THE REPUBLIC OF TRINIDAD AND TOBAGO:
APPLICATION NO. GSD-A009 of 2007

IN THE INDUSTRIAL COURT

BETWEEN

COMMUNICATION, TRANSPORT AND GENERAL WORKERS' UNION **- Party No. 1**

AND

BWIA WEST INDIES AIRWAYS LIMITED **- Party No. 2**

CARIBBEAN AIRLINES LIMITED **- Party No. 3**

CORAM:

Her Honour Mrs. Deborah-Thomas-Felix	**- President**
His Honour Mr. Albert Aberdeen	**- Member**
His Honour Mr. Patrick Rabathaly	**- Member**
Her Honour Ms. Bindimattie Mahabir	**- Member**
Her Honour Mrs. Heather Seale	**- Member**

APPEARANCES:

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DELIVERED ON 4TH OCTOBER, 2017

JUDGMENT

This application has some history before the Industrial Court. There have been a number of interlocutory hearings and a ruling on a preliminary point by the Court of Appeal before the commencement of the actual hearing. Final submissions were filed on 31st May, 2017 and we can now give a determination on the issues at hand.

1. The Communication, Transport and General Workers' Union (the "Union") is a registered Trade Union and the Recognised Majority Union for some of the bargaining units of BWIA West Indies Airways Limited ("BWIA"). BWIA is a Company registered under the Companies Act, Chapter 81:01, and was the national airline and "flag carrier" of Trinidad and Tobago until 31st December, 2006. Its principal shareholder was the Government of Trinidad and Tobago. Caribbean Airlines Limited ("CAL") is a Company also registered under the Companies Act, Chapter 81:01. CAL, currently the national airline and "flag carrier" of Trinidad and Tobago, began operations on the 1st January, 2007 and its principal shareholder is the Government of Trinidad and Tobago.

2. Apart from the Union, there were other Recognised Majority Unions representing categories of workers who were employed with BWIA in 2006, namely the Trinidad and Tobago Airline Pilots Association, the Aviation Communication and Allied Workers Union, and the Superintendents' Association.

3. The Union in its Application seeks a declaration that CAL is the successor employer to BWIA and that Certificates of Recognition No. 97 and No. 98 of 1976 are valid, among other things.

FACTS

The undisputed facts in so far are as they are material are as follow:

4. The Union was the Recognised Majority Union for those categories of workers employed by BWIA and comprised in the bargaining units described in the respective Certificates of Recognition. Some of these workers held senior

positions in the engineering and maintenance departments of BWIA while others were employed in areas of support services.

5. The Union and BWIA were engaged in negotiations in early 2006 for a new collective agreement. These negotiations "...*were conducted against the backdrop of certain directives of the Government to the board and management of BWIA concerning the viability of the airline.*

> "*During these negotiations, the shareholders made preparation for transferring the business of the airline from BWIA to a new Company and as early as February 2006 had already registered a new Company with the name BWIA Caribbean Airlines Limited".*[1]

6. By correspondence dated 16th February, 2006 to the Union by the then CEO, Mr. Nelson Tom Yew, discussed the **restructuring** of BWIA (emphasis added). This letter stated inter alia, "*a plan for restructuring will inevitably involve an internal restructuring. As previously indicated, the successful restructuring of the airline will depend on the cooperation of the Unions and BWIA to achieve a change in work rules as mandated by the Government, the major shareholder".*

7. The parties in these proceedings before the Court have agreed that negotiations broke down sometime in June, 2006. On 8th September, 2006 the Trade Unions representing the employees of BWIA, including the Union, attended a meeting wherein they were informed of the majority shareholder's decision to establish a new regional airline and to close the operations of BWIA. On the said day, 8th September, 2006, the registration of a new Company was initiated, and by 27th September, 2006 a new Company, Caribbean Airlines Limited, was formed.

