REPUBLIC OF TRINIDAD AND TOBAGO:
COMPLAINT NO. GSD-IRO 35 OF 2018

IN THE INDUSTRIAL COURT

BETWEEN

OILFIELDS WORKERS' TRADE UNION	**- PARTY NO. 1**
AND	
PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED	**- PARTY NO. 2**

CORAM:

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

APPEARANCES:

Mr. D. Mendes, S.C.	**)**
Mr. A. Bullock	**) - for Party No. 1**
Ms. L. Abdulah	**)**
(Attorneys -at-Law)	**)**

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

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

JUDGMENT

Dated: 19th November, 2018

Delivered by Her Honour Deborah Thomas-Felix

1. The Petroleum Company of Trinidad and Tobago Limited (the Company) is an integrated oil company engaged in the oil business in two distinct operations, upstream operations in Exploration and Production (E&P) and downstream operations in Refinery and Marketing (R&M). The Government of the Republic of Trinidad and Tobago is the sole shareholder of the Company.

2. The Oilfields Workers' Trade Union (the Union) is a Trade Union registered under the Trade Unions Act Chapter 88:01 (the Act) and is the Recognised Majority Union and bargaining agent for workers employed by the Company in the following bargaining units:

    i. Trinmar hourly/weekly rated workers;
    ii. Petrotrin hourly/weekly rated workers;
    iii. Petrotrin monthly rated junior staff;
    iv. Petrotrin monthly paid workers;
    v. Trinmar Operations monthly paid workers; and
    vi. Hospital Domestic workers and wardsmen.

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

4. The Union filed a Complaint on 1st October, 2018 in accordance with the provisions of Section 84(1) of the Industrial Relations Act (the Act) which alleged the commission of an Industrial Relations Offence (IRO) by the Company, namely, that the Company acted in violation of Section 40(1) of the Act by *"failing in good faith to treat and to enter into negotiation with the Union for the purpose of collective bargaining."* The standard of proof to be discharged by the Union in its Complaint of an IRO is the balance of probabilities.

5. The Union also filed an application for an injunction on the 2nd October, 2018 which was granted on 8th October, 2018.[1] The Company appealed the grant of the injunction and was granted a stay by the Court of Appeal. The Court of

[1] Application No. GSD-A 007 of 2018

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Appeal heard the Appeal and delivered its Judgment on 18th October, 2018.[2] There was also an application for Judicial Review which related to some aspects of this IRO before the High Court for which a Ruling was given on 1st November 2018.[3]

FINDING OF FACTS

6. The Attorney General applied for and was granted leave to be heard on the issue of Remedies. At the Hearing[4] that took place over a number of days the Court examined witness statements and heard oral evidence from the following persons: Ancel Roget - (President General of the Union), Wilfred Espinet (Chairman of the Board of the Company), David Abdulah - Political Leader - Movement of Social Justice (Witness for the Union), Timmy Baksh - Director of Energy (Witness for the Attorney General) and Vishnu Dhanpaul - Permanent Secretary - Ministry of Finance (Witness for the Attorney General).

7. The Court makes the following findings of fact, as far as are relevant, based on its opportunity to see and hear the witnesses and the benefit of extensive arguments from counsels, who vigorously presented their version of the evidence in accordance with the interests of the parties they represent. This Court is cognizant of the importance of this case based not only on the significant rights of such a large number of workers, rarely seen in these cases, but also the national interest. The Court is directed by the Act in Section 10 (3) to consider *"the interests of the persons immediately concerned and the community as a whole,"* and we are so guided in our analysis and conclusions which are ultimately based on the evidence we have before us and on the law.

8. The current Board of the Company was appointed in September, 2017. Prior to the appointment of this Board, the Company engaged the services of a Team to review the Operations of Petrotrin and make Recommendations for its Restructuring; this Team was named the Lashley Committee. On 1st June, 2017

[2] CA No. P320 of 2018
[3] Claim No. CV 2018-03932
[4] When the Hearing began His Honour Mr. Kyril Jack was a Member of the Panel. Unfortunately, His Honour Mr. Jack fell ill on the second day of hearing and a decision was made to proceed with the rest of Hearing without His Honour presiding as a Member of the panel.

the Company received what is termed the Lashley Report, which provided recommendations on the financial state of Company. The current Chairman of the Board, Mr Wilfred Espinet, was one of the members of the Lashley Committee.

