



**INDUSTRIAL COURT
of Trinidad and Tobago**

Keynote Address

by

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**“The Court and Workplace Transformation:
Balancing Rights and Productivity”**

at the

Employers Solution Centre’s Seminar

on

**LANDMARK COURT JUDGMENTS 2026:
“From Judgment to Action: Building Better IR and HR Systems”**

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Thank you for the kind invitation, once again, to deliver the Feature Address at this your annual Landmark Court Judgments Seminar on this year's theme, "*The Court and Workplace Transformation: Balancing Rights and Productivity.*"

The wider objective of today's seminar moving from judgment to action and building better industrial relations and human resource systems is both practical and timely. It accords with the Industrial Court's overarching objective as expressed in the long title of the *Industrial Relations Act*, Chapter 88:01 ("*the IRA*"), which is to make better provision for the stabilisation, improvement and promotion of industrial relations.

As you may know, the Court fulfils its mandate by facilitating parties in conciliation and by adjudicating in open hearings. The jurisprudence of the Court developed over its sixty-one years of existence provides a rich body of judicial work on the principles and practices of good industrial relations, which offer practical guidance to employers, trade unions and workers.

My assignment this morning is to focus on: -

1. The role of judicial interpretation of labour laws in shaping contemporary workplace relations;
2. Strategies for productive, equitable and law-compliant workplaces in a VUCAH environment;
3. And also to offer a practical Human Resource checklist for managing performance and productivity with procedural fairness.

The Role Of Judicial Interpretation Of Labour Laws In Shaping Contemporary Workplace Relations

The role of judicial interpretation of labour laws in shaping contemporary workplace relations is important because workplaces are not static. The workplace like society at large is characterised increasingly by uncertainty. Employers and workers and their representatives now operate in an environment shaped by technological advancement, artificial intelligence, new modes of working, economic constraint, climate-related disruption, national and international conflicts and changing expectations of fairness and inclusion. Organisations are required to be productive and competitive in this environment. The law must therefore be applied in a manner which remains faithful to established principles, while responding meaningfully to contemporary workplace realities.

The Industrial Court is central to that task. The Court's role goes beyond the resolution of disputes when workplace relationships have broken down. It sets standards for conduct

in the workplace in areas including maternity protection, minimum wages, retrenchment and severance benefits and occupational safety and health. The Court's decisions also provide guidance in translating statutory provisions into fair and sustainable workplace systems. In so doing the Court also draws upon international Conventions and Recommendations of the International Labour Organisation (ILO).

The Statutory Foundation: Section 10(3) of the Industrial Relations Act

Key in the Court's judicial interpretation of workplace relations is section 10 (3) of the IRA, with which we all may be very well acquainted. It provides:-

*“(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall—
(a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
(b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.”*

This provision goes beyond the common law. It requires the Court to do more than determine whether an employer possessed a contractual right, a policy-based authority or the managerial prerogative to act. It requires the Court to examine the exercise of that prerogative fairly and justly, in accordance with equity, good conscience, the substantial merits of the case and the principles and practices of good industrial relations. Significantly, the Court must balance the interest of individuals with those of the community as a whole.

The learning derived from the Court's many decisions on section 10 (3) and those of the Court of Appeal, provide a standard of workplace conduct. In particular, the pronouncements on the principles and practices of good industrial relations inform the way in which employers should manage performance, administer discipline, effect organisational change, consult with workers and unions, and so on.

The Foundational Role of Good Industrial Relations Practice

The principles and practices of good industrial relations do not really change; what changes is the environment in which those principles and practices have to be applied. It is that interaction between enduring principle and changing circumstance that gives judicial interpretation its continuing significance in the modern workplace.

The Court's obligation to apply the principles and practices of good industrial relations has long been recognised in our jurisprudence.

In *Caribbean Printers Limited v Union of Commercial and Industrial Workers*, Civil Appeal No. 30 of 1972, Rees JA described the principles and practices of good industrial relations as:

“those informal, uncodified understandings which are ancient habits of dealing adopted by trade unions and acquiesced in or agreed to by employers...”

Similarly, in *Texaco Trinidad Inc. v Oilfields Workers' Trade Union*,¹ Civil Appeal No. 53 of 1976, Hyatali CJ stated:

*“...both employers and trade unions are not only obliged to observe and apply these principles in all their dealings with each other but must be prepared to accept that any position taken up by any of them in breach thereof may well be condemned by the Court as unreasonable.”*¹

Among the principles and practices of good industrial relations that can be culled from two of the Court's leading cases *Trade Dispute No. 140 of 1997, Bank and General Workers' Union v. Home Mortgage Bank* delivered on March 3, 1998 and *Trade Dispute No. 2 of 2001, Banking Insurance and General Workers' Union v. Hindu Credit Union Co-operative Society Limited* dated July 31, 2001, as well as numerous other cases are that:

- a. The employer should properly investigate any allegation or allegations of misconduct made against a worker;
- b. Except in exceptional circumstances, a worker should be given an opportunity to be heard before being dismissed from an employer's service (the natural justice requirement, one of the more important principles of good industrial relations practice);
- c. The essence of a fair opportunity to be heard involves the provision of relevant information by the employer to the employee to enable the latter to understand the substance

¹ 34 WIR 215, dated March 11, 1981

of the allegations made against him and an opportunity to reply to such allegations, including putting forward any reasons in mitigation of a penalty; and

d. The opportunity is to be given before the decision to dismiss is made.