8. As a result, all Unions were engaged in a 17 day period of mandatory negotiations for voluntary separation packages for workers. Before the transfer of any of its assets, and prior to the closure of BWIA in December 2006, the then Chief Executive Officer (CEO) of BWIA, Mr. Peter Davies, conducted interviews, the

[1] Evidence of the Union paras. 8 and 9

purpose of which was to recruit and employ personnel from BWIA with the new carrier, CAL. A number of BWIA employees including members of the various bargaining units were offered employment with CAL and letters of offer were issued to them by the CEO of BWIA, Mr. Davies who was also acting as the CEO of CAL. Indeed, the evidence is that a number of employees attended interviews which were chaired by Mr. Davies, and they were offered employment with CAL. A large number of employees of BWIA accepted the offer of employment to work with CAL.

9. In its application to the Canadian Transportation Agency, BWIA represented to the Agency that the existing BWIA management would continue to operate CAL, and that "no material change will occur in this regard as a result of the corporate reorganisation and creation of a new company". BWIA also represented to the Agency that:

> *"… operating certificates and maintenance organisations will continue in their present role under (CAL) and the relevant staff, crew, mechanics, administrative support ...will stay the same."*

10. When BWIA was in existence, it published a magazine "Caribbean Beat", this publication was continued by CAL. Also, CAL continued to use the international airline Code "BW" for its flights and it honoured the loyalty miles programmes which were developed by BWIA though the loyalty miles were renamed "Caribbean Miles" and "Club Caribbean".

11. The BWIA workers who were employed by CAL in 2007 did not receive any new training before they assumed duty with that new Company.

ISSUES

12. The Union contends that CAL is the successor, in the industrial relations sense, to BWIA within the context of good conscience and the principles of good industrial relations practice, based on the following:

a. CAL is carrying on substantially the same operation as BWIA, in substantially the same way with substantially the same employees. The Union stated that its members (355 inflight, 355 in Maintenance, 13 in Quality Assurance) were employed by CAL after BWIA ceased operations.

b. Given the requirements of the airline industry, CAL has taken advantage of the benefits of the qualification, expertise and experience of the workers previously employed by BWIA and in settled organisational structures and working relationships which saved CAL the time, trouble and considerable expense of recruiting and training a whole new workforce, particularly in the technical business processes in which the workers of the bargaining units of the Union were engaged at BWIA.

c. CAL took advantage of the certification, particularly of the employees in the technical functional areas of Maintenance and Engineering, to be able to obtain the necessary licensing to operate as a commercial airline in what the shareholder, Board and management of both companies have described as "seamless transition" from BWIA to CAL.

13. The Union also contends that BWIA and CAL took steps in a deliberate and calculated manner, with the aim of depriving the Union of its bargaining rights and workers in its bargaining units of their rights to Union representation and did such action on the part of an employer which is contrary to good industrial relations practice.

14. Although BWIA filed Evidence and Arguments, it did not call any witnesses to support its case. BWIA accepts that the Union and BWIA were involved in negotiations for a new collective agreement. These negotiations commenced in January, 2006 and continued until June, 2006 when there appeared to have been a breakdown in negotiations. After the breakdown in negotiations, a decision was made to close BWIA and workers were given packages for separation of service. As a result there was no new collective agreement at the time when BWIA ceased its operations on 31st December, 2006.

15. CAL submitted that the Industrial Court has no jurisdiction to hear the Union's Application for the following reasons:

i. A successorship application as contemplated by Section 48 of the Industrial Relations Act, Chapter 88:01 (the Act), only relates to the enforceability of an unexpired collective agreement registered under section 46. There was no registered collective agreement in existence between the Union and BWIA at the time of the filing of this Application. The applicable collective agreement in this Trade Dispute expired by effluxion of time and is no longer current or effective in law.

ii. A current registered collective agreement must be considered as a pre-condition to being entitled to bring a section 48 successorship application. There being no such agreement at law the application for successorship must necessarily fail.

iii. The Court ought not to make an order of successorship pursuant to section 48 (3) where suitable arrangements have been made for compensating the workers for their past service.

iv. The employees formerly represented by the Union as at 31st December, 2006, were no longer employed with BWIA.

v. The relevant bargaining unit no longer existed and the Union therefore is no longer the Recognised Majority Union.