9. The Company's evidence is that the current Board retained *"the services of Mc Kinsey a global management consultancy firm around November 2017 to work alongside certain of the Company's employees to look strategically at the company's capabilities."* The Company also retained the services of a consulting firm named Solomon and Associates.

10. Sometime in December, 2017 after meeting with the firm Solomon and Associates, the Board formed the view that the Company's method of operation needed to be improved to meet international standards and best practices. The Board was also of the view that there was surplus labour and that the integrity of the Company's assets in some instances had to be upgraded. Moreover according to Mr. Espinet, the Board agreed in December, 2017 that the E&P aspect of the business had the potential to be profitable and that the R&M *"was at best, going to yield a breakeven position at the level of free cash flow."*

11. Mr. Espinet's evidence is that, the Government, as the sole shareholder to the Company, mandated the Board *"that we should make Petrotrin sustainable by making it profitable so it could pay Government dividends."* As a result, the Board decided that they needed to make changes to the structure and the culture of the Company in order for the Company to become profitable. Throughout the entire process of making changes, the Board was guided by the Lashley Report, a Report of Solomon and Associates, and the on-going and continuous advice of the consultants, Mc Kinsey.

12. Sometime between December 2017 and January, 2018 the Board decided to restructure the Company into two separate entities, one entity to focus on the E&P Operations and the other to focus on the R&M Operations. Mr. Espinet explained that the existing structure comprised of a President and four Vice Presidents (Business Development, R&M, E&P and Human Resources), with other layers of senior management under it. This structure he said was not sustainable.

13. In January 2018 the Board held a meeting with a committee which comprised of a group of Senior Ministers of the Cabinet of the Republic of Trinidad and Tobago to discuss its findings. These meetings between the Board and the Senior Ministers of Cabinet continued to occur up to the time of the hearing of the Complaint.

14. The Board met with the Union in January 2018 to inform the Union of its findings and to have discussions on the proposed restructure of the Company. As a consequence, the Union and the Company held meetings in February and March, 2018 to discuss the possible restructuring of the Company into two separate entities. The Union and the Company entered into and signed a Memorandum of Agreement (MOA) on the 3rd April, 2018. Under the terms of this MOA the parties agreed, among other things, to establish a working committee and to have monthly meetings for 18 months commencing from the month of April, 2018. It was intended by the parties, that these meetings would examine the present organisational structure, work processes, skill competence and manpower requirement of the company with a view of working together to ensure the survival, sustainability and profitability of the Company.

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

16. As stated by this Court in Application No. 7 of 2018, as an order of this Court at the instigation of the Company and the Ministry, *"this made the Memorandum of Agreement for the purposes of these proceedings, not merely an incidental matter but the law between the parties"*[5]: the framework for consultation, treating and/or negotiations between the parties.

17. After the month of April no meetings were held between the parties until the 28th August, 2018. Mr. Espinet in his Witness Statement explained that *"the*

[5] Application No. 7 of 2018 Oilfields Workers Trade Union and Petroleum Company of Trinidad and Tobago Limited

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development of the plan took a couple of months because we had to design the restructured organisation based on international benchmarks. We had to go through every single activity of the Company and define the duties of each position. We had to get the costing to do it. During this time we had weekly internal meetings to review where we were and what had to be done. We also had to check and recheck the data and we made site visits to check processes. We were also reviewing our procurement processes around that time…..it was not practical or realistic for us to meet with the Union during that because we were dealing with a mass of information which was being updated or corrected on a regular basis, and which had to be collated in a manageable form and analysed before discussion can take place."

The Board had a meeting with Cabinet and received the Cabinet's approval to move *"forward with the closure of the Company and the termination of its employees."*

18. After this lengthy hiatus, the Company met with the Union on the 28th August, 2018 to explain *"the change situation in light of the grave circumstances (that is to say, that restructuring was no longer a viable option and that closure of the Company was the only viable option)."* The Company's evidence is that there were three options, however, the closure of the Company was the only viable one. According to the evidence of Mr. Roget, at that meeting, Mr. Espinet indicated that the Company had already, with Cabinet's approval, selected the third option, that is, the closure of the company in order to transform the financial performance of the organization. The Union was further informed that the process of closing down the refinery would begin on October 1st 2018 and that as a result, all the employees of the Company (including those who were not represented by the Union) would be terminated and would have to re-apply for their jobs.

