Employee Relations and Regulatory Practices: The Global and Kenyan Perspective

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Abstract

In the globalized world today with the related heavy competitiveness prevailing in the business world, much attention is given towards the employee relationship as if not handled properly outcome may be disastrous to any business organization. The responsibility of maintaining healthy employee relations primarily lies with the hands of the management but employees too have a major role to play as it has to be a collective game plan in order to achieve a win-win situation for both the employees as well as the institution. The HR professionals should display their competencies in employee relations, management of conflict in the workplace and ongoing value of the employee relations rather than as a management function or well-defined area of activity. It is the key point of reference for determining the nature and extent of employer’s rights and obligations towards their workers. Employee relations has been, and continues to be, the main vehicle through which workers gain access to the rights and benefits associated with employment in the areas of labour law and social security. This paper will examine the issue of employee relations involved in the management of human resources in Kenya and international organizations. It will focus on the basics of employee relations, labour laws in Kenya and future trends in employee relations in Kenya and Africa in general.

Keywords: Employment relationship, Employee relations, Management, Labour laws and Human resources

1. Introduction

Employee relations concern the maintenance of the relationship between the employees and the employers that is meant to enhance the performance, morale, productivity and motivation of the employees (Budd and Bhave, 2008). It focuses on the prevention and solving problems in the workplace. Some problems arise in the workplace especially when supervisors are correcting performance that is poor or the conduct of the workers. This is why HR managers must ensure there are disciplinary approaches that are progressive and ensure that humane procedures are followed while settling disputes and resolving the grievances of the employees (Banfield & Kay 2008). Good employee relations also ensure that employees are given guidance and information to help them in proper comprehension of the objectives, principles and policies of the organization.

Employment relations in Kenya are regulated by a number of sources: constitutional rights, statutory rights, as set out in statutes and regulations, rights set by collective agreements and extension orders of collective agreements, and individual labour contracts. A particularly important role to play is in the tripartite Industrial Relations Charter that laid the foundation for an industrial relations system already prior to Kenya’s independence in 1963. International standards, especially ILO Conventions ratified by Kenya are used by the government and courts as guidelines, even though they are not binding. (COTU (K), et al 2003)

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The adoption of national labour laws and regulations is an important means of implementing international labour standards, guaranteeing Decent Work and promoting the Rule of Law. As they regulate constantly evolving employment and industrial relations, labour laws are subject to regular assessment and reforms. Under the ILO Constitution, the Office is committed to extending its advisory services to Member States and to assist tripartite constituents in assessing and, where necessary, framing or revising their national labour laws. (Kaufman, 2004)

Salamon, (2005) stipulates that as companies grow, employee policy manuals have to grow with the organization. Companies will have to hire new employees and new supervisors, and that means they will need to commit to writing exactly how employees ought to be treated and the behaviors the company won't tolerate. In general, employment legislation is expanding to cover a larger group of employees. Along with gender, race, color, religious beliefs, national origin, age and disability, some jurisdictions protect employees who are discriminated against on the basis of appearance or sexual orientation. This is a prerequisite in ensuring that high standards of employee relations are maintained within institutions, organizations and companies.

2. The Concept of Employee Relations

Employee relations has gradually shifted from mutual bargaining and trade union concept to depict individual relations with the employee. In international HR circles, the voice of the employee and the contract that is psychological is now a thing that is acceptable by the employers and they are actually evident in the policies that are made and even in the strategic visions of most international businesses (Budd and Bhave, 2008).

The competencies of the employees are still valued as vital to the achievement of set targets concentrating on the involvement of the employees, their engagement and involvement. A vital issue for international HR managers is the direction of focus on the things that will create a noticeable difference in organizational performance meaning that the contact that is psychological between them and the human resources they control can lead to improved performance but few of them do much to control that contact (Blyton et.al, 2008)

The realization of the set goals of an organization is actually dependent on the employee performance. The combination of commitment to an organization by its employees is known as the employee engagement (Foot & Hook, 2005). There are a variety of human resource management principles that are key to the construction of employee engagement in an organization. One of these principles is the voice of the employees in the decision-making process that ensures that they are recognized as vital contributors to the growth of the organization.