EVIDENCE OF THE UNION

16. Five witnesses testified on behalf of the Union. They are Peter Gonzales, Sandra Dindial, Gregory Aqui, Winnifred Scott and Gail Kelshall. The statement of Ms. Gwendolyn Lowe, who is deceased, was admitted into evidence by consent of the Parties.

Peter Gonzales

Mr. Gonzales was one of the flight captains employed by BWIA prior to its closure on 31st December, 2006.

In December, 2006 he attended a meeting chaired by the then CEO of BWIA, Mr. Peter Davies, where he was offered a three month contract to work for CAL, which he accepted.

The evidence is that when this witness began his employment with CAL, he piloted the same aircraft (the A340 aircraft), on the same routes, and with the same support crew as he had done while he worked for BWIA. He also reported for duty at the same location.

He testified that CAL used the same international airline codes which had been assigned to BWIA by the International Air Transport Association and the International Civil Aviation Organisation respectively, which is the "BW" and the "BWIA".

Sandra Dindial

Ms. Dindial testified that she worked for BWIA as a reservation supervisor before it ceased operations in 2006. She applied for employment by CAL and was interviewed by the same person who was her manager while she was employed by BWIA and was subsequently offered a contract employment by Mr. Peter Davies, the Chief Executive Officer of BWIA.

She assumed duties at CAL at the same place of business where BWIA operated, using exactly the same desk and equipment and documentation, alongside some of the same persons (although there were fewer persons re-employed by CAL), and was doing the same job as she did in 2006.

Gregory Aqui

Mr. Aqui is not a member of the Union. He worked for BWIA as a cashier up to the time it ceased operations in 2006.

On 14th December 2006, he received a letter of offer from Mr. Peter Davies, the Chief Executive Officer of BWIA, for employment by CAL.

Mr. Aqui accepted the offer and he was employed by CAL to do the same job he did for BWIA. His evidence is that he was based at the same location (Terminal Building, Piarco Airport), used the same equipment, and followed the same procedure. He continued to make deposits on behalf of BWIA after BWIA closed operations to sell tickets for the same flights which had been offered by BWIA. He testified that a number of other former employees of BWIA were also hired by CAL. He could not discern any change in the operations between BWIA and CAL.

Winnifred Scott

Ms. Scott, a purser, applied for and was interviewed for a job with CAL. She received a contract of employment from the Chief Executive Officer of BWIA, at a meeting called by CAL at the Eastern Credit Union, St. Joseph.

She testified that in December 30, 2006, she headed the flight crew on BW900, which was a flight operated by BWIA from Port of Spain to London. She was on the flight crew which returned to Trinidad on January 02, 2007. She left Trinidad wearing BWIA uniform and was instructed to wear a CAL uniform for the return flight which was operated by CAL. That flight comprised the same flight crew that left Trinidad on December 30, 2006, and used the same aircraft.

While working for CAL, Ms. Scott testified that she did the same job as she did while she worked for BWIA. She worked on the same aircraft alongside the same employees on the same flights. The flight numbers had also remained the same from BWIA to CAL. She also continued to be based at the same location used by BWIA, which was the In-Flight Service Department at the Piarco Airport.

The statement of Ms. Gwendolyn Lowe, (deceased) mirrored the testimony of Ms. Winnifred Scott.

Gail Kelshall

Ms. Kelshall was a Reservation Supervisor of BWIA and was re-employed by CAL. Her evidence is that she attended a meeting which was chaired by the CEO of BWIA and he gave her a new contract of employment with CAL.

When Ms. Kelshall worked for CAL, she did the same job, using the same equipment, and at the same location she had used when she worked for BWIA.