The practical content of the right to be heard was also clearly expressed in *TD No. 130 of 1994 between Association of Technical and Administrative and Supervisory Staff and Caroni (1975) Limited*, where the Court stated:

“The essence of a fair opportunity to be heard involves the provision of relevant information by the employer to enable the latter to appreciate and understand the substance of the allegations made against him and an opportunity given to the employee to reply to such allegations and to put forward any reasons in mitigation of any penalty or penalties which may be possible having regard to the nature of the allegations made against him. It is a requirement of basic fairness and justice as well as of the principles of good industrial relations practice. It is to enable the employee to bring to the notice of the employer relevant facts and circumstances and to enable the employer to hear and understand the employee’s side of the story before he makes up his mind finally. The opportunity must be given before the decision to dismiss is made.”

Additionally, **ILO Convention C158, Termination of Employment Convention, 1982**, has long been accepted by the Court as one of the best statements of good industrial relations practice. Articles 4 to 7 provide for a valid reason for termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. They also recognise that a worker should not be terminated for reasons related to conduct or performance before being provided with an opportunity to defend himself or herself against the allegations made, unless the employer cannot reasonably be expected to provide such an opportunity.

The Court of Appeal² has also emphasised that the right to be heard is not satisfied merely by allowing a worker to speak. Where an allegation or adverse material may bear upon an employment decision, the worker must know the case requiring an answer and have

² See Civil Appeal No. P 213 of 2015 Trade Dispute Nos. 27-30 of 2012 Between *Carib Brewery Limited and National Union of Government and Federated Workers* 19 February 2020 and Appeal Number P024 / 2024 Between *Urban Development Corporation Of Trinidad And Tobago And Appellant / Party No. 2 National Union of Government and Federated Workers* dated September 25, 2025

a real opportunity to challenge it. In *CA P067/2022 Oilfields Workers' Trade Union v Trinidad and Tobago Electricity Commission*, Kokaram JA stated:

"...the right to know and effectively challenge the opposing party's case is a fundamental feature of the judicial process. The right to a fair trial includes the right to be confronted by one's accusers and the right to know the reasons for the outcome..."

These principles are not confined to cases of dismissal for misconduct. They apply whenever a serious adverse employment decision is being contemplated, whether arising from performance, absenteeism, incapacity, conduct, workplace conflict or information supplied by others.

In a complex and ambiguous workplace environment, fair process assists the employer in arriving at a sound and defensible decision. It may reveal misunderstanding, inadequate training, insufficient resources, untested allegations or circumstances warranting a corrective measure short of termination.

A fair hearing does not guarantee a favourable outcome for the worker. Rather, it ensures that the employer's decision is informed, balanced and consistent with natural justice. In that way, natural justice supports lawful, equitable and productive workplaces by ensuring that decisions are fairly made, properly tested and capable of sustaining trust and confidence in the workplace.

Due process is one of the tenets of good industrial relations practice. It concerns the manner in which disciplinary action is undertaken. It requires the employer to follow a fair, orderly and transparent procedure before arriving at a decision that may have serious consequences for a worker.

In *TD No. GSD-TD 129 of 2023, Government and General Workers Union and Willoughby's Travel Services* delivered on 30 July 2025, the Court considered whether the employer had applied due process in dismissing a worker. The Court found that a worker with approximately twenty-six years of service was summarily dismissed by letter dated 4 August 2022, effective 5 August 2022.

Based on the facts and evidence in that case, at no time prior to her dismissal was the worker made aware of the company's decision to initiate further disciplinary proceedings after having issued her a warning letter on 25 July 2022 for the same issue. The company held an in-house management meeting, but the worker was not invited to attend. The company failed to take the necessary procedural steps, in accordance with good industrial relations practice, before making the decision to dismiss the worker. Having made that decision, it did not give her the opportunity to enter a plea in mitigation.

Based on the totality of the evidence before it, the Court found the employer's actions to be egregious. The worker had been issued a first warning letter for an alleged offence of

a separate nature from the second alleged offence. Her second warning letter was for the very misconduct for which she was subsequently dismissed. The dismissal therefore represented a second penalty for the same offence, that is, double jeopardy. The Court determined that the dismissal was conducted in a manner contrary to the principles and practices of good industrial relations and was harsh and oppressive. The worker was awarded damages of two hundred thousand dollars (\$200,000.00) payable in two equal tranches.

