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Indian Journal of Health & Medical Law
Volume 1, Issue 2
www.stmjournals.com

Dichotomy between the Cameroonian Labour Code and Employees' Right to Health: The Case of Cameroon Tea Estate

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Abstract

The Cameroonian Labour Code is instrumental in the protection of employees' rights in an enterprise, but none of these rights is as important as the right to health. Unfortunately, despite the importance accorded to employees' right to health, the Code does not spell out what therefore would amount to this right. Thus, should an employee encounters an accident out of the premises of the enterprise and or on his way to spend a recognise event with family, what says the law as to the definition of such a situation. It will not amount to work place accident or professional illness, then how does the law qualify such a case? This therefore leaves the employers to toast employees as toys since there is no definition to such situations. Thus, the preaching of the Code is not what takes place in the field and on daily bases; employees because of the conduct of the employers to the protection of their rights dismiss themselves from work.

Keywords: *Labour code,employees,right,health,enterprise,law,labor,accident,employment*

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INTRODUCTION

Good health is fundamental to a full and active life [1] in an enterprise. Should employees' right to health be protected, the goal of that enterprise is achieved since work cannot be carried out by an unhealthy worker. Good health is therefore wealth for an enterprise. Amongst other elements that cause ill-health to the employee, what if an employee incurs an injury out of an enterprise and sustain serious injuries, which affects his/her employment relation for more than a year, how should such a scenario be considered, what responsibility does the employer owes to the employee? Promoting the guarantee in an enterprise to long-serving workers and workers on short-term is primordial. Health care is everybody's business and the law should intervene in enterprises so as to promote public health for workers [2]. The case of employees' right to health when an accident occurs during working hours, out of working hours and in and out of an enterprise has been a cause for concern for workers, their advocates, and researchers.

Fundamental issues that need response to are; what is an industrial accident, distinguish from common accident or accident out of an enterprise? What is the employer's responsibility when an employee runs into an accident out of an enterprise and or within and outside working hours? When an employee resigns from work because an employer fails to honour his obligations with regard sick benefits, and other dues that accrue, what says the law? This paper thus seeks to examine employees' right to health as it is under the Code. This is to see if the Code gives an inside of what actually amounts to employees' right to health, and the experience in enterprises, as Sections 32 and 98 of the Code are so loosely drafted. But before x-raying what amounts to this right to health, it would be of interest to examine the notion of employees' right to health and who a worker is to benefit the goodies of health right.

THE NOTION OF EMPLOYEES' RIGHT TO HEALTH

Among the numerous fundamental human rights recognised by the labour law and other instruments is the employee's right to health, which forms the corpus of this article. The enjoyment of employees' rights represents an important condition for the protection and promotion of employees' health defined as a state of complete physical, social, mental, and social well-being, not merely disease free or infirmity [3], rights to the highest attainable standard of physical and mental health [4], including both health care, access to all medical services, clean water, nutrition, sanitation, adequate food, decent housing, social security, healthy working conditions [5] and a clean or healthy environment and leisure [6].That is an enabling working condition that does not jeopardise health. The employee's right to health has the following characteristics: guarantee a system of health protection for all; right to health care and living conditions that enable employees to be healthy such as adequate food, housing, and a healthy environment [7]; and, health care that must be provided as a public good for all, financed publicly and equitably.

DISTINCTION BETWEEN WORK ACCIDENT AND COMMON ACCIDENT

The definition of an accident provided by Heinrich [8] in the 1930s is often cited [9]. Heinrich defines an accident as an ''unplanned and uncontrolled event in which the action or reaction of an object, substance, person or radiation result in personal injury or the probability thereof'''. Variations on this definition can be found through-out the safety literature [10]. Bird and Germain for instance define an accident as an unintended or unplanned happening that may or may not result in property damage, personal injury, work process stoppage or interference or any combination of these conditions under such circumstances that personal injury might have resulted [11]. Occupational accident contains the following elements:

- Forfeits, sudden, or unexpected external events;
- During working hours/ on the way to and back from the workplace;
- Arising out of work performed in the course and scope of employment;
- Bodily harm; and,
- Causal link between the event and the harm: [12]

Occupational accident occurs during working hours and at the workplace [13] and/ or on the way to and from the workplace. In a broader sense, occupational accidents also include community accidents [14]. While Article 7 of Law of 10th April 1971 of France describes accident at work as ''...tout accident qui survient à un travailleur dans le cours et par le fait de l'exécution du contrat du louage de travail et qui produit une lésion'' [15]. On the other hand, accidents out of an enterprise is defined as a sudden or unexpected external event that happen to an employee out of work either by spraining any part of the body on the road, in the farm, or anywhere or by a motor vehicle, bicycle or any transportation means out of working hours, maybe travelling to spend an event recognised by the state and the enterprise or a public holiday [16], with the family back home or any other activity and therefore sustain bodily harms or injury as a result of the accident. Thus, this is what is a call for concern since the law is more focused on occupational accident or disease [17]. Occupational accident or disease and common accident or illness, all affect employees' right to health and all should be treated fairly, since health right is important to all.

The Cameroonian Labour Code [18] in it section 98 is to the effect that:

every enterprise and establishment of any kind, public or private, lay or religious, civilian or military, including those where persons are employed in connection with work in the professions and those belonging to trade unions or professional associations, shall provide medical and health services for their employees.

The Code therefore has not distinguished between industrial accident and common accident or accident out of work and accident out of working hours. The question now that begs for answers is, if an employee has an accident out of the enterprise and on the way to an event [19], which the purpose of the

event is known by the employer, can it amount to industrial accident? If not, then what is the responsibility of the employer? This therefore, would amount to common accident or non-professional illness.

