Enhancing Industrial Harmony: (Issues for Consideration in the Construction Industry)

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Abstract
The construction industry involves a range of integrated activities, groups and organizations who undertake the production of capital goods. The complexities of construction process and its characteristics make disputes an inherent phenomenon. This research articulates the causes of disputes, their impacts and offers some managerial processes and procedures for the resolution of disputes. The research adopts desk-based study procedure and through a qualitative approach it provides articulated reviews, results from prerian studies and other relevant documents as basis, using relevant documents and reports. The articulations appraise the construction industry; its nature and characteristics, claims and the likely concomitant disputes and other negative impacts. The articulations also border on processes and procedures which enhance industrial harmony in the construction industry. The study reveals that arbitration and other quasi legal mechanisms can enhance industrial harmony in the construction industry. The study recommends the possible exploration of the potentials of alternative disputes resolution (ADR) as disputes resolution approaches in contemporary construction industry.

Key Words: *Construction Industry, Nature and Characteristics of the Industry, Claims and disputes, Dispute Resolution.*

Introduction

Construction is a short-term covering a wide range of activities in civil engineering and building and including both new work and repairs and maintenance, it denotes the activities normally included under the terms building and civil engineering. The construction industry involves a range of integrated activities, groups and organization who undertake the production of capital goods. These goods include both building and engineering works. The industry is also supported by manufacturers of building materials and components, many of which are stocked and distributed by builders and plumber merchants. It is estimated that about 400,000 people are engaged in the production and distribution of these commodities. It is also possible to classify building firms according to the type of work that they undertake as: These contractors undertake large contracts in both fields, often at either national or regional level; they are medium to large sized contractors. General builders (these contractors can be grouped into a number of separate categories: large firms, medium-sized firm, speculative firms, small firms, very small firms of jobbing buildings who confine their activities to maintenance and repair works and specialist firms (Seeley 1983). Whether the project is a building, bridge, dam, pipeline, sewage treatment, water supply system or anyone of the numerous types of projects, it requires the skills and services of a project team comprised of three principals participants. The owner, the designer and the builder, each of these will normally involve other participants as a part of the team effort, either as a

consultant, a quality control and assurance representative, a subcontractor, or as a supplier of materials and equipment. Upon completion of the planning and design process, the project is ready for construction and the advertising or selection process to obtain a qualified construction contractor begins. As it is frequently the case, on a modern complex project, numerous special types of construction are involved and the contractor who entered into an agreement with the owner to build a project finds that the work can better be accomplished by subcontracting with a specialty contractor to do this portion of the works (Seeley 1983).

The term construction can include the erection, repair and demolition of things as diverse as housing, offices, shops, dams, bridges, motorways, home extensions, chimneys, factories and airports thus, the industry (and issues that affect construction projects) are difficult to comprehend fully because: The relationships between the parties are not always clear, the boundary of the industry is unclear. The fragmentation of construction into a large number of diverse skills is inevitable consequences of the economic, technological and sociological environment. There is an extra-ordinary diversity of professions, specialist and suppliers. There is a uniqueness which arises from the individual demands of the project coupled with the continuing evolution of specific rules. This is why it is not sufficient simply to know the contents of standard contracts. The specific details of each project and the continuing evolution of changing roles demand that students of construction can understand the importance of contract structure and the options opened to those who choose project strategies. Projects involve commercial risk and they involve people. These two aspects are the two most significant defining characteristics of projects and project managers (Hughes and Murdorch 2000).

The construction supply chain is composed of the network of organizations involved in the different processes and activities which produce the materials, components and services that come together to design, procure and deliver a building. The problems for process control and improvement that the traditional supply chain approach produces are related to: The various organizations which together form a specific project, at the end of which they disband to form new supply chains. Communicating data, knowledge and design solutions across the organization borders. Achieving goals and objectives across the supply chain and stimulating and accumulating improvement inside an organization that only exists for the duration of a project organized borders. Achieving goals and objectives across the supply chain and stimulating and accumulating improvement inside an organization that only exists for the duration of project (Cartidge 2009).

Hillebrandt, cited in Alagidede (2012), has posited that each construction process involves a plethora of activities, feasibility studies, design, erection and maintenance of structures: project delivery is normally managed by the client, supported by a myriad of professional and commercial organizations, most of which are linked via a hierarchical system of inter connecting contracts. Alagidede, further reiterated that inspite of the different layers and interconnections, the scope of the sector can be categorized under two broad headings: (a) construction and related engineering services and (b) architectural and engineering design).
As consequences of building projects in general being complicated, unique ventures erected in the open, on the ground the condition which is never fully predictable and in weather conditions that are even less so, it is not uncommon for disputes to arise during the course of building operations. There are many reasons why disputes occur, but in the main they are caused by the failure of one or more members of the building teams: To do their work correctly, efficiently and in a timely manner to express them clearly or to understand the full

implications of instructions given or received (Aqua 2007).

Kolawole and Anibogu (2004), have contended that the construction industry is subject to high occurrence of conflict. The industry is project based and further cited Hangan and Norman (1993), asserting that the process of taking a project from initial investment appraisal to completion and into use is complex and entails time-consuming design and production process. It requires a multitude of people with different skills and interests and the co-ordination of a wide range of disparate, yet interrelated activities. All this is further compounded by many external, incontrollable factors. Any construction project involves a variety of organization and a large number of people, creating a peculiar heterogeneity. This heterogeneity exists not only within one particular project but is worsened by the fact that there are no two projects like.

