Where a workers' remuneration depends on the amount of work done²⁹, refusal to offer work to such a worker could be translated as refusal of an opportunity to earn a salary under section 63 of the Cameroonian Labour Code. Where payment is based on commission, there is an implied common law obligation to give work to the servant in spite of the decision of Asquith J. in **Collier v. Sunday Referee Publishing Co. Ltd**³⁰ that, contracts of employment do not oblige a master to give work to a servant so long as the servant has been paid. Such refusal may amount to constructive dismissal as was the case in **Breach v. Epslon Industries Limited**³¹ where the contract for which the plaintiff was employed as a chief engineer³² was transferred to an overseas office leaving him with no work to do. It

²⁶ Section 63 of the Labour Code which gives practical expression to the spirit of non-discriminatory pay prescribed in section 61(2)

²⁷ Appeal No . 5 of 16/11/1978.

²⁸ Decision of the Kumba High Court (Unreported).

²⁹ Such as in agricultural establishments and plantations

³⁰ (1940), 2KB 647.

³¹ (1976), IRLR 180

³² Sama-Lang, op. cit., P, !05.

was held that failure to provide him with work amounted to a constructive

D. Weekly Rest

The occupational life of a worker alternates between hours of work and rest. Weekly rest is compulsory in all contracts of employment in Cameroon. It shall consist of at least 24 (twenty-four) consecutive hours each week. Such rest shall fall as a rule on Sundays and may under no circumstances be replaced by a compensatory allowance". Nevertheless, employers could accord rest on days other than Sunday in establishments such as hospital and hotels. Public holidays are legal public feasts regulated by law which are civil or religious. Rest on such days is compulsory but not for establishments whose functioning can't be interrupted such as firefighters. Also, exceptional permission for absence may be granted to a worker for personal reasons³³ of three working days and may not exceed 10 days per year.³⁴

Weekly rest is different from paid leave. The worker under probationary contract cannot claim the right of paid leave. For paid leave, the employer is under a statutory duty to grant periodical holiday with pay to the employee. This period is commonly known a leave³⁵. The right to paid leave is provided by section 89(1) of the Cameroonian Labour Code. Workers have the right to paid annual leave by the employer but this right is acquired on the condition that the

³³ As governed by Decree No . 75/29 of 10/06/1975

³⁴ Section 88(1) of the Labour Code.

³⁵ Ibid.

worker has been working for at least one year with the employer. Except for maternity leave pursuant to section 90(2) of the Labour Code, the workers' rights to paid leave may not be taken in an arbitrary and disorderly manner. It was held in **Hannah Nganje v. University of Buea**³⁶ that a worker who after applying for leave, took off without waiting for approval of her employer had acted unreasonably.

E. Provision of safe working environment

One of the reasons for probationary hiring is to permit the employee to test the hygienic and security situation of work in the enterprise. The safe working condition will determine if the employee will sign the final contract of employment or not. Section 95(1) of the Labour Code sets a high hygiene and safety standard in the Cameroonian workplace. While the employer is by this provision required to provide the worker with a safe working environment, the general modalities to this regard are fixed by Arrêté No. 039/MTPS/IMI of 26 November 1984. The Judge, in dealing with his own rhetorical question on to whether an employer owes any duty of care to his servant in **CDC v. Akem Benbella**³⁷ pointed out that this duty exists. Identifying the duty as that enunciated in **Smith v. Baker & Sons**³⁸, Bawak J.C. identified the substance of this duty as requiring "reasonable care to provide proper appliances and to maintain

them in proper condition, and to carry on his operations as not to subject those employed to unnecessary risk". It is therefore an obligation impose on the employer to ensure that during the probationary period, the working environment should be safe for the employee to carry out the task safely.

F. Provide proper tools and plans for work

The employer is under the duty to supply proper tools and maintain the necessary plants that will enable the employee to exercise his duties. In **Lovell v. Blundell's and Crompton & Co. Ltd**³⁹, the court employer was found not to have provided the plants for the employee's work. In **Bowater v. Rowley Regis Cooperation**⁴⁰, even where the tools are purchased from a reputable dealer and an employer has knowledge of its dangerous character, he is liable to his servant who is injured. This obligation is a continuing obligation in the course of the contract.

G. Competent staff with reasonable competent fellow employees

In an enterprise having several workers, it is the responsibility of the employer to have a competent staff and other employees who have the required skills to carry out the required task. A probationer cannot be held responsible for not performing his task well if other workers were supposed to do their part to make the work perfect. The employer must act reasonably or exercise reasonable care to employ reasonably

³⁶ HCB/18/98, the Court also held that the worker who herself resigned cannot turn around to claim damages for wrongful termination.

