REPUBLIC OF TRINIDAD AND TOBAGO:
APPLICATION NO. 7 OF 2018

IN THE MATTER OF THE INDUSTRIAL RELATIONS ACT,
CHAPTER 88:01

In the matter of an application by oilfields workers' trade union for an interim order UNDER THE PROVISIONS OF THE INDUSTRIAL RELATIONS ACT CHAP 88:01 AND IN PARTICULAR UNDER SECTIONS 7(1 AND/OR 10(1) (b) THEREOF AND/OR THE INHERENT JURISDICTION OF THE COURT

BETWEEN

OILFIELD WORKERS' TRADE UNION

- PARTY NO. 1

AND

PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED

- PARTY NO. 2

CORAM:

Her Honour Ms. Deborah Thomas-Felix	**- President**
His Honour Mr. A. Aberdeen	**- Member**
His Honour Mr. K. Jack	**- Member**
Her Honour Ms. J. Christopher-Nicholls	**- Member**
His Honour Mr. A. Mohammed	**- Member**

APPEARANCES:

Mr. D Mendes, S.C	**)**	**- for Party No. 1**
Mr. A. Bullock	**)**	
Ms. L. Abdulah	**)**	
(Attorneys -at-Law)	**)**	
Mr. R. Armour, S.C	**)**	
Ms. V. Gopaul	**)**	
Mr. D. Ali	**)**	
Ms. M. Ferdinand	**)**	
Ms. K. Peterson	**)**	**-for Party No. 2**

The Attorney General of Trinidad and Tobago
Mr. S. Jairam, S.C
Mr. R. Dass
Mr. D. Allahar
(Attorneys-at-Law)

DATED: 8th October 2018

RULING

Delivered by Her Honour Deborah Thomas-Felix

1. This is an Application by the Oilfields Workers Trade Union (the Union) against the Petroleum Company of Trinidad and Tobago (the Company). The Union filed a Complaint on 1st October, 2018 alleging the commission of an Industrial Relations Offence (IRO) by the Company. This Complaint alleges that the Company acted in violation of Section 40(1) of the Industrial Relations Act Chapter 88:01 (the Act) by "failing in good faith to treat and to enter into negotiation with the Union for the purpose of collective bargaining".
2. On the 2nd October 2018, the Union filed an application for an order of injunction in this Court which seeks to:

- restrain the Company, its agents and servants from terminating or otherwise determining any contract of employment entered into between the Company and members of the bargaining units for which the Union is the Recognised Majority Union until the determination of these complaints or until further order from the Court.

- restrain the Company, its agents and servants from making any offer of voluntary separation from employment to any of its workers who may be members of the bargaining units for which the Union is the Recognised Majority Union until the determination of these complaints or until further order from this Court.

3. The Union is the Recognised Majority Union for workers employed by the Company in the following bargaining units:

i. Trinmar hourly/weekly rated workers;

ii. Petrotrin hourly/weekly rated workers;

iii. Petrotrin monthly rated junior staff;

iv. Petrotrin monthly paid workers;

v. Trinmar Operations monthly paid workers; and

vi. Hospital Domestic workers and wardsmen.

4. The workers in the six Bargaining Units comprised approximately five thousand five hundred (5,500) persons.

5. The Parties by consent agreed that the Attorney General be heard on the application for the grant of an injunction only. Before the Court is the affidavit evidence of Oswald Warrick, the Executive Trustee of the Union, the affidavit of Wilfred Espinet, Chairman of the Board of Directors of the Company and the affidavit of Vishnu Danpaul, Permanent Secretary of the Ministry of Finance on behalf of the Attorney General.

BACKGROUND

7. The parties have agreed that the Company has been experiencing financial difficulties. According to the affidavit of the Chairman of the Board of Directors Mr. Espinet, the Company has been operating at a loss from the fiscal year 2014 to 2017 and this trend has continued. As a result, the Union and the Company have been meeting over time to discuss the financial viability of the Company and restructuring of the Company's operation.