Both the demand and supply chains of a typical construction project are influenced by an array of factors which manifest in one form of problem or the other.
Cartidge's (2009) has posited that the industry is vulnerable to economic influences as witnessed by the downturn in the UK housing sector in 2008. In the last 40 years the construction industry has seen a number of "boom and bust" associated with the economic performance. The supply side construction is characterized by the following factor by its structure which makes it difficult to introduce new initiative and working practices to increase productivity and/or efficiency. The time lag between the responses to supply to an increasing demand will nearly always result in a distortion of the market. In addition to construction firms, architects surveyors and alling professions are involved in the concept, design, finance and management of the construction process. Sir Harold Emerson remarked in the Emerson Report in 1964 that: "In no other important industry is the responsibility for design so far removed from the responsibilities of production". What is more, unlike other major industries such as car manufacturing or aerospace, construction activity is carried out: In the air exposed to the elements. At various locations with each project, to some degree being bespoke, unlike a standard model of car or computer. These factors have contributed to some of the problems that the industry has experience, during the past 50years or so where the construction has been confined to a mere assembly process, with little input from the contractor. These characteristics have led to claims that the industry is inefficient and wasteful and that clients have historically received a bad deal and poor value for money, with projects being delivered late and over budget.

Conflicts are fundamental to complete task management. Nagarajan (2010), has observed that uniqueness defined objectives, definite time limits are some of the characteristics of projects. Subcontracting, risk and uncertainty, one-off/customer specific nature changes and response to environments and complexity are variables which define the nature of the construction process.
Prompt and effective settlement of disputes – one of the causes of poor performance of the construction industry in Nigeria, will improve performance in no small measure (Abdul Razaq et-al).

New realities in engineering management include understanding of motivational forces and leadership skills that are essential for effective management of multidisciplinary engineering activities. The ability to build project teams, motivate people and create organizational structures conducive to innovative and effective work requires sophisticated interpersonal and organizational skills. The basis for such a team-centered leadership style is the manager's

ability to foster.
The basis for such a team-centered leadership style is the manager's ability to foster a work environment that is professionally stimulating and interesting. People like what they are doing and unify behind the task objectives, becoming committed to making them happen. Of course, effective engineering leadership requires more than just an understanding of human behavior. However, motivated people are self-directing; and like riding horses, they are easier to lead in the direction they are already going (Thamhain 1992).

Taiga (1998), has also made a case for usage of alternative settlement efforts and reiterated that it has been realized in recent times that rapid societal developments in all facets of economic life, require other means of resolving conflicts among people. Practices in other advanced economic countries the world of would show that over-reliance on traditional litigation methods is under increasing attack. Even in Nigeria, experience shows that the business community is getting dissatisfied with the traditional judicatory processes. The cost of litigation both in time and money has become so prohibitive that they deter all but the most determined parties from attempting to enforce their legal rights through the courts. Large sums of money are spent annually by companies, government corporations and even government ministries on litigation. Organizations worldwide prefer their disputes to be settled in an amicable manner as to leave nothing to poison the business relations already after settlement might have been effected. Systems of dispute settlement voluntarily selected by parties' usually foster stability because of the acceptability of such means to the parties involved. Parties are more willing to abide by the results if they are allowed to select their own system of dispute resolution.

Several author including Aniekwu 1995, Adams 1997, Ogunsemi and Aje 2006 cited in Adul-Razaq et-al (2010) have identified disputes as one of the major setbacks in the Nigerian construction industry. Consequently, resolving disputes has become an inevitable part of project delivery in today's complex and highly competitive construction industry. Enhanced industrial harmony between and amongst various groups and organizations is a sine-qua non for the effective co-ordination of the array of integrated activities that are needed towards the production of capital goods.

Claims and Disputes in the Construction Process
Due to the nature and characteristics of the construction process, claims have constituted an integral part of the construction process. Carzon cited in Adetona (2003) described "claim" as the demand or assertion of right. There is a promise to claim provided there is existence of right to such (legal or otherwise), there is a demand for right (procedural), there has been a loss or expenses incurred that requires compensation and the demand is commensurate with the loss or expenses incurred.

This description of claim is generic, however due to the nature and characteristics of the construction process, what would lead to claims and how such claims could be presented are extensively reviewed elsewhere.
The term "Potential Claim" applied to any differences arising out of the performance of the work that might reasonably lead to the later filling a claim by the contractor if the difference cannot be resolved in the field. The term 'claim' applies to differences that are developed during the life of the contract under protests and potential claims, and that are not yet resolved at the time the contractor returns the proposed final estimate of the amount of additional money or time asked for. There are normally two situations that become claims:

protests and potential claims that have not been resolved during the progress of the work and that have been restated with the return of the final estimate. Situations wherein the first notification of any problem is a claim submitted with the return of the proposed final estimate (Fisk, 1982).

According to Fisk (1982), the second worst way to handle claims is to ignore them; the worst way is to allow them go into litigation. Most disputes if handled promptly and vigorously can be resolved without being permitted to degenerate into large problems affecting not only the cost to the project, but eh progress of the work. It is important to both the efficient progress of the work and the lowest cost to both the owner and the contractor in the performance of "changed conditions" in work, that such charges be negotiated and settled as soon as possible. Keating (1978)'s elucidations provide the relevant basis for discussion on the fundamental elements that make up extra works and subsequently the payments, for which a contractor considers, he is entitled to payment in excess of the original contract sum. To recover such sums he must be prepared to prove that it is extra work not included in the work for which the contract is payable. There is a promise expressly or implied to pay for the work.