What is the responsibility of the employer when an employee incurs common accident? Case at hand which is instrumental and practical in the enterprise, which has not gone to court, is that of Atanga Vivian Kien, a worker of C.T.E. Facts of the situation. Atanga Vivian Kien, who has been a worker at the enterprise with the then Cameroon Development Cooperation (C.D.C.) which was privatised and now in the hands of a private individual called C.T.E. She was employed in 1987 by the C.D.C. till date a worker of the C.T.E. after the enterprise was transferred.

On the 24th of December 2016, after work, on her way to the village Mbei in the Santa sub-division to spend the 25th of December 2016 with the family, ran into a fatal motor bicycle accident. This accident is as a result of over speeding of the other motor bicycle that caused the accident, which the employee of the C.T.E. sustain serious injuries on her legs, other bodily harms as evident by eye witnesses, and her health situation deteriorated [20]. On the 3rd of January 2017, the employee informed by written notice the plantation manager of C.T.E. Djutissa-Dschang, about her accident, to which no response was made. On another occasion, the employee sent a written notice to the plantation manager, who still was silent. After a long while, the manager called the employee to come back to work, which she replied the manager that she is still suffering the effects of the accident and will come back when she is sane health wise. The manager further asked her if she would not come back to work again, which she responded to the manager's question in the negative, saying that until she is fine. On another occasion, the manager called the employee on the 2nd of June, 2018 to come take money and go to a man of God, which the employee went on the 16th of June, 2018 and told the manager that her health situation is not a spiritual problem. Thus, if the employer wants to sympathise with her, they should compensate her statutorily (SSP). Till date, she has not received any allowance from the enterprise. The issue then is, this would not constitute occupational accident, but is common accident or non-professional illness, which then warrants the employer to be responsible for the health services [21], that is statutory sick pay (SSP). In short, health care services [22] which the law should intervene in enterprises so as to play an important role in promoting public health [23] specifically non-professional ill-health of workers. At this length, it would be necessary to ask the question based on section 1(2) of the 1992 Code, who is a ''worker'' within the meaning of this section to benefit from health services of the enterprise?

THE CONCEPT OF EMPLOYMENT: WHO IS A WORKER TO BENEFIT FROM HEALTH SERVICES?

It is incontrovertible to sail the ship by examining the term 'worker' as used in the Labour Code. This is essential because the Labour Code does not protect all classes of workers, but is limited to a certain class of workers. Therefore, Section 1(3) of the Code fore says thus: This Law shall not apply to staff governed by:

1. General Rules and Regulations of the Public Service;
2. The Rules and Regulations governing the Judicial and Legal Services;
3. The Rules and Regulations governing Servicemen;
4. The Special Rules and Regulations of the National Security;
5. The Special Rules and Regulations of Prison Administration Civil Servants; and,
6. The Special Provisions applicable to Auxiliary Staff.

It can therefore be deduced that a worker who is governed by the provisions different from those of the Labour Code invariably are not considered as workers and thus, are outside the line of the Labour Code. So, in Regional Head of P&T Buea V Samuel Ndima [24]daily rated staff of the Ministry of Post and Telecommunication was considered not to be governed by the provisions of Sub (3) of Section 1 of the Code.

Taking into account that the aforementioned employee is not found among any of the above categories of workers, can we suggest that she was an independent contractor? [25] the prerequisite of this interrogation is due to the fact that a fine line must be drawn between an 'independent contractor' and an 'employee' and the award or non-award of damages or compensation maybe defined in this vein when an employee's right to health is violated by an enterprise-C.T.E. Almost all people working with C.T.E. have a contract of employment and are employees or as used in the old days 'servants' [26]. Identifying who is an employee and who is an independent contractor to employment law is deep down, because when an employee of a particular enterprise is injured, at job site or out of work or maybe a common accident on his way to visit his family back home for an event recognised by an enterprise and the Cameroonian Labour Code, it is noteworthy to apportion the rights and obligations of the stakeholders concern. But the epicentre is common accident or out of work accident or what is rather termed nonprofessional accident or employment injury [27] leading to sickness, what is the responsibility of the enterprise to take care of the health situation of the employee? A worker who contracts employment injury that is, disease out of or in the course of employment and not as a result of an industrial accident or of an injury or disease caused by such an accident is considered to have contracted an occupational disease if he satisfies that his disease or accident is characteristic of work he has done or is directly related to the risks peculiar to that work [28].

Distinction between Employees and Self-employed Persons or Contract of Service and Contract for Services

The definition of an employee is vitally important and must be distinguished from that of a self-employed person or an independent contractor [29]. This is because a variety of legal and economic consequences abound from the distinction [30]. There are many reasons for stressing the importance of this distinction between an employee and an independent contractor [31] or to dichotomise an employee from an independent contractor, though; fundamentally, there are essential and subsidiary reasons why this distinction is weighty. This is to examine employers' responsibility for employee's health (statutory sick services) situation. The first separation is based on the notion of vicarious liability [32] that is, when an employer is liable to a third party for the torts of employees [33]. This doctrine [34] touches only on the relationship between the employer and the employee. This therefore catches sight with a contract of service-'employee' and distinct from a contract for services–'independent contractor'. The second distinction is based on the concept of social security benefits [35]. Employees are entitled to unemployment benefit, statutory sick pay, industrial injury benefit and a state retirement pension as long as they have paid Class 1 National Insurance Contributions [36]. Such contributions are assessed on the employee earnings and should be deducted at source by the employer; while self-employed pay lower-rate Class 2 payments [37]. The employer does not have to deduct pay as you earn (PAYE) income tax under schedule E when it concerns self-employed [38] persons pay their own insurance stamps [39], whereas, the employer must pay secondary Class 1 contributions [40] for their employees. Thus, if a person is an employee in the legal sense, the employer's obligations will arise despite any attempt or arrangements made to eschew such duties [41]. Thirdly, wrongful termination of contract cannot be pleaded upon by persons who do not fall under the provisions of the Labour Code and are not employees govern by the Code. Also, an employee benefits from some implied rights and obligations in the employment contract which is not the same to the relationship between an independent contractor and the person for whom he is working for. More extensively, the distinction is necessary since only workers qualify for employment protection rights [42], protection of wages on their employer's insolvency, the benefit of their employer's common law duty of care, and under the health and safety provisions, social security payments [43].

