TRINIDAD AND TOBAGO:
TD 717 of 2013 and IRO 23 of 2013 (Consolidated)

IN THE INDUSTRIAL COURT

BETWEEN

TRINIDAD AND TOBAGO NATIONAL PETROLEUM MARKETING COMPANY LIMITED - COMPANY

AND

OILFIELD WORKERS' TRADE UNION - UNION

CORAM:

Her Honour Deborah Thomas-Felix - President
His Honour Kyril Jack - Member
Her Honour Kathleen George-Marcelle - Member

APPEARANCES:

Mr. Douglas Mendes, S.C.)
Mr. Michael Quamina)
Mr. Anthony Bullock)
Mr. Imran Ali)
Attorneys at Law) - Union
Mr. Teddy Stapleton)
Snr. Labour Relations Officer)

Mr. Seenath Jairam, S.C.)
Mr. Derek Ali)
Attorneys at Law) - Company
Mr. Courtney Mc Nish)
Industrial Relations Consultant)

DATED: 19th November, 2014

RULING ON NO CASE SUBMSSION

DELIVERED BY HER HONOUR MRS. DEBORAH THOMAS-FELIX

INTRODUCTION

1. The case before us raises fundamental issues from which we can remind ourselves of the conceptual rationale of our industrial relations framework which is an essential expression of our national commitment to productivity, and economic growth based on the principles of fairness, inclusion and cooperation.

2. Fifty years ago, this nation was the first in the Commonwealth Caribbean to embark on creating a regulatory framework for industrial relations. This framework acknowledges the need to balance the competing interests of employers, workers, and trade unions within the broader framework of the national interest to prevent strikes and industrial unrest that would impede productivity and economic growth. The Industrial Stabilisation Act 1965 and its successor, the Industrial Relations Act 1972 ("the Act"), were the legislative solution for achieving a stable industrial relations environment.

3. The fundamental pillars of the regulatory system are:

   (1) The central role of the consensual agreement especially through the instrumentality of the collective agreement which, upon due registration at the Industrial Court, became legally enforceable.

   (2) A methodical system of conciliation and compulsory arbitration for unresolved disputes.

   (3) The transcendent principle of equity, good conscience and the principles and practices of good industrial relations; and

   (4) The pivotal role of the Industrial Court as the guardian of the principles and practice of good industrial relations.

4. In *Texaco Trinidad Inc v Oilfield Workers Trade Union,*[1] Phillips J.A. expressed it in this manner:

[1] (1973) 22 W.I.R. 516, 521

"The paramount object of the Act is the achievement of industrial peace and stability. With this end in view it provides machinery which operates two basic purposes, *viz*.:

(1) The promotion of collective bargaining between employers and workers with the object of entering into industrial agreements registrable under the Act.

(2) The settlement of trade disputes by the method of conciliation and compulsory arbitration.

Each of these processes is as important as the other. The term 'dispute' is the antithesis of 'agreement'. It is only when there is no agreement between the parties in relation to a particular matter that there can arise the question of its settlement by the trade dispute procedure laid down by Part III of the [Industrial Stabilisation] Act."

5. Nearly 30 years later, Sharma CJ in the Court of Appeal said that:

"The Industrial Relations Act, 1972 repealed and replaced the Industrial Stabilisation Act, 1965 and is designed to make better provision for the stabilisation, improvement and promotion of industrial relations. Its object is the maintenance of sound industrial relations practices and the preservation of stable industrial peace. The legislature conferred jurisdiction on the Industrial Court to ensure that these objects were achieved in employment relationships in this country".[2]

6. It is noteworthy that this country does not have a labour code to give detailed guidance to employers, workers and trade unions regarding the day to day conduct of their relationships. Instead the legislature has provided overarching principles and has emphatically positioned the Industrial Court as guardian of the national standards of what constitutes good industrial relations principles and practice. Thus, the importance of the role of the Industrial Court in issuing

[2] *Caribbean Development Company Limited v National Union of Government and Federated Workers Union* Carilaw TT 2003 CA 61, per Sharma CJ [24]-[25].

guidance to shape the industrial relations jurisprudence in the country cannot be overemphasised.

7. Sir Isaac Hyatali, CJ, echoed this view and stated that:[3]

> "The court's authority to define and lay down the principles and practices of good industrial relations cannot in my judgment be lightly challenged, let alone interfered with, since it is a specialised court consisting of members with specialised knowledge and experience in industrial relations. As such, the court must necessarily be regarded as speaking with overriding authority on such principles and its definitions thereof treated with respect."

8. In that case, the learned Chief Justice insightfully posed the often seemingly intractable dilemma faced by this Court in resolving the issues taking place in the reality of the workplace of industrial relations "wherein common law principles do not run and have little, if any, relevance?"[4]

> "The answer, manifestly, is by taking or pursuing a course of action which accorded with "equity, good conscience and the substantial merits of the case ... having regard to the principles and practices of good industrial relations". These are the principles which the Court is enjoined to apply to the resolution of all trade disputes before it by section 10 of the Act 'notwithstanding anything [contained in it] or in any other rule of law to the contrary'. It follows that 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 unjustified or unreasonable."