8. In January 2018, the parties met and the Board made a presentation of the financial picture of the Company to the Union and both parties agreed that the Company was in need of restructuring. They agreed at that meeting that "the next steps are going to include stakeholder engagement and the establishment working groups." Thereafter there were several meetings following which the Chairman of the Board of Directors wrote to the Union and confirmed the following:

1. *"That the Board is in agreement with the position that Company be separated into four business units: Land Production, Marine Production, Refining and Marketing and Health Services;*

2. *That the Board is agreement with the need to flatten the management layers and also to reduce the superstructure that is currently in place at an administrative level;*

3. *That the business units must be empowered and completely resourced with all necessary support functions so as to independently fulfill their mandates;*

4. *That a joint committee comprising of (sic) members appointed from the Union and from senior management be established to more granularly review the structure proposed by the Union and agree on the base structure;*

5. *Using the benchmark study which was proposed by the Solomon Associates agree on a manpower plan that ensures that overall, the Company becomes viable."*

9. As a result of these meetings, the parties signed a Memorandum of Agreement (MOA) on 3rd April 2018. This Memorandum of Agreement provided, *inter alia*, for the parties to meet and resolve the organizational structures, work processes and skilled competencies and manpower requirement to ensure the survival, sustainability and profitability of the Company. The said Memorandum of Agreement further provided that:

> *"The executive of the Company agrees to meet on a monthly basis with the Union's Executive ("the Executive") for the following specific objective:-*
>
> a. *To progress the implementation of the organizational structure, skill/competencies, work process, customs and practice and the manpower requirements in all areas of the Company's operations which will ensure the Company's survival, sustainability and profitability; and*
>
> b. *To review, monitor and ensure progress of the Working Committees described in Article 2 of this MOA; and*
>
> c. *To resolve issues which may arise from time to time within the Working Groups.*
>
> *The Company and the Union agree to the establishment of a Working Committee comprising representatives of both the Company and the Union that will work over the next eighteen (18) months to address, resolve and agree on the four (4) organizational structures, work processes and skill/competencies and manpower requirement which will make the Company internationally competitive thus ensuring its survival, sustainability and profitability. The parties agree to a timetable for these meetings commencing in the month of April, 2018 with the*

enhancement of operational efficiencies, reduction of waste and the promotion of the business of the Company.

The parties to this Agreement recognizing their common interest in the promotion of the business of the Company, declare jointly and separately that they will use their best endeavours to protect and further the well-being of the enterprise.

To this end, the Union agrees that it will co-operate with the Company and support its effort to secure a full day's work on the part of its workers who are members of the Union and it will actively combat absenteeism and other practices which curtail production, and it will support the Company in its efforts to maintain discipline and eliminate waste and inefficiency to improve the standard of workmanship and to prevent accidents. In this regard the Company will ensure that a safe and secure work environment is provided at all times."

10. According to the evidence before Court, the Union submitted the names of the representatives to join the Working Committee. The Working Committee was never established.

11. The Memorandum of Agreement was filed in the Industrial Court by the Minister of Labour and Small Enterprise Development on the 24th June, 2018 with a request that it be entered as an Order or Award of the Court. This Memorandum of Agreement was duly made and entered as an Order or Award of the Industrial Court on the 20th July, 2018.

12. This made the Memorandum of Agreement for the purposes of these proceedings, not merely an incidental matter but the law between the parties.

13. At this point, there is a clear conflict in the evidence of the Company and the Attorney General that is at present before the Court which the court has not and cannot resolve in this preliminary proceeding.

14. On behalf of the Company, Mr. Espinet deposed on affidavit that, "The Board therefore went to the Cabinet to explain the situation and received its approval to move forward with the closure of the Company and the termination of its employees." This meeting with the Cabinet, according to Mr. Espinet, took place around the 3rd week in August, 2018.

15. Mr. Espinet's averment in his affidavit differs in significant material respects from that of the Minutes of the Cabinet.

16. The Minutes of the Cabinet of Republic of Trinidad and Tobago which were filed with the Court in these proceedings on behalf of the Attorney General state that the Board of Directors of the Company made a presentation to Cabinet in July 2018 (not around the 3rd week in August) outlining the options for the way forward with respect to the restructuring of the Company. The Board informed and recommended to the Cabinet that the most viable and economic of these options as the way forward for the Company would be a structure which does not involve refining operations.

17. The Cabinet accepted this recommendation of the Board and advised the Board to present the decision for the restructuring of the Company to the employees' representatives (the Union) and the employees. The advice which the Cabinet gave to

the Board, to present the decision to Union and to the employees, according to the Cabinet minutes, was given in July 2018.

18. No evidence has been submitted to the Court regarding any communication between the Company and the Union acting on the consultation framework established by the Memorandum of Agreement prior to the Company's meeting with the Cabinet, whether this occurred in July or in August 2018.

19. On the 28th August the Union was invited to a meeting with the Company's Board of Directors. At that meeting the Company presented the Union with three options which were as follows:

I. To continue business as usual
II. To improve financial performance of the organisation; and
III. To transform the financial performance of the organisation.