Most organizations have implemented methods of communication and recognition of employees that are proving to be beneficial in the running of a business. Institutions that are rigid and have not adopted open communication strategies tend to have more workplace related conflicts especially at various management levels due to the perceived threat posed by the barriers of communication. Employees tend to be more productive and committed to the strategic objectives of an organization if they are made to feel that they are part and parcel of the running of the organization. A vital part that improves the employee relations is the act of delegation of duties that ensures that power is not centralized on certain individuals and the employees given the leeway to be managers of their own work. (Gerhard, 2005)

According to Kaufman, (2004a) real organizational policies are usually spiced by communication which is a two way traffic that is accentuated by dialogue rather that one way instruction based policies. Professional HR managers must ensure that there is a lot of professionalism and persistence for them to get communication within the different levels in an organization right. They must be able to focus the positive mannerisms and outcomes and adopt an optimistic approach of problem solving and offer solution focused advice to the management about the implementation of HR policies.
They also need a lot of professionalism for them to be able to interpret the attitudes of the employees and manage conflict that may arise in the workplace. They should also be able to place the policies of the organization in a manner that suits the perceived character of their employees. This will be easier than trying to mould the characters of the employees around the policies of the workplace because the policies keep changing meaning that there will be a strain on the employee relations if the character of the workforce is to be changed whenever there is a policy change (Kaufman, 2004a).

The influence of the trade unions in addressing the interest of the employees may still be very applicable in the public sector but it is on the decline in the private sector. This is because the conventional employee relations models are not in line with what the HR management is supposed to do today. This means that the term employee relation may therefore seem ambiguous when looked from a traditional angle because the conventional perspective has not indicated vivid boundaries. This means that employee relations may have replaced the role of industrial unions meaning that, they are a vital component and attitude skill that is needed by the professionals in the HR management, where the employees are largely being viewed as business partners. (Kelly, 2008)

Employee relations aspect of engagement offers the HR managers an opportunity to monitor a wide range of variables that include the attitudes of employees, their mannerisms and also represents some concepts that the employees should comprehend as they commit themselves to the goals and the objectives of the companies that they do work for. This calls for the HR managers to see the bigger picture and familiarize themselves with a wide range of human relations skills that include the process of workplace communication and the application of mediation as a workplace problem solving approach (Kaufman, 2004b). Employee relations should not be neglected because it is very vital to the performance of any organization. Where there are strained relations between the management and the workforce, a lot of time and resources are wasted trying to solve conflicts that would have otherwise been avoided if there were sound human resource practices to enhance good employee relations.

3. The Global View to Employee Relations

In the international business the traditional industrial framework of relations may prove to be obsolete meaning that it can no longer be applied to solve workplace conflicts that remains a key issue for many international organizations (Salamon, 2005). Currently, most international human resource managers use the concept of mediation whereby the HR management can achieve a win-win situation that is in line with its policies by emphasizing on discipline that is formal and positive procedures of tackling the grievances of the employees. The interests of the employees may clash with those of the employers but the HR management should be able to avert industrial action that may heavily dent the image of an international business. This calls for a very professional and sound management of the diverse interests of the employees without provoking some realities that may mess up with the image of an international business (Salamon, 2005).

The business partner Model of IHR can be used to identify a value frame by which HR managers in international business require in order to improve employee relations by using the soft skills approach (Sisson, 2010). These are very vital in the management of the relationship between the employee and the employer by making sure that the interests of the employees are taken care of without raising any issues that may dent the operations of the international business. This is one of the chief works of the employee relations manager who needs to resolve the issues regarding the business strategies and the alignment of the human resources (Sisson, 2010).

Lambert, (2010) argues that during the past decades employee relations was viewed by governments as a means of preventing or minimizing conflict. In South Asia the objective was also achieved through restrictions or prohibitions on the freedom of action of employers in matters such as termination of employment, closures and even transfers of employees. On the other hand, several South East Asian countries resorted to measures to restrict trade union action and to control unions, as well as to avoid union multiplicity. While in South Asia the focus of employee relations was on equity from the point of view of
workers and unions, in South East Asia the emphasis was on economic efficiency and less on worker protection laws.