19. The Union's evidence is that when Mr. Espinet informed Mr. Roget of the Company's selection of the third option, Mr. Roget reminded the Company of the terms of the MOA and proffered a fourth alternative option which encompassed compliance with the MOA. Mr Roget said that *"Furthermore, we put forth several questions to Mr. Espinet concerning the discussions held during the meeting. The*

questions included what the exact plan for the refinery was and what it would cost to send all of the employees home. Mr. Espinet indicated that he could not answer all of the Union's questions at the time but undertook to providing a dedicated team to answer those questions at a subsequent meeting." During Mr Espinet's viva voca evidence he stated the following: *"When we came to the decision, we did meet with the union and we did say to them that this is the decision we see no option….if you have a better plan that is convincing enough then you can bring it."*

20. By letter dated August 29th 2018, the Union forwarded to the Company on the Union's behalf a list of questions which had not been answered at the meeting. These questions were:

    i. What is the structure for the Organisation going forward in each area?
    ii. What is the volume of crude oil they took into consideration to be sold and to which Market?
    iii. What or how is it envisaged to meet the requisite production targets?
    iv. What will happen to the Pension Plan, Medical Plan, Saving Plan and other benefits?
    v. What process was used so that we can validate the information which was given to us?
    vi. Where will the fuel come from?
    vii. How will the price control mechanism work?
    viii. What is the plan for the Refinery?
    ix. If the Refinery has to be decommissioned what is the cost?
    x. If there is an Environmental incident/accident, with respect to the assets or facility, how do we plan to mitigate or prevent such Environmental impact?
    xi. How much is it going to cost the Company to send home 2600 workers?
    xii. What is the criteria for the rehire process? and
    xiii. Is the 2,600 only within the Bargaining Units or the complete Company, from Senior Management to lowest position?

21. Although the decision which the Company informed the Union about in August 2018 raises the very critical issues of surplus labour, the alteration of the

employment contact, the termination of all workers, separation packages and the rehiring of some of the workers, there is no evidence before this Court to suggest that there have been meetings between the Company and the Union to have any discussions surrounding these and other very salient issues related to collective bargaining. The discussions between the Union and the Company from August 28th to date have mainly centred on the Union offers and proposals to the Company to lease the refinery.

22. The Union presented what has been referred to as an "Alternative Plan" and other proposals to the Company as plans to avert the imminent closure of the Company. The Union proposed, among other things, to work along with a consortium to lease the refinery and to pay all of the Company's outstanding debt. The Union however, did not disclose the name of the members of the consortium to the Company when it was requested to do so in September 2018.

23. It is instructive to note that the main subject matter at these meetings was the question of ownership or the leasing of the refinery. The issue of ownership, strictly speaking, is not a subject of collective bargaining.

24. There is no evidence that the Company and the Union as the bargaining agent of these five thousand five hundred workers have held discussions in good faith to address issues which affect the terms and conditions of employment and the entitlement of the workers who are now faced with unemployment.

25. It is stated in its Evidence and Argument that the Company is no longer viable and that it is closing down its operations by the 30th November 2018 and sending all the workers home. However, what has emerged from the evidence and during the hearing of this Complaint, is that the Company is undertaking a restructuring exercise. The Board's Chairman Mr. Espinet testified that the Company *"is restructuring."* What is contemplated, and what will exist after the Company closes its doors on 30th November, 2018, according to Mr. Espinet are five (5) companies namely Trinidad and Tobago Petroleum Company Limited (a Holding Company), Paria, Guaracara, Heritage and Petrotrin (a Legacy Company).