³⁷ (1977) Suit No. CASWP/67/96

³⁸ (1891) AC 325.

³⁹ (1978) 1 ALL ER 1026

⁴⁰ 8 (1982) IRLR 75.

competent and proficient staff and also competence fellow employees. The Court stated in *Hudson v. Ridge Manufacturing Co. Ltd*⁴¹, per Streatfield J; “if a fellow workman...by his habitual conduct is likely to prove a source of danger to his fellow employees, a duty lies fairly and squarely on the employers to remove the source of danger”. The employer must therefore select competent and suitably qualified people to do his work, providing training and necessary instructions as the case may be. He must ensure that those in charge have the knowledge and ability to see that the work is done safely. In *Smith v. Crossley Brothers Ltd*⁴², the Court of Appeal however re-emphasized that the duty to provide competent staff includes the duty to supervise them properly. If an employer knows or can foresee that acts being done by employees might cause physical or psychiatric harm to a fellow employee, it is arguable that the employer could be in breach of duty to that employee if he did nothing to prevent those acts when it was in his power to do so. Section 29 of the Cameroonian Labour Code, 1992 obliges the company head to draw up internal regulations for the functioning of the enterprise⁴³. This document which is unilaterally conceived by the employer bestows on him exorbitant powers of control and sanctions which must emanate from it. Thus, it is the principal source of the employer’s power¹⁸⁵. In this light, the employer is under the obligation

⁴¹ (1976) IRLR 50.

⁴² (1951) 95 SJ 655.

⁴³ Pougué, P.G., et Tchokomakoua, V., (1989), *Jurisprudence Sociale Annotée*, Tome II-1986-1987, SOPECAM, Yaoundé, p.11

to conceive and produce the internal rules and regulations, and to determine its content¹. The internal regulation is the constitution of the enterprise. ⁴⁴ Paradoxically, the internal regulations is the center of controversy today as some schools of thought hold that it is an instrument for the oppression of worker, a “judicial anomaly”,⁴⁵ “the average age of the 20th Century”, a “retrograde and phased-out institution”, which is supposed to belong to the past. It usually consists of a long list of restrictions for the workers with no obligations for the employer.⁴⁶ Therefore, it is the responsibility of the employer to recruit other competent workers and staff to ensure the effective execution of the job within the enterprise.

1.2.3. Rights and obligations of the employee in contracts of probationary hiring

The conclusion of contracts of probationary hiring under Cameroonian law confer rights and obligations

A. The right not to be unfairly dismissed

Unfair dismissal was a completely new concept when ushered in as a minor part of controversial English Industrial Relations Act 1971⁴⁷. Unfair and wrongful dismissal is separate and distinct causes of action. Philip J. said in *Redbridge*

⁴⁴ 8 Lyon-Caen, G., Une anomalie juridique : Le règlement intérieur, D. 1969, Chron, p. 247.

⁴⁵ Camerlynck, G. H., et Lyon-Caen, G., *Droit du Travail*, précis DALLOZ, 11e édition, No . 376, p. 631.

⁴⁶ Ibid, p, 634.

⁴⁷ Andermann S.D., (2001), *Labour law: Management Decisions and Workers’ rights*, 2nd ed, London, Butterworth p.35.

*London Borough Council v. Fisher*⁴⁸: “The jurisdiction based on paragraph 6 (8) of Schedule 1 to the Trade Union and Labour Relations Act 1974 has not got much to do with contractual rights and duties. Many dismissals are unfair although the employer is contractually entitled to dismiss the employee. Contrariwise, some dismissals are not unfair although the employer was not contractually entitled to dismiss the employee. Although the contractual rights and duties are not irrelevant to the question posed by paragraph 6(8), they are not of the first importance” Under the Cameroonian Labour Code, dismissal occurs when an employment contract is terminated at the initiative of the employer with or without notice, by repudiation or where he fails to renew a fixed-term contract on the same terms⁴⁹. As a protective measure, the Cameroonian Labour Code presumes every dismissal to be prima facie wrongful unless proven otherwise by the employer. Thus, when the employee is dismissed as a result of serious misconduct⁵⁰ it is for the employer to satisfy the Courts that the alleged misconduct is well-founded and this offers further protection to the worker from the whims and caprices of the employer.⁵¹