The Court's decisions remain the cornerstone of the principles and practices of good industrial relations because they provide a standard which should govern the dealings of the parties in the workplace from the outset. In other words, the principles and practices of good industrial relations should be seen as the rules of engagement between the actors in the workplace. They can: -

- a) inform the formulation of policy.
- b) guide the management of performance and conduct.
- c) determine how complaints are investigated and grievances are addressed.
- d) shape the manner in which organisational change is communicated and implemented; and
- e) guide the exercise of managerial prerogative.

It is worth emphasising that an employer who disregards good industrial relations practice in its everyday conduct, may do so at its own peril because, when a dispute reaches the Court, the Court is required to review the conduct not at 'the doors of court' but in the lead up to the dispute. It is too late at the last minute to put a positive spin on conduct which, throughout, was not in keeping with the principles and practices of good industrial relations.

Judicial Interpretation in a Changing World of Work

Contemporary workplace relations now present questions which earlier generations of employers, workers and lawmakers may not have anticipated in their present form. Remote and hybrid working arrangements require clarity as to working time, supervision, occupational safety and health, privacy and the right to disconnect. The ILO's 114th Session, which incidentally ends today, addressed among other things, '*Decent work in the Platform economy*'. Included in the ILO's discussions were a Draft Convention and Recommendation to provide standards in that area.

Automation and artificial intelligence offer increased efficiency, but may also raise questions concerning displacement of labour, transparency, bias in automated decision-making, monitoring and data protection. Climate-related disruption and public health emergencies may require organisations to take rapid and difficult decisions affecting working arrangements, income and security of employment.

Judicial Interpretation and Emerging Technology

The role of judicial interpretation in shaping contemporary workplace relations will assume increasing importance as workplaces become more dependent upon artificial intelligence, automation, biometric systems, electronic surveillance and remote working arrangements. These developments may improve efficiency, service delivery and productivity. They may assist organisations in analysing information, monitoring output, allocating resources and automating routine tasks. However, they might also produce serious consequences for workers, including job displacement, loss of privacy, misuse of sensitive personal data, unfair monitoring, potential bias in algorithmic decision-making and the risk that an employee may be adversely affected by an automated assessment which he or she does not understand and cannot meaningfully challenge.

AI also raises certain ethical considerations for the administration of justice itself. The Honourable Mr. Justice Westmin James referred two attorneys-at-law to the Disciplinary Committee of the Law Association of Trinidad and Tobago after multiple fictitious legal authorities were cited in court submissions in proceedings concerning the dismissal of a Laboratory Assistant in 2023. Of particular concern was that the fictitious authorities were purported to be decisions of our own Industrial Court. In addressing the matter, James J stated:

“Irresponsible use of internet sources or generative AI tools undermines not only individual cases but also the credibility of the legal system as a whole. If such conduct is not condemned and appropriately addressed, it could lead to a dangerous erosion of the rule of law.”

That matter was identified as possibly the first local case involving the use of AI resulting in sanctions, and James J., described the incident as a serious breach of professional ethics. Its significance for present purposes lies in a broader principle: technology cannot be used as a substitute for professional responsibility, verification or accountability.

Just this week, the New York Times reported a case in which a Federal Judge in Mississippi imposed fines and cancelled a civil trial removing four lawyers from the case³.

³ New York Times, June 9, 2026, *Judge Punishes 4 Lawyers After Catching Both Sides Using A.I. in Lawsuit* by Neil Vigdor – The New York times <https://share.google/C3xBYeyczAH7Pt6uR> accessed June 10, 2026

Attorneys of both litigants in that case engaged in sanctionable conduct. Relying on AI, they cited fake legal cases in their court filings.

In treating with the use of AI in its Court, the Caribbean Court of Justice has already taken an important step within this region by issuing ***Practice Direction No. 1 of 2025: The Use of Generative Artificial Intelligence Tools in Court Proceedings***. That Practice Direction provides guidance on the permissible use of generative AI tools by attorneys, parties, witnesses, self-represented persons and other court users in proceedings before the CCJ. Although directed to court proceedings, its underlying message is also relevant to industrial relations: the responsible use of emerging technology requires rules, transparency, verification and accountability.

Judicial interpretation, like labour laws themselves must keep pace with changing times. At a Subregional Labour Law Training Workshop held in 2023,⁴ the ILO addressed the reasons for labour law reform and what they recommend as the best approach. I posit that the following reasons are also applicable to judicial interpretation: -

- a) Labour laws may be failing to achieve their objectives because they do not 'fit' well with labour market conditions. This may be because they were inherited or borrowed.
- b) To address concerns/problems that have emerged in the labour market because of changes to employment practices (e.g., growth in indirect, temporary employment) and that need to be addressed through law reform;
- c) To reflect changes in societal values (e.g., discrimination at work, work/ family balance);
- d) To address deficiencies in the law that have been highlighted by legal cases or practices; and
- e) To improve compliance with fundamental and ratified ILO Conventions.

