



**INDUSTRIAL COURT
of Trinidad and Tobago**

Address

by

**Her Honour Mrs. Heather Seale
the President of the Industrial Court of Trinidad and Tobago**

**at the Special Sitting of the Industrial Court
to mark the Opening of the 2024/2025 Law Term**

Tuesday September 17, 2024

The Industrial Court stands at the cusp of its sixtieth year. On March 20, 2025, the Court will celebrate its Diamond Jubilee. The *Industrial Stabilization Act, 1965*, (ISA) the precursor to the *Industrial Relations Act, Chapter 88:01*, (IRA) which now governs this Court, was assented to on March 20, 1965.

This occasion presents an opportunity to reflect on the origin of the Court. On the Second Reading of the *Industrial Stabilization Bill* on March 18, 1965, the then Prime Minister and Minister of Community Development, Dr. the Right Honourable Eric Eustace Williams, gave some statistics on strikes and its effects on productivity from 1960 to 1964, there were 230 strikes, an average of 46 per year resulting in a total of 803,899 man-days lost, an annual average of over 160,000 man days per year.¹ The strikes also resulted in significant lost wages to workers, loss of government revenues and losses to business.

During the same five-year period, ten arbitration tribunals were appointed, nine boards of enquiry and four commissions of inquiry. Dr. Williams highlighted that while the community had a responsibility to each of its sections, none of these should ignore its own obligations to the larger community.

Before finalizing the ISA, the Government considered a number of precedents from Australia, Singapore, Jordan, New Zealand, Scandinavia and the United States of America. However, it did not slavishly follow any of the precedents studied but drafted a Bill that contained many unique features. The Court contained features of both the

¹ See Speech of Prime Minister, Dr. Eric Williams, on the second Reading of the Industrial Stabilization Bill, 1965 in the House of Representatives-Trinidad and Tobago Hansard dated March 18, 1965.pp 130-134

Australian Court which consisted of Judges and the Singapore Court which consisted entirely of laymen.²

The Bill was passed during a period of public emergency. For the most part, the ISA was a response to the industrial climate in the early 1960's. The Act was heavily criticized as repressive especially by the trade union movement and its constitutionality was challenged by the Oilfields Workers' Trade Union, up to the Judicial Committee of the Privy Council.

The Industrial Court was set up by section 5 of the ISA. It is no surprise that given the history of its birth, the Court was subject to criticism in some quarters. At the first sitting of the Court on April 29, 1965, its first President, Sir Issac Hyatali, remarked that *"Misguided, inaccurate and ill-conceived statements have been made publicly about the possible role and integrity of the Court."* He sought to disabuse the minds of everyone of the false notions which those utterances may have created. He declared publicly and emphatically that the Industrial Court was an independent Court, *"free from the control, directions or influence of the Executive, members of Parliament, political parties and personalities and all pressure groups and combines, guided or misguided that may appear on the scene, now or hereafter"*.³

In spite of his staunch defense of the Court and for all time, the Court has continued to face criticism up to today. However, let me assure our detractors, none of whom I am sure are present today, that we do not take it personally. We are well aware that many

² Khan, Addison. *The Law of Labour and Employment Disputes in Trinidad and Tobago*. Derwent Press, Derbyshire, 2006, p9

³ See *First Annual Report of the Industrial Court* for the period April 29, 1965 -April 28, 1966, pp 6-7

labour Courts and Tribunals in other jurisdictions, including Kenya, and Canada to name a few, are faced with similar sentiments. In an article in the All Employment Law News of March 27, 2023, on Kenya's labour courts, it states and I quote

“It is well known that Kenya's employment and labour relations courts are considered more lenient towards employees, especially when the balance of power favours the employer.”⁴

In an earlier article from 2000 on employment law in Canada entitled “*Courts siding with employers*”, the writer, Joyce Hampton said and I quote

*“In Canada's courthouses, there is an invisible pendulum that swings over employment law decisions. It moves between the employer and the employee. Some years, the courts seem to side more often with the employee. Other years, court decisions seem to be more often in favour of the employer.”*⁵

I agree that the pendulum swings and at one time or another we are perceived to be in the union's or the employer's corner. However, actually, I believe we are like the pendulum at rest until our powers are invoked.