Possible Remedy

26. The Attorney General's submission on remedies is that the Company is in debt and that the country's credit rating is negatively impacted by this debt. The testimony of the witness for the Attorney General, Mr. Dhanpaul, was that there was an increased call for government guarantees after the injunctive relief was granted by this Court on 8th October, 2018. Mr. Dhanpaul in his witness statement stated inter alia, *"The calls for government guarantees are happening with greater frequency as more delay and instability occurs and this increased even more when the interim injunctive relief was granted by the Court."*

27. Mr. Dhanpaul offered to produce letters to the Court in support of his contention. He produced emails with their respective attachments dated 24th October, 1st November, 2nd November and 9th November, 2018. However, none of these emails made mention of Court proceedings or to the injunctive relief which was granted on the 8th October, 2018. Moreover there is no email which contained a request for a government guarantee as a result of Court proceedings.
28. The evidence provided by the witness for the Attorney General disclosed that there was an email in which a full guarantee was requested on the 2nd November, 2018 to replace a letter of guarantee of 12th October, 2018 on a credit facility that was being negotiated since on 11th October, 2017, 9th July, 2018 and 12th September, 2018. Therefore the Attorney General's evidence as a whole cannot be relied upon by this Court to conclude that, strictly speaking, the grant of injunctive relief will inevitably lead to a downgrading of the country's credit rating.

29. The Union is seeking the following Orders of the Court:

    i. A finding and/or declaration, pursuant to Section 84(1), 40(2) of the Act that the Company has committed an industrial relations offence.
    ii. An Order imposing a fine of $4,000.00 on Petrotrin.
    iii. An Order restraining the Company from terminating the employment of any employee pursuant to restructuring.

iv. An Order mandating the Company to negotiate with the Union in good faith, in accordance to Section 40(1) of the Act.

30. The witness for the Attorney General testified that of the four Orders sought by the Union only the Order sought that **may** affect Trinidad and Tobago's credit rating is (iii) above namely *"An Order restraining the Company from terminating the employment of any employee pursuant to restructuring."*

31. With respect to remedy the Company submitted that if the Court does not uphold its submission then the suitable remedy is a fine of $4000.00.

ANALYSIS

<u>The Overarching and Guiding Principles</u>

32. The overarching principles which guide this Court in its deliberations on any matter before it are contained in the Act particularly in Section 10(3) which sets forth what may be termed the primary directive from which this Court is not permitted to deviate:

> *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.*

33. These directives are unique to the Industrial Court and not stated in relation to the general jurisdictions of ordinary, non-specialised courts. We are therefore legislatively constrained to apply these guiding principles to this matter before us.

The Indispensable Elements of Collective Bargaining

34. The requirement for parties to treat and negotiate in good faith is an integral part of collective bargaining which is the bedrock of the industrial relations law and practice to which the Republic of Trinidad and Tobago is constitutionally and legislatively committed. So integral is that requirement that a failure to do so creates an offence under Section 40 of the IRA. Key to this, is that the parties have genuine meetings where they consult, discuss and negotiate workplace disputes and collective agreements with a view to arriving at a consensus with input on both sides to make informed decisions. This is confirmed by Section 2 of the IRA, the definition section:

> *"collective bargaining" means treating and negotiating with a view to the conclusion of a collective agreement or the revision or renewal thereof or the resolution of disputes;"*

35. These two not separate but interlocking terms, "treating and negotiating", require meetings, discussions and consultations towards the broad and inclusive objectives mentioned in the definition.

36. The definition section of the Act gives a definition of "collective agreement" which is all encompassing to the relationship between the employer and the employees and the recognised majority union representing the parties.

> *"Collective agreement" means an agreement in writing between an employer and the recognised majority union on behalf of workers employed by the employer in a bargaining unit for which the union is certified, containing provisions respecting terms and conditions of employment of the workers and the rights, privileges or duties of the employer or of the recognised majority union or of the workers, and for the regulation of the mutual relationship between an employer and the recognised majority union;"*

37. Section 40 of the Act signals the central focus of collective bargaining and collective agreement and the process of "treating and negotiating" to industrial relations in Trinidad and Tobago by making it an offence not to engage in this process. That section provides:

> ***40**. (1) Where a trade union obtains certification of recognition for workers comprised in a bargaining unit in accordance with this Part, the employer shall recognise that trade union as the recognised majority union; and the recognised majority union and employer shall, subject to this Act, in good faith, treat and enter into negotiations with each other for the purposes of collective bargaining.*
>
> *(2) A recognised majority union or an employer that fails to comply with this section is guilty of an industrial relations offence and liable to a fine of four thousand dollars.*