The ILO in the same session indicated that in its experience labour law reforms that have been crafted through an effective process of tripartite consultation prove more sustainable because this approach allows for consideration of the complex set of interests at play in the labour market. In addition, they can ensure a balance between the requirements of economic development and societal needs.

⁴ Session 6, Subregional Training Workshop, Nadi Figi, November 8, 2023

Global Trends

Some of the recent trends in labour law reform in other jurisdictions indicate a greater focus on inclusivity, non-discrimination and diversity in the workplace. Both legislative reforms as well as judicial interpretations have sought to fortify the rights of marginalized groups, encompassing gender, race, sexual orientation, and disability.⁵

Teleworking or remote work and the gig economy are changes in how work is performed that have prompted legislative change in other jurisdictions. They would also require changes in judicial interpretation.

Modern labour laws and policies must address the challenges of ensuring a safe work environment for remote workers, encompassing ergonomic considerations, mental health, and the right to disconnect.

Remote work requires special attention to ensure that the obligations of parties are clear. For example, how do we define a workplace? When is a worker on active duty? What is a workplace accident? ⁶Whose obligation is it to provide a safe place of work when the work is being performed at the worker's home? These may sound as trite and simple questions but similar questions have engaged the minds of Judges in other jurisdictions. I would suggest that in the absence of legislation, these and similar questions should be in the contemplation of employers, unions and employees when settling Management Policies or when negotiating collective agreements. This approach may well minimise disputes in these areas and would go some way in filling the gap until our labour laws are updated.

Gig workers, whom we would refer to generally as independent contractors, face hurdles in organizing and bargaining collectively. Some jurisdictions are exploring innovative solutions, such as sectoral bargaining or platform cooperatives, to address the collective bargaining rights of gig workers (Stewart and Stanford, 2022).

⁵ Ibid

⁶ Ms. Alexandria Gentile-Patti, a customer agent for Air Canada works remotely from home. She fell down the stairs in her home on her way to her dinner time. She asserts that her fall constitutes an unforeseen and sudden event that occurs during work, since the fact of going to dinner constitutes, in particular, a comfort activity from which the employer benefits. The Commission for Standards, Equity, Health and Safety at Work recognizes that she suffered an employment injury. Air Canada asserts- the fall did not occur during work, since she was no longer in her professional sphere, but rather in her personal sphere. There is no connection between this activity and work and adds that when a worker is in the comfort of his home, there is a presumption of privacy such that there is no effective control on the part of the employer.

Decision of the Tribunal-Ms. Gentile-Patti's fall, which occurred a few moments after she disconnected herself from her workstation to go to dinner, represented an unforeseen and sudden event that occurred during work. She therefore suffered an employment injury.

AI seems certain to be part of the future world of work and industrial relations in Trinidad and Tobago. Until our laws provide specifically for its use in the workplace, employers and trade unions would be well advised to establish appropriate policies and, where necessary, provisions in collective agreement governing its use. Such policies should include the purpose for which the technology is deployed; the information which may be collected and retained; safeguards against misuse; the extent to which automated outputs may inform employment decisions; and the procedure by which a worker may question, explain or challenge material relied upon against him or her.

Ultimately, emerging technology reinforces rather than diminishes the significance of judicial interpretation. Where legislation has not yet caught up with every development, the Court's jurisprudence gives practical content to the enduring principles which must govern the workplace. In the technological workplace, as in every workplace, conduct of employer, workers and their representatives must accord with equity, good conscience and the principles and practices of good industrial relations.

Productive, Equitable And Law-Compliant Workplaces In A VUCAH Environment

I turn now to the strategies required for building productive, equitable and law-compliant workplaces in a VUCAH environment.

The term VUCAH describes an environment which is volatile, uncertain, complex, ambiguous and hyper-connected.⁷ That is an accurate description of the context within which organisations presently operate. A technological development may alter established jobs. A cyber incident may disrupt operations. A complaint may circulate beyond the workplace in minutes. A shift in demand may require rapid adjustment. A public institution may be expected to deliver more responsive service with limited resources. An employer may have to balance cost, output, public expectation, employee wellbeing, legal risk and industrial stability all at the same time. Like the many seafarers still stuck in the Strait of Hormuz, an unanticipated conflict may turn what was a routine workday into an unpredictable, seemingly unending traumatic event.