Ms. Kelshall testified that CAL used the same international airline codes which BWIA had used, and in her viva voce evidence on April 10, 2014, she said the ticket code of "106" which prefix the ticket which BWIA had used continued to be used by CAL.

EVIDENCE OF CAL

17. Four witnesses testified on behalf of CAL, namely, Patricia Ramsey, Colville Carrington, Mark Garcia and David Ramnauth.

Patricia Ramsey

Ms. Ramsey applied for the job in 2006 and was interviewed December, 2006. She held the position of Director In-Flight (Ag.) up to December 31, 2006, when she worked for BWIA, and she was hired by CAL effective January 01, 2007 in the position of Executive Manager, In-Flight.

The linkages which existed between the in-service department and the Flight Operations and Human Resources departments under BWIA continued to exist in the same way when CAL began operating. However a more structured procedure was introduced under CAL for receiving and processing workers' complaints, this procedure was implemented under BWIA, but was abandoned before it ceased operations.

Colville Carrington

Mr. Carrington's evidence is that he had been employed by BWIA as Line Maintenance Manager, he received an offer from CAL in December 2006 to work

with CAL in the position of Director of Maintenance and Engineering. He accepted the offer.

His evidence is that there had been significant changes in the reporting lines between his department and his superiors, and that there had been a re-organisation of the responsibilities between the various departments responsible for repairs and maintenance. The only difference between the collective functions of the departments operated by CAL, compared to when they were operated by BWIA, was that CAL used less radionics and electronic components as compared to BWIA. Mr. Carrington testified that CAL now did C-level checks on aircraft, a function which had been outsourced by BWIA.

When CAL began operations, it needed to be certified by the local Civil Aviation Authority, and in order to obtain that certification it relied on the expertise and training of members of staff who had been re-employed from BWIA, as well as maintenance records of the aircraft which had been used by BWIA.

Mr. Carrington's evidence is that when CAL commenced operations, it began with 226 persons in that department. All of these persons, with the exception of one, were previously employed by BWIA.

Mark Garcia

Mr. Garcia had been employed by BWIA in the position of Head of Quality, and was re-employed by CAL when it began operations in the position of Director of Quality Assurance. His department comprised of 12 persons under BWIA, his evidence is that under CAL, the department continued to employ the same 12 persons but with an addition of one to make a total of 13 persons. The additional person was previously employed with air safety committee.

David Ramnauth

Mr. Ramnauth worked as Senior Director Air Safety under BWIA and was employed by CAL to be its Manager of Safety when operations began on January 01, 2007.

His functions as Senior Director Air Safety under BWIA were the same functions of the Manager of Safety under CAL. Apart from internal re-organisation, the function of occupational health and safety were added to the department in which he worked when CAL began operating. Mr. Ramnauth testified that under BWIA there was a department which addressed issues affecting the health and safety of workers which merged with his department under the new company CAL.

CAL acquired the aircraft which BWIA operated, took over its routes, also acquired the Tobago Express airline, which was owned by BWIA. According to Mr. Ramnauth the Tobago route was merged into CAL's business, (insofar as maintenance was concerned) unlike before 2006 whereby BWIA had been contracted by Tobago Express to provide its maintenance services. CAL was directly responsible for maintenance instead of the position which had previously obtained,

This witness testified that in order to begin operations, CAL made the required application to the local Civil Authority for an Air Operators Certificate (AOC), and would have also made similar applications to other aviation authorities in countries to which CAL provided flights.

ANALYSIS

18. A business is not a precise legal concept, rather it is an economic activity which combines certain intangibles (goodwill, know-how), physical assets (contracts, inventory and equipment) and human assets (employees and their skills). When a business changes hands, it is the duty of this Court to examine the new operations to see what is the true nature of the new business venture in the industrial relations context. In the present application before us we are examining the new venture CAL to see if the doctrine of successorship applies.

