

The Right to Peaceful Demonstration and the Protection of Workers' Right: A Cameroonian Labor Law Perspective

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Abstract

The concept of peace has been observed by many as a basic element in the preservation of dignity and unity of every State especially when dealing with nation building and security. The concept has been encouraged and recognized by many states who do not only consider such principle a fundamental one, but whose main aim and objective has been that of unity and protecting the national sovereignty and security of such a state. The maintenance of this fundamental principle has been felt in every day-to-day human relationship, especially those experienced by labor relations and operations. In the advent of forming, executing and terminating employment agreement, parties have those prerogative rights and obligations in respecting terms binding them in the employment relationship by carrying out specific obligations spelled out in the employment contract. The Cameroon Labor Code of 1992 has not been left out when dealing with relationships that exist between employer and employee in enforcing their basic employment rights and obligations. In situations or cases parties fails in performing what they agreed in the employment contract, either of the parties has the right in bringing an action against the other in breach of such obligations. One of such actions can be through demonstration by the workers against the employer in the employment engagements, who has failed in respecting the employment relationship. This demonstration can give rise to adverse effects, there by affecting the nature of the employment relationship.

Keywords: Right, Peaceful, Demonstration, Protection, Workers, Right, Cameroonian, Labor, Law.

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INTRODUCTION

An employment contract as defined by the Cameroon Labor Code[1-3] is a situation whereby one person called the employee agrees to enter into an employment contract with another person called the employer in putting his services under the authority and supervision of the employer against remuneration. There must, therefore, be the presence of a basic relationship that exists between two parties, where such relationship may give rise to legal obligations and relationships. The parties are bound in performing what they concluded in the act of entering into an employment contract in which failure to do so may attract some action by either of the parties. When dealing with the element of demonstration, usually it is always the employee who initiates an action claiming that the employer has not respected the terms of

the employment relationship they accepted at the initiation of the employment relationship, and this non-respect of the contractual agreement has affected this employee negatively through the rights and privileges possessed in the employment relations. This action on the part of the employee can be experienced as a result of non-compliances with the contract engagement, poor working conditions, violating the worker right to privacy and dignity, non-payment of acceptable working remunerations, and to an extent in case of wrongful or abusive termination on the part of the employer has affected the employee in one way or another. All these elements provoked some basic labor relation elements like that of freedom of association and assembly, speech in an opinion in expressing their various grievances involved in the labor relationship which has been breached upon by

the employer when performing the employment agreement.

NATURE OF EMPLOYMENT CONTRACT

Every labor relationship has always compendiously styled the employment contract agreement. This employment contract has always experienced proper effects on the labor relation depending whether the relationship in question is termed a specified or unspecified employment contract.

Notion of an Employment Contract

The employment contract like most legal concepts has not been given a precise and concise definition or understanding. However, this is far from saying that the Cameroon labor legislature has not postulated directly or indirectly the understanding of an employment contract. This labor legislation [4] has been provided in its Section 23(1) that: *“an employment contract is considered as an agreement by which a worker or employee undertakes to put his services under the authority, management and supervision of an employer against a remuneration”*. Better still, in understanding this concept of employment contract, one can say that it entails a situation where a person called a worker has contracted with another person called the employer to put his professional activity under the direction and authority of such person in return of a remuneration. So, for an employment contract to be recognized, it must be an agreement between two persons.

Elements of a Valid Employment Contract

The fact that an employment contract is an agreement existing between two persons, it is prima facie that such contract should be bound by certain essential prerogatives that parties in such contract must respect and implement for the better application and functioning of the labor relationship. Some of these features include aspects such as reciprocity, the notion of personal contract, onerous, and even the aspect of successive execution of such contract.