Low unionization in many Asian countries, strong governments in South East Asian countries and South Korea, and perceptions that unions could be potential obstacles to the direction of economic development led to a relative neglect of employee relations. Japan, however, was an exception where, since the 1960s, workplace relations and flexibility facilitated by enterprise unionism dominated employee relations in the larger enterprises. Australia and New Zealand continued to focus on centralized industrial relations, though the emphasis has radically changed in New Zealand during this decade, and is changing in Australia (Kaufman, 2004c).

Employers as well as some governments are viewing employee relations from a more strategic perspective i.e. how employee relations can contribute to and promote workplace cooperation, flexibility, productivity and competitiveness. It is increasingly appreciated that how people are managed impact on an enterprise's productivity and quality of goods and services, labour costs, quality of the workforce and its motivation, and on the prevention of disputes as well as on aligning employee aspirations with enterprise objectives.

The new information technology, the limits of which are not known in terms of its potential to effect change, is exerting a tremendous impact on the structure of organizations, the nature of work and the way it is organized, and even on the location where work is performed. In societies of the future information and knowledge will be - as in fact they already are - crucial to competitiveness. Technology is already facilitating changes in organizational structures so as to create flatter organizations. This has resulted in less management by command and supervision, in more emphasis on cooperation, information-sharing and communication and in a more participative approach to managing people (Child, 2005).

Modern technology now makes it possible for aspects of work to be performed outside the enterprise, for example from home, and even outside national borders, and this trend is being given a further push by the influx of more females into employment and their preference in some cases, for part-time work. Developing countries are also feeling the impact of these changes (Chamberlain and Kuhn, 2005). Many countries are undergoing a process of industrial restructuring which, in some cases, include privatization of public sector undertakings and technology upgrading. This process has resulted in several social consequences such as redundancy, all of which have sometimes strained the relationships between employers and workers (and unions) and between the latter and the government (Chamberlain and Kuhn, 2005).

According to Dowling & Welch, (2004) another feature in employee relations is the changes occurring in the workforces, to varying degrees, in both industrialized market economies and developing economies. The skills of an employee are, therefore, an issue on which the interests of employers and employees converge, and the "development" of the employee is now of mutual advantage to both employers and employees. Consequently, there is a greater need than before for a cooperative and participative system of employee relations. Further, the many emerging work arrangements do not fit into the traditional employment relationships. Increasing numbers of enterprises are differentiating between the core and peripheral workforce, which consists of those whose work, can be performed by persons outside the enterprise who specialize in it.

Manufacturing companies are becoming essentially assembly firms, and many service organizations now act as brokers, "connecting the customer with a supplier with some intervening advice". There has been the development of another category of employees consisting of increasing number of temporary and part-time employees in the rapidly expanding service industries, some of which experience peak periods (hotels, airlines, shops) requiring a flexible labour force.

The policies and methods of training of workers, for example, reflected what the two social partners had identified as appropriate for the industry. Or again, in Belgium the State recognizes the two social partners as the main formulators of social policy through collective bargaining; even the social security system is managed by the two social partners. The pervasive influence of bipartite arrangements is felt only where
there is a 'balance of power' between the social partners. There is less likelihood of bipartism impacting on national policy formulation in developing countries due to strong central governments in many cases, and their assumption of the role of identifying the direction of economic and social policies.

4. Labour Laws and Employee Relations in Kenya

When conflicting interests have taken definite form and shape, the State has often stepped into protect some of these interests through legal control (Ackers, et.al 2005). In regard to Ackers, (2004) labour laws have amply demonstrated the sociological theory that "law is a social institution which seeks to balance conflicting interests and to satisfy as many claims as possible with the minimum of friction. Since the law must necessarily determine those interests which most urgently require protection over and above other interests, those of labour, where they lack self-reliance, have invariably formed a significant class of interests which the law protects. Hence, especially in some developing countries, the legal rules of an employee relations system have been judged to some extent by the degree to which they further this end.