38. These definitions are important as it will become clear shortly.

<u>The Section 40 Industrial Relations Offence</u>

39. It is pursuant to this provision that the Union brought these proceedings. The actual conduct, misconduct or omission that the Union alleged contravened Section 40 in relation to which it submitted its evidence before this Court, was the course of events culminating with the Company deciding to close its operations and terminating the employment of all the workers in the Union's bargaining units. The contention of the Union is that *"the company has acted in bad faith in arriving at its decision to terminate all employees by 30th November 2018 without first consulting with the Union in accordance with the memorandum of agreement, or at all."*

40. The Company, in its attempt to avoid the jurisdiction of the Court under Section 40, argued *"This distinction drawn between 'negotiation' and 'consultation' in industrial relations law is not insignificant and ought not to be ignored by this*

Honourable Court. The purpose and intended outcome of each process is different: negotiation contemplates agreement while consultation does not."

41. The Company further stated that "*the Union's complaint is a failure to consult in accordance with the terms of the MOA or at all, not a failure to negotiate. In other words, the complaint ex facie does not contain an essential ingredient of a section 40 offence, that is to say, a failure to negotiate. The Company argues that "This alone is sufficient to dispose of the complaint summarily."*

42. In response, the Union relied on the decision of this Court on the issue of consultation[6] and stated that although no one can stop an employer from declaring workers to be redundant or from laying off workers, nevertheless the employer has an obligation to consult.

43. We reject the Company's technical parsing of words to defeat the jurisdiction of this Court, in light of the broad scope of the activity which the statute clearly and unequivocally intends the terms "treating and negotiating" to encompass, with the goal of arriving at a resolution to disputes and differences in relation to the terms and conditions of the employment of workers. Indeed "consulting" is a synonym of the words "negotiate" and "treat" in the industrial relations context. Moreover, Section 9 (1) of the Act implores the Court to "*act without regard to technicalities and legal form*" with regard to the hearing and determination of any matter before it. Section 40 provides for parties "in good faith" to treat and enter into negotiations for the purpose of collective bargaining. "Good faith" is antithetical to the trap of abstract technicalities and "treating and negotiating" in the industrial relations context, contemplates meetings, consultation and discussions. This is the key to the principle of collective bargaining as the Act itself has defined it.

44. As was stated in IRO 31 of 2015:

> "*In our view, consultation with a RMU is an integral part of the procedural duty of employers where redundancy or layoff is contemplated. This consultation must be fair and adequate to allow the RMU the opportunity to*

[6] Complaint No. GSD-IRO 31 of 2015 SWUTT and ArcelorMittal Point Lisas Limited

deliberate and to respond to what has been contemplated by the Company. The level of consultation which is required with the Union can be no less than the type of consultation which is contemplated in redundancy and retrenchment cases as provided by the RSBA. It must be pointed out that in a layoff, it is the Company who benefits by not having either to pay wages or to pay severance benefits. The only hope for the laid off worker is re-employment."[7]

45. Equally unavailing is the Company's argument that when it moved from the initial decision or restructuring to the new decision of closure, there was no need to treat and negotiate with the Union. The Company justified its dramatic shift in discussions not with the Union under the MOA but in meetings and consultations with Cabinet, representing the government as sole shareholder of the Company, in which closure and termination was approved. Whilst it is expected that the Company would meet with its shareholder, as is the norm in that type of relationship, this argument cannot be accepted for three obvious reasons:

    a. The first is that termination of employment of workers whether cause be closure of the company or for any other reason is fundamental to the terms and conditions of employment of workers emphatically included in the registered collective agreement to which the Company is legally bound and is so defined by the IRA.

    b. The second is that the Company's argument is particularly futile as it is transcended by the MOA, which laid the framework for the parties to treat and negotiate in good faith regarding the future of the Company in relation to the terms and conditions of employment of the 5,500 Workers' covered by the extant Collective Agreement. It was on this basis that the MOA was forwarded by the Minister of Labour and Small Enterprise Development to this Court with a request that it to be registered and given the legal force of an order of this Court. It effectively became an addendum to the Collective Agreement that regulated the relationship between the parties and could not be ignored

[7] Complaint No. GSD-IRO 31 of 2015 SWUTT and ArcelorMittal Point Lisas Limited

by either party. Consistent with and pursuant to the purpose of collective agreement under Section 43, the MOA contained *"effective provisions concerning appropriate proceedings for avoiding and settling disputes between the parties"* relating to the future of the employees under the contemplated restructuring by the Company.