Under the IRA, which succeeded the, ISA in 1972, the Court stands ready and prepared to continue to dispense social justice in keeping with our mandate to make orders and awards, that are fair and just, having regard to the interests of the persons immediately

⁴“Are your justifications for termination reasonable or simply a smokescreen?” *CDH*, 27 Mar. 2023, cliffedekkerhofmeyr.com/news/publications/2023/Practice/Employment/employment-law-alert-27-march-2023-are-your-justifications-for-termination-reasonable-or-simply-a-smokescreen.html, Accessed on 19 July, 2024

⁵ Hampton, Joyce. *Courts siding with Employers. Decision signals a new era of employer-friendly judgments.* 25 Sept. 2000, <https://www.hrreporter.com/focus-areas/employment-law/courts-siding-with-employers/287458>, Accessed 19 July, 2024

concerned and the community as a whole; to act in accordance with equity, good conscience and the substantial merits of the case before it and most importantly, to have regard to the principles and practices of good industrial relations.

As you may well know, the principles and practices of good industrial relations are not defined in the Act. While some may not agree, in my view, by not expressly stating them in the Act greatly allows the Court to take account of the dynamics of society and the changing landscape in the world of work.

Some of the trends include flexible working arrangements including teleworking, hybrid work, Artificial Intelligence, (AI) zero hours contracts and unlimited vacation leave. Given the emerging trends we urge all stakeholders, who may not have done so already, to develop policies to govern the terms and conditions of employees, in the areas where these working arrangements may apply in your organization.

In the case of AI, in a Staff Discussion Note of the International Monetary Fund (IMF) dated January 2024,⁶ produced by Cazzaniga and others, they state that

“Artificial intelligence (AI) has the potential to reshape the global economy, especially in the realm of labor markets...almost 40 percent of global employment is exposed to AI, with advanced economies at greater risk but also better poised to exploit AI benefits than emerging markets and developing economies. In advanced economies, about 60 percent of jobs are exposed to AI, ...Overall

⁶ Cazzaniga and others. 2024. “Gen-AI: Artificial Intelligence and the Future of Work.” IMF Staff Discussion Note SDN2024/001, International Monetary Fund, Washington, DC

exposure is 40 percent in emerging market economies and 26 percent in low-income countries.”

They suggest that *“Emerging market and developing economies should prioritize the development of digital infrastructure and digital skills.”*

Like AI, teleworking and hybrid work may raise issues that require new approaches and new challenges for occupational safety and health. For example, what is a workplace, who should equip and outfit the workspace, bear electricity and internet costs when an employee is employed at home? If a teleworker is injured during the workday but at home, would such an injury constitute a dereliction of the employer’s general duty to ensure, so far as is reasonably practicable, the safety, health and welfare of the employee at work? These and similar issues are already the subject of litigation in some jurisdictions and are likely to arise in Trinidad and Tobago also.

The Court is also mandated to have regard to the community of interest in our orders and awards. This has been so from inception. There are many decisions of this Court as well as from the Court of Appeal on this issue. However, what is now emerging in many instances is the need for the Court to consider the effect of the wider community and in particular criminal activity on the world of work. From matters that have come before the Court we have a firsthand look at some of the ways in which this current phenomenon can impact the workplace. For example, in the area of tardiness some workers may find it unsafe to leave their homes either too early or return home too late and so may have difficulty in adhering to their scheduled hours of work, which in turn may lead to disciplinary action. Conversely, employers may be forced to change their opening hours and mode of operation with cost and other implications. There is also a negative effect on

productivity when workers and/or their employers witness violent events or are themselves or their close relatives, the victims of violence. These are matters for us all to consider.

I will now highlight some areas of the Court's work in the last year.

THE WORK OF THE COURT 2023-2024

Judges

During the review period, spanning from 15th September 2023 to 14th September 2024, the Court experienced a number of changes. I succeeded Her Honour Mrs. Deborah Thomas-Felix as President in December 2023. She served the Court for twelve years in her own indomitable style. We record our thanks to her for her service to the Court and enhancing its jurisprudence.

In January 2024, the Court welcomed five new Judges to the Bench. They are Their Honours Mr. Peter Ramkisson, Mr. Glenn Wilson, Mr. Mario Als, Ms. Stephanie Fingal and Mrs. Caron London. Very recently, the Court added another Member, Her Honour Mrs. Enid Zephyrine.

All of the Judges have been appointed to the General Services Division of the Court, with the exception of Her Honour Mrs. London who is appointed to the Essential Services Division. This is their first Special Sitting of the Court as Judges, some of them would have attended before in other capacities. For Her Honour Mrs Zephyrine, it is actually her very first sitting in Court on the whole. Their addition to the Bench has

strengthened the Court in their respective fields of law, industrial relations, economics and accountancy. We welcome them all.