9. This guardianship role of the Court has been reiterated by the Court of Appeal on several occasions. In *Caroni (1975) Limited v Association of Technical*

[3] *Texaco Trinidad Inc V Oilfield Workers' Trade Union* (1981) 34 W.I.R. 215, 234

[4] Id at 233

Administrative Supervisory Staff,[5] de la Bastide CJ made clear the breadth of the jurisdiction of the Court:

> "The Industrial Court is a comparatively recent creation of statute, and so is the right given to appeal from it to the Court of Appeal. The intention of Parliament, clearly expressed in s 10(6), is that the question whether the dismissal of a worker is in any case harsh and oppressive and contrary to the principles of good industrial relations practice, should be reserved to the Industrial Court. What distinguishes a dismissal that is harsh and oppressive from one that is not, is a matter which the Act clearly regards as grounded not in law, but in industrial relations practice. The practice, which is not codified in our jurisdiction, is to be determined and applied to the facts of each case by the Industrial Court. The policy of the statute is obviously to entrust that function only to judges of the Industrial Court who come equipped with experience of, and familiarity with, industrial relations practice. This is a qualification which judges of the Supreme Court do not necessarily or even ordinarily have. It is considerations like these which presumably underlie the prohibition in s 10(6) against the Court of Appeal reviewing the decision of the Industrial Court that the dismissal of a particular worker does, or does not, have the quality which triggers the grant of the remedies of compensation and reinstatement.
>
> A harsh and oppressive dismissal is something which, according to the Act, may be identified only by the Industrial Court."

10. The issues which arise in this case, present the opportunity to further clarify the responsibilities of employers, workers, and the Unions under the principles and practice of good industrial relations in an environment where communication between the parties is the signal mechanism for the peaceful resolution of disputes at the floor level as envisioned by the Act and where arrogance and intransigence have no place in the peaceful solutions of conflicts.

[5] (2002) 67 WIR 223, 225-226

UNDISPUTED FACTS

11. Trinidad and Tobago National Petroleum Marketing Company Limited ("the Company"), a state owned Company is engaged, inter alia, in the sale and distribution of petroleum products. The Oilfield Workers' Trade Union ("the Union") is the Recognised Majority Union for several categories of workers at the Company.

12. On 20 August 2013, the Company filed a complaint at the Court pursuant to s.84 of the Act. This complaint alleges that the Union had engaged in industrial action not in conformity "with the requirements of the Act and/or Part V of the Act and in particular section 60 thereof". If the Union is found guilty, the Company is asking the Court to cancel the Union's certificate of recognition, pursuant to the Court's powers under s. 63(1)(b) and, in addition, asks "that the Union be fined the maximum penalty available for having committed an Industrial Relations Offence (IRO)" under s. 63(1)(c).

13. On 21 October 2013, after disciplinary proceedings were conducted, the Company dismissed sixty-eight (68) employees. On 24 October 2013 the Union reported a Trade Dispute to the Honourable Minister of Labour and Small and Mirco Enterprise Development. On 11 February 2014, the said Trade Dispute which was reported by the Union remained unresolved and it was referred by the Honourable Minister to the Industrial Court. In filing the Trade Dispute, the Union is seeking, inter alia, a declaration from Court that the dismissal of the 68 workers was "harsh, oppressive and contrary to the principle of good industrial relations practices". The Union is also asking the Court to reinstate the workers. The Union has filed an IRO on 23 August 2013 against the Company pursuant to s. 63(1)(a). That IRO is not before the Court and is not the subject of this ruling.

THE PROCEDURAL POSTURE

14. The parties agreed to consolidate the Industrial Relations Offence, which was filed by the Company and the Trade Dispute, which was file by the Union.

15. The Company's case for dismissal of the workers is based on the commission of an IRO, namely, industrial action taken otherwise than in conformity with Part V

of the Act. Indeed, the generic letter of dismissal dated 21 October 2013 and issued by the Company to each of the 68 workers expressly relied on the provisions of s.63 which creates the IRO. After defining what action constitutes an IRO, s. 63(1)(c) states as follows:

> "Subject to sections 65 and 65(2)(b), where a worker takes part in such action the employer may treat the action as a fundamental breach of contract going to the root of the contract of employment of the worker."

16. The generic letters of termination of employment which the Company sent to the sixty eight (68) workers, after making reference to the actions of the employees on dates on which the Company alleged that the IRO was committed, went on to mirror s. 63(1)(c). The text of this letter reads in pertinent part as follows:

> "Your actions on the 2013 August 13, 14 & 15 constitute a fundamental breach of contract going to the root of the contract of employment, thereby entitling the Company to terminate your services.
>
> Accordingly, the Company has decided that your employment be terminated with immediate effect."