c. The MOA as an order of this Court is binding on both parties pursuant to Section 19 of the IRA which provides:

19. *(1) An order or award of the Court shall be binding on -*

a) all parties to the dispute who appear or are represented before the Court;

b) all persons who have been summoned to appear as parties to the dispute, whether they have appeared or not;

c) in the case of employers, any successor to, or assignee of, the business of the employer who is a party bound by such order or award, including any company that has acquired, or taken over the business of such a party;

d) any trade union on whom such order or award is at any time declared by the Court to be binding, as well as on its successors; and

e) all workers belonging to a bargaining unit to which such order or award refers.

d. The third reason for rejecting the Company's submission is based on the integral concept of "good faith", an essential element of the offence under Section 40. "Good faith" is the indispensable requirement for compliance with Section 40 and, indeed, an essential element of "*good industrial relations principles and practice*" which we are compelled to uphold. "Good faith" means, in this case, that any departure from the terms of the MOA or reconsideration of the goal of restructuring to closure must be discussed with the Union beforehand. The fact is

indisputable that the Company violated the MOA when it went on its own to work out and decide on the future of the company and then presented it to the Union as a *fait accompli* and indeed began issuing letters of termination. Mr. Espinet confirms this Court's own views when he said in his oral testimony, *"To us, to sit and to negotiate that structure….did not seem to be realistic." Mr. Espinet* also confirmed in cross examination that the reason for *"not coming back"* to the Union was because the Company came to the conclusion that there was no viable option other than shutting down.

46. We therefore find that for the reasons stated above and the facts found by this Court the industrial relations offence under Section 40 has been made out.

Is The Complaint Out Of Time?

47. The following is the Company's submission on whether the Union's complaint is time barred:

> *"In determining whether the elements of a section 40 offence are made out on the evidence, the Honourable Court ought to first consider the period of time within which it can properly find that an industrial relations offence has been committed. Section 84(2) of the Act provides in relation to the reporting a complaint:*
>
> > *'An application under subsection (1) shall be made within three months from the time when the industrial relations offence took place, and not after.'*
>
> *We submit that Section 84(2) of the Act operates as a three month limitation period against the reporting, and by extension the adjudication, of an alleged industrial relations offence.*
>
> *Applying this three month limitation period to the IRO complaint before this Honourable Court, it follows that the Union cannot properly invoke the jurisdiction of this Honourable Court in*

respect of any alleged breaches of Section 40(1) of the Act which occurred before 1st July 2018."

48. This question can only be answered by understanding the time line when the offence was allegedly committed.

49. There is some uncertainty about the actual date the Company decided to change its stated decision from having two separate entities to the new decision that the closure of the Company was the only viable option. However, the Company agrees that the Union was informed of the new decision on the 28th August, 2018; this is after the Company made its decision. It is only at the point when the Union was informed of the Company's new decision that the Union could contemplate the filing of an IRO.

50. Clearly therefore the submission regarding the timeliness of the complaint is without merit.

Restraining Order

51. On the 2nd October, 2018 the Union filed an application for an order of injunction in this Court.

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

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

52. On 8th October, 2018, we granted an interim injunction restraining the Company from terminating the employment of its workers pending the determination of the

issues underlying the IRO complaint. Citing the accepted standard for granting an interim injunction, that is, whether the risk of injustice would be greater if it is granted or if it is refused, we reasoned that;

"It is our view that there would be a greater injustice if the issues affecting the loss of employment of five thousand five hundred workers are not properly ventilated before the closure of the Company. Indeed, the public interest is one of the considerations which we are mandated to take into account under Section 10 of the Act in determining any matter before us. When we considered the balance of convenience, the justice of the case and the public interest it was our view that the injunction should be granted."[8]

53. The Court of Appeal differed with us in the assessment of the balance of injustice. It grounded its jurisdiction to review our exercise of discretion on the basis that we did not give the national interest the weight that was appropriate that the Court of Appeal thought it deserved *vis a vis* the workers' interests. In overruling this Court, the Court of Appeal reasoned:

"On the other hand, if the injunction is continued or reinstated there is:

a. A non-trivial risk to Petrotrin of being driven into liquidation (this would present further hardship for its employees, who may suffer as a result of obtaining little to no payment due to their ranking on a creditors' list of priority).

b. Risk to the wider national community of:

i. Increase in the sovereign debt ratio;
ii. Downgrade of credit rating;
iii. Increase in the cost of borrowing;
iv. Adverse effects on the national economy and its ability to deliver on social programs.