The VUCAH environment points to the need to pay greater attention to the psychosocial working environment. ILO publication 'The psychosocial working environment Global developments and pathways for action'⁸ reports that:-

“According to the latest estimates released by the ILO for the first time in the global report the psychosocial working environment: Global developments and pathways for action

⁷ <https://www.beverlylandais.co.uk/blog/how-to-thrive-in-a-vucah-world>

⁸ 28 April 2026 – World Day for Safety and Health at Work

psychosocial risk factors are responsible for more than 840,000 deaths annually due to associated cardiovascular diseases and mental disorders.

These risks also lead to nearly 45 million disability adjusted life years (DALYs) lost each year. The combined impact of cardiovascular disease and mental disorders associated with psychosocial risk factors is estimated to result in 1.37 per cent of global GDP lost annually.”

In the VUCAH environment, employers and trade unions may well have to place more emphasis on the provision of services offered in Employee Assistance Programmes (EAPs). In a survey of four hundred and seventy-three collective agreements registered in the Industrial Court between 2021 and up to this time in 2026, sixty-five of those collective agreements included a clause covering EAPs. In some of instances, there were no concrete provisions, merely an undertaking to discuss an EAP.

In a study ‘*Incorporating VUCA and Digitalisation Capabilities into Resilient Organisations: A Multidimensional Approach*⁹, which looked at the effects of COVID 19 on the performance of manufacturers, the abstract of that work reads in part:-

“The performance of Trinidad and Tobago (T&T) manufacturers has since 2019 been significantly affected because of the Covid-19 pandemic. In 2020, manufacturers operated at only 61.9% of their capacity, their economic activity decreased, gross domestic products (GDP) was affected and unemployment increased. The pandemic has exposed the vulnerability of T&T manufacturers to adversities/disturbances. It is imperative that these organisations be re-established to be more resilient.”

The paper aimed to review the concepts of resilient organisations; identify the factors affecting their development; and explore the resilient organisation models advocated by scholars, researchers and practitioners in the literature.

They pointed to the many approaches to VUCA. They posited that the most prominent approaches utilised¹⁰ were “vision, understanding, clarity and agility.” They stressed the importance of monitoring several areas including:-

“- Globalisation e.g., being aware of any impending conflicts/wars that could affect the supply chain,

⁹ Surujdaye Jaggernath-Furlonge and Kit Fai Pun, *Incorporating VUCA and Digitalisation Capabilities into Resilient Organisations: A Multidimensional Approach*: Department of Mechanical and Manufacturing Engineering, Faculty of Engineering, the University of the West Indies, St. Augustine, Trinidad and Tobago, West Indies; (2025) *Industrial Engineering and Management Journal*, pp. 79–87. Doi:10.47412/ pp. 81,82

¹⁰ by Johansen and Euchner (2013)

- *Competition e.g., keeping an eye on rivals for percentage market share, and any new developments,*
- *Technology e.g., identifying what is happening in research and development for your product, what new developments in your area of business in terms of, equipment, software, and methods,*
- *Economy e.g., economic indicators are available from the Central Bank of T&T, and*
- *Legal/Political e.g., the Ministry of Legal Affairs provides updated information of any impending legislations, rules, and laws.”*

In their view, the areas outlined should be continuously probed for any potential threats, formation of trends. For any weak signals identified, scenarios are identified and their possible impacts. It is recommended that this task be outsourced or managed by a designated department, however communication to the entire organisation is vital. Scenarios can include experimentation and pilot studies. This is an ongoing process but commences in the anticipation resilience phase.

In the absence of specific labour laws or codes governing every consequence of the COVID-19 pandemic, the Industrial Court was required to determine pandemic-related employment disputes by applying the broader principles and practices of good industrial relations.

In GSD-TD No. 322 of 2021 between *Oilfields Workers’ Trade Union and Long Beach Hotel trading as Rex Turtle Beach Hotel*, delivered on 6 June 2025. That dispute concerned the employer’s decision to extend the temporary lay-off of three workers during the COVID-19 pandemic. The workers had initially been laid off for three months from 26 March 2020. Shortly before that period expired, they were informed that the temporary lay-off would be extended for a further period of four months and one week. The Union contended that the extension was imposed unilaterally, without effective consultation and contrary to good industrial relations practice.

The employer maintained that the closure of the hotel arose from public health restrictions and circumstances entirely outside its control. It relied upon the severe impact of border closures, stay-at-home requirements, restrictions on public gatherings and the continuing prohibition on the normal operations of the hotel and tourism industry.

The Court accepted the extraordinary nature of those circumstances. In its decision, the Court expressly recognised that industrial relations cannot be isolated from the wider social and economic context, stating:

“Industrial Relations is a dynamic process, subject to change. The Industrial Relations System may be influenced by changes in the external environment (the social, economic

and political system) and in turn the industrial relations system influences the external environment by its judgments, rulings, collective agreements and management decisions.”