Ofoma (1990), has articulated basic requirement that are needed for the presentation of genuine claims which include condition of contract that is applicable to it (i.e. the contractual basis for the claim) comply with all the detailed requirements of the contract (e.g. written notice), indicate how the event or instruction that caused the disruption or loss occurred, indicate the extent of the disruption, evaluate what reasonable loss or expense that can be directly attributed to have caused the claim and the format of presentation (to be clear and neat). To satisfy the above requirements it would be necessary to make reference to related correspondence, site minutes, clerk of works or resident engineer's record, contract conditions and the buildup of tender rates and preliminary items. Claims are divided into four broad categories including: Design and specification changes and additions, changed site conditions, delay claims, acceleration, impact and effect and ripple effect of above delays and charges. A typical complex claim might involve numerous changes and additions to the work by designer causing a schedule delay to the contractor, as well as additional direct costs to perform the changed or added work. The delay could cause a schedule extension which would involve extended overhead costs for job site and home office indirect costs. If the owner directed that the original completion be maintained, the contractor would have an additional claim for acceleration which required over-time and larger work crews from initial plans. The overall impact and effect of the larger crews and possible overtime work could cause productivity losses to both the changed work and the unchanged work through a ripple effect which spread throughout the entire job site. Typically in this situation, the contractor and the owner might agree upon direct costs of the work and the out-of-pocket costs for overtime premium (barrie and Paulson 1992).

Dispute is an argument, debate, controversy or disagreement over ran opinion or position. Disputes are part and parcel human phenomenon and any interaction among human beings is a potential generator of disputes. Any expectation of their total eradication in any human endeavour, is therefore patently utopia (Anago 1993).
It is however important to note that is only unsettled or unresolved claims that eventually lead to disputes or conflicts. Okereke-Onyeri (1998), has opined that a dispute or difference can only arise when there is both a claim and a rejection of it. Lord Denning cited in Okereke (1998), further elucidated on the conditions precedent before dispute or difference can be said to have occurred. There must be both a claim and a rejection of it in order to constitute a

dispute or difference.

According to Asawo (1998), a claim in contract may arise from measurement quantities, delays and disruptions or a combination of them. Claim may be either contractual, extra-contractual or ex-gratia. Contractual claims are founded in the clauses of the contract and the adjudicator named therein. Extra-contractual claims arise when the contract makes no specific provisions for the basis of the claim. Under such situations, redress is sought in common or equity, therefore adjudication is rested in the courts only. Ex-gratia claims arise in situation when there is no ground for redress in the contract or common law. It is therefore a sympathetic claim which the public authorities never honour.
Duncan's (2009) articulation provide relevant items that form the basis for discussion on claim variations: Postponement of the works, adjustment of the provisional sums for undefined works, opening up of work for inspection that subsequently proves to be in accordance with the contract. Discrepancy and divergence between the contract documentation particularly e.g. from bills of quantities and drawings, etc. Perhaps two of the most watch words when preparing a claim are transparency and records.

Disputes / Conflicts in the Construction Process
Due to the nature and characteristics of the industry, claims are a common occurrence. It is unsettled or unresolved claims that eventually led to conflict/disputes.
A trade dispute is defined in the trade union Decree 1973, as any disputes between employers and workers or between workers and workers, which is connected with the employment or the terms of employment, or conditions of work of any persons. The terms of employment of workers may be said to include such things as wages, hours of work, leave and leave pay etc. conditions of work may be said to include the environmental factors that are relevant to the efficiency or enjoyment by the workers of his job. These will include safety and working conditions generally, the health and welfare of the employer etc. with regard to the employer or non-employment of the worker, there are many instances of which have given rise to trade disputes (Ubeku, 1975).

Kolawole and Anigbogu (2004), categorized the sources of conflicts into two broad groups, Internal and External factors and that the fundamentally conflicts arise due to the variety of organizational goals that dependent upon limited resources, due to different perceptions of and approaches to solving the same problem, power struggles within project organization and due to personality differences. Contractual, which include disputes between contractors and client over cost, administrative procedures and schedule are examples of internal sources. Differences between two professional (architects builders, civil engineers and quantity surveyors) over priorities, technical opinions, roles with respect to project management. Often project team members feel that their traditional roles are threatened, as a result they focus on their own objectives rather than project objectives. Labour versus management disputes over working conditions and remunerations. High level of task interdependency of construction activities, inter personal relations which are often affected by tribalism, religious intolerance and other socio-cultural differences and inadequate communication skills in Nigeria construction serve as relevant examples as conflicts arising from internal sources. Distressed economy, political instability, changes in government policy serve as relevant example of external source of conflicts.