[8] Application No. 7 of 2018 Oilfields Workers Trade Union and Petroleum Company of Trinidad and Tobago Limited

In the circumstances it is not clear to us how or even whether that damage is even compensable or even remediable. We cannot in these circumstances allow the injunction to continue or have it reinstated."[9]

54. The tradition of adherence by this Court to the rule of law, leaves no room for it to differ in any way from the Court of Appeal's decision in this situation, although a factual rather than a legal assessment. The rule of law expressed in the doctrine of *stare decisis* dictates that the Industrial Court being a lower court to the Court of Appeal in the hierarchy of Courts, must follow the ruling of that Court. The Court of Appeal has determined this issue and this Court cannot revisit the issue of whether *"an order restraining the Company from terminating the employment, of any employee pursuant to restructuring,"* should be granted.

55. That being said, the Union is not without other remedies and this Court's jurisdiction under the IRA remains intact in several respects. First, the Collective Agreement and the MOA remain as legal instruments which this Court is empowered under Parts IV and V of the IRA to monitor and enforce. The Union has the option of bringing additional proceedings before this Court under those provisions to invoke its supervisory, conciliatory and adjudicative jurisdictions. Indeed, the Court of Appeal acknowledge this jurisdiction in para. 35 of its judgment wherein it implied the continuing duty of the Company to adhere to the existing collective agreement and also intimated the continuation of the treating and negotiation by the parties, *"In the meantime, if a viable option other than closure is identified and agreed upon, the letters can be withdrawn and the termination process rolled back."*

56. The Court of Appeal was guided by the seminal decision of the Privy Council in *National Commercial Bank (Jamaica) Limited v OLINT Corporation* [2009] UKPC 16, wherein it adopted the reasoning in *American Cyanamid Co v Ethicon Ltd* [1975] AC 296 that *"If damages will be an adequate remedy for the plaintiff, there are no grounds for interference with the defendant's freedom of action by the grant of an injunction."* We take this to mean in this context that the Union representing the workers is not without additional financial remedies sounding in

[9] CA No. P320 of 2018

damages as the IRA Section 10 (4) through (7) is pellucid in the plenary, non-reviewable power of this Court to protect workers from dismissal "*in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations.*"[10]

57. Putting together these points of advice from the Court of Appeal in resolution of the application for a restraining order, we will order that the parties treat and negotiate with the objective of finalising all outstanding issues which affect the soon to be terminated workers through collective bargaining.

FINDINGS

1. On the totality of all of the evidence, it is the finding of this Court that the Company did not, in good faith, treat and negotiate with the Union for the purpose of collective bargaining as required by law.

2. In accordance with the ruling of the Court of Appeal, the application to restrain the Company, at this time, from distributing termination letters to the workers is denied.

3. There are many issues related to the terms and conditions of employment of the workers for which the Company has a duty to discuss with the Union. Among these issues are:

   - What criteria is used for the rehiring process
   - What is the proposed structure of the Company
   - Pension and medical plans of the workers
   - Workers' savings plan and other benefits
   - Computation of termination packages
   - Outstanding loans which workers may have

   These are fundamental issues of collective bargaining which parties should treat and negotiate with a view to arriving at a resolution.

[10] We do not find it at this time to address the issue canvassed before us of whether the proposal is a closure or a restructuring, which has significantly different legal consequences. This should not be interpreted as overlooking its importance or a view one way or the other on the issue.

ORDER

4. We order:

    a. That the Union and the Company meet, in good faith, to address the issues, mentioned in paragraph 3 of the Findings herein and other issues, if any, before the termination of the workers.

    b. These meetings are to take place daily from 9:30 a.m. on 20th November to 26th November, 2018 inclusive.

    c. These meetings are to be held at the Company's premises or a mutually agreed venue.

    d. The Company is further ordered to pay the maximum fine of $4000.00. The said fine to be paid on or before the 23rd November, 2018.

We so rule.

Her Honour Ms. D. Thomas-Felix
President

His Honour Mr. A. Aberdeen
Member

Her Honour Ms. J. Christopher-Nicholls
Member

His Honour Mr. A Mohammed
Member