The Court further recognised that the pandemic had imposed extreme pressure upon businesses in the hotel and tourism sector and that, in order to survive, businesses directly affected by the public health restrictions would have been forced to make harsh adjustments affecting their industrial relations policies and procedures.

However, the Court did not permit exceptional operational circumstances to displace consultation. Although it accepted that the hotel was forced to alter the workers’ terms and conditions by extending the lay-off period, the Court held that the employer was required to do so in consultation with the Union.

That decision is a powerful illustration of the role of judicial interpretation in shaping modern workplace relations. It neither ignored the commercial reality facing the employer nor treated consultation as dispensable because circumstances were urgent. Instead, it struck the balance which section 10 (3) requires: the interest of the persons immediately concerned and the community as a whole.

In GSD-TD No. 9 of 2021 between *Communication Workers’ Union and Crown J’s Limited*, in an oral decision delivered on 6 January 2025, followed by written reasons on 14 January 2025. The worker had been employed as an Accountant from January 2007 until May 2020. When operations ceased in March 2020 because of pandemic restrictions, she was sent home. When construction companies were permitted to resume operations, she was informed that the company had not resumed business. However, having access to company emails, she formed the view that operations had in fact resumed. When she challenged the employer as to why she had not been recalled, the employer maintained its position and subsequently failed to respond to further communication from her.

The Court found the employer’s conduct to be dishonourable and rendered more egregious by the worker’s many years of service. Notwithstanding the effect of the COVID-19 restrictions on the construction sector and the economy generally, the Court stated that it could not permit employers to ignore their obligations to employees and to the law. The worker was found to have been wrongfully dismissed in circumstances which were harsh and oppressive and contrary to good industrial relations practice, and damages of one hundred thousand dollars (\$100,000.00) were awarded.

The Court will recognise genuine external pressure and the need for operational adjustment. However, it cannot permit crisis to become a shield for the abandonment of fair process, consultation, candour or the lawful treatment of workers.

In the VUCAH environment, there may be a temptation to regard fair procedure as too slow or too cumbersome for urgent decision making. However, fair procedure need not be the enemy of decisive management. The Director General of the International Labour Organization, Mr. Gilbert F. Houngbo, in opening the 114th International Labour Conference highlighted that a human centred approach is essential to ensure technological process advances. He stated,

“The future of work will not be determined by technology alone, but by the policies, institutions and social dialogue that guide it.”

Specific Strategies may include:-

- a) Making good industrial relations practice part of the organisation’s ordinary operating system. Employers and trade unions are required to observe and apply the principles of good industrial relations in their dealings with each other. (See Civil Appeal No. 53 of 1976, *Texaco Trinidad Inc. v Oilfields Workers’ Trade Union supra*).
- b) Treating natural justice as the foundation of fair and lawful decision-making to ensure that natural justice is treated as a practical requirement of fair workplace decision-making, not as a technical or abstract doctrine.
- c) Follow due process to improve the Quality and Defensibility of Management Decisions.
- d) Apply Progressive Discipline and Fair Performance Correction.
- e) Manage performance and conduct, through progressive discipline, fair correction and proportionate response.

In a VUCAH workplace, where duties may change, technology may be introduced and expectations may shift, employers must be mindful not to treat every performance concern as immediate misconduct warranting severe sanction. Productivity requires standards, but fairness requires that those standards be clearly communicated, monitored and, where appropriate, corrected progressively.

Where dissatisfaction arises in relation to a worker’s performance, the employer should identify the concern, communicate the required standard, allow the worker to respond, and provide a reasonable opportunity to improve before serious disciplinary consequences are considered. This is not a retreat from managerial authority. It is the proper exercise of that authority.

The principle is directly supported by *TD No. 101 of 1992, Communication Workers Union and Busy Business Systems and Equipment Limited*, where His Honour Mr. Khan stated:

“It is well known in industrial relations practices that there are varying degrees of dissatisfaction with a worker’s services. For summary dismissal to result there must be dissatisfaction of a very serious nature and the company must have taken steps to bring the dissatisfaction to the worker’s notice and allow a worker an opportunity to correct any deficiencies. There’s also the matter of progressive disciplinary action. Summary dismissal is rarely justified where a worker has not been told beforehand of his shortcomings in performance and given an opportunity to improve his performance...”

This authority recognises two important propositions. Firstly, an employer is entitled to require competence, diligence and productivity from its employees. Secondly, where the issue is capable of correction, fairness ordinarily requires notice, guidance and an opportunity to improve before the ultimate sanction is imposed.

Progressive discipline therefore serves both fairness and productivity. It allows the employer to correct behaviour, preserve employment where possible, and reserve dismissal for cases where the deficiency is serious, persistent or incapable of reasonable correction. It also ensures that disciplinary action is proportionate, transparent and consistent with good industrial relations practice.