Conflicts or disputes are common inherent occurrences that are intrinsically associated with engineering process. This according to Thamhain (1992) stems from the fact that conflict is

fundamental to complex task management and is often determined by the interplay of the engineering organization and its support functions. Complex organizational relationships, dual accountability and shared managerial power are factors that contribute to a new frontier environment, where conflict is inevitable. Understanding the determinants of conflict is important to an engineering manager's ability to deal with conflict effectively. When conflicts becomes dysfunctional, if often results in poor technical and managerial decision-making, lengthy delays over operational issues, low innovation and creativity and a disruption of a team's effort, all negative influences on engineering performance. The observed negative impacts and effects of disputes notwithstanding, conflicts can also have positive influence on the engineering environment. Thamhain's (1992) postulation revealed that contrary to conventional wisdom, conflict can be beneficial when if produces involvement, new information and competitive spirit. This is clearly a new concept which traditional management fails to recognize. Emerging new view on conflict, recognizes conflicts as a potentially creative force in today's engineering organizations, this perspective therefore sees conflict as inevitable, part of change which is determined by the structure of the system and the interplay of its components, conflicts may be beneficial; it may enhance communications, stimulate innovation, unify the team, provide early warning signs.

Dispute Resolution Techniques

Barrie and Paulson (1992), have asserted that the high cost and time delays associated with litigation and the increasing complexity of arbitration has convinced a number of industry leaders that certain alternate dispute resolution methods can help to avoid both delays and high costs of traditional methods. Such alternative methods focus upon creation of favourable climate to encourage settlement of the dispute by parties themselves.

Taiga (1998) and (Cheung 1999) cited in Abdul Razaq et-al 2010), have also asserted that the lengthy on high cost involved in litigation have necessitated the search for other alternatives. These other alternatives are termed Alternative Dispute Resolution (ADR) have become popular because of their flexibility, speed and cost effectiveness.

Several factors influence the choice of DR Techniques in Nigeria. Abdul Razaq et-al's (2010), examination revealed factors that influence the choice of dispute resolution techniques in Nigeria. The results of the study showed that the factors that commonly responsible for the choice of an appropriate technique depend on the technique and the group making the choice (contractors, consultants or foreigners). For **contractors**; confidentiality of the process, formality of the process and the finality of the process are crucial in taking decision for choice of DR technique. For **consultants**, abidingness of the decision, enforceability of the decision and expertise of those involved in the process was high. Mediation and conciliation are most affected by preservation of relationships. Arbitration is choosen for reasons of fulfilling semi-formality.

The dispute resolution method involves a mandatory four-step process. Direct negotiation between the disputants involved (not binding). Mediation between disputants, with a third party expert to facilitate early resolution (not binding). Mini-trial, with company officers cross-examining disputants in each other's presence (not binding). Adjudication, either by private judging, litigation or arbitration (binding). The four-step sequence for resolving a dispute can best be defined by identifying the people involved in each step and their roles in trying to reach an optimized resolution between the contracted parties, without further escalating the dispute. During the first three steps, it is assumed that the parties are acting in good faith to try to resolve the Dispute. Therefore, clear and accurate communication

between all the parties is encouraged in an informal (i.e. oral) manner. In the fourth step, procedures and responsibilities become more formally defined (Barrie and Paulson 1992).
Several arguments and postulations have been made as it relates to the effectiveness and selection of conflicts resolution modes. Effectiveness is measure or function of the situation, the type of conflict to be solved, the personnel and the organization, the power relationship that exists among the parties engaged over a particular problem. Thamhain (1992), has observed that in contrast to the views of general management, research in project oriented environments suggests that it is less important to search for a best mode of effective conflict management. It appears to be more significant that project managers and engineering managers, in their capacity as integrators of diverse organizational resources, employ the full range of conflict-resolution modes, rather like any other method of organizational development, conflict resolution must be managed in a disciplined behavioural framework. The integrity of such a procedure becomes even more crucial for larger groups in conflict or for solving conflicts among groups. The following headings and their contents provide relevant basis for discussion on a multiphase approach to solving organizational conflicts among groups: Preliminaries perspective, image exchange problem identification, organize for problem solving, problem solving, implementation, continuing improvement.

Analyzing conflict provides insight into the engineering management environment and its dynamics, thus enabling managers to choose appropriate resolution modes and thereby management disagreements more effectively. Thamhain (1992), have provided extensive discussion on conflict-handling modes and their characteristics, using the following as relevant headings: withdrawing, smoothing, compromising, forcing and confronting or problem-solving. Withdrawing, fundamentally involves retreating from a conflict issues; this consequently may intensify the conflict situation. Smoothing fundamentally emphasizes common areas of agreement and de-emphasizes areas of difference, they allowing work to continue in areas where there is agreement by the parties. Comprising allows for bargaining and searching for solution which bring some degree of satisfaction to the parties involved in the conflict. Compromising is always the outcome of a negotiation. Forcing, exerts one's view on another's this may cause resentment and deterioration of work climate. However, many organizational or final technical decisions are most made via forcing. Forcing requires that the leader has the proper position power confronting or problem solving, involves a problem-solving approach. Disputing parties solve differences by focusing on the issues, looking at alternative approaches and selecting the best alternative. Certain modes are more important to project managers while others are less favoured. The problem-solving approach of confrontation and compromise seem to be the two most important to project managers and the most frequently used; use of force and withdrawal seem to the two methods least favoured. The effectiveness of conflict-resolution approaches is highly situational and depends on upon the type of conflict to be solved, the personnel and the organization involved and the power relationship that exists among the parties engaged over a particular problem. Confrontation or problem solving not only is the most frequently used method, but also seems to result in a higher project performance. This holds particularly in situations of complex, unstructured decision-making, which do not follow traditional lines of authority or pre-established rationales.