Reciprocity of Parties

The Labor Code as aforementioned [5] has stipulated that an employment contract is an element of two-sided in nature when it comes

to the execution of services of both parties. Both parties in the employment obligations owe each other some fundamental duties in the performance of the contract. The employee on his part must respect the terms of the contract by ensuring that he or she respects the terms of the agreement by putting his or her professional services under the authority, control, supervision and even management of the employer. In this regard, whatever the employee performed, it must be ratified and approved by the employer for a proper implementation of the employment relationship. On the other hand, the employment contract is not the responsibility of one individual, since in the formation of such a contract, there are two persons who agree in the effective and smooth functioning of such contract; therefore, the employer on his part must also respect and performed his own part of the bargain stipulated in the employment engagement. He owes that responsibility of furnishing the employee with the expected remuneration after performance of services in the labor relation. It is highly emphasized in the contractual relationship [6] that every contract of employment must be backed by the notion of consideration. The worker furnishes his professional activity in return for remuneration. The remuneration can take any form be it salary, piece wages, commission and even payment in kind, even though the Common Law [7] stipulates that consideration need not to be adequate but must be sufficient. In the situation of an employment relationship, the aspect of remuneration must not only be adequate, but rather should also not fall below a certain minimum amount. Besides, when such remuneration is in kind, it must be capable of being evaluated in monetary worth fixed by mutual agreement of the parties concerned [8]. It becomes very frustrating when it is discovered that neither parties has respected the terms of their employment agreement, the employer has failed in providing the employee with this fundamental aspect of the employment contract after when such a person [9] on his part has rendered and offered all legal and contractual obligations point pinned under the employment relationship. This aspect alone can cause the party in engaging an action since he knows that an employment

contract is always and will always be looked upon as a bilateral agreement where the obligations of parties are considered to be reciprocal.

A Contract and Personal agreement

So far so good, in carrying out obligations under employment relationship, it is of great and utmost reminder that as far as workers are concerned, the contract should be performed or executed on a personal basis [10]. This, therefore, entails that under the Cameroon Labor Code, the employee considered as a professional must render his professional skill to the employer and in this regard, he alone must furnish such duties in the employment relationship personally. It is also provided that in the situation of performing duties owed to the employer, he must not delegate the performance of such duties to someone without the prior authorization of the employer. The employee has agreed under a contract that he must place his services and professional skills only under the authority and control of the employer, and such terms must be respected. Performing the employment contract is a matter of relevance when respecting the terms of the said agreement. In case the employer discovered that the person performing the employment contract is not initially that agreed under the said contract, the employer in his status and authority has that absolute power to cancel the said contract. The notion of an employment contract being an offspring of a personal contract has an element of absolute concern in which employer used in rendering such contract *ab initio*. The fact that the employment contract is based on this principle has been of great advantage to the employer who always uses this as a parameter in manipulating the contract in question and this has really affected the right of the employee in employment relationships. The aspect that it is only the employee who has the ultimate power in performing what he agrees in the working engagement without any sphere of delegation to another is a good ground that solicitudes the appropriate employment contract. The situation may become precarious in case the contract comes to an end.

The Classical Understanding of a Labor Relationship

The fact that an employment contract has been defined and given great importance as per the Cameroon Labor Code as that contract in which the employee agrees in placing his services under the supervision and control of the employer against a remuneration is a prior concern to parties in an employment contract. The parties owe each other that fundamental obligation in respecting and performing what they initially accepted when concluding the employment agreement. This agreement thus raises the question as to whether the parties will respect what they agreed in the employment relationship, and this will depend upon whether during the agreement the nature or type of employment contract was emphasized or specified.