By definition therefore, a worker as per section 1(2) of the Code, articulate thus:

a 'worker' shall mean any person, irrespective of sex or nationality, who has undertaken to place his services in return for remuneration, under the direction and control of another person, whether an individual or a public or private corporation, considered as the ''employer''.

The reason therefore for this definition is to determine if the employer has any responsibility to take care of the health care services of the employee when he/she encounters an accident or non-professional accident and became sick.

Regarding the affinity between the employer and employee, there must therefore be complete subordination [44] to the direction and control of the employer [45] to qualify someone as a worker of another (employer), in order to benefit from the proceeds of statutory sick pay. This view was rekindled in the case of Secretary of State, West Cameroon Development Agency V M.N. Wole [46] wherein Dervish J. (as he then was) had this to say:

I am of the opinion that the labour court was wrong in asserting that the respondent was an employee of the appellants. In as much as not only his appointment but also his salary and other emoluments and termination of his appointment were at the discretion of the Prime Minister, it cannot be said that the respondent was under the direction and control of the agency as envisaged by Sub (2) of Section 1 of the Labor Code. It is true that the respondent served the agency and received his remuneration for services rendered to the agency in so far as the execution of the duties assigned to him were concerned; but I am of the opinion that these alone do not constitute him as an employee of the agency within the definition of the Sub Section of the Labour Code.

The 'giver of life' (employer) to the 'taker of life' (employee) must also be responsible for the employment, remuneration [47] and termination of the contract of employment. The determination of this question: what conditions a person must fulfil in order to be qualified as a worker of another person varies from case to case or depend on the circumstances of each case [48].

The Debate as to Notification of Termination under the Labour Code and Practical Experience on the Field-Conundrums

The debate as to notification before an employment contract comes to an end [49] is of prime importance. That is to say that in an enterprise, depending on the contract type, when an employee encounters common accident and sustain grave injuries that makes him/her incapable and retards him /her from going to work for a considerable period of time [50], it is of essence to notify the employer within a reasonable period [51] in order for the employer to notify or signal the local social insurance office within a reasonable time period for sick pay benefits to be effected. What is the situation if the employer does not respond to the notification of incapacity and sick pay of the worker? Thus, the worker out of vex resigns from the enterprise? Or refrains his/herself from work eternally? Who has caused the dismissal? Invariably the employer because Section 33 of the Code obligates the employer to compensate a worker because of ill-health and if an employer refrains from this obligation, and then he/she has violated the reciprocal link.

NOTIFICATION OF SICK ABSENCE AND PROOF OF INCAPACITY AS A RESULT OF COMMON ACCIDENT OR NON-PROFESSIONAL SICKNESS

It is a condition sine qua non that when an employee is sick or incapable because of motor vehicle accident or any other accident(s) that affect his/her health, it is statutorily correct that a notification should be communicated to the employer [52] within a reasonable time frame for the employer to send the documents to the national social insurance for sick pay and or the employer pays the sick benefit and recoups it from the insurance company [53]. It behoves in this situation on the employee to inform the employer about his health situation that is the detail about the accident beginning from the start to the end, and the first aid he or she received to relieve the situation. All these go with evidence to buttress why the employer should take care of the health situation of the employee. Notification of absence is distinguished from evidence of sickness. Notice of any day of incapacity must be given

to the employer by (or on behalf of) an employee [54]:

1. Where the employer has a fixed time limit and has taken reasonable steps to make it known to the employee, within that time limit. However, an employee cannot be required to notify 'earlier' than the first qualifying day...or by a specified time during that qualifying day;
2. In any other case before the end of the seventh day after that day of incapacity.

Notice of a day of incapacity can be given one month later than as mentioned in (i) or (ii) if there is a ''good cause'' for doing so, or it was not practicable in the particular circumstances, but in any event it must be submitted before the end of the ninety-first day after the day of incapacity. Where the employer has taken reasonable steps to make the desired manner of notice known to the employee [55], that manner must be respected. Nevertheless, the employer cannot emphasis on notice being given:

1. personally, or;
2. in the form of medical evidence, or;
3. more than once in every seven days during the period of entitlement, or;
4. on a document supplied by him or her, or;
5. on a printed form.

The employee can give notice to the employer in anyway desirable by him or her, if and only if done in writing (unless otherwise agreed). Where the employee does not respect the stipulated procedure, the employer may withhold or retain SSP for the days not notified, although the employee maximum entitlement [56] will not be affected [57].

Employees may give information as may reasonably be needed to ease the employer ascertain if there is an entitlement period, and, if so, its duration. Proving common accident or sickness, it must be attested by means of a doctor's statement in a prescribed form [58]. The medical practitioner must specify in his or her written statement that he/she has ordered the employee not to go to work for a period which is usually up to six (6) months [59] Sub C of Section 32 of the Code ordains:

During the workers absence in the case of illness duly certified by a medical practitioner approved by the employer or one belonging to a hospital establishment recognised by the state, for a period not exceeding six months; this period shall be extended until such a time as the worker is replaced.

It is worthy of note that medical information is not required in respect of the first seven days of absence in any period of incapacity for work [60].