Studies have been carried on the critical factors that affect the choice of appropriate dispute resolution technique (DR) techniques, however nothing seem to exist on the assessment of the influence of the factors of confidentiality, formality of the process, finality of the process, the bindingness of the decision and the expertise of those involved in the process on the

individual (Barrie and Paulson 1992).

Alternative Dispute Resolution Methods

Alternative dispute resolution, ADR, like litigation and arbitration will often involve an independent third party but his function is fundamentally different from that of a judge or arbitrator and is best described as that of a neutral facilitator, whose role is to guide the parties in resolving their differences.

The elements, principles, characteristics theory and methods which surround the application of negotiation as a dispute resolution mechanism are extensively reviewed by Ladan (1998). Negotiation is the process by which parties arrive at an agreement over an issue in respect of which they have different and varying positions, objectives and goals. Essentially, negotiation involves the prescription of the terms and conditions of the relationship. For negotiation to be successful the parties must be willing, ready and able to agree on common grounds. The elements and principles of negotiation must essentially have the following ingredients. Interest, relationship options, legitimacy, alternatives, communication and commitments.

Taiga (1998), has provided articulated reviews which extensively discussed Mini-trial and Mediation as primary ADR mechanisms. On mini-trial, the review highlighted the mode of presentation, the negotiation and settlement mode. Proceedings of mini-trial are relatively short. An interesting feature of some of the settlement is that they involve new contract based on future business relationship, which would be beyond the power of a judge or arbitrator. Mediation begins with a joint season at which an informal presentation is made by each party in the mediation. An independent is appointed, who assist the parties in arriving at a settlement. A successful mediator takes pro-active role in helping and encouraging the parties to find a create solution to their disputes.

Based upon guidance, it would seem reasonable to infer that all the other areas or techniques of dispute resolution are fundamentally variants of negotiation. The strategies and tactics for all forms of dispute resolution, also have principles, elements and characteristics which serve as the relevant basis from wherein disputes are settled, using the other techniques.

Arbitration as a Dispute Resolution

Arbitration is a quasi-legal dispute resolution technique has the potentials to enhance harmony in the construction industry. The technique has some advantages over the adoption of strictly legal mechanism. Arbitration according to Fisk (1982), is the voluntary submission of a dispute to one or more impartial persons for final and binding determination. It is private and formal and is designed for quick, practical and inexpensive settlement. But at the same time, arbitration is an orderly proceeding governed by the rules of procedure and standards of conduct that are prescribed by law of relevant legal and construction associations. The associations administer arbitration in accordance with the agreement of the parties and to maintain panels from which arbitrators may be chosen. The arbitrators are quasi-judicial officers. Taiga (1998), describes arbitration as the submission of a disagreement between two or more persons to other impartial persons for resolution. More technically, arbitration can be defined as the reference of dispute or differences between two or more persons for determination after hearing both sides in a judicial manner by a person other than a court of competent jurisdiction.

Keating (1978), has posited that the settlement of disputes arising out of building contracts by procedure of arbitration has the following advantages: where the substantial questions of disputes are matters of fact, a final conclusive decision can be obtained in a manner which is

theoretically quicker and cheaper than the ordinary process of law. In particular the appointment as arbitrator of a person experienced in building matters such as an architect or engineer may shorten proceedings as he will have personal knowledge he is entitled to use, of customs and technical terms and processes. The amount of evidence required to prove a case may therefore be materially less than in proceedings in the courts where the role of the judge is to find strictly on the evidence before him. The modern tendency, more especially in arbitrations is to endeavour to uphold the awards of the skilled persons that the parties themselves have selected to decide the question at issue between them.

Fisk (1982), also agreed and has asserted that arbitration as a dispute resolution technique has advantages over the normal legal process; which are that the strict rules of evidence do not apply, the arbitrator is the final judge of matter brought him, his decision will not be reviewed on its imprint where procedures where fair and impartial; the strict rules that govern the law of evidence in civil action in courts do not apply. More than a years ago in 1854, the United States Supreme Court said: "if an award is within the submission and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set it aside for error, either in law or in fact. A contrary course would be a substitute of the judgment of the chancellor in place of the judges chosen by the parties, and would make an award, the commencement, not the end of litigation".

Principles, Processes and Procedures govern the adoption of arbitration technique like any other dispute resolution techniques. Asawo's (1998) articulation, has submitted that the decisions of the arbitration lack inherent force until pronounced upon by a competent judicial authority and that it is very doubtful, if any arbitrator would want the courts to disagree with our decision. To avoid such ugly situation calls for intrinsic knowledge of the rules of natural justices as currently applicable in the construction industry.
Acquisition of intrinsic knowledge forms a good basis for understanding the underlying principles, processes and procedures of arbitration. This is whey references to and the interpretations of provisos of clauses of relevant acts of legislature as may be contained in various standard forms of building are considered of utmost importance in matter of facts that substantially border on arbitration.

The correct procedure for claims and disputes should derive their legitimacy from the standard forms of contract. In addition, such procedures should be useful to clients and contractor and relevant professionals and other personnel involved in the construction process to respond appropriately to issues that may lead subsequently to claims and consequential disputes if not handled carefully (Wahab 1993).