17. The Company's reliance on the commission of an IRO as the basis upon which its right to dismiss the 68 workers is so complete that the Company raised as a preliminary objection that the Union's application for the hearing of a Trade Dispute, which is an application under s. 51 of the Act, ought to have been an application under s. 64 because the workers had committed illegal industrial action, which constitutes an IRO. The Company submitted to the Court that because an application under s. 64 must be made within 14 days of the occurrence of the incident the Union is barred from filing a s. 64 application because the 14-day period in which to file such an application has elapsed. The Company further submitted that since the mandatory 14 days have elapsed, the Court has no jurisdiction to hear the Trade Dispute filed by the Union under s.51.

18. Therefore, the procedural posture of this consolidated hearing is that, by the Company's own concession, its power to dismiss the workers is based solely on the proof that the Union committed an IRO. If this Court finds that the Union is

not guilty of an IRO, *ergo a causa*, the workers cannot fall within the provisions of s. 63(1)(c) and the Company is therefore deprived of authority pursuant to that provision to treat the workers as having committed a fundamental breach of contract entitling the Company to terminate their services. Indeed, the submission which Counsel for the Union, made, without dissent from Counsel for the Company, was that in essence, if the Company fails to prove that the Union has committed an IRO, then the dismissal of the 68 workers was without legal basis and thus harsh and oppressive. The dismissals would also not be in conformity with the principles and practices of good industrial relations because the Company is not entitled under this new dispensation to rely on any other reason for the dismissal of the workers, as it could under the old common law principles.

19. Since the Company has framed its submission in relation to the Union filing the Trade Dispute under s.51 rather than s. 64 in jurisdictional terms, it is incumbent on this Court to settle this point before examining the Company's evidence in relation to the complaint that the Union committed an IRO.

20. There are several answers to this submission, each of which is self-explanatory and obvious to a sensible operation of the system of Disputes Procedure outlined in Part V of the Act. The first is that s.64 places no restriction on a Union with regard to the filing of a Trade Dispute under the Act. In conformity with the central concern of the Act to promote industrial peace, "Trade Dispute" is broadly defined and the right to file a Trade Dispute is a liberal concession conforming to the system of conciliation and compulsory arbitration, which as we mentioned in the introduction, is a vital and fundamental part of the mechanism of the system. No reference to the actual definition is needed to conclude that the allegations of the Union regarding the dismissal of the 68 workers amount to a Trade Dispute. Equally, there can be no argument as to whether this dispute between the Company and the Union, which is connected to the dismissal from employment and the reinstatement of the workers is reportable within the meaning of s.51(1) of the Act.

21. Section 64 does not restrict the filing of a trade dispute. Instead it deals with the situation in which the Court finds that the Union by its action has committed an IRO and the worker, who has been dismissed, took part in the action thereby giving the employer a right to dismiss that worker pursuant to s. 63(1)(c). If Court finds that an IRO was committed and the worker in whose behalf a trade dispute was filed is seeking reinstatement or any other remedy, it is obvious that the position of that worker's case is dramatically altered by this finding. Section 64 provides that worker with a way to continue his request for a remedy from the Court by applying within 14 days for an order that he be treated as having been excused from the consequence of the action of taking part in the IRO. This allows the Court in its discretion to set aside the dismissal that was based on s. 63(1)(c).

22. The confusion comes from the failure of the provision to clearly state when the 14 days within which to make the application to the Court starts to run. However, the omission may be explained by the obvious. Only the Industrial Court has jurisdiction to find that an IRO has been committed and the 14 days can only be triggered from the date of that finding. If it were otherwise, the provision would not make sense, since it is the proceeding to resolve the reported or referred Trade Dispute which gives this Court jurisdiction to consider whether in the circumstances the dismissal of a worker is harsh and oppressive and not in accordance with the principles and practice of good industrial relations. It would be inconsistent with the provisions of s. 84 to start computing the time from the date of the incident, since s. 84 gives the employer or the recognised majority union three months from the time when the IRO allegedly took place to file IRO proceedings before the Court. In the instant case, for example, the IRO is alleged by the Company to have taken place from 13-15 August 2013 and the Company filed the IRO proceedings on 20 August 2013. The Company purported to dismiss the workers pursuant to s. 63(1)(c) on 21 October 2013 while the IRO was pending before this Court and no determination had been made on whether there was "any industrial action … taken otherwise than in conformity with … Part V [of the Act]". It would not be logical to require the worker to apply to the Court for a s. 64 order when this Court has heard no evidence that anyone had taken illegal industrial action.

23. Simply put, s. 51 of the Act outlines the procedure for the reporting of a Trade Dispute. Section 64, on the other hand, makes provision for a worker who has taken industrial action which is not in conformity with the Act and who is dismissed by his employer, to apply to the Court to be excused from the consequences of such action when the Court is considering the merits of the allegations underlying the Trade Dispute that the dismissal was harsh and oppressive and contrary to the principles and practice of industrial relations.