There is an implied over hope or presumption in contracts of employment that during the absence of an employee, during sickness, pay would accrue [61], though the employer could contradict the over hope by an express term [62]. While an employee may be entitled to statutory sick pay, this will only give the statutory level of payment and will often be considerably less than the employee's wages. It is therefore of essence to see into the terms of the contract if it gives room for payment during sickness. Such a term may be implied or express, but before a court will imply a term that the employee will be paid during sickness, there must be evidence that the parties intended this to be the case [63]. However, in the case of Mears V Safecar Security Ltd [64], the Common Law presumption in favour of continued pay during the period of sickness was rejected by the Court of Appeal. The Trial Court had to look at such factors as the knowledge of the parties at the time the contract was formed, if the employment was daily, indefinite or for fixed term of years and on occasion what the parties actually did during the contractual period [65]. And in Howman & Son V Blyth [66], the implied term to pay sick pay for a reasonable time period was held in the affirmative, but what if the sick leave is too long and the employer encounters serious difficulties or hardships? In such a case, dismissal of the employee will be justified. The employees may not claim SSP for the first three days of any period of sickness, and the following employees are exempt altogether from claiming SSP: (i) pensioners; (ii) employees for less than three months; (iii) those who earn little to pay national insurance contributions; and, (iv) a person not employed by reason of a stoppage of work caused by a trade dispute at his work place unless the employee had no direct interest in its outcome [67].

Notification of Termination under Cameroon Labour Code and Practical Experiences: a Twist

After examining notice base on the employee's side of the coin, the issue of the type of contract entered into by the parties is not of less importance. This is to determine the manner in which a contract can come to an end wrongfully. Thus, in the case of TRAPP Groupement d'Enterprise V Che Guza Cletus [68], the defendants (TRAPP Groupement d'Enterprise) were road constructors with headquarters in Yaoundé. In the above case, no proper notice was given to Mr Che; he was dismissed summarily and was entitled to the award of compensation because of failure by the defendant to give him proper notice [69]. Failure to give proper notice ipso facto does not mean that dismissal was wrongful. On the other hand the dismissal may be wrongful even if proper notice was given [70]. Against this backdrop, Section 34 (1) of the 1992 Labour Code gives leave to a contract of employment of unspecified duration to be terminated at will and at any time if notice is given beforehand to the other party. That Section provides:

A contract of employment of unspecified duration may be terminated at any time at the will of either party. Such termination shall be subject to the condition that previous notice is given by the party taking the initiative of terminating the contract. Notification of termination shall be made in writing to the other party and shall set out the reason for the termination.

Failure to give proper notice is sanctioned by section 36(1), which is to the effect that:

Whenever a contract of unspecified duration is terminated without notice or without a full period of notice being observe, the responsible party shall pay to the other party compensation corresponding to the remuneration including any bonuses and allowances which the worker would have received for the period of notice not observed.

Notice of termination of an employment contract must not be respected in every case to the other party. The more so reason why Section 36 (2) of the Cameroon Labour Code permits an employer to a contract of service for an indeterminate period to end it without notice in case where the other party (employee) is guilty of "grave misconduct" [71] or the employee conduct is such as to warrant summary dismissal without notice [72]. At this juncture an employer can dismiss an employee without notice only where the employee is guilty of serious misconduct [73]. Little misconduct in itself is not enough to justify a dismissal without proper notice [74].

The contract may be terminated without difficulty when notice had been duly served to the other party [75]. Therefore, Section 34(1) of the 1992 Labour Code aforementioned is instrumental.

This view was diffused by Dervish J. in the case of *Pamol (Cameroon) Ltd V Thomas Obi and 3 others* [76]. In a nutshell, the voice of Dervish J. in this case was not different from the purport of Section 34 (1) of the Cameroon Labor Code of 1992. However, in the case of *C.M.T. Oben Etchi V. Pamol (Cameroon) Ltd* [77] the obligatoriness of a person taking the initiative to terminate the contract by making the reasons known in his notice of termination was discarded. That is, it was not mandatory for the person taking the initiative to end the contract to give the reasons in his notice of termination [78].

The view discussed above was confirmed and trailed by the South West Court of Appeal in C.D.C. V. Joseph Nyambi [79]. Notwithstanding, it was said in Pamol (Cameroon) Ltd V MUSOKO J.N. [80], that once in court, the defendant would be required to give and justify his reasons, for failure to do so would lead to the imputation of wrongful dismissal [81]. Nevertheless, in B.S. Agbabiaka V. The Personnel Manager C.D.C. [82], it was said that in case the plaintiff admits the reason given for his dismissal to be proper, he cannot thereafter be heard to complain about its wrongful character [83]. At Common Law, an employer is not required to give reason for dismissal. However, this position has been revamped by the operation of the unfair dismissal provisions and statutory right of a pregnant employee or a worker with more than two years continuous service to receive a written statement giving particulars of the reason for dismissal [84].

It is a well-known fact that an employer who makes mistake could offer to re-employ the employee. The question now is: when an employee gives notice of incapacity as a result of common accident or employment injury or non-professional sickness sustained out of an enterprise, and the employer says nothing as to the health-care benefits (does not pay statutory sick pay nor show sympathy), for more than six months, and as a result of vex, other hardships gone through by both the employee and the family, resigns, who bears the resignation burden legally, the employer or the employee? This is one of the aspects the present commentator is baffled with and has keen interest in the relationship between the employer and employee. Thus, the Labour Code is not oblivious of employees' sick compensation or indemnification. It affirms the fact that an employer has the responsibility to compensate the employee during ill-health suspension period. Section 33 of the Code runs thus:

In each of the cases (a), (b) and (c) referred to in Section 32 above, the employer shall be bound to pay the worker, if the contract is of unspecified duration, compensation equal either to compensation in lieu notice when the period of absence is equal or exceeds the period of notice, or to the remuneration to which the worker would have been entitled during his absence when the period of absence is shorter than notice period provided for in Section 34.