Chinedo (1994), using the Standard Form of Building Contract (S.F.B.C), and its relevant clauses and provisos has articulated matters that may be referred to arbitration. Clause 35.1, gave details of the nature of the disputes or difference that may be the subject of reference.
The appropriateness of time, is an important factor that calls for consideration during the arbitration process and procedure for arbitration and that arbitration process cannot take place anytime because of its labourious nature and the seriousness of its procedure, it's therefore very important that it takes place without adversely affecting the progress of the works. However, there are certain obvious situations which demand instant arbitration. Such situations depend on the nature of the dispute and the special circumstances that may have arisen. They include: Dispute in connection with the replacement of the architect or quantity surveyors in the events of death, dismissal or termination of the appointment of either the

Architect or Quantity surveyor. Dispute as to the authority Architect of the Architect to issue instructions, Alleged improper withholding of contractor's certificate. Dispute in connection with contractor's right to an extension of time. Dispute in connection with as outbreak of hostilities or with war damage: Disputes in connection with right to parities to determine the contract.

Issues relating to the serving of notice of disputes, appointment of arbitrator, the hearing and award are extensively dealt with elsewhere by Chinedo's (1994), arbitrations which borders on the articulation procedure for appointment of the arbitrator, procedure for appointment by mutual agreement of the parties, Procedure for appointment by an institution, procedure for appointment by the court. When can an arbitrator be appointed, who can be appointed an arbitrators when the appointment of an arbitrator is valid, power of the arbitrators, the sources of arbitrators powers, the limitations of the arbitrations. Other issues include the revocation of the appointment and replacement of the arbitrator, the arbitrator's remuneration. The formal hearing, the awards the form and character, the types and the effect of the award, conditions for a valid award, enforcement of the award, recourse against award, effect of remission of an award and the settlement of costs.

Taiga (1998), has articulated conditions precedent for an arbitration to take place as follows: that at the commencement there must be a dispute or differences between the parties, unless there is a dispute there is nothing to be referred to arbitration. The dispute or difference must be over matters which are justice able. Validity is determined by the ability to enforce the award as a judgment of the court. The parties in dispute must agree not in compulsion or coercion of law but by their own accord to submit their dispute for resolution by a third party. The agreement to submit to arbitration must be a binding contractual obligation not tainted with illegality. It must provide for the settlement of the dispute or difference by a third person chosen by themselves or by somebody they have agree should appoint the third party if they fail to agree upon one, e.g. an appointing authority. There must be formal reference of the dispute to the decision of the third party. That third party must expressly or impliedly be required to decide according to law.

Standard form of building contracts in Nigeria provided that the law of the Federal Republic of Nigeria shall apply to any arbitration, under contracts and that in all matters concerning arbitration, the standard form will always provide the laws of the countries to apply. The arbitration and Conciliation Decree No. 11 of 1988, now (The Arbitration and Conciliation Act CAP 19), provides the stipulated provisos and guidelines for dealing with matters of arbitration. The provisos constitute the legal frame-work for the fair and efficient settlement of industrial disputes by arbitration and conciliation. The procedure for settlement of industrial dispute as contained in the Arbitration and Conciliation Act (CAP 19) revealed the following general principles: That arbitration; as a means of settling disputes does not lay too much efficacy on the strict rules of evidence (civil action) that govern civil action in court. There must be hearing of all parties to the disputes and an award must be made. There must also be a panel of arbitrator; this most times is composed of three arbitrators. The arbitrator is governed by the majority rule. The laws of the Federal Republic of Nigeria (CAP), further authorizes the minister of labour and productivity to appoint a fit person to act as a conciliator, whose prime duty it is to inquire into the circumstance and cause of the dispute and to endeavour by negotiation with the parties to bring about a settlement: Where settlement is reached, both parties to the dispute and the conciliation will sign a memorandum of the terms of the settlement and this memorandum is forwarded to the minister of labour

within fourteen days of the settlement, the minister shall confirm the settlement as contained in the memorandum. The terms as from the day in which it is confirmed, become binding on parties to whom it relate. In an event that the conciliation, fails to settle the dispute, he will submit a reports of his failure to the minister within seven days. The minister subsequent upon this, would refer the dispute to the industrial Arbitration Tribunal.

Ubeku (1975), has also noted that before a dispute is referred to arbitration, the commissioner (now minister) must ensure that the parties have made reasonable efforts to reach agreement by negotiation and also made full use of any facilitates available to them for settling the disputes through conciliation. Arbitration is a last resort to be used when there has been a genuine failure to reach a negotiated agreement.

Based upon this guidance, it would seem reasonable to infer that the rationale behind the adoption of conciliation on a dispute settlement procedure is to give the disputants sometime, if they would calm down, rub minds and settle their differences without much formal involvement. Conciliation and negotiative procedures should be exhausted before parties go to arbitration.

Ankrah et-al (2012), have also noted that the Industrial Relations (IR) within the Ghanaian construction industry is based on provisions in legislations and regulations, thus bears the industrial relations ideology of pluralism and collectivity. Companies rely on the Labour Act 2003 and the collective Agreement of Act 651 by the negotiation or joint negotiation committee in managing their labour force.

Overview: Dispute Resolution Approaches and Procedures

Negotiation is a primary method for resolution of disputes. By virtue of negotiation many cases have been settled without the necessity for a complaint being filed by a court. Even when complaints are filled in court, a sizeable percentage will be resolved by negotiation without the need for a full trial on the merits (Ladan 1998). Negotiation is therefore a foundation process for dispute resolution. Hartfield, 1989 cited in Ladan (1989) emphasized this, in his presidential address to the society for professionals in Dispute Resolution. Ladan has observed further and submitted that all of the other areas of Dispute resolution are manifestations of negotiation. Negotiation links the various sector and processes of dispute resolution. If one understands the renegotiation process and where he or she fits in as the third-party impartial serving that process, then one can serve as a dispute settler in different fields. We are all in the business of helping two or more parities reach a mutually acceptable solution to perceived problems…… And this we do, by enabling the parities to negotiation.