24. In this regard, s.64 works in tandem with s.51 and s. 63. The provisions of s. 64 can only be invoked if a worker was dismissed pursuant to the provisions of s. 63(1)(c) of the Act. In such a case the worker is liable for the consequences which are outlined in s. 63(1)(c) if the Court finds that such was the case. An application to the Court under s. 64 is through the instrumentality of IRO proceedings described in s. 63 and this is specifically what the Company has brought, not against the workers but against the Union. Essentially, a s.64 application is a petition to the Court for a worker to be excused from the consequences of "such action" which constitutes the alleged IRO committed by the Union. Under the provision, only a Union can be found guilty of an IRO.

25. If this were not so, this would require the worker, through his Union, to admit to the commission of the very IRO that the Union is saying it did not commit in defending against the proceedings brought by the Company. So despite Mr. Jairam's S.C. very spirited arguments, it is clear that the Union has not and is not admitting to any breaches of the Act. In the absence of such an admission we respectfully rule that the Company and indeed the Court cannot compel the Union or the workers to admit to such a breach. Therefore, contrary to the Company's contention, we do not accept that an application to the Court under Section 64 is a prerequisite to this Court's jurisdiction to consider the contention in the Trade Dispute that the dismissals were harsh and oppressive.

26. We therefore rule that the 14-day limitation period within the meaning of s. 64 of the Act does not apply unless this Court finds that industrial action was taken otherwise than in conformity with Part V. In any event, this does not go to the jurisdiction of the Court to hear the Trade Dispute, which was properly filed by

the Union in accordance with the provisions of s. 51 of the Act. Instead it goes to the remedy which this Court may give in light of any finding in relation to the IRO brought by the Company, when determining the Trade Dispute concerning the workers' dismissal.

THE COMPANY'S CASE

27. The Company's case in support of its IRO, comprises its evidence and arguments, witness statements and the oral testimony of:

(1) Shyam Karan Mahabir – Senior Estate Constable;
(2) John Gormandy – General Manager, Lubricants;
(3) Deborah Dinnoo-Benjamin – General Manager of Retail and Industrial Fuel; and
(4) Geeta Ragoonath – General Manager, Human Resources

28. The Company's evidence, so far as is material, is that the Company which employs 450 to 500 persons has a compound at Sea Lots, Port of Spain and one at Pointe a Pierre. On the 13th August, 2013 Ms. Deborah Dinnoo-Benjamin and four other senior employees went to the Company's Fuel Bond at the Gantry in Pointe a Pierre to receive training. This three day training was scheduled by Ms. Dinnoo-Benjamin on the previous day.

29. Ms. Dinnoo-Benjamin testified that the purpose of this training was to familiarise and train Managers/Supervisors on the loading of road tank wagons which deliver fuel to customers. She explained to the Court that a decision was made by the Company for Senior Management staff to be trained by their juniors to perform these duties as a contingency plan in case there was fuel disruption of any kind. Its obvious link to pre-empting the effectiveness of any industrial action that the workers or Union may take in the future was confirmed by the Company's own witness. Counsel for the Union asked Ms. Dinnoo-Benjamin, "You were asking the workers to train Managers to perform their duties when they decided that they would take industrial action. Is that what you are doing?" Ms. Dinnoo-Benjamin replied "yes".

30. Ms. Dinnoo-Benjamin testified that a dispute over terms and conditions of employment arose when she approached a worker, Mr. Ricky Ramlochan, and requested that he trains the five man contingent. Mr. Ramlochan refused to conduct the training. He informed Ms. Dinnoo-Benjamin that the training of managers was not his job. She then approached another worker, Mr. Ramdass Kissoon, who also refused to train the managers. He too explained that training was not part of his job function. Ms. Dinnoo-Benjamin insisted to the two workers that training was part of their job function. The Company has provided no evidence to the Court to support this contention leaving it open to an adverse inference against the Company that there is no evidence to support this claim. As a consequence of the refusal to train the management contingent, Ms. Dinnoo-Benjamin "convened" a meeting with Mr. Ramlochan and then held a separate meeting with Mr. Kissoon.