The question that follows is whether: silence on the part of the "air giver" to "air taker" in employment relationship speaks for dismissal or retainment of the employee? It is common learning in contract law that silence [85] has a double angle: either acceptance or refusal. Thus, the circumstances of each case would decipher the employer's intention. Taking the practical case above, that is the case of Atanga Vivian Kien who has been working with the then C.D.C., and today, C.T.E. for almost 31 years, that is a contract for unspecified duration, who had an employment injury out of work and is incapable as a result, has not received any attention like SSP and other benefits as a worker. Can we now say that the employer's [86] silence of his responsibilities to the employee's right to health means dismissal? From the facts of the practical case, considering the duration of the employee at the enterprise, would the employer's irresponsibility and silence which leads to the employee's discontinuance of work mean that the employer has dismissed the employee by conduct [87]? It could amount to dismissal by conduct only if it can be objectively demonstrated to have been the intention of the employer [88]. From the facts of the practical case, it is all in all conclusive that the employer has forced the employee who has served the enterprise for quite a long time to resign. That is when an employee is in health distress and the employer does not pay statutory sick pay, and other benefits, nor show some sympathy for the health situation of the employee. Thus, without mixing of words, the conduct of the employer amounts to dismissal of the employee since the employer has been honouring sick pays, with regards to other employees. Therefore, what are the remedies for wrongful dismissal in such a situation?

REMEDIES FOR WRONGFUL DISMISSAL DUE TO THE IRRESPONSIBILITY OR SILENCE OF AN EMPLOYER TO AN EMPLOYEE RIGHT TO HEALTH

Dismissal

At first, an employer was entitled to dismiss an employee for any reason or for no reason at all; with the only reason whether or not the employee was entitled to a certain period of notice, or whether his conduct was such as to demand immediate or instant (summary) dismissal without notice [89]. The Privy Council in Jupiter General Insurance Co. V Shroff stated that summary dismissal was a strong measure, to be justified only in exceptional circumstances. An employer may dismiss an employee summarily for serious misconduct [90]. The conduct that warrants such dismissal is always a question of fact in each case and the standards to be applied are those of the current mores, not those which may have become in some way out of fashion [91].

It is no doubt that if an employee resigns on his own will, there is no dismissal [92], but resignation. A dismissal comes from the employer [93], which can take place even though the employee invites this course of

action. In Thomas V General Industrial Cleaners Ltd [94], the applicant was in poor health, but did not wish to resign because of fears that he might lose certain benefits. He left the decision to the employers, who accepted the initiative and terminated his employment. It was held that there was a dismissal by the employers [95] where the employee him/herself terminates the contract, with or without notice, in circumstances that he is entitled to terminate it without notice by reason of the employer's conduct or if the employee is given the option of resigning by the employer's conduct, or being dismissed, and chooses the former, he is treated as dismissed in law [96]. This is sometimes referred to as 'constructive dismissal', for although the employee resigns, it is the employer's conduct which forced the contract to be repudiated, and the employee accepts that repudiation by resigning [97]. Thus, the nature of the employer's conduct which could be unreasonable be sufficient to entitle an employee to resign [98]. Also, when the employer makes life difficult or uncomfortable in the expectation that the hint will be taken, and the employee will resign [99]. Thus, as to health issues, if an employer does not pay SSP, sick leave allowances, and other benefits that are due, and the employee resigns, then the employer has caused the employee to resign, which therefore will amount to dismissal.

Frustration can make an employment contract to become impossible to be executed by some intervening factors like illness or accident [100], of which no party is at fault. The length of time the employee is likely to be away from his work and therefore be unavailable to perform his contract, the need for the employer to obtain a replacement, the duration of the employment, his or her position are determinants. Long-time absence of the employee, the nature of the illness, (or injuries), how long it has continued and the prospects for picking-up, the terms of the contract, including the provision of sick pay [101] are all important to measure dismissal. The mere absence from work, even for a long-time, will not automatically amount to frustration and even dismissal [102], even if regular sick notes are communicated to the employer. In Egg Stores (Stamford Hill) Ltd V Leibovici [103], the EAT stated that there may be a long process before it can be said that illness has brought about frustration of the contract. If it drags for long and prospects for future continuation of work is slim, that is unable to subsist the contract, then frustration will occur and this is determined by factors like: the length of the employment; how long will it be expected to continue; the nature of the job; the nature, length and effect of the illness; the need to appoint a permanent replacement; the risk to the employer of acquiring further obligations in respect of redundancy payments or unfair dismissal; whether sick pay is still being paid; the acts and statements of the employer in relation to the employee, including his failure to dismiss; and whether in all the circumstances, a reasonable employment could be expected to wait for the employee any longer [104]. If the employer takes no action, will he have obligations in respect of redundancy payments or compensation for unfair dismissal? If an employee is away for a long time, the employer should not dismiss as an automatic matter, but consider whether it is necessary to dismiss. All necessary inquiries should be made by the employer, from the employee; his doctor, and if possible, obtain an opinion from the firm's medical advisers [105].

THE ROLE OF NATIONAL SOCIAL INSURANCE FUND IN EMPLOYEE'S HEALTH SITUATION

The Labor Code has not made detail reference to compensation of employee health or payment of social insurance benefits of workers. This is a feature common with the Cameroonian Law. Nevertheless, Part 7, Chapter 1, of the Code in Section 104 (1) creates a body for labor and social insurance administration [106], which this Section provides:

The Labor and Social Insurance Administration comprises all services responsible for matters relating to the conditions of workers, labor relations employment, manpower, movements, vocation guidance and training, placement, the protection of workers' health as well as social insurance problems'' [107].

The National Social Insurance Fund (NSIF) has the legal duty to get employers register their workers for the purpose of social insurance benefits, of which their failure to discharge their duty cannot lead in the punishment of workers, who play no role in the registration process [108], and failure of the Fund to use it administrative and criminal sanctions to force the employer to register the employee, must bear the burden itself since it must pay the worker's benefits [109].