20. With respect to the third option, the Chairman, Mr. Espinet, informed the Union that this option involves the closure of the refinery and that all employees will be terminated. He further informed the meeting that the Company, with the approval of the Cabinet, had selected the third option and that the process of closing down the refinery would begin on the 1st October, 2018.

21. Mr. Espinet informed the Union that the services of the employees would be terminated and that these employees would have to re-apply for their jobs.

22. There is no evidence after the signing of the Memorandum of Agreement on the 3rd April, which was filed and made an Order and an Award of this Court, that there was any meeting in pursuance of the terms of the Memorandum of Agreement between the Union and the Company. It is not clear to the Court, on this evidence, whether the Company's call of the Union to the meeting on the 28th August 2018 was pursuant to the Memorandum of Agreement or to announce a *fait accompli*. The Company has also not provided the Court with any evidence of notice to the Union of the intention to make submissions to the Cabinet or a discussion with the Union in accordance with the Memorandum of Agreement of the options that would be proposed. According to Mr. Espinet at the time of the signing the Memorandum of Agreement "there was no intimation that the closure of the Company and the termination of all its employees would be or would become the only viable option."

23. Although the Company stated that the circumstances which existed at the time of the signing of the Memorandum of Agreement had changed there is no evidence submitted as yet before this Court that the Company informed the Union of those changes before the 28th August meeting.

24. The Company's evidence is that prior to the meeting on the 28th August, in or around the 3rd week in August it decided that the only viable plan was to shut down the Company and create "an entirely new entity focused entirely on E&P (Exploration and Production) in accordance with international benchmark".

25. Counsel for the Attorney General explained that due to the current financial state of affairs of the Company, if the Company is not closed by the 30th November, 2018 there

would be dire financial consequences to the country. The Company supports the Attorney General's contention, but the Company could not provide the Court with a reason on the significance or even the relevance of the date, 30th November, as opposed to any other date.

26. The Court did at the hearing of this Application suggest that the Company consider giving an undertaking to maintain the status quo while the Court hears and determines the IRO with alacrity and delivers a judgment very early in the month of November. This suggestion was not accepted by the Company.

ANALYSIS

27. The fundamental tenet of our framework for the resolution of disputes is collective bargaining and consultation among the parties. This Court's jurisdiction is invoked where there is a failure by parties to resolve issues using this process. This application has been brought to the Court for resolution since it appears that the issues which the parties currently face cannot be resolved within the framework provided for collective bargaining.

28. The mandate of this Court in the exercise of its powers is to take into account what is fair and just. Further, in accordance with the provisions of Section 10 of the Act, the Court in the exercise of its powers must take into consideration "the interest of the persons immediately concerned and the community as a whole" and also what is desirable in the public interest.[1] This has been the tradition of the Industrial Court in its over 53 years of

[1] ESD IRO No.2 1993 – Public Services Association and Water and Sewage Authority
CA No. 120/1992 & 132/1993 United Hatchenes and Nutramix Feeds Limited and OWTU

existence. It would be remiss of this Court to depart from these principles and precedents and ignore the impact of the closure of the Company on five thousand five hundred of the country's workers in the six bargaining units.

29. We pause to repeat what we stated during the hearing of this application for an Injunction. This Court is cognisant of the right of the Company and indeed the right of any employer to restructure and or to close its business operations. We respect and uphold this right as part of the prerogative of management, we also understand the great difficulty which an employer may have when faced with the decision of the closure of a Company and/or the restructuring of a Company when either of those actions involves the termination of the services of workers. This Court, in the exercise of its mandate under the statute has always been cognisant of the economic and social crises that may arise from time to time which create pressure on the parties to action that may be inconsistent with the law. Courts of law have historically and repeatedly face this claim of exigency to sweep aside the law. Perhaps the most famous and eloquent rejection of the clarion call to self-help in disregard of the law, was made by Lord Atkin in his dissent which has become the foundation of Administrative Law. There the country (Great Britain) was at war and the exigencies of the situation was pressed to make court initiated adjustments.[2] Lord Atkin said: "In this country, amid the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace." *Liversidge v Anderson* [1942] AC 206 at 244.

[2] France had fallen. The British army in France had been told that a German invasion was expected daily. It was the gravest national crisis in the life of anyone alive in the UK then or since. There was high anxiety about the risk of German collaborators in the United Kingdom.