31. Each worker requested that a Union representative be present at the meeting but Ms. Dinnoo-Benjamin denied the request and informed the workers that "it was not a Union issue". Each worker at his meeting told Ms. Dinnoo-Benjamin that he wished to used the washroom and shortly after returned with Union representative, Mr. Lex Francois. Ms. Dinnoo-Benjamin testified that she told Mr. Francois that the matter involving the workers was a matter between the "employee and his supervisor at this point in time and it was not a Union issue." She stated that the Union representative told her that the workers were entitled to representation by their Union and he also explained that it was not Mr. Ramlochan's and Mr. Kissoon's duty to train managers/supervisors. As a result the meeting ended; and to use Ms. Dinnoo-Benjamin's words, she "dispatched" the Union representative and each worker. She testified that she then informed Mr. Ramlochan and Mr. Kissoon that they were relieved of their duties for the day. She explained that this meant that the two workers were suspended from duties for one day with pay. Ms. Dinnoo-Benjamin made no attempt before doing so to ascertain if the training of managers was indeed part of the duties of these workers, to try and settle the dispute that had arisen once and for all. The Company to date has not formally informed these two workers of the reason for

their suspension or afforded them the opportunity to respond to whatever the allegations were that merited the summary disciplinary action of suspension.

32. The Company alleged that within a short time after Ms. Dinnoo-Benjamin "dispatched" the two workers all the other workers at the Pointe a Pierre compound stopped working in what the Company described as support for Mr. Ramlochan and Mr. Kissoon. The Company claimed that the other workers alleged that Mr. Ramlochan and Mr. Kissoon were fired by Ms. Dinnoo-Benjamin; an allegation which the Company has denied. The Company's case is that the fire alarm at the Sea Lots compound was sounded around the same time that the workers in Pointe a Pierre stopped working. Ms. Dinnoo-Benjamin testified that she returned to the Pointe a Pierre compound the next day, on 14 August. She observed that the workers were gathered to use her words "milling around", and that they were not performing their duties. She was aware that the workers believed Mr. Ramlochan and Mr. Kissoon to be dismissed and not suspended, yet she made no effort to speak to the workers or to consult with the Union to clarify the workers' misconception.

33. The Company's case is that several workers assembled at the Company's gate at the Sea Lots compound from 13 to 15 August, 2013. The Union held meetings at Sea Lots with these workers on those days and the Company's operations were disrupted. Senior Estate Constable, Mr. Shyam Karan Mahabir, testified that he was instructed to document the names of the workers who had assembled at the gate and who appeared to be attending the meetings. He explained that after the first meeting ended on the 13 August, he generated a list of the workers who attended that meeting and he "cross reference who was there on the 14th because I had a list for the 13th". His evidence is that he recorded the names of all the workers who assembled at the gate on the dates in question and he submitted a list with the names of 85 workers to Management. He explained that he knew all the workers by their first and last names and was able to generate and submit to Management an accurate list from memory of all persons who assembled from 13 to 15 August. The list which was produced in Court was Mr. Mahabir's record of the workers who had allegedly assembled on the 14th and 15th only.

34. Mr. Mahabir testified that he does not recall hearing the sound of a fire alarm on the 13th, and he asserted that the incident which occurred with the fire alarm was not on 13 August but on 14 August, 2013.

35. Ms. Ragoonath, the Company's General Manager Human Resource Services, testified that 85 workers were suspended after the three day incident on what she described to be 'administrative suspension'. 'Administrative suspension' she explained meant that the workers were not permitted to come onto the compound and they were not allowed to perform their duties, they received their salaries while on suspension.

36. The Union wrote three letters to the Company requesting a meeting. The Company refused to meet with the Union.

37. On 30 September 2013 each of the 85 workers was informed by correspondence that they had to attend a disciplinary hearing and they were each charged by the Company for the following:

> ***"1. Refusal to perform job functions*** **(**dates specified**);**
>
> ***2. Participating along with others in an illegal work stoppage*** **(**dates specified**);**
>
> ***3. Absence from workstation without authorization*** **(**dates specified**)."**

38. The Company's case is that the disciplinary panels which conducted the hearings ensured that the charges were read and each worker was given the opportunity to respond to the charges. Some of the workers elected to remain silent while others proffered explanations; the most popular explanation related to health and safety issues.

39. Ms. Ragoonath explained that a management team of 15 which comprised of the Chief Executive Officer, all General Managers and the Industrial Relations Manager reviewed the recommendations of the disciplinary panels and that management team made the decision to dismiss 68 workers. Ms. Ragoonath and Ms. Dinnoo-Benjamin were part of the Management Team. Seven members of the said Management Team were also members on the disciplinary panels.

40. The Management Team exonerated 15 workers. Ms. Ragoonath explained that the Company accepted that those workers were not on the compound on the days in question. Two workers were suspended for a period of two weeks and the services of 68 workers were terminated, as said before. These 68 workers are the subject of the Trade Dispute which is before the Court.

41. Ms. Ragoonath testified that the 68 workers were dismissed pursuant to the provisions of s. 63 of the Act. She said that they were dismissed for participating in illegal industrial action. It is noteworthy that although the charge which was proffered against the Union by the Company was for engaging in illegal industrial action and the Company's General Manager Human Resource Service confirmed this, the workers were not charged for taking illegal industrial action and therefore could not answer to this charge when they appeared at the disciplinary hearing.