B. The right to payments

As mentioned as one of the obligations of the employer is to pay the wage of the employee above, it is therefore a right for the employee to

be paid as per article 4(a) of ARRETE N° 017/MTPS/SG/CJ du 26 Mai 1993 fixant la durée maximale et les modalités de l’engagement à l’essai. At times, most employers in Cameroon take advantage of employees during probationary period by not paying them their required salary. Some of the workers are not even aware they are entitled to payment during his period. But as a right, the worker during probationary period is required to be paid and not necessary the same amount like someone who has completed his contract of employment and is already recruited.

b. The right to medical suspension pays

Under the Cameroonian Labour Code, during the workers absence in case of illness duly certified by a medical practitioner approved by the employer or to a hospital establishment recognized by the state, for a period not exceeding six months, this period shall be extended until such a time as the worker is replaced, and during such period, the employer shall be bound to pay the worker. If the contract is of unspecified duration, compensation equal either to compensation in-lieu-of notice when the period of absence is equal to or exceeds the period of notice, or to the remuneration to which the worker would have been entitled during his absence when the period of absence is shorter than the notice period. In the same case, if the contract is of specified duration, the compensation shall be granted within the above limit, by reference to the notice provided for contracts of unspecified duration, the length of service being deemed to run from the state of the

⁴⁸ (1978) ICR 569.

⁴⁹ Ibid., section 37(1).

⁵⁰ Section 34(1) of the Labour Code

⁵¹ Smith v. City of Glasgow District Council (1985) ICR 796

contract in force. In such cases, suspension may not have the effect of extending the term of the contract initially provided for in the original contract of employment⁵².

C. The right to maternity protection

Apart from the important protection from unfair dismissal resulting from pregnancy, the Cameroonian Labour Code offers more protection in relation to pregnancy to the worker. Every pregnant female worker whose pregnancy has been medically certified may terminate her contract of employment without notice and will not be obliged to pay compensation⁵³. She is entitled to fourteen (14) weeks of maternity leave which takes effect four (4) weeks before the due date of confinement, and may be extended to six (6) weeks in case of illness and if the confinement occurs before the due date, the rest period shall be extended such that the worker benefits from the full fourteen (14) weeks. Apart from the various social and family welfare benefits provided for by legislation, the woman is duly entitled to an allowance payable by the National Social Insurance Fund, equal to the amount of wages actually received at the time of suspension of the employment contract during maternity leave. She retains the right to benefit in kind. Also, for a period of fifteen (15) months after birth, the mother is entitled to nursing breaks which are periods one hour per working day during which

the mother is allowed to go and breastfeed her child.⁵⁴

d. The right to be protected from night work

Per the Cameroonian Labour Code⁵⁵, any work done between ten p.m. and six a.m. shall be considered night work. In this regard, women and children are prohibited from such night work in industries as they are accorded a daily rest period of at least twelve (12) consecutive hours⁵⁶, excluding women with executive duties and those involved in services not involving manual labour⁵⁷. Employers who defile the above provisions are punished with a fine ranging from XAF 200.000 to 1.500.000 or with imprisonment from 6 days to 6 months.⁵⁸

g. The right to join a trade union

Workers have the right to set up a trade union without prior authorization for the defense, promotion and protection of their rights⁵⁹. In this light, the no prior authorization either from the state or the employer is needed in so far as the association (trade union) formed aims to protect, promote and defend the economic, cultural and moral advancement of its members. The worker has the right to join any such association of his/her choice⁶⁰. They are also protected against any discrimination in relation to their employment or any practices which tend to make

⁵² Sections 32-34 of the Labour Code.

⁵³ Section 84(1) of the Labour Code

⁵⁴ Ibid.

⁵⁵ Section 81.

⁵⁶ Ibid., section 82(1).

⁵⁷ Ibid., section 82(3).

⁵⁸ Sections 168-170 of the Labour Code

⁵⁹ Ibid., Section 3.

⁶⁰ Ibid., section 4.

their employment subject to their membership or non-membership to a trade union or their dismissal or suffer any prejudice because of their membership or non-membership or participation in union activities.⁶¹

1.2.4. Duties of the Employee towards the Employer

Despite the numerous rights available to the employee, he also owes certain duties towards the employer.