A Contract of Employment of an Unspecified Duration

According to Section 25(1) (b) of the 1992 Labor Code which defines a contract of employment of an unspecified duration as a contract whose determination is not fixed in advance and which may be terminated at any time by the will of the parties provided that prior notice referred to Section 34 is given. Where termination is initiated by the employer, it is referred to as dismissal; when initiated by the worker, we might call it disguised dismissal; and when it is done by free will of the worker, it is called resignation. Under this form of employment contract, the parties are bound to each other for an indeterminate period which extends more or less far into the future and may last for the lifetime of the parties. From the content or provision of the employment contract of unspecified duration, one may deduce that this form of contract bestows on either party that right or discretion to terminate the relationship at any time provided that the conditions as to the forms are respected. Even though the Labor Code has given the parties that discretionary power in terminating the employment engagement without any legal action taken by both parties as to the termination or breached, but there has been some aspect of reservation to this effect. The Labor Code has clearly made emphasis on the notion of prior notice in Section 34 of the said code. This is to the effect that even though the

parties have the right in terminating an employment contract, this can only be done with the aspect of notification made by the employer to the employee. The employer must inform the employee about such breach or termination, providing reasons to the effect. Looking at the case in question, it is, therefore, placed that the employer cannot dismiss the employee in an employment relationship without providing such employee at least a prior notification to such effect. From all indications, we are, therefore, saying that in case the employer fails in respecting the term of the contract, the employee has absolute right in bringing an action against the employer for wrongful or abusive termination. All this euphoria of discourse has been to the advantage of the employee in the employment contract. Thus, there are circumstances under which the employer may wrongfully terminate the employment relationship at any time which can be as a result of the unscrupulous behavior or conduct of the employee.

Contract of Employment of Specified Duration

This form of contract is an exception to that of unspecified duration. It is stipulated in Section 25(1) (a) as a contract whose termination is fixed in advance by both parties during its formation. It can be concluded for a number of days, weeks, months, or years. The date of the termination of such form of contract must be clearly stated at the time of conclusion of the contract. It can't be established for a period of more than two years. To this effect, it is understood that a contract of specified duration has a time duration in which parties of such contract must respect. To this effect, the employer has no obligation or power in terminating the employment engagement entered into in the employment contract, the parties has no right in terminating or breaching this contract before the date of termination of the said contract. What happens when the worker or employee uses this provision of the law as a shield and practices illegal activities and putting up unscrupulous conducts in the establishment that will provoke the employer in initiating unwanted dismissal or termination before the due date. The employee fails or refuses in performing what he initially agrees in the employment contract by failure in putting his professional skill under the control

and supervision of the employer, or he fails in respecting the terms of the employment contract, and even initiates gross misconduct. As in every principle there is always an exception, the fact that the parties have entered or signed a specified duration contract is not a condition *prerequisite* that such agreement will respect the duration mentioned.

Abrupt Termination of the Labor Relations and Its Consequences

The reciprocal relationship and duties parties owe to each other always originates from a written statute spelling out their obligations and even the present of collective agreement. The Cameroon Labor Code has provided to the effect that [11]for a contract to give rise to an employment relationship, the parties in question must have agreed either expressly or impliedly that one party called the employee should render his services under the control and supervision of another person called the employer, and the employer in question owes this worker that fundamental duty of remuneration where failure or the non-respect of such obligation on the side of the employer can lead to the worker frustration leading rise to possible demonstration. The question which can draw one's attention is that in determining the rationale that may have pushed the employee in having that intention for instituting a demonstration against the employer in the employment relationship. Statistic shave shown that the most aspects instigating workers for demonstrating or manifesting usually termed from pertinent factors such as the non-payment of the agreed remuneration or wages by the employer, procurement of work on the part of the worker, the employee working conditions, and even the non-respect of the worker's rights as stipulated by relevant provision of the law.

Failure in Providing the Worker with the Agreed Remuneration

One of the main obligations owed by the employer to the employee when concluding an employment relationship lies in the aspect of remuneration [12]. Once the worker has placed his professional services under the control and supervision of his employer, the worker is entitled to his wages whether such work is actually carried out or not on the part of the

worker. Section 23 of the Cameroon Labor Code has spelled out that the employer must respect his own part of the bargain by ensuring that the terms of the employment relationship are respected to the latter especially in matters of remuneration owed to the worker. The question one should be interested in posing lies at the aspect of wages paid. Section 61 of the Labor Code provides as follows:

1. *“in this law, wages means remuneration or earnings however designated or calculated, capable of being evaluated in terms of money and fixed by mutual agreement or by the provisions of regulations or collective agreements which are payable by virtue of a contract of employment by employer to a worker for work done or to be done or for services rendered or to be rendered.*
2. *For the same type of work and level of proficiency, workers shall be entitled to the same remuneration, irrespective of their origin, age, sex, status and religion, subject to the provisions of this section.*
3. *Apart from the cases provided for by the regulations or collective agreement in force and except where there is agreement between the parties concerned, no wage shall be paid to a worker in case of absence” [13].*

From the above analysis, it is said and seen that the worker has a good case in bringing an action against the employer in situation of failure in respecting the employment contract when it comes to wages or remuneration. A worker becomes frustrated in circumstances where the employer tampers with his remuneration. The employers in an employment contract always consider the employee as the weaker party and as for them they can manipulate and control the nature of the contract as they like to the detriment of the employee since they think that they are the ones in determining what should be paid in the relationship as they failed in understanding that an employment engagement is a reciprocal relationship in which both parties in the contract have equal rights when it comes to determining, functioning and even at the level of terminating the employment relations. It is the right of the worker in terminating the employment contract when noticed that the

employer is not respecting his own terms of the bargain.

As regards the aspect of wages, Section 67 has provided that wages of this concept of remuneration should be done in legal tender and any other method of payment shall be unlawful in the contract. It is also of great emphasis that dealing with the wages, it is a matter of monthly issue which should not be made later than eight days following the end of the month of employment in respect of which wages are due, and that upon termination of a contract of employment, a final settlement of all wages and allowances should be effected as soon as the employment ceases. That in case the worker is absent on payday, the worker shall be entitled to draw their wages during normal hours of opening of the pay office in accordance with internal regulations of the enterprise and that the wages should not be paid in a public house, shop, or store except in the case the workers are employed there. In situation not respected by the employer in complying with the above contractual term, the employee has the right to institute a legal action and even launch a peaceful demonstration against the employer. Circumstances always arise where employers use pretext as to that there was no task assigned to the worker, so he does not deserve propound financial benefits attached to the contract [14]. The fact that there was no work readily available at a given time to the employee does not forfeit him of his financial entitlement in the relationship. An employment contract is considered as a successive relationship where it is the duty of the employer in assigning task to the employee during the course of the employment relationship. The employee only performs what has been assigned to him in the concluding of the contractual engagement, and any task out of this should not be the responsibility of the employee. The payment of the remuneration should not be done according to the task assigned except in situations of temporal, seasonal or occasional worker. The payment of the contract should be a monthly issue and remuneration should be made as provided.

Procurement of Work for the Worker

Corresponding to the worker's duty to be ready and willing to serve the employment relationship, it is the obligation of the employer to procure for the worker the type of work provided for under their agreement. The task assigned to the worker must correspond to the professional qualification for which the worker was recruited. This case has been looked upon as when there arise circumstances where the worker will not be contracted based on his qualification or acquired skills, but can be asked to perform a service different from that in which he was employed for, and this worker has the right either to accept or refuse where the contract can be rescinded in case of denial or refusal. In business engagement, it is forbidden to assign the worker a function below his category as it is always seen that such act can affect the smooth functioning and interest of the establishment. Where the worker is obliged to work away from his normal place of residence, Section 66 of the Labor Code obliges the employer to provide such worker with a lodging or failing this, to pay him a housing allowance. This scenario always arises where the worker has been transferred, and accommodation offered to the worker must correspond to the family status of the worker and even satisfy the condition determined by the competent authority [15]. In case the employer fails in respecting the above terms of engagement, the worker has that requisite right in instituting an action against the employer for breach of such fundamental right of the employee. In an employment relationship, employees are always employed based on their expertise and skill acquired for the execution of a given service in the employment relationship, which will warrant efficiency and quality services for the enterprise. The quality and knowledge of an establishment will be determined based on the quality and nature of goods and services rendered and can be done by the nature and knowhow acquired by the worker portrayed through the output and facilities of the enterprise. Accordingly, a task assigned to the worker, who has no knowledge about such service, can have a critical influence on the functioning of the establishment. If the worker was employed to effect a given service in the

establishment in which such a worker has the acquired skill, and in the course of performance of the employment contract, the employer discovers that this worker has an additional skill necessary for the benefit of the establishment, the said employer must pay the worker an additional financial benefit for this extra service rendered. He should not use this as ground for the worker in performing a service outside of that stipulated in the employment contract. The worker has the right in asking for additional financial attributions for his extra skilled acquired.