However, while the complement of Judges has increased, we are somewhat hampered, by a severe shortage of Court Reporters. We also have only two Legal Officers to assist Judges in their research. Our dedicated Clerks who perform the role of Court Clerks are not so classified. We hope to address this in the near future.

Two Judges left the Bench during the year, Their Honours Ms. Elizabeth Solomon and Ms. Angela Hamel-Smith. In October 2023, Her Honour Ms. Elizabeth Solomon transitioned to become Assistant Secretary-General of CARICOM after four years of service to the Court. On behalf of the Court, I extend heartiest congratulations to her. On August 31, 2024, we bade farewell to Her Honour Ms. Hamel-Smith. She resigned for personal reasons.

The Court registers its thanks to both of these Judges for their commitment and dedication during their tenure and we wish them continuing success in the paths they now choose to follow.

Tobago

The Court resumed sittings in Tobago this year. It sat from the 3rd of April to the 5th of April 2024, as well as on the 6th and 7th August 2024, at the Supreme Court in Tobago. In April, we held four (4) hearings and three (3) conciliations. The hearings were chaired by Her Honour Mrs. Kathleen George-Marcelle and by me. His Honour Mr Patrick Rabathaly and Her Honour Ms. Bindimatie Mahabir sat with us and also conducted

conciliation sessions. Altogether, the matters involved thirty-two (32) workers, twenty-nine (29) of them in April and three in August. Out of the matters heard in April, two (2) were settled, two (2) were reserved for judgment, two (2) were referred to open court hearings and one (1) was remitted to the Recognition, Registration and Certification Board (RRCB). The three (3) conciliations conducted in August, were successfully resolved as the parties consented to settle the disputes. You can well imagine the time and expense that those thirty-two workers were saved by not having to travel to Trinidad for their matters.

On behalf of the Court, I would like to express my gratitude to the Honourable the Chief Justice Mr. Ivor Archie, ORTT, for generously extending to the Industrial Court, the Judiciary's Court facilities in Tobago, which made it possible to have open hearings and conciliations. We look forward to the day when we will have our own Industrial Court in Tobago and be able to sit, not only during the Court vacation but all year round.

The Court also extends its gratitude to the attorneys-at-law, and Union representatives and Industrial Relations consultants who sacrificed part of their Easter vacation, as did our Judges.

We commend also our members of staff who worked tirelessly, selflessly and efficiently to ensure the smooth-working of our Tobago sessions.

While in Tobago, the Court paid a courtesy call on the Chief Secretary, the Honourable Farley Augustine, who took time out of his hectic schedule to meet with us. We thank you for your interest in making the Industrial Court in Tobago a reality.

On October 9, 2015, the Court executed a lease with the THA for one hundred and ninety-nine (199) years for Sandy Hall. Since then, the building has been gutted but financial constraints have hampered the progress of the project. On July 17, 2024, I headed a team of officials from the Court, including His Honour Mr. Morton Mitchell, and then Acting Registrar, Mrs. Kathy-Ann Alexander-Fraser and Court Administrator, Mrs. Youland Robinson and Mr. Duaine Hewitt, Office Manager, along with personnel from National Insurance Property Development Company (NIPDEC) and the Technical Officer from the Division of Infrastructure, Quarries and Urban Development (DIQUD), Tobago House of Assembly.

The purpose of the visit was to examine the existing condition of the gutted building and its layout with a view to making the necessary adjustments to the approved drawings submitted by NIPDEC. The Court had previously re-examined the drawings and requested some adjustments be made. We are optimistic that as soon as the plans are received and with the necessary funding, the Industrial Court in Tobago, which we conceive as a Court that can facilitate other similar Courts, such as the Tax Appeal Board, the Equal Opportunities Tribunal and the Environmental Commission, will become a reality. We are optimistic, also, that in 2024/2025 for our 60th anniversary, the Court will receive the financial support to complete the project and make it a reality.

We are heartened by the commitment of the Honourable Attorney General for his support in this venture.