In ESD TD No. 049 of 2021 between *Government Industrial and General Workers’ Union and North West Regional Health Authority*, the Court addressed the employer’s failure to communicate a reason for an adverse decision notwithstanding requests from the worker and the Union. His Honour Mitchell stated:-

“Because a reason was not communicated to the Worker, she was unable to make representation to mitigate the Employer’s decision to dismiss her. The failure by the Employer to give a reason for the Worker’s dismissal circumvented the Worker’s natural justice right to be heard in defence of her dismissal.”

The provision of reasons is not a matter of courtesy; it is an essential element of procedural justice. Reasons enable the worker to understand the case, respond to it, advance matters in mitigation and, where represented, obtain meaningful assistance from the Union. They also require the employer to satisfy itself that the proposed decision rests on a valid and defensible basis.

Mitigation is a critical part of fairness in disciplinary decision-making. It recognises that even where wrongdoing is found, the circumstances surrounding the conduct, the worker’s record, and other relevant considerations may bear directly on the appropriate penalty. An important element which the Industrial Court must consider when examining the conduct of the employer is whether or not the employer afforded the worker an opportunity to make a plea in mitigation prior to the penalty being imposed.

This principle was underscored in *Civil Appeal No. P013 of 2018, Public Services Association and Water and Sewerage Authority*, where the matter was remitted to the Industrial Court to consider whether the failure to hear the worker in mitigation before the penalty rendered the dismissal harsh, oppressive or contrary to good industrial relations practice.

The practical lesson is clear. Before a serious sanction is imposed, the employer must consider not only whether the complaint has been established, but whether the worker has been given a genuine opportunity to place relevant matters before the decision-maker. This is particularly important in a hyper-connected workplace, where allegations may spread quickly and reputational pressure may build. A complaint may require prompt attention, but it must not be treated as a finding before a fair and open-minded process has taken place.

Accordingly, a productive workplace requires clear standards and accountability. An equitable workplace requires notice, support and a genuine opportunity to improve. A law-compliant workplace requires progressive and fair treatment before serious disciplinary consequences are imposed. In a VUCAH environment, progressive discipline is not a procedural formality; it is an essential discipline of fair and sustainable workplace management.

Management should aim to strengthen communication, consultation, the provision of reasons, mitigation and fair investigation, particularly during periods of workplace transformation.

In a VUCAH environment, workplace change may involve changes in duties, reporting lines, technologies, location of work, performance measures, deployment of staff or organisational structure. Management may, in an appropriate case, possess the authority to make such changes. However, a change imposed without adequate communication may undermine the trust and cooperation necessary to make that change effective.

The decision in TD No. 343 of 2004 between Banking, Insurance and General Workers' Union v First Citizens Bank Limited, is instructive. I indicated that the Bank had the right to reassign the Worker and revise his job description according to its changing needs, it nevertheless held that a reasonable period of notice and a meaningful opportunity for discussion ought to have been given before implementation. The Court found that the sudden change, which left no room for genuine discussion before the move, was contrary to good industrial relations practice.

Accordingly, even if the Employer had the managerial prerogative to reassign the Worker, the exercise of that power was still required to be fair, transparent, and preceded by meaningful engagement, particularly where the reassignment followed allegations concerning the Worker's conduct and performance.

Consultation does not mean that management relinquishes its authority to manage. Nor does it mean that every worker or trade union must agree with every proposed change before it may proceed. Consultation means that persons materially affected by change are treated with respect, informed adequately, heard meaningfully and given a proper opportunity to raise relevant concerns before an irreversible decision is implemented, where the circumstances warrant that approach.

Practical Hr Checklist: Managing Performance And Productivity With Procedural Fairness

The many decisions of the Court over its existence disclose criteria or standards which can be reduced to a checklist or aide to assist in managing performance and productivity with fairness. Some suggestions are:-

(I) Recording Performance Concerns

Performance Reviews: Documenting any inefficiencies in performance reviews.

Written Warnings: Issuing written notices or warnings which address performance concerns.

Performance Improvement Plan (PIP): Providing PIPs which allow the the opportunity to improve areas of concern.

In *Trade Dispute No. 421 of 2016 Government Industrial and General Workers Union v NAGICO Insurance Trinidad and Tobago* the Court was called upon to examine the alleged constructive dismissal of a Worker who resigned only two days after a negative performance appraisal. The Company in its evidence presented a well-documented train of performance appraisals, verbal and written warnings as well as plans for improving the Worker's performance.

In dismissing the matter, the Court stated:-

*"The worker's resignation letter highlighted his disagreement with **the** scores that he received in his performance appraisal, and he resigned two days after his last performance appraisal. However, the Company has a right to issue a performance appraisal in accordance with its policy to outline any workers' strengths and weaknesses. From the worker's very first performance appraisal, an agreed development plan was also designed to resolve the weaknesses identified.*

Therefore, issuing "a drastically low performance appraisal for November 2013 - April 2014" cannot be viewed as an attempt by the Company to breach the worker's contract of employment."