THE ISSUES

42. The main issue in this case is whether the Union took industrial action contrary to Part V of the Act and is thereby guilty of an industrial relations offence. As we have discussed above, if the answer to this question is in the negative, then that also resolves the issue of the Trade Dispute which is concededly based on a finding of the commission of an IRO.

THE UNION'S NO CASE SUBMISSION

43. Mr. Mendes SC for the Union made a no case submission to the Court. He submitted that the Company's case against the workers was for taking "illegal industrial action" which is industrial action which is not in conformity with the Act. He argued that the charges which the Company filed against the workers and for which the disciplinary hearings were convened to investigate was not for 'industrial action'. This meant that they were not told that they were charged with committing "illegal" industrial action and they therefore could not answer those charges before the disciplinary panel. Counsel further submitted that the charge which the Company laid against the workers for "illegal work stoppages" on its own does not amount to a charge of illegal industrial action. He also submitted

that in the absence of this evidence the Court can only conclude that there was no industrial action.

44. Counsel for the Union further argued that there is no evidence adduced by the Company to prove that the Union "called out workers to do anything" and there is no evidence that the Union made a demand of the Company or attempted to compel the Company to comply with the said demand.

45. The Union referred to the dicta in Public Services Credit Union Co-operative Society Limited v Banking Insurance and General Workers Union, where the Court stated that "*an offence under section 63 is one which requires a specific intent so that it must be established by appropriate evidence that the Union called out the workers, and/or that the workers stopped their work….to compel the Employer to agree on terms of employment or to comply with any demands made by the Union or by the workers*."[6]

46. The Union argues that even if there is evidence that the Union's Branch Officials were involved in the work stoppages their action cannot be attributed to the action of the Union because Rule 24 of the Union's Rule Book (on which the Company and the Union relied) does not regard Branch Officials as members of the Executive of the Union.

47. The Union cited *Caribbean Tyre Company Ltd v OWTU* which states inter alia that negotiations with Branch Officials of a Union are not negotiation with the Union and therefore, for the purposes of industrial relations only the Union's Executive can negotiate on behalf of the Union. Warner J.A., on appeal, stated inter alia:[7] "I agree with the conclusion of the Industrial Court that it was with the executive of the Union and not with the Branch Officers that the Company is required to negotiate".

[6] Public Services Credit Union Co-operative Society Limited v Banking Insurance and General Workers Union, IRO 29 of 2000

[7] Caribbean Tyre Company Limited and OWTU C.A. No. 106/86 and IRO 31 of 1985

48. Counsel for the Company, Mr. Jairam SC, in response to the Union's no case submission argued that news clips which appeared on television and which were aired on the radio inform us of the demands which the Union made on the Company. He asked the Court to consider comments from members of the Union in particular, comments made by the President of the Oilfields Workers Trade Union Mr. Ancil Roget. These comments he argued amounted to the demand by the Union to the Company. A text of what Mr. Roget reportedly said is as follows:

> "The NP Management, the top Management; the CEO and the Board of Directors, they are politically appointed that they now want to give contractors the permanent workers' jobs. It is a direct instruction coming from the Political party, the UNC, and their cabal wanting to make lucrative and profitable state enterprise and share it out to their supporters; it's now being ventilated in the public. You have Jack Warner saying that those persons who are appointed to the Board and the top management are there, appointed only because the cabal say so. He is saying that now, we were saying it all the time."
>
> "For the company to ask that workers train contractors to take away their jobs, so they the workers, correctly, resisted that. This morning it escalated because the Management dismissed those workers who refused to train contractor workers to take away their jobs. Workers will not be allowed to, whether they want to or not, to train persons to take away their jobs. Those jobs are in the schedule of classification and they ought to be performed by permanent workers."

49. We agree with the view expressed by Mr. Mendes SC that the news clips are mere snippet of the actual interview and not a true reflection of the entire interview. However, the real issue is whether Mr. Roget's statements to a news reporter amount to a demand within the meaning of the Act. The answer is resoundingly no. A demand within the meaning of the Act can only be made when one party communicates that demand to the other party. If we are to examine the news clip with Mr. Roget, at the very highest, he appears to be

informing the media and/or the public about the reason for the work stoppage and the Union's position as it relates to workers training members of management. There is no evidence of a demand in these statements. All the public statements of the Union on the matter which the Company relied upon were made after the initial work stoppage on 13 August, 2013. These statements make no mention of a demand to compel the Company to comply with anything and indeed the Court does not regard these statements to be a demand within the meaning of the Act.

PROCEDURAL FAIRNESS

50. The disciplinary hearings were conducted by three panels, a member of the Management Team sat on each panel and each hearing was scheduled to last for thirty (30) minutes. Eighty-five (85) disciplinary hearings were held over a four (4) day period. While these types of disciplinary hearings are not required to have the formality and rigidity or many of the safeguards required of a Court hearing, a worker has a right to be informed of the substance of the employer's case and to be given a proper opportunity to state his case before a decision is reached. In other words, although there is no formal of procedure at these type of hearings and we are mindful that some organisation are less sophisticated in their operations than others, we expect that the procedure which is adopted at these hearings are fair and that the worker knows of the allegations which are made against him and, also, that he is provided with the opportunity to adequately respond to these allegations. The procedure which is adopted by employers at disciplinary hearings for workers must be predicated on fairness.