A. The duty of obedience and respect

As a result of the contract, there exists a subordination link from which the duty of obedience emanates and buttressed by sections 1(1) and 23(2) of the Cameroonian Labour Code. Disrespectfulness, disobedience and insolence are signs of insubordination, which leads to loss of confidence in the employee by the employer and may result to dismissal. This was adopted in the 1974 Labour Code in the case of **Gwarak Jean v. Splangounias Stamatius**⁶² where the Supreme Court of Cameroon held that an employee who responded rudely when questioned by the employer about the apparent negligence with which he had worked was justifiably dismissed. The worker in question was a night watchman who had been summarily dismissed because he answered that “I am not your boy, I am not your slave, I am neither your bodyguard leave me in peace” when told to do his job carefully. This does not mean that the employee is bound to respect every order given

by the employer since obedience and respect in the sense must be related to the job, he was employed for⁶³. In **Laws v. London Chronicle**⁶⁴, a director said to an employee “stay where you are”. She did not obey and walked away. She was summarily dismissed although she had been a good employee all through. On appeal it was held that, the workers conduct did not go to the root of the contract of employment to justify her dismissal and she was re-instated in her position in the company. Thus, a duty of obedience arises where the orders are reasonable and legal. If the instructions are illegal or criminal in nature, failure to obey such order could be justified and any termination resulting from their disobedience amounts to termination.

B. The duty of fidelity and loyalty

Employment contracts are built on trust thus; the employee must be faithful and loyal towards the employer and must devote all his gainful activity to the undertaking⁶⁵. This moral duty is often judged based on the professionalism and the commitment with which the employee executes his job.

C. The obligation to preserve professional secret

Under the Cameroonian labour code in section 31, the employee is required to keep all professional information secret even after the termination of the employment contracts. The probationer cannot reveal any professional

⁶¹ Ibid, section 4(2).

⁶² Appeal No. 18 of 31st January, 1974.

⁶³ Sama-Lang, I, F., op. cit., P. 109

⁶⁴ (1959) A11 ER 311

⁶⁵ Section 31 of the Cameroonian Labour Code, 1992.

information gotten during or after the termination of the contract of employment. Every profession, job or business has secrets or techniques which must not be disclosed to the public.⁶⁶ Workers are called upon not to make these known to third party and/or exploit them for their own personal gain. In establishments like hospitals that receive patients, information received from them must be kept secret and if a worker makes them reveals them to a third party, this may attract grave consequence which might culminate into termination. There are certain implied terms in any contract of employment one of which is not to disclose secrets, i.e. an employee is under an implied obligation not to disclose or make public any professional or trade secrets or confidential information which he has learnt by reason of his employment. A doctor is bound to keep his patient's secrets as far as he lawfully can. **In A.B. v. C.D.**⁶⁷, it was held that secrecy is an essential condition of the contract between a medical man and his employers, and that breach of secrecy affords a relevant ground for an action of damages. Also, in **Tournier v. National Provincial Bank**⁶⁸, the bank disclosed information to the employer of one of its customers. As a result of this, the employer refused to renew employment. The customer sued the bank for slander and breach of its duty of secrecy. The Court of Appeal held that there was an implied term in the contract that the bank should keep its clients' affairs secret. The

Cameroonian Penal Code⁶⁹ punishes the breach of secrecy with imprisonment of from 3 months to 3 years or fine from XAF 20,000 to 100,000. If it is a commercial secret, imprisonment is from 3 months to 3 years or fine of XAF 100,000 to 5,000,000 or both⁷⁰.

D. The duty of care and skill

One of the objectives of probationary hiring is for the employer to test the professional skills of the employee as per section 28(1) of the Cameroonian labour code. As per the contract of employment, the employee is bound to exercise his duty with reasonable care and skill. This implies that he is not supposed to delegate the duty to a third party⁷¹ and is supposed to take care of the employer's property such as tools and equipment. If the employer's equipment is stolen or lost as a result of the employee's negligence, this will amount to breach and the employee will be liable to dismissal.

E. The duty to respect discipline and internal regulations

Every establishment has internal rules and regulation also known *workers handbook* by which its employees are governing and they are bound by it. They contain the organizational layout of the establishment and rights and obligation of employees including hygiene and safety conditions, security, working hours, rules of conduct, etc. Repeated non-observance of

⁶⁶ Lee, Y. K., (1967), "Professional Secrecy and the law" Singapore Medical Journal, Vol. 8, No. '2, June, p.87.

⁶⁷ (1851) 14 Dunlop 177

⁶⁸ 8 (1924) 1 K.B. 641.

⁶⁹ Section 310.

⁷⁰ Section 311.

⁷¹ Sama-Lang, I, F., op. cit, P, 110

company rules and regulations is a legitimate cause for dismissal.