It is common learning that in every enterprise, employers deduct from the earnings of employees; taxes, sick monies, stamp duties, insurance contributions on behave of the employees. Employees are entitled to unemployment benefit, statutory sick pay, industrial injury benefit and a state compensation and retirement pension [110] as long as they have paid Class 1 National Insurance Contributions. Such contributions are assessed on the employee's earnings and should be deducted at source by the employer [111] and when the employee is sick, the documents are channelled by the employer to the insurance company to effect payments to the employee or the employer pays and recoups from the insurance company [112] or if this is insufficient, from the monthly tax return [113]. Essentially, the Social Security covers medical and hospitalization costs, nursing transport costs necessities, treatment and lodging of infants and adolescents handicaps, cost of care and of hospitalization, and others [114]. The documents are communicated to the employer within a reasonable time frame for the employer to send them to the national social insurance for sick pay and other dues that culminate. Thus, the social security is like a shock absorber to the employees when in great distress. This company is therefore aimed at relieving the pains felt by employees in difficulty. In other words, it is their money kept, in anticipation of difficult days in future.

CONCLUSION

It is evident from the above experience that most employers have used the vagueness of Sections 32 and 98 of the Code which is based on illness or health rights in an enterprise to manipulate the employees. This is because the Labor Code does not distinguish between professional accident and common accident or professional sickness to non-professional sickness, which therefore is left at the whims and caprices of the employers to do with their employees like toys as experience shows. Therefore, the Labor Code should clearly draw a fine line between work accident from common accident on the one hand, and professional illness from non-professional illness on the other hand. The above Sections 32 and 98 are loosely framed, and since both employers and employees most at times are not schooled details in the labor legislation, they are confused on when to apply what. The court sets in to interpret the law base on the circumstances of each case.

It is a well-established fact that if a worker is working under contract of service, the employers deduct social insurance contributions, insurance stamps, deduction of income tax, sick pay monies. This therefore means that they have to be responsible for employees' health rights whenever they are incapable to work. That is compensating them during ill-health. If the employer fails to pay the whole or any part of the employee's SSP, the latter should lodge a complaint to the industrial tribunal or adjudication officer or the Labor Inspector and lastly the National Labor Advisory Board, and when no fruitful results in case of amicable settlement of conciliation, the Labor Inspector shall make a statement of conciliation and both parties plus the Inspector shall sign. In case of partial conciliation, the statement of non-conciliation shall mention the points on which agreement have and has not been reached, and as to the later, that is if attempt at conciliation fails, the Labor Inspector, social security or his representative shall make out a statement of non-conciliation, signed by both and addressed to the president of the competent court which the court shall then rule on the matter and if the complainant is not satisfied, they can go on appeal. With a final appeal to the Social Security Commissioner, and if it finds the complaint well founded, it shall order the employer to pay to the employee all the dues, whether statutory sick pay, remuneration or other benefits. Thus the law should make it clear what amounts to health rights and health care benefit in the Code, to the employers and the employees and the responsibility of both.

Therefore, what the law says and what the employers practice is like birds of different feathers that fly together. Thus the state should intensify and encourage more workshops, seminars and conferences to educate both the employers and the employees on the right to health and the benefits that follows. Also, an inspection system destined to guarantee employees' right in practice should be created that go to the job sites after every two months to foster the health situation of employees and the team should ensure that all employees are registered in the NSIF. And lastly, enterprises should be encouraged to take universal health coverage for their workers.

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2. Ibid p. 23.
3. "The Constitution of the World Health Organization,'' 1946; http://www.who.int /governance/eb/who-constitution-en.pdf, Declaration of Alma-Ata, 20th December, 2017.
4. Article 12 (1) of the International Covenant on Economic, Social, and Cultural Rights , 1966.
2. ''General Comment 14, The Right to the Highest Attainable Standard of Health'' UN Committee on Economic, Social and Cultural Rights, 11 August 2000, UN Doc. E/C.12/2000/4. (General Comment 14), http://www.unhchrch/tbs/doc.nsf/(sy mbol)/E.C.12.2000.4.En, Retrieved on 14th December, 2017.
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8. Bird, F., Germain, G., (1966), A new horizon in accident prevention and cost improvement, 4th edition, New York, p. 2.
9. A-3.001-Act Respecting Industrial Accidents and Occupational Diseases, Quebec, (2018)p. 6, http://googleweblight.com/i?u=http:legisq uebec.gouv.gc.ca/ShowDoc/cs/A-3001/htl=en-cm. Retrieved on 2nd June, 2018.
10. Léon NOAH MANGA, Practique des relations du travail au Cameroun par l'exemple et les chiffres, p. 119.
11. Bird, F., Germain, G., Op.cit note 9, p. 2.
12. Luc Van Gossum (2000), Les accidents du travail, De Boeck Université, 5thédition, p. 49.
13. Public holidays, some of which are; 1st January, 11th February, 1st May, 20th of May, 25th December, etc.
14. Occupational disease means a disease contracted out of or in the course of work and characteristic of that work or directly related to the risks peculiar to that work.
15. Law No. 92/007 of 14th August 1992 instituting the 1992 Labour Code of Cameroon.
16. Public holidays recognised by the state and the enterprise such as Christmas.
17. Medical report from the Mbouda District Hospital where first aid was taken, and the Mbingo Baptist Hospital, corroborated by her medical certificate and booklet.
18. Section 33 in harmony with section 98 of the Code.
19. Jonathan Montgomery Op.cit note 2, p. 23.
20. Ibid.
21. Civil Appeal No CASWP/14/76 CA (Unreported).
22. Simon Tabe T. (2000), Employers' Breach of Contract, Redundancy, Wrongful Dismissal and Notice: The case of TRAPP Groupement d'Entreprise V Che Guza Cletus, Appeal No.BCA/2.L/98 (Unreported), Juridis périodique No. 44, University of Dschang, pp. 38-39.
23. A builder building an extension to a house, a watchmaker repairing a watch or a plumber mending a tap is, however are engaged on contract for services-independent contractor. The contractors labours for not a long period of time, but for a short time and the hirer is more interested in finished product or service.