19. One of the underlying principles of the doctrine of successorship, in the industrial relations context, is that since employees and Unions do not decide when there is to be a change in corporate ownership; that decision is a decision of the owners and management of business; the business owners' prerogative and freedom to

buy and manage their business must be balanced by the protection and preservation of the rights of the employees including the rights of collective bargaining.

20. The full import of a determination of successorship by the Court is that an employer who obtains a "successor" business is bound by all the obligations pursuant to any collective agreement between the former employer and its employees. The Court in its determination is guided by the principle of good conscience and the principles and practice of good industrial relations.

21. The primary issue in this Application is whether, from the evidence, the business operations which were carried out by CAL, after BWIA ceased its operations in 2006, were the same or substantially the same as that of BWIA when it existed. Also, whether there was substantial continuity in the use of the human assets of BWIA by the new Company, CAL.

22. The reasoning of HH Brathwaite, P. captures the very essence of what is successorship in the industrial relations context; which is, when a business changes hands and there is what can be considered substantial continuity from the old business to the new, namely, the new employer carries out substantially the same business operations with the use of substantially the same workforce as the previous employer; that new business is the successor of the former.

> "*Under the industrial relations principles of successorship, a new employer who carries on substantially the same operation as a previous employer, in substantially the same way with substantially the same employees, must grant these employees terms and conditions of employment no less favourable than those they previously enjoyed with credit for previous service with the former employer so that the assessment of any benefit dependant upon length of service will take into account that previous service".* [2]

[2] Dispute No. 20 of 1969 the Shipping Association and the Seamen and Waterfront Workers Trade Union pg. 6

23. We also adopt his statement of rationale that a key advantage to a successor company is:

> "…. *the fact that such an employer has the benefit of the expertise and experience acquired by the workers' previous service, as well as the advantage of the established arrangements and relationship of a settled working environment, and is thereby saved the time, trouble and considerable expense of recruiting and training a whole new workforce and establishing smooth working relationships between them……."*. [3]

Is there a Requirement for a Subsisting Collective Agreement before the Court can have Jurisdiction?

24. CAL submits that the Court has no jurisdiction because an application for an employer to be deemed a successor as contemplated under Section 48 of the Act refers only to situations where there exist an unexpired collective agreement. Further, that in the current case, the relevant collective agreement between the Union and BWIA had expired before CAL began its business operations; and therefore was not effective in law save for the provisions regulating the resolution of disputes.

25. This submission is without merit. There is no requirement or pre-condition for the existence of a subsisting collective agreement before a determination of a successorship can be made by the Court. In fact, the rights of collective bargaining remain, whether or not there is a subsisting collective agreement. Section 48 (2) of the Act expressly provides that certain terms of a collective agreement continue to have effect after the expiry of that agreement until another agreement has been executed. This section states:

> *48 (2) "Notwithstanding section 43(1) the terms and conditions of a registered agreement shall, in so far as they relate to procedures for avoiding and settling disputes, be deemed to continue to have full force and*

[3] Application No. 4 of 1978 – Lake Asphalt Company of Trinidad and Tobago (1978) Limited and Contractors and General Workers Trade Union pg. 14

effect until another collective agreement between the parties or their successors or, in the case of an employer, assignees, as the case may be, has been registered".

26. Moreover, Section 47 (2) of the Act also provides for the survival of the collective agreement by means of the individual contracts of employment.

27. The evidence before the Court is that the Union was the Recognised Majority Union for workers at the time of the closure of BWIA and there was a registered collective agreement between the Union and BWIA. Further that this Union along with other Unions were engaged in negotiations with BWIA for new collective agreements just before BWIA closed its business at the end of December, 2006.