Kivutha, (2003) states that the genesis of labour law and practice can be traced to the 19th century when need arose for the colonial government to pass legislation to ensure adequate supply of cheap labour to service the emerging enterprises in agriculture, industry and in the service sector. Terms and conditions of employment were regulated by statutes and the common law. The law of contract in Kenya was originally based on the Contract Act, 1872, of India, which applied on contracts made or entered into before 1st of January 1961. The Indian Contract Act applied to the three countries Kenya, Tanzania and Uganda. Since then the Kenyan law of contract has been based on the English common law of contract, under the Kenyan Law of Contract Act (Cap. 23), section 2 (1).

The Industrial Relations Charter spelt out the agreed responsibilities of management and unions and their respective obligations in the field of industrial relations, it defined a model recognition agreement as a guide to parties involved, and it set up a joint Dispute Commission. The Industrial Relations Charter has been revised twice since then, but remained the basis for social dialogue and labour relations in Kenya throughout the years. With the setup of an Industrial Court in 1964, one additional basic cornerstone was laid for the development of amicable conflict resolution in Kenya. (Aluchio, L. 2005). The government has, since independence in 1963, implemented minimum wage policy as one of the means of improving the living standards of workers and promoting employment creation. This is in line with the recognition that low wages is the major cause of employee unrest in the country.

In essence, the labour laws in Kenya and in specific the Labour Relations Act 2007 and the Labour Institutions Act 2007 clearly outlines that workers and employers, without distinction whatsoever, have the right to establish and to join organizations of their own choosing with a view to defending their respective interests, subject to national legislation which determines the extent to which the guarantees in the Acts will apply. Public authorities are required to refrain from any interference which would restrict this right or impede the lawful exercise of this right (Aluchio, 2005).

In more recent times employee relations in Kenya has been influenced by other social sciences such as organizational psychology and behaviour. Traditionally economics and law were two main influences on employee relations, which led to a concentration on macro level industrial relations, and therefore on unions, government and collective bargaining. Organizational behaviour has been influenced by psychology which centres on the individual, and by social psychology which focuses on relationships between people and on group behaviour. It is easy to see, therefore, why human resource management has been influenced by organizational behaviour. Paradoxically employee relations, though dealing with 'relation', has until recently largely ignored the social sciences relevant to behaviour and human relations. While labour problems are the result of imperfections in the employment relationship, employee relations should be seen as the theories and methods which have been developed over time to address and correct these problems, in both the external and internal labour markets (Aluchio, 2005).
5. Current Trends in Employee Relations Issues

Befort et al., (2009) argues that the profound changes occurring in the world of work, and particularly in the labour market, have given rise to new forms of relationship which do not always fit within the parameters of the employment relationship. Employers are now compelled to view employee relations and human resource management from a strategic perspective; in other words, not only from the traditional viewpoint of and conditions of employment and performing a personnel and welfare function. Employee relations and human resource management are directly relevant to competitiveness, and how they are managed will impact on enterprise performance e.g. its productivity and quality of goods and services, labour costs, quality of the workforce, motivation, prevention of disputes and not only their settlement, and aligning employee aspirations with enterprise objectives.

Minimum Wages

In countries which have a legal minimum wage three concerns are evident. The first is that minimum wage levels sometimes tend to be fixed on extraneous considerations (e.g. political), or on inadequate data needed to define the level of wages. The second concern is that such instances have an adverse effect on competitiveness in the global market and on employment creation where the minimum wage is fixed above a certain level (much of the controversy relates to what that level is).

Therefore many employers prefer to see the minimum wage, if there is to be one at all, as a 'safety net' measure to uplift those living below the poverty line. The third concern relates to increases in minimum wages not being matched by productivity gains which help to offset increased labour costs.