The Phenomenon of Working Hours

Section 80 of the Labor code is to the effect that workers under the labor provision, in the course of rendering their services to the employer under the employment contract, should not exceed the required number of working hours. It further explains that the statutory hours of work in either public or private establishments should not exceed 40 hours per week but extends in situation of agricultural establishment where the working hours shall be based on a total of four hundred hours per year, within the maximum limits of forty-eight hours per week. The explanation given above should be applied to all workers, irrespective of age and sex and irrespective of the mode of payment. Working hours of workers in the employment relationship should be an aspect of utmost importance in the performance, execution, and perfection of the employment engagement. It is the right of the employee to not exceed the number of working hours stipulated or outlined by the law during the conclusion of the employment contract. The worker has the right to quit or terminate the employment contract when noticed that the employer fails in respecting the working hours of the contract, and even where the worker exceeds the established stipulated working hours in the relationship, the employer is mandated under a legal obligation to provide payment to the worker for the additional hours put in place. It is the fundamental right of every worker irrespective of status or age in bringing an action against the employer for failure in respecting this provision of the law [16]. The National Advisory Board in Cameroon, whose main

function is in regulating labor relationships, has played a great role in situations of working hours where it provides that the working hours of work shall be determined by them and has gone a long way in providing the various conditions governing the performance and remuneration of overtime giving rise to extra pay. It provides that the working hours of workers in Cameroon are from eight a.m. to 4p.m., and under no situation should a worker exceed this period of work.

Safety, Adequate Hygienic and Decent Working Environment

It is the responsibility of the employer in every employment relationship to provide the worker with a decent working environment captivated with hygienic and safety aimed at securing for the workers standards of hygiene and safety conforming to those recommended by the International Labor Organization. Under the Cameroon Labor Code in its Section 95, it is a primordial concern that the worker should carry out his services under a conducive and healthy working environment provided by the employer. The working conditions most of the time always endanger the safety or health of the worker and are not taken into consideration by the Labor Code where we experience workers are abandoned when they contract occupational diseases in the course of executing the employment contract, and nothing is done to this effect. It is also the obligation of the employer to supply water and non-alcoholic beverages at the workplace and during working hours in enabling work carried out in a diligent and effective manner. This is a fundamental obligation which should be affected by the employer to the employee in the employment contract. The worker cannot be carrying out services on behalf of the employer when it is shown that the exercise can adversely affect the wellbeing of the worker and even health wise. It is the right of the worker to be in a proper state and comfortable working position when rendering his services to the employer. The employer does not only have that responsibility of providing the employee with financial entitlement but must extend to the safety and protection of the worker during his services in his establishment. The employee is like every

human being who should be treated with some dignity and protection by the employer, through the provision of services and facilities needed for efficient and effective performance of the contracted obligations.

Termination of the Employment Contract

The employment relationship like any other agreement is like a human being that is born, lives, and eventually dies whether its motive of creation was formulated or concluded under a contract for specified or unspecified duration. Such a relationship can be terminated either based on frustration, breach, agreement, performance, lapse of time, and even sometimes through operation of the law. The Cameroonian employment system has defined the concept of termination of an employment contract as any termination of the labor relation by either the employer or the worker with or without notice or the expiration of a fixed term contract. The termination can arise as a result of several causes, which depends as to whether the termination in question was lawful or unlawful having regard to the circumstances of each case. Regarding the situation of the Labor Code, before parties can bring an action as to the termination of an employment relationship, either of the parties has to prove such a termination within two basic ends; which include that the employer decided in terminating the labor relationship on the fact that he could not tolerate the conduct of the employee, or that the termination came as a result of an economic situation which plagued the enterprise. The employee on his part, can also base his argument on the basis that the employer did not follow the due process of law in terminating his employment contract, and to this effect characterize the termination as being abusive.