28. Section 48 (1) of the Act, provides as follows:

> ***48.*** *(1) For the purposes of section 47, the following persons shall be deemed to be the parties to a registered agreement:*
>
> *(a) the Recognised Majority Union;*
>
> *(b) the employer who has entered into the registered agreement or on whose behalf and with whose concurrence the agreement has been entered into;*
>
> *(c) any successors to, or, in the case of an employer, assignees of, such employer or Recognised Majority Union, as the case may be.*

29. Section 48 (3) of the Act further provides:

> *(3) For the purposes of this section any question whether a person is a successor or assignee of another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all the purposes connected therewith".*

30. It is clear that Section 48 (3) places the determination of a successor squarely on the Court. This determination is made when all the circumstances are considered and in accordance with good conscience and the principles of good industrial relations practice. There is no requirement in law for the existence of an existing collective agreement before the Court can make such a determination.

31. Kangaloo J. was quite pellucid on the issue when he stated:[4]

> *"…. the effect of Section 48 (1) (c) of the Act is that a successor employer is deemed to be a party to a registered agreement. Section 48 (2) provides that despite a registered collective bargaining agreement having expired by the provisions of S.43 (1) of the Act, the terms of the registered agreement, insofar as they relate to procedures for avoiding and settling disputes, are deemed to continue until another collective agreement has been registered. This is even so if the original collective agreement has already expired……..."*
>
> *It cannot therefore be said that with the expiration of a collective bargaining agreement the employer/union relationship comes to an end. That is the effect of Section 48 (2), and if there is a new employer whom the Industrial Court is satisfied on all the particular facts of the particular case, and in accordance with good conscience and good industrial relations practice should be declared a successor, then the Union will continue to be the recognised bargaining unit (sic) for the workers concerned".*

[4] Civil Appeal No. 78 of 2009 – Eastern Commercial Lands Ltd and Banking Insurance and General Workers Union at pgs 8 and 9

Is Payment for past service a bar to Successorship?

32. CAL contends that the Court ought not to make an order of successorship pursuant to section 48 (3) because suitable arrangements have been made for compensating the workers for their past service.

33. In our view the payment of compensation to workers when their service has ended is not a determinative factor or a bar to a declaration of successorship. Instead what it simply means is that the workers have received compensation for their past service; payments which they are entitled to receive at the end of their service with BWIA.

34. We adopt the reasoning of Kangaloo J. that:

> "….*Liability for past service with a previous employer can be a consequence of successorship. It is a factor to consider in deciding whether there is successorship, but payment of severance benefits by the previous employer is not a necessary determinative of successorship"*[5].

35. The purpose of successorship is to preserve the collective bargaining rights of workers, as this Court has previously stated:

> *"The payment of severance does not negate successorship. Severance benefits are related to service. Successorship is primarily concerned with the preservation of the collective bargaining process….*
>
> *While the payment of severance benefits may sever the employment nexus, it does not eliminate the recognised majority Union. The bargaining agent and the bargaining unit remain as long as the Union's certification remains intact or another Union succeeds it as the Recognized Majority Union".*[6]

[5] Civil Appeal No. 78 of 2009 – Eastern Commercial Lands Ltd and Banking Insurance and General Workers Union pg 8

[6] Application No. 5 of 1998 – NUGFW v Federated Workers and Caribbean Bottlers Limited

36. We accept that it will be inequitable for the workers to be paid the same severance benefits twice (by BWIA and by CAL) and indeed there is no suggestion that this should be done in this case. We therefore reiterate that:

> *"If a collective bargaining agreement does subsist, the successor employer will be bound by its terms. The workers are not without representation solely because they have been terminated and paid severance by the previous employer".*[7]

When BWIA ceased operations did the relevant bargaining units cease to exist, and, was the Union no longer the Recognised Majority Union?

37. The evidence of the Union is that the bargaining units which the Union represented, continued to exist when CAL took over. This evidence was not controverted by BWIA or CAL. The rights of workers to representation by a Union and the rights to collective bargaining are fundamental rights in industrial relations. The rights of a Recognised Majority Union to bargain collectively are not simply obliterated when a business has been restructured or by the absorption of one company into another. These rights continue to exist after workers in the bargaining unit are absorbed from one company to another and the respective Union continues to be the Recognised Majority Union for its workers.