Training

In July, as part of continuing judicial education, the Court partnered with the Judicial Education Institute of the Judiciary of Trinidad and Tobago (JEITT) to provide training in JUDGMENT WRITING and ETHICS/IMPLICIT BIAS for Judges. On behalf of the Court, I extend heartfelt thanks to the facilitators, Honourable Justice Gillian Lucky, Justice of Appeal and Chairperson of the JEITT, and High Court Judges, the Honourable Justice Eleanor Donaldson-Honeywell, our former colleague and the Honourable Justice Avason Quinlan-Williams, and also to the entire JEI team for their warmth and professionalism. The sessions were not only informative but also fostered a spirit of open dialogue and mutual learning. Looking ahead, we are excited about the potential for further collaboration and the opportunity to support ongoing professional development for the Judges of the Industrial Court.

Judges of the Court were also exposed to online *ILO Training in Introduction to International Labour Standards; Foundations for the Judicial Use of International Labour Standards Nationally and Using the Work of the ILO Supervisory Bodies*, which are accessible at their convenience. On behalf the Industrial Court, I would like to thank the Director of the ILO Decent Work Team and Office for the Caribbean for his input in this regard.

Statistics on Disputes

During the review period, spanning from 15th September 2023 to 14th September 2024, the Industrial Court recorded **803** new cases filed across both the General and Essential Services Divisions – just 1 case less than the 804 cases recorded in the previous year

(2022/2023). This year, the Court disposed of **779** disputes, a decrease from the 921 disputes disposed of, during the same time frame last year. The clearance rate for 2023/2024 also fell to **97.01%**, from **114.55%** in 2022/2023.

The breakdown of disputes disposed is as follows: **220** Judgments were delivered, **181** cases were withdrawn, **292** matters were settled through the conciliation and bilateral process and **86** matters were dismissed. Among the total disputes filed, Trade Disputes constituted the largest category of cases, totaling **635**, followed by **48** Retrenchment and Severance Benefits Disputes, **38** Occupational Safety and Health Complaints and **36** Industrial Relations Offences.

Information Technology

The Industrial Court is actively working towards transforming into an e-Court by adapting to the global advancements in court technology and the overall court environment. The Court has been seeking funding through the Development Programme to support computerization, and improvement works. In terms of Computerization, the Court successfully entered into a Memorandum of Understanding with the Judiciary to utilize the Trinidad and Tobago Judicial Information Management System (TT.jim). Additionally, a consultant and a developer were engaged to map out procedures and processes, convert the Court's current, outdated database software to TT.jim and customize TT.jim to fit the specific needs of our court system.

Improvement Works

The Court has been at its current location in Port of Spain since 1997. The building and its facilities are in need of urgent repair and upgrade. The Court will soon begin the replacement of the outdated and deteriorating elevators in Port of Spain. A new warehouse has been acquired. Outfitting this facility has become one of our top priorities, as the previous warehouse did not meet the necessary standards for maintaining court records, documents and equipment.

Library

The Library has increased the number of decisions in its judgment database. It added 208 new Industrial Court cases, 35 relevant Court of Appeal entries, 2 High Court cases, and 1 Privy Council judgment. Capturing the Court of Appeal outcomes related to specific Industrial Court cases in the judgment database provides stakeholders with a clearer understanding of the decisions made, which in turn facilitates better decision-making in advocating for labour and social justice.

Additionally, the remote access experience for subscribers to the judgment database was enhanced through the creation of full-text hyperlinks for 386 Industrial Court cases and 5 Court of Appeal cases. This improvement allowed subscribers to access additional judgments from outside the physical Library, aligning with the goal of delivering timely and effective information to users. Currently, the judgment database contains 6,267 Industrial Court records, of which approximately 55% (3,464) feature a full-text case link. The Library continues to be well utilized by our stakeholders.

Other Activities

The Court facilitated the attendance of fifty children at the Court as part of the Chief Personnel Officer's second annual three-day vacation camp. The Court also contributed supplies to our Caribbean neighbour Grenada after the destruction wrought by Hurricane Beryl.

Conclusion

As I conclude I am confident that with our current complement of Judges, and their dedication and that of the Registrar and staff at all levels, the Court will go from strength to strength.

It is a testament to the Court collectively, its Judges, staff and stakeholders that the Court has withstood the test of time. As the seventh President of the Industrial Court, I stand on the shoulders of all of my predecessors and I look forward to steering the Court towards its 60th anniversary.

I thank you for listening and thank the media for their coverage of this event and for the infomercials that have made my task simpler. Special thanks to all of our attendees, viewers and listeners and to the tireless efforts of those members of staff who have made yet another Special sitting a success.

Mrs. Heather Seale
President, Industrial Court

September 17, 2024