51. Natural justice, in a case such as this requires not merely that the 68 workers have the opportunity to state their case in detail; they must know sufficiently what they are accused of so that they can put forward a proper answer to their respective cases.

52. The evidence of the Company is that the 68 workers who are the subject of the Trade Dispute participated in "illegal industrial action". Indeed Ms. Ragoonath's evidence and the IRO which was brought by the Company support this. There is no evidence that the workers were informed that among the charges they had to

answer were charges of illegal industrial action. There is also no evidence that they were given the opportunity to respond to the employer's allegations which was that they were involved in illegal industrial action, which from the Company's evidence was the main reason for the dismissal. In addition, there is no evidence that an e-mail report which the Company had in its possession allegedly about the workers' activities on the days in question was presented to the workers. There is also no evidence that the list which the security guard compiled was given to the workers before or at the hearing.

53. There is a plethora of judgments in this Court which states that when an employer is considering disciplinary action against workers, the procedure which is adopted by the employer must be fair, and that to do otherwise will be contrary to the principles of good industrial relations. We agree, generally speaking, where there is no notice of strike action; the Court treats strike action as a breach of contract.[8] Phillips J in W *Simmons v Hoover Limited*, posits that there is: …"a settled, confirmed and continued intention on the part of the employee not to do any of the work which under his contract he has been engaged to do, which was the whole purpose of the contract. Judged by the usual standards such conduct by the employee appears to us to be repudiatory of contract of employment." Repudiation entitles the other party to the contract to accept the contract as at an end, should he so wish. The Employment Appeal Tribunal stated that, "we should not be taken to be saying that all strikes are necessarily repudiatory although usually they will be". The example of what may not be repudiatory conduct was where the strike was "in opposition to demands by an employer in breach of contract", in which case employees might be merely accepting the employer's repudiation. In the instant case the Company had requested of the two workers (Ramlochan and Kissoon) to perform duties which the workers claimed were not within their job functions. The Collective Agreement between the parties, which is registered at the Court, provides for workers to be furnished with copies of their job description. A perusal of the job description by Management would have clarified the issue of whether training was among the

[8] Phillips J in W *Simmons v Hoover Limited* [1977} IRC 61, at page 76

duties of the two workers. Ms. Dinnoo-Benjamin admitted that she did not check the job description of the two workers to see if training of Management was included in their job function. Instead she insisted that they accept her unilateral interpretation of their duties and job function and she punished the workers for their refusal to adhere to her instructions.

54. One of the authorities Mr. Jairam SC relied upon is *Heathons Transport (St Helens) Limited v Transport General Workers' Union and others*[9]. In this case the Court noted at page 23 that "The National Industrial Relations Court is a court, but a court with a difference. All courts exist to uphold the rule of law. So does this court. All courts are concerned with people. So is this Court…Why, then, is this court different? It is different in its composition, in its objects and in its procedures. It is a court of law, but not a court of lawyers….The Industrial Court is more that a court of law, it is a court of industrial common sense. The Court's procedure is different. It is designed to be quick, informal and suited to the needs of those who are not lawyers."

55. This is indeed the case with the Industrial Court of Trinidad and Tobago, industrial common sense causes us to examine the extent to which Management's own action or omission call into question the reasonableness of the decision to suspend the workers and then to dismiss them. Industrial common sense also causes us to question the actions of Ms. Dinnoo-Benjamin on the 13th and 14th August, 2013 and the veracity of her viva voce evidence. A reasonable employer in our view will attempt to ascertain what was communicated to the workforce about the two workers, Ramlochan and Kissoon, and attempt to correct any perceived miscommunication and inaccuracies, particularly when the alleged miscommunication appeared to have been the catalyst to broader actions which were taken by workers. Ms. Dinnoo-Benjamin told the Court that she made no attempt to clarify and to explain to the other workers (the workforce) that she had not dismissed the two workers in question.

[9] [1973] A.C.15

56. Ms. Dinnoo-Benjamin denied that she dismissed the two workers and informed the Court that while she can suspend workers she had no power to dismiss workers. She stated that only the Chief Executive Officer has the power to dismiss workers. However, Ms. Ragoonath testified that the decision to dismiss the 68 workers was made by a Management Team of which Ms. Dinnoo-Benjamin is a member. Indeed some of correspondence from the Company requesting workers to attend disciplinary hearings and some of the letters of termination of employment were signed by Ms. Dinnoo-Benjamin. The Court did not accept the evidence of Ms. Dinnoo-Benjamin as the truth of what transpired on the days in question.