Flexible/Performance Pay

Many employers, and even some governments, have expressed a wish to review traditional criteria to determine pay levels such as the cost of living and seniority. Pay systems which are flexible (i.e. based on profitability or productivity) so as to be able to absorb business downturns and also reward performance, are receiving considerable attention. One major problem in this regard is how employees and their organizations can be persuaded to negotiate on pay reform. The objectives of pay reform will not be achieved unless reforms are the result of consensual agreement and are part of a larger human resource management strategy and change in human resource management systems.

Cross-Cultural Management

Due to substantial increases in investment in Asia from both Asian and Western investors, many employers and unions are dealing with workers and employers from backgrounds and cultures different to their own. Many of the resulting problems and issues (reflected for instance in the proliferation of disputes due to cross cultural 'mishandling') fall within the concept of cross cultural management. The problems arise due to differences in industrial relations systems, attitudes to and of unions, work ethics, motivational systems and leadership styles, negotiating techniques, inappropriate communication, consultation and participation procedures and mechanisms, values (the basic beliefs that underpin the way we think, feel and respond), expectations of workers and interpersonal relationships.

These cross-cultural management issues in turn pose the following problems:

i. What would be the most effective programmes for this purpose’?

ii. How can investors in Asia familiarize themselves with the environmental and cultural considerations in the recipient country relevant to their managing people at work?

iii. How could information be collected, analyzed and disseminated?

Dispute Prevention

Equally important are dispute prevention through communication, consultation and negotiation procedures and mechanisms which operate largely at the enterprise level. They are not particularly common in many Asian enterprises. Their importance has increased in the current decade when changes in the way
organizations are structured and managed have created the potential for workplace conflict. A more positive movement from personnel management to strategic human resource management is called for.

**Industrial Relations/Human Resource Management Training**

Not many developing countries in the region have facilities for training in labour law and industrial relations - negotiation, wage determination, dispute prevention and settlement, the several aspects of the contract of employment, and other related subjects such as safety and health. More facilities are probably available in human resource management (the distinction is becoming increasingly thin). Since industrial relations have assumed a particularly important role in the context of globalization, structural adjustment and in the transition to a market economy, employers in each country would need to identify what aspects of industrial relations and human resource management should be accorded priority, how training in them could be delivered, and what concrete role is expected from the employers' organization.

**Balancing Efficiency with Equity and Labour Market Flexibility**

During this century industrial relations and the law in industrialized countries have paid considerable attention to the means through which the unequal bargaining position between employees and management can be rectified. Thereafter the focus in some countries has been more on the relationship between management and labour and their organizations rather than on their relationships with the state. This has been due to the fact that the latter has adopted a less interventionist role than in developing countries, based on the premise that regulation of the labour market should to a large extent be left to employers, workers and their organizations.

6. Summary and Conclusion

International labour standards should be the basis for the development of labour legislation in any country, particularly concerning the Fundamental Principles and Rights at Work as established in the ILO Declaration. It is recommended that the views of the social partners are taken into account when formulating the specific labour legislation of any country, since they will facilitate the future application of such laws. In order to be able to design and conduct a process of labour law making that takes into account the views of the social partners, the Programme can offer courses on how to analyse and design the process, how to apply modern drafting techniques and how to draft or revise labour law in accordance with the ILO standards. (Budd, 2004)

Labour relations and regulation is considered increasingly important to the implementation of economic and social policies on both the national and international level. In order to regulate and stabilize the labour market, and ensure decent work for all, countries need to develop a coordinated labour management system and national labour policies. The labour relations management system often coordinated by a labour ministry should deal with the implementation of policies, programmes and services related to many different areas of employee relations. It is therefore important that the Government has to play a pivotal role in ensuring that the policies and procedures a effectively implemented.

Labour relations management system has to be well coordinated in order to work effectively. However, more often than not officials are only knowledgeable about their specific work area; therefore, they have difficulty in perceiving the system as a whole and in connecting their policies with other areas. Insufficient knowledge of the roles and functions of the system as a whole can also be a problem for newly elected authorities and new officials, as well as for specialists and those providing technical assistance in a specific area. It is therefore important for employees as well as employers to be equipped with the necessary information to guide them in effectively enhancing a sound employment relationship in their organization.
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