In settling disputes, irrespective of the technique to be adopted some requisite skills, attributes are desirous for the effective management of conflict. Thamhain (1992), has postulated that the work environment is changing rapidly and dramatically. With increasing technology and changing organizational structures, we expect people to be accountable, self-directed and team-oriented. Their expectations lead to new performance norms and leadership styles. Especially for dealings with conflict, we have learned that autocratic styles are ineffective. While autocratic or forcing methods of handling conflict can often stop the apparent conflict, they do not solve the underlying problem. Conflict may continue below the surface unchecked; it might even get stronger, less diagnosable and manageable. At the same time, potential benefits are being lost. In today's environment, effective management of conflict requires proper attitudes and skills. There are many approaches to conflict management as there are managers. Anyone who has handled a conflict situation has quickly learned some lessons on what to do or not to do in a similar situation the next time around. However, what we found systematically through formal research is that managers who could

real effectively with conflict had certain skills and attitudes in common which are summarized as follows: Before trying to mediate, managers tried to understand the nature and implications of the conflict, not just the symptoms. The effective manager can diagnose the conflict and determine why it occurred, who is involved, and where it leads. The team or its leader could successfully isolate the problem areas and eventually deal with them successfully. They built trust with their people and earned credibility to be qualified to help in the search for solutions. They were perceived as sincere in their attempt to help and find acceptable solutions to all parties. They facilitated communications with all parties involved in the conflict and built coalitions among competing groups. Steering committees, quality circles, design reviews, and technology transfer teams are examples of organizational vehicles for facilitating cross-functional communications and support. They could stimulate professional excitement, work challenge, and a clear business direction. When people see the need for their contributions and the potential for professional recognition, they are more likely to cooperate toward the organizational mission and its objectives. Such a professionally stimulating work environment is one of the strongest catalysts toward effective conflict activity, and team unification. They minimized power struggles and polarizations of groups along functional, professional, or ethnic lines. They ensured a collegial work environment. Where people from all parts of the organization were proud of their contributions and had a strong sense of worship. They could sense personality conflicts and handle them "off line." They recognized a deadlocked situation and its dysfunctional consequences and could mediate, intervene or, if necessary, force a conflict resolution. They could lead a group toward resolving their internal conflict or a conflict with other groups. Managing such organizational conflict usually required a multiphase approach. They help their people to implement solutions, which were worked out and agreed on. Finally, effective conflict managers monitored the organization carefully after a conflict had apparently been resolved to ensure that the organization stabilized completely and absorbed the new solution as permanent.

Managing conflict, now and in the years to come, requires a skillful assessment of the situation, a good understanding of the organization (its people and the interaction of all business components, including the market) and great leadership. As a change agent and facilitator, the manager provides the organizational framework and human interaction to continuously deal with the inevitable conflicts. This requires vision, empathy, wisdom, and leadership, and the courage to experiment beyond the known parameters of conventional methods.

The effective use of ADR process in commercial contracts demands a degree of sophistication from the parties when drafting agreements, whether all potential disputes should be submitted to the same process, characteristics, preferable to certain dispute, but for others all require specialist consideration. Parties to a commercial agreement adopting ADR must consider the full spectrum of course their relationship and attempt to consider the best ADR or a combination that best suits the conditions of the relationship. Considerations should be given to the scope of clause, how broadly should it apply, should it apply to only certain times of disputes or to all types, if only to one type, how does one deal with the inevitable characterization issued. Should the disputes that are likely to rise be subjected to the same resolution process (Taiga 1998).

Barrie and Paulson (1992), has submitted that where possible, the owner choice of the appropriate contract provisions can help to place the risks with the party who has the ability

to influence the outcome. Fairness in allocating risk is one of the major steps that an owner can take to help achieve a smooth-running construction project and to avoid costly and time consuming litigation and arbitration. Changes during construction are the major cause for disagreements and disputes. Changes can be initiated by the owner or designer, the contractor or by outside regulatory agencies or other parties: Major claims occur when the contracting parties are unable to agree upon change order for change or disruption. Types of claims include: Design and specification changes and additions, charged site conditions, delay claim, acceleration, impact and effect and ripple effect.

Alternation dispute resolution methods show considerable promise in helping to avoid the high cost and delay of arbitration and litigation. Methods that involve the parties themselves, coupled with guidance from recognized impartial industry professionals can include: Direct negotiation, mediation assisted negotiations, mini-trial and dispute resolution review board.
Abugu's (1997) heading provide relevant basis for discussion on the requisite character traits, and training, and skills of a good negotiator. Good communication skills, pleasantries and politeness, good rapport, ability to maintain a cordial atmosphere.
There is a need to adopt some **strategic and tactical measures during negotiation**. Abugu's (1997) articulation provide relevant basis for review on some of these issues. Ascertaining the subject matter of the negotiation, articulate the core or topical issues for discussion. Ascertain the date and timing of the negotiation, the negotiation team from the other side, choosing your own team for the negotiation, setting your least acceptable result, setting your maximum supportable position, and ascertaining your best alternative to a negotiated agreement.