Therefore, an employee in contracts of probationary hiring has the rights and obligations just as the employer. The fundamental question which can therefore be asked is, what are the effects of the violation of the rights and obligation in all contracts of probationary hiring under the Cameroonian labour code?

1.3.The effects of violation of the rights and obligations in contracts of probationary hiring

Rights and obligations of parties in employment contracts are to be respected by both parties. The labour code has provided for sanctions or consequences which will fall on any of the parties for violation the right or failing to perform an obligation which is imposed on any of the parties.

1.3.1. Effects on the employer

The employer in contracts of probationary hiring have certain prerogatives recognized by the labour code in cases where the employee fails to meet up with the obligations under the contract of probationary hiring. If the employer does not possess the required skills as required, the employer has the right to terminate the contract. It is also possible for the employer to terminate the contract if the employee does not respect the conditions of professional secrecy as required by the law. In all these circumstances, if the employee is at fault, the employer will not pay any damages to the employee for terminating the

contract of probationary hiring as a result of non-respect of obligations imposed by the law.

1.3.2. Effects on the employee

The employee on the other hand, has a right of action against the employer in cases of wrongful termination or abuse of the rights of the employee during the period of probationary hiring. Generally, if the period of probationary hiring expires without any contract of employment and the employee continues to work, then it is transformed into an employment contract for an unspecified duration as provided in section 25(1) (b) of the labour code.⁷² The termination of contracts of probationary hiring by the employer without any justified reasons, permit the employee to bring an action for wrongful termination of employment contract and claim for damages. This is in line with the provision of section 39 of the labour code. In cases of wrongful termination, the employee can demand for the payment of damages as a result of wrongful termination. According to section 39(1) of the labour code, Every wrongful termination of a contract may entail damages. In particular dismissals effected because of the opinions of the worker or his membership or non-membership of a particular, trade union shall be considered to be wrongful⁷³. The competent court may ascertain the wrongful nature of the termination by investigating the causes and circumstances

⁷² A contract of an unspecified period is a contract whose termination is not fixed in advance and may be terminated at any time by the will of the worker or the employer, provided that the prior notice referred to in Section 34 below is given.

⁷³ Section 39(1) of the labour code

thereof. The judgment must expressly mention the reason put forward by the party terminating the contract⁷⁴. In all cases of dismissal, it shall be up to the employer to show that the grounds for dismissal alleged by him are wellfounded.⁷⁵ Damages shall be assessed with due regard to all factors indicating that prejudice has been caused and all factors determining the extent of such prejudice, and in particular, with due regard:

- (a) Where the worker is responsible, to his qualification and post;
- (b) Where the employer is responsible, for whatsoever the type of employment, the worker's seniority with the employer, his age and any vested rights. However, the damages shall not be less than three months' salary or more than one month's salary per year of service in the enterprise⁷⁶. If the worker is rightfully dismissed by the employer without respecting the formalities provided for, the amount of damages shall not exceed one month's salary. The salary to be taken into consideration in above paragraphs shall be the gross average monthly salary of the worker's last twelve months of activity. These damages shall be distinct from pay in-lieu-of notice and severance pay.

Thus the effects of violation of the rights and obligations in contracts of probationary hiring permit each party to take measures and ensure the protection of his or her rights if violated by the other party.

⁷⁴ Ibid, section 39(2)

⁷⁵ Ibid

⁷⁶ Ibid

1.4. Conclusion and recommendations

The reason why we have labour legislations today is because one party is always trying to abuse the right of the other party in contracts of employment. Probationary period which is still a pre contractual phase provides a better avenue for the rights of the employee who is the weaker party to be violated by the employer. If the parties cannot be enforced to respect their obligations in contracts of employment, then the labour market will be in chaos where the employees will be take advantage of by the employers because of the vulnerability of employees. At times, some employees lie about the professional skills and the only mechanism to know if they are qualified or not is through the contract of probationary hiring. The employer has the right to dismiss the employee even before the duration of the contract of probationary hiring if he realizes that the employee does not possess the required skills or if the employees commit any gross misconduct as provided in section 38 of the labour code. The employee other hand, have the right to bring an action against the employer in cases where the employer violates any of the obligations imposed by the law. The employee is the one who suffers the most in employment contract. It is at this junction that we recommend that; Firstly, the government of Cameroon has to ensure an effective implementation of the labour legislation. This is because; most employers violate the provisions of the labour code because of lack proper mechanisms to ensure compliance by the state. Additionally, there should be a sensitization campaign both by conference, at work place, on

the media on the rights of employees during probationary period. A lot of these workers are ignorant of the right given to them by the law during probationary period.

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