Tribute to His Honour Mr. Vernon Ashby on the Occasion of His Retirement from the Industrial Court

DELIVERED BY

MARTIN G. DALY S.C ON MAY 17, 2014 AT THE HYATT WATERFRONT HOTEL

This is the event which Madam President of the Industrial Court of Trinidad and Tobago has appointed as the appropriate place to pay tribute to the service of His Honour Mr. Vernon Ashby following his retirement on December 31, 2013 after nearly twenty-five (25) years of unbroken service.

Fidelity to the terms of reference of this tribute requires focus on Mr. Ashby's time on the Court. One must therefore resist the temptation to review the entire life and times of Mr. Ashby. If I do not resist that temptation, this tribute to his service on the Court might become in the words of a United Kingdom Court of Appeal Judge to whom fulsome retirement tribute was paid "an interlocutory memorial service."

Nevertheless, before I move directly to Mr. Ashby's service on the Court, I should like to let you know something of the significant breadth of background that Mr. Ashby brought to the Court:

Island Scholar

First Degree in English and Modern Languages from Cambridge where he rowed (as in row a boat) for his college, St. John's.

Teacher for ten years or so

First in his class for the Diploma in International Relations at the Institute of International Relations.

Nine years employment in Personnel and Industrial Relations Management.

He is also a lifelong agricultural farmer and a fix-it man. Want an engine overhauled, he is your man.

By virtue of his nearly twenty-five years unbroken service, Mr. Ashby has taken his place in the pantheon of Industrial Court notables. He joined the Industrial Court assigned to the Essential Services Division on April 17, 1989. He became Chairman of the Essential Services Division in April 2010. As indicated, he retired on December 31, 2013. Hence his 24 years 8 ½ months unbroken service.

Reference to the Court's website regarding past judges' service over 20 years reveals as follows:

J.A.M. Braithwaite (1/6/67-31/10/92)	25 years 5 months
K.F.S. Sealey (1/11/67-6/10/92)	24 years 11 ¼ months
V.E Ashby (our honouree) (17/4/89-31/12/13)	24 years 8 ½ months
L.P. E Ramchand (21/3/75-19/10/99)	24 years 7 ¼ months
G.C. Awang (16/8/65-3/1/89)	23 years 5 ½ months
Gaston Benjamin (1/11/74 -31/7/96	21 years 4 months

Also in order to illustrate the depth and quality of Mr. Ashby's service it is useful here to record the initial membership of the Bench of the Industrial Court.

Mr. Justice Isaac Hyatali (President)
Harold Hutson (Vice President)
Dr. Zin Henry
J. O'Neil Lewis

It would be churlish not to record that Mr. Gregor Awang was there almost at the start in that he was appointed on August 16, 1965, shortly after the Court delivered

its first Judgment on June 16, 1965 in Trade Dispute No 1 of 1965 UWI v Federated Workers' Trade Union.

This is a point at which also to record in connection with Mr. Ashby's depth and quality of service that his record of delivery of judgments also places him in the pantheon of Industrial Court notables, as does the fact that he sat from time to time by invitation as a member of the General Services Division.

Mr. Ashby's tenure is particularly significant for his adherence to judicial independence, to consistency and, while paying due regard to the elastic powers of the Industrial Court, for his clear sense that the Industrial Court needed to continue to establish its own precedents. In the words of Blom Cooper and Drewry in their book *Final Appeal*, at page 65, precedent is "a doctrine which compels Judges to synthesize present decisions (or at least articulate the reasons for such decisions) out of the accumulated wisdom (or folly) of their judicial forbears".

Mr. Ashby was faithful to this synthesis without undue rigidity. His fidelity to this synthesis can be seen not only in his judgments but also in his extra-judicial publications, such as the paper he delivered at last year's symposium of the Industrial Court at this venue entitled *Jurisdiction Matters*. Mention must also be made of a paper delivered to the Chamber of Commerce on May 15, 2008 entitled *Recent Trends and Current Developments in Judgments of The Industrial Court* in which he elucidated judgments of the Court on Voluntary separation, injunctions, the employees equitable right in employment based on long service, and on cases reflective of the internationalization of the Trinidad and Tobago labour market.

It would be fair to say that Mr. Ashby's judicial philosophy was that a change in direction should be nuanced but explicit. He abhorred anything that might be considered underhand.

I will shortly refer again to Mr. Ashby's opinions on the jurisdiction of the Industrial Court but I mentioned earlier his contribution to judicial independence and I would like to say something about that.

For example, it is widely known that he was a party to the only "No Decision" of the Industrial Court. I refer to *WASA v NUGFWU* breakdown in negotiations for a collective agreement for the 1984-1986 period. Mr. Ashby's fidelity to precedent, consistency and fairness compelled him as a member of a two-person tribunal to resist any departure from the award made in the 1998 Special Tribunal Case of the *CPO v PSA* in which the Court famously awarded 0,0,0,0,0 and 2 per cent. This is a case notable not only for the parsimonious award but also for the fact that the Tribunal exceeded the 5-year limit to its jurisdiction when it made that award. Mr. Ashby remembers the fact the he was regularly serenaded on his way in to the Industrial Court building by the chorus "We want we judgment now".