(II) Communication of Clear Expectations

Clear Expectations: Informing workers of the standards and expectations for performance especially when they are falling short.

Feedback Sessions: Hold frequent meetings with the worker and recording the input received.

Regarding poor worker performance, in **Re Edith Cavell Private Hospital and Hospital Employees Local 180** (1982) 6 L.A.C. (3D) 229, a 1982 decision from British Columbia and summarized in the Canadian case **Boulet v. Federated Co-operatives Ltd.**, 2001 MBQB 174 (Can Li) two decisions which gave some valuable insights, both judgments agreed that:-

"An employer who seeks to dismiss an employee for a non-culpable deficiency in job performance must meet certain criteria:

(a) The employer must define the level of job performance required.

(b) The employer must establish that the standard expected was communicated to the employee.

(c) The employer must show it gave reasonable supervision and instruction to the employee and afforded the employee a reasonable opportunity to meet the standard.

(d) The employer must establish an inability on the part of the employee to meet the requisite standard to an extent that renders her incapable of performing the job and that reasonable efforts were made to find alternate employment within the competence of the employee.

(e) The employer must disclose that reasonable warnings were given to the employee that a failure to meet the standard could result in dismissal."

(III) Consistency

Policy Adherence: Applying Company policies consistently to all employees.

Past Practices: Ensuring that the action chosen is consistent with the handling of similar cases in the past.

In *TD 31 of 1984 Texaco Trinidad Incorporated v. Oilfield Workers' Trade Union* two employees with over thirty-seven years of service were embroiled in an argument which quickly turned to blows. They both reached for a nearby cutlass and the Worker retrieving it first struck the other employee on his shoulder and buttocks with the flat side of the blade.

The Company offered no evidence as to why it fired the Worker and gave the other employee a two-week suspension. In that matter, the Court stated:

"In our view the disciplinary measures meted out to both Birbal and the worker should be similar, but the Company's decision does not reflect this. The worker's services were terminated, while Birbal was suspended for two (2) weeks, a decision which he did not challenge. We accept the submission of the Counsel on behalf of the Union that such disparity in the disciplinary action taken by the Company was discriminatory and hold that the worker was dismissed in circumstances that are harsh and oppressive and not in accordance with the principles of good industrial relations practice."

(IV) Exit Process

Termination Meeting: Management or Human Resource personnel should conduct a termination meeting with the Worker to explain the reasons for termination as well as the process. At this meeting, the normal approach is for the employee to return all company property (e.g., keys, laptops, ID cards) and be reminded of any post-employment confidentiality agreements.

In Trade Dispute GSD-TD No. 003 of 2021 *Government and Industrial General Workers' Union v. Food Basket International Limited*, the Worker was terminated for poor performance, 17 working days after his probation period had commenced. While the Court's judgment emphasized the improbability of a proper objective assessment of the Worker's performance, given the shortened trial period, it also made the following observation about the Worker's termination meeting.

"The Worker's dismissal meeting was attended by two managers, none of them his direct reports. They knew nothing of his work or why he was being fired. There was no letter before them that they could draw reference to in explanation for the termination. Indeed, it was his supervisor's admission that he did not attend the termination meeting that day because he was attending a funeral."

We believe the Worker therefore, when he stated that there were no proper reasons advanced for his immediate dismissal that day. We accept that he was not dismissed by his supervisor who would have best been able to answer the Worker's queries, because the supervisor simply was not there."

Termination of Probationers- The generally accepted principles which apply to workers on probation are-

- 1) the employer retains the right to confirm the appointment after a specific period.
- 2) The test applied to a probationer are not necessarily the same as those applied to a confirmed employee.

- 3) The employer must give the probationer a proper opportunity to prove himself.
- 4) The probationer's progress should be monitored and regular feedback given during the probationary period.¹¹

See ESD 6 of 1981 *Trinidad and Tobago External Telecommunications Company Limited (Textel) and Communication Workers' Union*, delivered on the 23rd June 1982 and restated in Trade Dispute No. GSD 114 of 2019 between *Communications Worker and Mobak Foundation* dated December 17, 2025.

CONCLUSION

The jurisprudence of this Court demonstrates that notwithstanding changes in technology, systems of work, methods of work etc. the principles and practices good industrial relations remain the foundation of the standards for workplace conduct. They have stood the test of the last sixty-one years and remain relevant, though they are now required to address changing phenomenon in the workplace, including in the VUCAH environment.

HER HONOUR MRS. HEATHER SEALE
President Industrial Court of Trinidad and Tobago
June 12, 2026

¹¹ Emir, Astra, *Selwyn's Law of Employment* 22nd Edition Oxford: Oxford University Press;[2022] p 60