The Place of Abusive Termination in the Employment Contract

Diametrically opposed to the concept of lawful termination of an employment contract is the aspect of terminating a contract unfairly or wrongfully. In an ordinary sense of view, wrongful termination of a labor relationship emanates from the conception of repudiating the relationship wrongfully without the

existence of a justifiable cause. In normal parlance, parties in a labor contract relationship are bound to perform duties and tasks agreed upon during the conclusion, execution, and termination of the contractual relationship. Where one of the parties fails in performing his own part of the contract, he is said to be in breach of the contract. As regarding the provision of the Cameroonian Labor Code, it has failed in providing sufficient grounds as to what act of the worker will amount to illegal dismissal. However, it is provided in Section 34 of the Labor Code that where the employer fails in providing notice to the employee in case of unspecified duration contract, termination of such a contract will be termed abusive. Thus, any termination of an employment relationship which contravenes the law, public policy, termination based on trade union activities, collective agreement, sex, marital status, political, religion and even philosophical opinion of the worker will be characterized as abusive. In theory, it is always a principle that both parties in an employment relationship can provoke the termination of such relationship, but in most cases and termination circumstances, the employer always has the whip hand in such cases. The fact that he possesses the resources and even provide the employment may with great impunity bring an end to the contractual relationship with his employees.

It is of essence in noting that terminating the employment contract is not an emphasis on the part of the employer; sometimes even before the lawful termination of such a relationship, the employee can push the employer to extreme that such person has no choice rather than terminating the contract without talking the position of the worker in question. The employer may base his argument on some relevant grounds which provoked him in instituting such a termination.

The Conduct of the Employee

Demonstrating as a ground for the violation of a worker's rights in an employment relationship will be a blessing rather than curse if the worker can prove beyond all probabilities that it was the willful intention on the part of the employer in refusing to respect

the terms of the employment contract, and such breach by the employer has caused adverse effect on the right of the employee in such a relationship. We have all this while been laying more emphasis that in most scenario of workers demonstration of their non-respect of labor rights usually arises from the part of the employer but fail to understand that sometimes the misconduct of the employee can push the employer in terminating the employment relationship. For the employer to effect termination of the employment contract before the due period of such termination, the misconduct committed by the employee has to be such that the employer cannot wait for the contract's due termination. In determining what will amount to misconduct is usually a difficult task under labor relationship, since misconduct will all depend on the circumstances in question. The misconduct can arise from a professional fault committed by the employee due to persistent mal execution of tasks assigned to him by the employer. In labor relationships, possible elements of misconduct which can be raised by the employer in challenging the action brought by the employee for wrongful termination can include aspects of insubordination, gross negligence at work, violation of the internal rules and regulations of the enterprise, unjustified absences from work, late coming and even the non-respect of the closing hours.

Disobedience and insubordination can be established by the employer which warrants him in dismissing or terminating the employee-employment relationship due to the fact that the employee has refused to perform work which falls under his contract of employment. For example, the employee was employed in the establishment as a typist, but he refused to type the official documents of the enterprise. The use of obscene and abusive language or other reprehensible behavior of the employee towards superior officer may amount to summary dismissal. The worker should and shall devote his gainful activity to the establishment and consequently work only for the employer during working hours. Any private work of the employee during hours of work shall be considered as serious misconduct.

The situation here is in asking whether it is only the worker that may be guilty of misconduct; the employer's behavior may be such that the worker could not reasonably be expected to continue the labor relationship. What about a situation in which the employer refused to pay the agreed remuneration in the employment contract [17]? Should the employee continue working for the employer on this basis? Will this not push the worker in acting in ultra vires. One thing of importance here is that the concept of misconduct whether gross or not is a justifiable cause for the lawful termination of a labor relationship.

