

EMPLOYMENT BONDS IN NIGERIA: PROTECTING INVESTMENTS, EMPOWERING EMPLOYEES

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Employment Bonds: A Solution to Talent Retention or a Legal Hurdle?

The "brain drain" issue has significantly impacted the global workforce, raising questions about how to retain top talent. As skilled professionals seek better opportunities abroad, Nigeria faces a critical question: how can it retain its most valuable assets – its talents? This situation has brought employment bonds into the spotlight as potential tools for retaining local talent. But do these bonds truly solve the issue, or do they create new legal challenges? This article examines the role of employment bonds in addressing brain drain, exploring their legal basis, practical use, and impact on Nigerian professionals and businesses.

Defining Employment Bonds: Agreements That Bind.

Employment or training bonds are agreements between employers and employees that require employees to stay with the company for a set period. These bonds ensure that employers can protect their investment in employee training and development.¹ If employees leave before the bond period ends, they must repay the bond value, which is often calculated on a prorated basis.² To secure the repayment of the bond, employers often require a guarantor.

In Nigeria, employment bonds are legally recognized and enforceable. This was affirmed by the National Industrial Court of Nigeria ("NICN") in **Overland Airways Limited v. Captain Raymond Jam's**³ case. This case confirmed the legitimacy of training bonds within the Nigerian aviation sector and established that such bonds do not constitute forced labour. The interpretation that employment bonds are not forced labour is based on the assumption that the contract terms are agreed upon freely and the employee has the option to repay the bond value if he terminates his employment prematurely.

Employment bonds can also be established before the actual employment begins. In such cases, an employer may wish to retain the potential talents or expertise of a job seeker by offering to train and sponsor the knowledge acquisition. The job seeker, in turn, agrees to work for certain period before leaving the employment. This scenario was addressed in the landmark case of **Continental Chemists Ltd v. Dr. C. A. Ifekandu**⁴, where the Supreme Court held that such a contractual bond was valid and enforceable. In that case, while still a medical student, the doctor signed a contract in November 1956 with the company, which funded his studies in

¹ Dr. Victor Balogun & Ors. v. Federal University of Technology, Akure & Anor (Unreported Suit No. NICN/AK/49/2015, delivered on November 15, 2018).

² Overland Airways Ltd v. Captain Raymond Jam (2015) 62 NLLR (Pt. 219) 525.

³ (2015) 62 NLLR (Pt. 219) 525.

⁴ (1967) LLJR SC.

England. In return, he agreed to work for the company for five years upon his return. After completing his studies and qualifying as a medical practitioner, he joined the company but left two years later for private practice. The company sued for breach of contract. The court confirmed the legitimacy of training bonds and clarified that such bonds do not constitute forced labour.

Nigerian employment law requires that training bonds be 'reasonable'⁵ and free from elements that could render them invalid. These bonds must be structured in a way that balances business interests with legal standards. Recognized as international best practice, employment bonds must adhere to specific conditions to prevent undue influence by employers and protect against unfair labour practices.⁶ These conditions include:

1. **Absence of Vitiating Elements.**

The employer-employee relationship often involves unequal bargaining power, with employers typically holding the advantage. If an employee can demonstrate factors such as duress, undue influence, misrepresentation, or fraud in the execution of a bond agreement, the agreement becomes null and void. Economic duress at the workplace is common and often involves employers coercing employees into signing bonds through unfair economic threats, leaving them no reasonable alternative but to comply to avoid significant harm or job insecurity.⁷

2. **Reasonable Bond Duration.**

An employer cannot use a bond agreement to unreasonably restrain an employee for an extended period as this could be considered forced labour.⁸ The bond's duration must be fair and proportionate to the training costs. The NICN evaluates the fairness of a bond by weighing the training costs against the bond's duration and the financial consequences for its breach. In **Iscore Nig. Ltd v. Victoria Omotayo Akinsanya & Anor**,⁹ the NICN invalidated a bond requiring three (3) years of service or payment of NGN5,000,000.00, in addition to the training costs, for a seven-day training, deeming it oppressive and against public policy, and international labour standards.

⁵ Dr. Victor Balogun & Ors v. Federal University of Technology, Akure & Anor (Supra).

⁶ Overland Airways Ltd v. Captain Joseph Gamara (Unreported, Suit No. NICN/LA/141/2011 with judgment delivered on January 7, 2017).

⁷ Bimbo Atilola, Labour & Employment Law in Nigeria, Volume 1 (Lagos: Hybrid Consult, 2022) at pp. 97-100.

⁸ Section 34(1)(c) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) prohibits forced or compulsory labour.

⁹ (Unreported Suit No. NICN/LA/484/2012, judgment delivered on May 19, 2017).

3. **Training Bonds Are Not Penalty Bonds.**

For a bond to be enforceable, its value must accurately reflect the training costs without imposing excessive penalties. A bond becomes punitive if it demands exorbitant damages, sets specific amounts as punishment, or uses threats to deter breaches.¹⁰ Such bonds should balance the employer's business interests with the employee's right to labour mobility while complying with fair labour standards. In the case of **Overland Airways Ltd v. Captain Joseph Gamra & Anor**,¹¹ the NICN ruled that training bonds of NGN7,500,000.00 and NGN1,575,969.00, which tied an employee for sixty (60) months and twelve (12) months respectively, were excessively punitive and unenforceable.