38. Section 35 of the Act provides that certified Recognised Majority Unions, like this Union, have the exclusive authority to bargain collectively on behalf of workers in bargaining units as long as the certification remains in force. Indeed the Certification of the Union in this Application remains in force.

39. We reject the submissions of CAL and find that the bargaining units and the rights of the Union continued to exist after the closure of BWIA

[7] Application No. 5 of 1998 – NUGFW v Federated Workers and Caribbean Bottlers Limited

in December, 2006 when the same categories of workers who comprised the bargaining units were absorbed into the new Company, CAL.

40. **FINDING OF FACTS**

i. The Union is one of the Recognised Majority Unions for BWIA.

ii. The Union and other Recognised Majority Unions were involved in negotiations with BWIA in 2006 after a breakdown in these negotiations, BWIA ceased its operations.

iii. Although the Collective Agreement which existed between the Union and BWIA expired, the certification of the Union remained in force.

iv. The CEO of BWIA chaired the meetings to employ the staff for CAL and represented himself to be the CEO of the new CAL. He made offers of new contracts to the workers while BWIA was still operational. The business operations of BWIA, together with its intangibles, physical assets and human assets, continued to be used in substantially the same way by CAL, who continued substantially the same operation as BWIA did before.

v. Although there were for the most part insubstantial changes made, such as the clothing of the workers and the paint on the aircrafts; the business of BWIA and CAL is essentially the same. The same categories of workers from BWIA were employed with the new company, CAL, and they continued to perform substantially the same duties which they did when they were employed with BWIA. Some of the workers performed the same jobs at the same locations and used the same equipment, systems and processes as they did when employed with BWIA.

vi. No training was provided to the workers before they commenced their duties with CAL on 1st January, 2007.

vii. The retrenchment of workers in BWIA and their re-employment in CAL took place seamlessly and almost simultaneously.

viii. CAL has retained some significant identifying features of BWIA, such as the international code and the magazine “Caribbean Beat”.

ix. From the totality of the evidence, we find that CAL was created as a result of the restructuring of BWIA as mandated by the principal shareholder, and the purpose of CAL was to replace BWIA as the national “flag carrier”.

FINDINGS IN LAW

41. From the totality of the evidence we find that the Court was not deprived of jurisdiction to determine this Application. There is no requirement in law for there to be a current subsisting collective agreement between the Parties before this Court can deliberate upon the issue of successorship.

42. We find, from all the evidence, that Caribbean Airlines Limited was the successor employer to BWIA when it commenced its operations as Trinidad and Tobago’s “flag carrier” on 1st January, 2007. We find that CAL conducted substantially the same operations as BWIA, in substantially the same way and with substantially the same categories of workers as did BWIA. We further find that there was substantial continuity of the business enterprise of BWIA by CAL. We make these findings in accordance with good conscience and the principles of good industrial relations practice.

43. We further find that the successor employer, CAL, cannot rid itself of a Recognised Majority Union by asserting that there is no existing collective agreement and that the employees who were represented by the Union are no longer employed with BWIA.

RULING

44. It is the ruling of this Court that CAL as the successor to BWIA, is constrained by the provisions of Section 48 of the Act to recognise the Union as one of its Recognised Majority Unions and to honour the terms of the registered collective agreement between the Union and BWIA.

45. We further rule that Certificates of Recognition Nos. 97 and 98 of 1976 are binding on the Parties. The rights of the Union and that of its members are uninterrupted, therefore the successor employer, CAL, is duty bound to honour these rights.

46. It is hereby ordered that Caribbean Airlines Limited do recognise the Union as the Recognised Majority Union of workers of the respective bargaining units for which Certificates Nos. 97 and 98 of 1976 apply.

47. We so rule.

Her Honour Mrs. Deborah-Thomas-Felix
President

His Honour Mr. Albert Aberdeen
Member

His Honour Mr. Patrick Rabathaly
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