Economic Motive of Termination

The law has provided a reasonable ground on which an employer may dismiss or lay off workers when economic conditions are unfavorable to the enterprise, usually referred to as the concept of redundancy. Redundancy may be defined as the dismissal of a worker motivated by common consideration of a collective and economic nature not depending on the personality of the individual worker affected. It is a compendious way of describing the individual or collective termination of the workers' contract of employment for a variety of reasons, ranging from dismissal or the completion of construction works, suppression of employment or particular positions and reorganization of service, due to adverse economic or financial situation of the establishment. It may also arise as a result of the closure of the establishment or by the simple replacement of one worker by another accumulating two posts or activities. The question one may be pushed in asking arises in knowing the modalities the employer takes in laying off or retrenching workers in his establishment. It is worthy of note that choosing workers arbitrarily for redundancy will be a cause for concern. The employer has to take into consideration certain aspects like that of the longevity of the worker, professional proficiency, and to an extent the family responsibility of such a worker before laying him off. He must have to notify the workers he wants to lay off with a letter of notification and stating the reasons of such laying off. Failure in providing the workers

with necessary information of lay off can amount to possible demonstration and even justifiable protest by such workers.

The Aftermath of Justifiable Labor Demonstration

Terminating an employment contract wrongfully on the part of the employer is a sufficient ground for the law in awarding remedies to the employee. Since it is the protection of a worker, under the Cameroon Labor system it is a matter of utmost concern. A series of safeguards have been provided by the labor legislation in protecting the worker from wrongfully being excluded from work place. The worker in the quest for maximum protection and acquisition of rights arising from the illegal or abusive dismissal from the work place can institute relevant actions which can range from the fact that the illegal dismissal on the part of the employer has caused him in suffering severe injuries, as in such regard demands compensation for the acts of the employer, or rather still he should be re-integrated into his lost position.

The Peculiarities of Damages

The main objective of every employment contract has been the payment of damages to the employee as a means of putting the worker in a position he was supposed to be as if the injury was never committed. The Labor Code under Section 39(1) provides that every wrongful termination of an employment relationship will amount to the payment of damages. Even though the labor legislation has made mention of damages, the question one is to pose is in knowing the meaning of this concept of damages provided by the code. In the ordinary sense, the term damages refer to any pecuniary satisfaction that a judge in a civil claim will award for an act or wrong suffered by a plaintiff, who in labor law could either be the worker or the employer [18]. The award of such damages is defined in Section 39(4) of the code as:

"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 particular with due regard" [19].

The purpose of damages is to compensate the plaintiff; especially for the injury such person has suffered as a result of the act or wrongful dismissal of the worker. The worker has suffered physical and moral deprivation. As worker with responsibilities, the wrongful or illegal termination of the employment contract will cause him some hardship, and, therefore, he needed to be compensated by the employer [20]. When it comes to the assessment of damages, the Labor Code has provided in Section 39(4) in limiting the amount to not less than three month's salary per year of service [21]. These damages elucidated upon in the labor relation can either be in the form of general or special damages. General damages here connote those assessed by the court in proceedings, while special damages are the actual loss suffered by the worker as a result of illegal dismissal. Even though it is practically impossible to anticipate special damages incurred by the employee in the course of offering his services to the employer, the court always calculates the damages based on loss of earnings, and all incidental benefits that had become due [22-30]. The special damages here will include rent allowances, leave claims, salary arrears, and irregular deduction from worker pay off, post allowances, reclassification payment, etc. The damages claimed are those actually lost by the worker and not those he will lose in the future. The situation will be different for workers transferred to work outside their usual residence and have been dismissed. The Labor Code has provided in Section 37(1) that it is the responsibility of the employer to pay wrongfully dismissed worker engaged under a contract of unspecified duration severance pay on the determination of the employment [31-34].