30. Our role as the Industrial Court under the Act is to ensure that when there is a closure, retrenchment or a restructuring of operations, the employer's duties and obligations under the law are carried out in good faith and "in accordance with principles and practices of good industrial relations"[3]. In addition, this Court has repeatedly acknowledged and taken cognisance of the International Treaties to which this country has acceded among which are– the ILO Conventions – namely Convention No. 87 and Convention 98. [4]

31. The principles and practices of good industrial relations in this context contemplates candour and openness; it contemplates collective bargaining with the Recognised Majority Union of the workers. Collective bargaining and consultation must be done in the formative stages of decision-making so that the Union can have adequate information for it to deliberate upon, for it to present to its members, the workers, and also for it to respond to the Company with its own suggestions if any.[5] The Company is not required to adopt all or any of the views of the Union, but the Company has a duty and an obligation to meet and to consult with the Union in good faith in accordance with good industrial relations principles and practice, as it has been repeatedly stated and defined by this Court over the decades of its existence. That it is the law of the land as laid down by the Parliament of this Republic in the Industrial Relations Act and not the invention of individual members of this Court.

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[3] Industrial Relation Act Chapter 88:01 Section 10(3)(b)

[4] Convention No. 87 Freedom of Association and Protection of the Right to Organise Convention, 1948 Convention No. 98 Right to Organise and Collective Bargaining, 1949

[5] Complaint No. GSD-IRO 031 of 2015 SWUTT and ARCELORMITTAL POINT LISAS LIMITED; [GMB VS SUSIE RADIN LTD [2004] IRLR 400.

32. The Court, in considering whether or not to grant an injunction has examined the evidence to see what the issues are and whether these issues are serious issues to be heard and determined.[6]

33. In the grant of the Injunction another question the Court has to ask itself is whether the risk of injustice will be greater if the injunction is granted or if it is refused. It is our view that there would be a greater injustice if the issues affecting the loss of employment of five thousand five hundred workers are not properly ventilated before the closure of the Company. Indeed, the public interest is one of the considerations which we are mandated to take into account under Section 10 of the Act in determining any matter before us. When we consider the balance of convenience, the justice of the case and the public interest it our view that the injunction should be granted.

34. On evaluation of the evidence presented in this case, the follow issues arise in line with the authorities:

a. Whether after the signing of the Memorandum of Agreement and it being given formal legal status, a legitimate expectation arose that collective bargaining and consultation would continue under the framework laid down, based on the reliance by one of the parties on this Memorandum of Agreement.

[6] CA No. 212 of 1997 Jetpak Services Limited and B.W.I.A. International Airways Limited

b. Whether the changed circumstances annulled any duty on behalf of the Company to meet in good faith with the Union to inform the Union and to discuss the change of events which existed after April, 2018 before a new decision is made.

c. Whether the meeting on the 28th August 2018 which informed the Union that a decision had been made to close the refinery is adequate to meet the requirements of Section 40(1) of the Act.

d. Whether the reason which has been provided by the Company for not meeting with the Union from April to August 28 is a valid reason within the meaning of Section 40(1) of the Act.

35. These are serious issues to be heard and determined by the Court, requiring a full hearing and giving the parties the right to present further evidence to assist this Court in arriving at a determination that in all respects meet the highest standard of judicial decision-making, that it is fair and impartial, based entirely on the law and the evidence before it which the parties have a full opportunity to present and confront. This is the true tradition of the Rule of Law to which this Court has adhered and will continue to adhere in every circumstance, bar none.

ORDER

The Injunction is granted

1. The Company, its servants and or agents are hereby restrained from terminating or otherwise determining any contract of employment entered into between the

Company and the members of the bargaining units of which the Union is the Recognised Majority Union until the determination of IRO 35 of 2018 or until further Order from the Court;

2. The Company, its servants and agents are hereby restrained from making any offer for the voluntary separation from employment of any of the workers who may be members of the bargaining units of which the Union is the Recognised Majority Union until the determination of IRO 35 of 2018 or until further order from this Court;

3. That the Union files all the relevant documents related IRO 35 of 2018 on or before the 15th October, 2018;

4. That the Company files all its documents with respect to its reply to the Union's Complaint of the said IRO 35 of 2018 on or before the 22nd October, 2018.

5. That the hearing of the Complaint of the IRO is fixed for 9:30 am on the 30th and 31st October and the 1st November 2018 respectively.

This order is without prejudice to the Union and the Company meeting in consultation and negotiation prior to the hearing of the Complaint of an IRO and to make any application to this Court for extension to the case management time limits set forth in this order for this purpose.

We so rule.

Ms. D. Thomas-Felix
President

Mr. A. Aberdeen
Member

Mr. K. Jack
Member

Ms. J. Christopher-Nicholls
Member

Mr. A Mohammed
Member