Adopting tactical approach is an inherent boost towards attaining a successful negotiation by negotiators. Abugu (1997), has postulated that being tactical is one of the basic skills which a successful negotiator must inherently possess, it involves an analytical mind quick at comprehension and decision making. Some useful tactics are to direct your attention and that of the other side to merit of your proposal. Do not defend your ideas, invite criticism and advice. Use questions a lot, instead of statements. Forestall extreme and escalating demands from the other parties. Keep linkage in mind; bring important issue to bargaining table, in a manner that makes the opponent to resist. Insist on package of terms, not isolated or piece meal mode. One more for the road, always attempt to exact one last concession from your opponent. Ascertain the extent and limit of the authority of your opponent. Opt for silence when it is absolutely necessary so to do, especially when unnecessary demands are made. Employing delay tactics can be very effective. Do not give a deadline, when your opponents need is lower than yours. Avoid walk out on your opponent, if your need for the deal is high. Flattery and humour, breaks deadlocks and open doors. Other tactics are to always open lines for further articulated discussion based on fairness, interest and courtesy. Promptly put a stop to common tricks when your opponent attempts to use such on you. Adopt psychological warfare.

Conclusion

The construction industry and its processes are characteristically by nature of its activities, organization, structure and group of personals and the inter-linkages between the various organizations and groups are highly violate and very susceptible to inherent and advertent risks which can manifest in claims, if unsettled or left unmanaged, leads to litigations. Crisis and Disputes are an integral part of the construction process, expectation of a total eradication of them is utopia. Dispute arises mostly as a result of the general lack of understanding and appreciation of what constitutes a claim". Disagreement usually stems from the interpretation

of collective agreement or the non-implementation of the whole or parts of the agreement reached.

Disputes are resolvable inter alia via: Negotiations, Mediations, Conciliation, Arbitration and full blown litigation. Negotiated Settlement is better options for dispute resolution than the formal litigation or arbitration; however in matters of strict point of law and fraud, legal proceeding by wall of litigation is a better option to other restorative proceedings. All areas or the other types of dispute resolution technique are fundamental variant of negotiation technique. Dispute resolution techniques necessarily have to adopt strategic and tactical approaches towards the settlement of disputes. The principle, elements, characteristic provide the relevant and necessary basis for frame work for the statistic or tactical measures. Cost effectiveness, ease of application, the time factors are essential parameters that influences the option of Alternative Dispute Resolution methods. The principles and process of legislation can be cumber some, time consuming and financially more involving.

Conflict is fundamental to complete task management. It is not only important for project managers to be cognizant of the potential sources of conflict, but also to know when in the life cycle of a project they are most likely to occur. Such knowledge can help the project manager avoid the detrimental aspects of conflict and maximize its beneficial aspects. Conflict can be beneficial when disagreements result in the development of the new information, which can enhance the decision making process. Finally when conflict does develop, the management needs to know the advantages and disadvantages of each resolution method in order to optimize its effectiveness of his or approach. The nature of engineering management the need to elicit support from various organizational unit and personnel the frequently ambiguous authority definition and often temporary nature of multi disciplinary engineering managers activities all contribute to the complex operations environment that engineering managers experience in the performance of their roles A number of suggestive headings outlined below increase the engineering managers' effectiveness understand the motivational needs, adapt leadership to the situation, accommodate professional interest, build technical expertise, plan ahead, provide role model (Thamhain 1992).

Recommendation

Claims and disputer in the construction industry and their resolutions and settlements are essential elements of the construction process. The following conditions and the enhancement of industrial harmer: At all times if agreement are to be reached during negotiation all parities should be prepared to chase their positions when necessary. It is worthwhile to strive for negotiated settlement and avoid the more costly formal processing (Litigation and Arbitration) The correct procedures for claims and disputers should derive their legitimacy from the standard form of contract, The following suggestions and strategies should be adopted during the settlement (agreement-making process) between parties: presentation of formal demands (i) Reviews and evaluations of the demands made an the sake fixed for formal hearings. (ii) The next stage is confessional, parties should be willing to give and take. (iii)Adjourn negotiations, when agreements cannot be reached on one or two items. Also during the negotiations do not threaten or be threatening. A stable temperament and emotions should always be maintained at all times during negotiations. (iv) Articulation of issues into a memorandum of agreement. (v) In an event that agreement fails, parties should follow stipulated processes and procedures as outlined in the provisos relevant legislature that derive their legitimacy from standard form of building in readiness for an arbitration process and subsequently perhaps a litigation process.

Developing fair contract documents, fostering timely jobsite communication in a non-adversarial climate and utilization of recognized construction industry professional in an advisory capacity can be of great parties to settle disputes in an economical and timely manner while avoiding the time delays and heady expenses adjudication by outside parities through arbitration and litigation.

Construction industry mediator and arbitrators (QSRBN & NIQS) is to explore the option of encouraging the popularity and acceptance of Alternative dispute resolution (ADR) by organizing courses. Firms and group should begin to retain in house mediators to prevent and manage internal dispute. This will assist in the firm management of internal conflicts
Developing fair contract documents, fostering timely jobsite commutations in non-adversarial climate and utilization of recognized construction industry professional in an advisory capacity can be of great assistance in allowing the contracting parities to settle disputes in an economical and timely manner while avoiding the time delays and heavy expenses of adjudication, by outside parties through arbitration and litigation.

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