The Notion of Re-integration

It is of little interpretation that the Labor Code has limited its remedy for wrongful termination on the sole payment of damages, which finds its justification in Section 39(1) by providing that any wrongful termination of a labor contract may entail damages [35]. Do we, therefore, infer that all other form of remedies should be excluded except that of damages? I think the answer here should be in the negative under an employment relationship

because reinstating the dismissed worker will be a fundamental aspect of the master-servant relationship. The aspect of reinstating the worker in a wrongful termination of an employment relationship is an adjunct of the general equitable principle of specific performance in the law of contract. Most of the time in an employment relationship, the court always finds it reluctant in applying the concept or reinstating since according to them, they considered it as amounting to slavery as it will be to impose a servant on an unwilling master and vice versa [36]. The payment of damages to the worker as a result of termination of the employment contract can sometimes be grossly inadequate for compensation, so making alternative remedy will be of utmost importance. In most labor relations, reinstating a worker will only be in a situation where employers are protected by statutes. It is, therefore, the prerogative of the employer whether he will accommodate or accept the dismissed worker into his previous employment. Again, the worker who has taken the trouble of manifesting and asks to be reinstated must have manifested enough evidence of his desire to go back in employment [37]. Such a worker, who has been forced out of employment through dismissal or termination, always faces problem of getting another job, so the order of reinstatement can be of great benefit to the dismissed worker even if he knows that such reinstatement will be only for a short while.

CONCLUSION

The Cameroonian labor law has been very instrumental when dealing with relationships existing between an employer and employee in a labor engagement. It is, therefore, clear that a labor relation considered as a legal binding relationship imposes some basic responsibility on parties in respecting the terms of the employment relationship. Both parties have that fundamental role to play in ensuring that rights of parties are respected to the letter. It will be a disgraceful scenario where parties accept to respect terms of employment contract, turn around and violating these same terms and knowing the adverse effect it will manifest on the other party. The fact that in an employment relationship, the employee or worker is always considered as a weaker party

in which the employer always takes this as an advantage since, he sees himself as the holder of the economic power in the contract by breaching and infringing on the employees' rights. The Cameroon Labor Code has made it clear that the employee has the prerequisite right in instituting an action against the employer in the case of breach on the non-respect of the employment contract because such a worker has incurred grave injuries and damages as a result of the breach, and deserves to be compensated upon such a breach and while not even re-integrated into his previous post.

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15. ILO Recommendations No. 86 and No. 151.
16. Law No. 2004/016 of 22nd July 2004 to set up the organization and functioning of the National Commission on Human Rights and Freedom and Its Enabling Instruments to Law No. 2005/254 of 7th Jul 2005.
17. Section 23(1) of the Labor Code
18. Law No 92/007 of 14th Aug 1992 Instituting and Establishing the Labor Code governing Labor Relationships in Cameroon.
19. The situation in Section 23(1) of the 1992 Labor Code stipulates or spells out the definition of employment contract as an agreement where the employee has accepted in putting his skills under the control and supervision of the employer against remuneration.
20. Ibid, section 23(1) of the said Code.
21. The Cameroon Labor Code of 1992.
22. Section 23 of the Code.
23. Element necessary for the formation of a valid contract.
24. The law that existed in England and applicable to all the courts of England.
25. Section 66(1) of the Cameroon Labor Code.
26. Herein referred to as the employee.
27. This is the fact that an employment contract is a personal contract which should only be performed by the employee and no one else.
28. Section 23 of the Cameroon Labor Code.
29. Ibid, Section 23.
30. Section 61 of the Code.
31. Usually, this is provided by the Minister of Labor and Social Security issued after consultation with the National Labor Advisory Board.
32. Section 80 of the Labor Code.
33. Etude de Men Nkili vs Abbo Mvogo Jean, where the Supreme Court of former West Cameroon 1972 held that the worker was entitled to rescind the contract without notice following the non-payment of wages for several months of work.

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