4. **Absence of Oppressive and Onerous Clauses.**

Due to concerns about retaining employees, employers often draft overly stringent contracts with harsh penalties, long service periods, and restrictive covenants designed to deter employees from leaving. Such provisions can be excessive and infringe on employees' contractual freedoms and labour mobility, including such as restraint of trade and the statutory right to seek other employment or observe minimum notice periods.

5. **Employment Bonds are not Contracts in Restraint of Trade.**

Contracts in restraint of trade and bonds serve different purposes.¹² While restraints of trade protect an employer's trade secrets and confidential information which are crucial to maintain a competitive edge, bonds aim to recoup training costs from the employee.¹³

6. **Clarity of Terms and Conditions.**

Employment bonds must clearly outline the nature, duration and cost of the training, the required commitment period, the parties' obligations and breach consequences. Clear terms allow employees to make informed decisions. Courts interpret the terms strictly as written, without modifying or inferring additional terms.¹⁴ Given the typically

¹⁰ *Overland Airways Ltd v. Captain Joseph Gamara* (Supra). Further, the law will not enforce contracts that contains unfair and unconscionable clauses designed to terrorize – *Oyeneyin & Anor v. Akinkugbe & Anor* (2010) LPELR-2875 (SC).

¹¹ Supra.

¹² *Overland Airways Ltd v. Afolayan & Anor* (2015) 52 N.L.L.R. (Pt. 174) 214 at 281.

¹³ *Overland Airways Ltd v. Captain Joseph Gamra & Anor* (2012) LPELR – 9339 (SC).

¹⁴ *Nika Fishing Co. Ltd v. Lavina Corporation* (2008) ALL FWLR (PT. 437) 1.

greater bargaining power of employers, any ambiguous terms in the contract are usually interpreted or resolved in favour of the employee.¹⁵

7. **Employers Adherence to Bond Terms.**

Employers must fulfil their obligations under the bond, including covering training costs, paying salaries and allowances during training¹⁶ and avoiding wrongful termination.¹⁷ Any breach by the employer can render the bond unenforceable.

8. **Avoidance of Past Consideration.**

Bonds must not be based on past consideration, where benefits are provided before a related promise.¹⁸ If training is given without an initial stay or repayment agreement, and a bond is later required, it is unenforceable because the promise came after the benefit was provided.¹⁹

The Dual Edges of Training Bonds: Balancing Stability and Employee Mobility

Businesses prioritize customer satisfaction, often achieved through continuous employee training, investing in employee development with the expectation that new skills will foster business growth and knowledge transfer within the workforce.²⁰ Generally, specialized training that enhances the employer's competitive edge and exceeds usual training budgets is often 'bonded'.²¹

Training bonds protect employers' investments by requiring employees to stay for a specified period post-training,²² or face financial consequences for leaving early. While these bonds promote stability and growth, employees may find them restrictive, limiting their professional mobility, ability to pursue new career opportunities and leading to a sense of financial and workplace entrapment.

¹⁵ Bimbo Atilola, *Labour & Employment Law in Nigeria*, Volume 1 (Lagos: Hybrid Consult, 2022) at pp. 103-104.

¹⁶ *Overland Airways Ltd v. Afolayan* (Supra).

¹⁷ *Iscare Nig. Ltd v. Victoria Omotayo Akinsanya & Anor* (Supra).

¹⁸ *Stabilini & Co. Ltd v. Obasi* (1997) 9 NWLR (Pt. 520) 293 at 305.

¹⁹ *Overland Airways Ltd v. Afolayan & Anor* (Supra); *Northern Thunderbird Air Inc. v. Van Haren* (2011) BCSC 837.

²⁰ Oluwakemi Odeyinde, 'Employment Bond Contract in No Manner A License Without Limitations: Ensuring the Elimination of Oppressive Bond Terms Incorporated by Employers'. https://www.researchgate.net/publication/355198417_Employment_Bond_Contract_In_No_Manner_A_License_Without_Limitations_Ensuring_The_Elimination_Of_Oppressive_Bond_Terms_Incorporated_By_Employers, accessed on May 7, 2024.

²¹ https://www.researchgate.net/publication/366279159_Enforceability_of_Employment_Bond_Agreement_under_Nigerian_Labour_Jurisprudence, accessed on May 14, 2024.

²² *Allied Air v. Engineer Kwabena Sarfo Ossei* (Unreported Suit No. NICN/LA/464/2014, NICN Lagos Division) judgment delivered on April 6, 2017.

To mitigate negative outcomes, potentially affecting morale and productivity, organizations should carefully evaluate bond terms, ensuring they balance business interests with employee growth and satisfaction. Transparent communication, flexible career development opportunities, and fair exit clauses can help create a supportive environment where training bonds are seen as investments in mutual success rather than mere constraints, helping to maintain motivated and engaged employees.

When resolving disputes over employment bonds, it is crucial to balance the employer's investment with the employee's foregone opportunities, ensuring both parties' interests are fairly represented and protected.

Crafting Balanced Employment Bond Strategies

In the evolving landscape of Nigeria's workforce, where the pursuit for global opportunities often results in brain drain, employment bonds present a complex solution. They hold the potential to retain essential skills within the country but must be implemented carefully to avoid discouraging professionals. Businesses need to design these bonds with not only legal accuracy but also a commitment to fairness and empowering employees.

For organizations considering the implementation of employment bonds, or professionals navigating their implications, a careful and balanced approach is essential. This ensures bonds are investments in mutual success rather than constraints, helping businesses retain talent while fostering growth and satisfaction. For enquiries regarding employment bonds or general employment-related matters, please contact: info@scp-law.com.

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