24. Employment injury means an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation. See A-3.001-Act Respecting Industrial Accidents and Occupational Diseases, Quebec, (2018) Op.cit note 12, p. 6.
25. Ibid, p. 15.
26. Deborah J. Lockton (1999), Employment Law, Macmillan Press Ltd, 3rd edition, p. 15.
27. Ibid.
28. Norman M. Selwyn (1982), Employment Law, Butterworths, 4th edition, pp. 31-32.
29. Simon Tabe T. Op. cit note 25, p. 38.
30. Ibid.
31. Vicarious liability.
32. Norman M. Selwyn, Op. cit note 31, p. 32.
33. Deborah J. Lockton, Op. cit note 29, p. 15.
34. Self-employed are responsible for their own contributions and these payments only give limited rights to certain welfare benefits and do not entitle the contributor to job seekers allowance or SSP, while as per employees, their contributions are assessed on the employee's earnings and should be deducted at source by the employer.
35. They must make their own arrangements under Schedule D, self-employed earners pay a flat rate Class 2 contribution, and in addition a Class 4 contribution based on the gains or profits derived which are chargeable to income tax under Schedule D, he needs not pay levy for industrial training purposes, he may have to charge VAT on services supplied.
36. See Jennings V Westwood Engineering Ltd, (1975) IRLR 254, see also Construction Industry Training Board V Labor Force Ltd (1970) 3 ALL ER 220, 114 Sol Jo 704.
37. The employer has to deduct PAYE income tax under Schedule E, needs to pay levy for industrial training purposes, should not charge VAT on services supplied, is not responsible for his own income tax and does not pay insurance stamps.
38. See Pennington V Minister of Social Security; see also Norman M. Selwyn, Op. cit note 35, p. 32.
39. Deborah j. lockton, Op. Cit note 29, p 16. Some of these include the right to be unfairly dismissed, statutory sick pay, the right to redundancy payment, statutory maternity pay, security of employment after maternity leave, etc., wherein an independent contractor has no such protection, except sex discrimination and race relations.
40. Ibid pp. 15, 50 and 51.
41. Gérard Lyon-Caen & Others (1994), Droit du travail Précis, Droit Prive, Dallox, 17th édition, p. 164.
42. Ibid p. 171.
43. Civil Appeal No. CASWP/17/76 (Unreported).
44. Gerard Lyon-Caen, Op. cit note 44, p. 173.
45. Simon Tabe T. (2000), Op. cit, note 32, p. 39.
46. See Section 1 of Order No. 015/MTPS/SG/CJ of May 1993 relating to the Conditions and Duration of the Notice Period.
47. Six (6) months or more.
48. Twenty-four (24) hours. Though there are varied debates as to the time limit to inform the employer. An employee may have a common accident where there is communication problem or no network at all or too far from the employer or any person who can communicate the employee message to the employer. The only remedy for that employee is to first have immediate treatment before endeavouring to reach the employer. Thus most English authors talk of 7 days, which my opinion is indifferent from theirs, See Deborah J. LocktonOp.cit note 43, p. 51.
49. International Labour Organization (2000), Termination of Employment Digest, 1st edition, Geneva Switzerland, p. 87.
50. When this happens, the employer pays the employee his SSP and then recoups the payment via his National Insurance contribution. The English Statutory Sick Pay Scheme introduced by the Social Security and Housing Benefits Act 1982, with the aim to pass the administration of the old sickness benefit on to the employer. Wherein the employer pays the employee his statutory sick pay and recoups those payments from via his National Insurance Contributions. By the

Statutory Sick Pay Act 1994, only those employers who pay less than £2000 in the National Insurance contributions can now recoup such payments.

51. See Regulation 7 of Statutory Sick Pay (SSP) (General) Regulations 1982 (as amended) of the European Union (EU).
52. Deborah L. Lockton Op.cit note 51, p. 51.
53. Entitlement includes the right to a system of health protection that gives everyone an equal opportunity to enjoy the highest attainable level of health.
54. Section 156 (2) (3) of the Social Security Contributions and Benefits Act 1992 (otherwise known as SSCBA 1992).
55. Léon NOAH MANGA (Administrateur Principal du Travail), Pratique des relations du travail au Cameroun par l'exemple et les chiffres, Saint-Paul Yaoundé, p. 120.
56. Section 32 (C) of the Labor Code.
57. Lammy Better (1993), ''International Labor Law, Selected Issues'' Netherlands, Kluwer Law and Taxation Publishers, pp. 121-122.
58. Section 33 of the Code, also Marrison V Bell (1939), 2KB 187, (1939), 1ALL ER 745; Orman V Saville Spotswear Ltd (1960) 3ALL ER 105, (1960) 1WLR 1055. And Simon Tabe T. (2001), ''Enhancing the protection of female workers under the 1992 Cameroonian Labor Code" Annals, Faculty of Law and Political Science, University Dschang, p. 173.
59. Petrie V Mac Fisheries Ltd (1960), 1KB 258, (1939) 4ALL ER 281.
60. Deborah J. Lockton Op. Cit note 55, p. 50.
61. (1982) IRLR 183.
62. See ANDERMAN, S.D, (1993), Labor law: Management Decisions and Workers Rights, 2nd ed., Butterworths London, p. 46.
63. (1983) ICR 416.
64. Deborah J. Lockton Op. Cit note 63, p. 50.
65. Appeal No. BCA/2.L/98 (unreported).
66. Simon Tabe T. (2000), Op.cit note 48, p. 39.
67. Carlson Anyangwe (1983), "Wrongful Dismissal: The Cameroon Development Corporation V D.N. Embola", Cameroonian Law Review, 2nd Series, No. 26, p. 26.
68. International Labour Organisation, Op.cit note 52, p. 87.
69. Norman M. Selwyn Op.cit note 41, p. 186.
70. Carlson Anyangwe, Op.cit note 70, p. 26.
71. Simon Tabe T. Op.cit note 69, p. 40. In all, the gravity of the misconduct is to be deciphered by the courts. The courts take into account, the place and time of the events, the repetitive nature of the event or fault and the personality of the worker who committed the fault. See Affaire Commune de Plein Exercise de Nkongsamba C/ Mbatchou Adolphe, Cour Supreme, Arêt N0. 35/S du 21 Fevrier 1980, Revue Camerounaise de Droit, N0 27, 1984, P. 118.
72. The case of Pamol (Cameroon) Ltd V Thomas Obi and 3 others, civil Appeal No. CAS WP/14/76 (unreported).
73. Civil Appeal No. CASWP/14/76 (unreported).
74. Civil Appeal No. CASWP/32/78 (unreported).
75. The case of Elong C. Martin V Pamol (Cameroon) Ltd (Civil Appeal No. CASWP/21/76 (unreported), also the English Law in Chitty on Contracts (specific contracts), 22nd ed. Para 1135, at p.494.
76. Civil Appeal No. CASWP/12/76 (unreported).
77. Civil Appeal No. CASWP/23/76 (unreported).
78. Common sense proves the fact that every dismissal by 'air giver' to the 'air taker' in employment contract is wrongful, until he justifies his reasons for dismissal.
79. Civil Appeal No. CASWP/30/76 (unreported).
80. Simon Tabe T. Op.cit, note 71, p. 40.
81. International Labor Organization, Op.cit note 71, p. 87.
82. Chris Turner (2010), Key Facts Contract Law, Hodder Education, 4th edition p. 12.
83. Cameroon Tea Estates Djutissa.
84. Acceptance of dismissal can be construed from the conduct of the employer as justified in the case of Brogden V Metropolitan Railway Co (1877).
85. Day Morris Associates V Voyce (2003).
86. Norman M. Selwyn Op.cit note 72, p. 186.
87. For gross misconduct, wilful refusal to obey a law, and reasonable order, gross neglect, dishonesty, and so forth.