Returning to Mr. Ashby's consistency, I think it is fair to say of him that, following in the tradition of His Honour Mr. J.A.M. Braithwaite, he kept the Industrial Court on the straight and narrow as far as jurisdiction is concerned. He regarded it as important that the Court did not "frolic" with its jurisdiction. He said in the conclusion of his paper last year entitled *Jurisdiction Matters*:

> "In short, therefore, this paper modestly proposes that jurisdiction does matter, not only for the reasons set out above, but because a Court acting outside its jurisdiction may actually be doing injustice. An order or award made by a Court becomes an imposition not made less onerous by the fact that nothing can be done about it once the opportunity to object under section 18 (2) has been missed.
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> Some discerning person is certain to see the jurisdictional error available in the eternity available after delivery of a Judgment for reading, re-reading and second-guessing. Identification of such error can be corrosive of confidence in the Court.
>
> In a Court such as ours, where it is frequently the case that representative on both sides of a dispute are lay persons, the responsibility of the Bench for jurisdictional rectitude is all the greater".

In ST11-14 of 2010 *EPA v Caroni (1975) Limited* in a ruling on preliminary issues dated March 21, 2013, Mr. Ashby, without the intervention of Counsel, spotted the tip of the iceberg in that case that could have struck the jurisdiction vessel and driven it seriously off course. That case concerned four disputes seeking retrospective compensation, reclassification, implementation of a group health plan and a job evaluation.

Similarly in ESD 20 of 2008 *CWU v TSTT* in a ruling on a no case submission delivered on August 9, 2010 Mr. Ashby again acted as guardian of the Court's proper jurisdiction. In that case the Court did not permit any inroad into the principle that, in a dispute over interests, terms and conditions on employment must be recorded in a written document that complies with the requirements of the Act.

In these two cases, the Court referred to and applied two seminal decisions of the Braithwaite era, namely C 8 of 1974 *Trinidad Footwear v TIWU* and A 70 of 1981 *BGWU v Citibank*.

Now you will have noticed that not all of the six persons in the pantheon of longest serving Industrial Court notables were lawyers. I submit that this is not an accident. It is an accurate reflection of the strength and value of a Court established with a multi disciplinary bench. It has long and consistently been recognized by the Court of Appeal of Trinidad and Tobago that the legislature placed a high degree of trust and confidence in the institution that is the Industrial Court by excluding the Court of Appeal from review of some areas of the work of the Industrial Court because it was "sensible and logical" to do so "since members of the Court are normally selected for appointment thereto by reason of their specialized knowledge and experience in Industrial Relations and related matters".

I have been practicing in the Industrial Court since 1972 and, since the firm which I head was formed in 1987, I have had at least two persons associated in practice with me who are regular practitioners in the Industrial Court. I can speak for all of us when I say that our practicing experience has been broadened by appearing before

multi disciplinary tribunals, and, in particular, having to advocate a cause before persons who are not lawyers, but not less astute in considering and, where necessary, picking apart any analysis presented to the tribunal.

I should say in passing that the same applies to the many opponents we have had over the years, who, although not lawyers, are as formidable in their advocacy as many leading members of the legal profession.

One major lesson that is learned in the Industrial Court is the importance of relationships. This is not a matter readily understood in the more strictly adversarial atmosphere of the High Court and Court of Appeal. In learning the importance attached to relationships in industrial relations, I have no doubt that we lawyers are better persons as a result of it. Mr. Ashby had something to say about this as part of a five member court in Application No 8 of 2004 *NUGFW v Caribbean Development Company Limited/Carib Glassworks Limited*, where he said:

> "The domain of Industrial Relations is one in which parties come before this Court not as ships that pass each other in the night, but as partners in a relationship that existed before they came to Court and to which they will return. It is a relationship that is assimilable in some respects to the conjugal".

It will be apparent from all that I have said that the time Mr. Ashby has spent on the bench in the Industrial Court has exemplified many of the qualities of a good Judge and, equally importantly, he is a vivid advertisement for the value and success of the Industrial Court as a multi disciplinary tribunal.

It is fashionable nowadays to ask in relation to significant contributors to the welfare of a country, what is his or her legacy? I would say this about Mr. Ashby's "legacy": There have been times, albeit few, when I have feared for the independence of the Industrial Court. To be my usual blunt self, there has sometimes been an uncomfortable scent of the partisan political in the precincts of the Court. Mr. Ashby's career was not for one moment blighted by such a scent.

Mr. Ashby's legacy is to have shone a light on the duty of the members of the Industrial Court to support the work, scholarship and reputation of the unique jurisdiction conferred by statute on the Court and **not** to take instructions from any source other than "equity, good conscience, the substantial merits of a case and the principles and practices of good industrial relations."

Mr. Ashby has also served as an example of the fundamental importance of not deviating from duty for frivolous or otherwise unsupportable reasons and of not interfering with the statutory structure of the Court.

Your Honour we bid you farewell in your capacity as an Honourable Judge of the Industrial Court and wish you well in all you future endeavours. May your agricultural land be blessed with bountiful harvests.

ACKNOWLEDGMENT:

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