57. The incidents which Ms. Dinnoo-Benjamin related to the Court about the workers (Ramlochan and Kissoon) request for representation by the Union are indeed very disturbing. It is highly unacceptable where there is a Recognised Majority Union in a Company that a worker has to use the guise of going to the washroom to seek representation from that Union. The right to representation, which is a right guaranteed under the Constitution, is a pillar of the IRA and fundamental to the practice of good industrial relations in this country. The denial of the workers of their rights to representation when there is a dispute over the duties and job functions can only be described as self-serving and misplaced arrogance.

58. We accept, from the evidence, that there was some sort of disruption of work on the days in question but there is no evidence before the Court to support the contention that the Union instigated these disruptions.

FINDING OF FACTS

60. On the totality of all of the evidence presented by the Company and the submissions which have been made by the parties, the Court makes the following findings of facts:

(1) There is no evidence that the Union made a demand on the Company

(2) there is no evidence that the Union was involved in industrial action which was not in conformity with the Act

(3) That the workers were dismissed for taking illegal industrial action

(4) the genesis of the incidents which occurred on the three days and disrupted the Company's operation was as a result of the Company's arrogance and lack of regard for the rights its workers

(5) we do not accept the evidence of Ms. Dinnoo-Benjamin as the truth of what transpired on the 13th August, 2013

(6) that the Company denied the workers (Ramlochan and Kissoon) of their rights of representation by their Recognised Majority Union

(7) That the list of the names of the eighty five (85) workers which was prepared by Mr. Mahabir is not an accurate list of the workers who were on the compound on the days in question. The Company conceded that fifteen (15) workers from that said list who were suspended were not on the compound on the days in question and they were therefore exonerated

(8) The disciplinary hearing did not meet the minimum standards of natural justice in significant respects and it therefore was not conducted in accordance with the principles and practice of good industrial relation.

RULING

60. We remind parties of the provisions of s 10 (3) of the Act and the principles which were expressed by Sir Isaac Hyatali, CJ earlier in this judgment, these principles are essential to the smooth operations of an organisation. Fairness and good industrial relations are the overarching principles which should guide policies and practices of industrial relations in the workplace: to do anything to the contrary tantamount to conduct which is harsh, oppressive and contrary to the principles and practice of good industrial relations.

61. We uphold the Union's no case submission and as a consequence the IRO which has been brought against the Union is hereby dismissed.

62. After careful consideration of the Company's case we rule that the dismissal of the sixty-eight (68) workers by the Company was harsh, oppressive and contrary to the principles and practice of good industrial relations.

63. Pursuant to the provisions of section 10(3) to 10(6) of the Act. We hereby order that:

    (1) the sixty-eight (68) workers who are named in the list attached to this judgment be reinstated immediately to their respective position without any loss of seniority and benefits.

    (2) the Company computes the salary and pecuniary benefits of each of the sixty-eight (68) workers from the date of their dismissal namely 21st October, 2013 to 19th November, 2014 and pays to each worker the sum of the said computation on or before 30th January, 2015.

    (3) the Company pay to each of the said sixty-eight (68) workers the sum of forty thousand dollars ($40,000.00) as damages on or before 18th December 2014.

This Order is effective 19th November, 2014.

Deborah Thomas-Felix
President

Kyril Jack
Member

Kathleen George-Marcelle
Member

LIST OF WORKERS

Sheryl Strachan
Roger Nanton
Jerome Fritz
Dexter Lynch
Denzil Regis
David Williams
David Ramchand
Marlon Matooram
Erica George
Mark Blackman
Mary Lawrence
Derek Raymond
Curt Richards
Clinton Le Gendre
Aubin Holder
Dexter Wong Chong
Hayle Lucas
Jason Fisher
Ramdass Kissoon
Ricky Simbhu
Peter Holder
Sheldon Pena
Errol Pierre
Mathew Ottway
Lennox Bellerand
Richard Evelyn
Colin Orosco
Sean Nanton
Clayton Le Gendre
Enoch Phillip
Kurt Prescott
Phillip Knox
Rishi Lalloo
Ricky Ramlochan

Mark Sookdeo
Lex Francois
Jumoke Baptiste
Gerard Browne
Brent Pierre
Walter Jules
Jason Matooram
Gerard Phillip
Jason Trumpet
Josanne Guy
Keisha Virgil
Trent Phillip
Eric Duke
Ashley Frontin
Trevor Jupiter
Wayne Leacock
Wayne Agustus
Dipnarine Ramnarine
Michael Codrington
Michelle Williams
Rodney Barthelemy
Richard Paul
Anderson Irish
Ancil Joseph
Sham Serrattan
Kevon Charles
Treston Reyes
Albert Ellis
Nyusha Alcal-Jones
RichardEdwards
John Perez
Derick George
Linton Clarke
Krishna Dookie