88. Norman M. Selwyn Op.cit note 89, p. 187.
89. See Elliott V Waldair (Construction) Ltd (1975), IRLR 102, Harvey V Yankee Traveller Restaurant (1976) IRLR 35.
90. Deborah J. Lockton, Op. Cit note 67, p. 158.
91. (3964/72) IDSSupp 2.
92. Norman M. Selwyn (1982), note 91, p. 202.
93. Robertson V Securicor Transport Ltd (1972) IRLR 70.
94. Norman M. Selwyn Op. cit, note 91, p. 204.
95. See Western Excavating (ECC) Ltd V Sharp (1978QB 761, (1978) ICR 221, (1978) IRLR 27, CA, Hill (RF) Ltd V Mooney, Industrial Rubber Products V Gillon (1977) IRLR 389, 13ITR 163.
96. In London Transport Executive V Clarke, (1981) AC ICR 355, (1981) IRLR 166, Clarke wanted to go to Jamaica on extended unpaid leave, but the employer refuse to give him permission as he had already exhausted his entitlement under the rules. When he asked what would happen if he went without permission, he was told that his name would be removed from the books. Nevertheless, he went to Jamaica, stayed there for seven weeks, and on his return, he submitted a medical note, which the industrial tribunal viewed 'with some surprise'. While he was away, the employers wrote to his home address, stating that if no reply was received within two weeks (that is 14 weeks), it would be assumed that he did not wish to continue his employment, and eventually his name was removed from the books. When he returned from Jamaica, he applied for his job back, and when this was refused, he claimed he had been unfairly dismissed. For the employers, it was argued that the applicant has 'resigned', but this view was rejected by the courts. Thus, Clarke had been dismissed, and had not resigned. However, the Court of Appeal then went on to fine that the dismissal, in the circumstances, was fair See Section 55 (2) (C) of the Employment Appeal Tribunal (EPCA) of 1978 as amended by the 1980 Law, see again Norman M. Selwyn ibid note 90, pp. 209-210.
97. London Transport Executive V Clarke, (1981) AC ICR 355, (1981) IRLR 166.
98. Marshall V Harland and Wolff Ltd (1972) 2 ALL ER 715, (1972) ICR 101, (1972), IRLR 90.
99. Maxwell V Walter Howard Designs Ltd (1975) IRLR 77.
100. (1977) ICR 260, (1976), IRLR 361, 11 ITR 289.
101. Norman M. Selwyn op. cit, note 97, p. 211, also in Hart v Marshall $ Sons (Bulwell) Ltd (1978) 2 ALL ER 413, (1977) ICR 539, (1977) IRLR 51.
102. East Lindsey District Council V Daudney (1977) IRLR 181, 12 ITR 359.
103. Michael A. Yanou (2012), Labor Law: Principles and Practice in Cameroon, Langaa RPICG, Research and Publishing Common Initiative Group Mankon Bamenda, pp. 112-113.
104. Sub 2 of Section 104 says a decree shall determine the organization and functioning of such services.
105. As in the case of China International Water & Anor. V Ndinwa Wilfred, BCA and Section 17 of Law No. 77/11 of 13 July 1977 relating to NSIF.
106. Michael A. Yanou, Op.cit note 112, p. 122.
107. Ibid.
108. Deborah J. Lockton Op. Cit note 93, p. 15.
109. Ibid p. 50.
110. Norman M. Selwyn Op. Cit note 110, p. 126.
111. Jean-Pierre Laborde, Droit de la securité sociale, Thémis, Droit Public, puf, pp. 268-287.
112. Section 33 of the Labor Code.
113. See Sections 131-156 of the Labor Code.
114. Deborah J. LocktonOp.cit note 112, p. 51.

Cite this Article
Rodrick Ndi, Nana Charles Nguindip. Dichotomy between the Cameroonian Labour Code and Employees' Right to Health: The Case of Cameroon Tea Estate. *Indian Journal of Health & Medical Law*. 2018; 1(2): 55–68p.