# JURISDICTION MATTERS

## Introduction

In the title of this paper the word ***'matters'*** is used as both a verb and a noun. As a verb it indicates the purpose of the paper which is to make the case that awareness of issues and questions concerning jurisdiction is an important component of the judicial mindset. The paper will further propose that awareness of jurisdiction on the part of parties to disputes, their representatives in Court and employed persons affected by proceedings before the Court is desirable and will conduce to a more crisp and expeditious hearing and determination of certain matters and, in the fullness of time, to a reduction in the number of matters that come before the Court for trial as a result of a more widespread appreciation of what kinds of matters are or are not within the Court's jurisdiction.

As a noun the word **'*matters*'** indicates the method adopted in the presentation of this paper which is to identify the wide variety of occasions when the Court may be called upon to determine whether or not it has jurisdiction to deal with cases or certain aspects of cases which are up for trial before it.

The approach of the paper may be described as ***'navigational'*** in the sense that it will journey from beginning to end of the Industrial Relations Act Ch. 88:01 ***('the Act')*** stopping at provisions that may give rise to jurisdictional questions or concerns in order to discuss them, as often as possible making reference to determined cases.

A convenient starting point for a discussion of the importance of jurisdiction is to be found in S. 18 of the Act. This section begins by immunizing ***"the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award)..."*** from challenge, appeal or review. This immunity, however, is subject to subsection 2 in which provision is made for a right to appeal to the Court of Appeal on limited grounds among which jurisdiction looms large. Section 18 (2) provides as follows:

> ***"(2) Subject to this Act, any party to a matter before the Court is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:***
>
> ***(a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;***
>
> ***(b) that the Court has exceeded its jurisdiction in the matter;***
>
> ***(c) that the order or award has been obtained by fraud;***
>
> ***(d) that any finding or decision of the Court in any matter is erroneous in point of law; or***
>
> ***(e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings".***

Of the grounds for appeal set out at S. 18 (2) it is jurisdictional error and error on a point of law that appear to be the pitfalls posing the greatest danger to the judge's progress.

The Industrial Court judge may take some comfort from a line of Court of Appeal Judgments that have held that S. 18 (2) of the Act must be read together with S. 10 (6) of it. The first case in that line was C.A. 81 of 1978 ***Flavorite Foods Ltd. v Oilfields Workers' Trade Union delivered on January 26, 1983***
in which Hyatali CJ had this to say:

> ***"In my opinion this conclusion is fortified by the fact that s. 10 (6) occupies a special place in the earlier part of the Act and to all appearances has been deliberately inserted there to put it beyond doubt that appeals will not be allowed against the Court's opinion in what is manifestly a highly specialised area of Industrial relations, namely, whether or not a worker has been dismissed in circumstances that offend against the principles of good industrial relations practice or are otherwise harsh and oppressive.***
> ***Consequently, if an appellant is unable to rely on any of the statutory grounds of appeal specified in s. 18 (2) then he is barred from appealing altogether since the Act prohibits him from relying on any other ground. If however he is able to rely on one or other of those statutory grounds he will nevertheless be barred from appealing if the only ground of appeal on which he relies involves a challenge against an opinion of the Court given in pursuance of s. 10 (6).***
>
> ***This is an unusual provision by which to bind the Court of Appeal; but it is manifestly a sensible and logical one since members of the Court are normally selected for appointment thereto by reason of their specialised knowledge and experience in industrial relations and related matters. It is only right therefore that their opinion, duly formed on a question arising in such a specialised area of human relations should be final and not subject to review or recall by members of the Court of Appeal who would normally have no such knowledge or experience."***

The Court of Appeal has consistently reinforced this position in subsequent decisions such as:

***C.A. 21 of 1978 Neal and Massy Industries Ltd. v Transport and Industrial Workers' Union delivered on July 26, 1984.***

***C.A. 114 of 2000 All Trinidad Sugar and General Workers' Trade Union v Caroni (1975) Ltd. Delivered on November 27, 2000.***

***C.A. No. 114 of 1999 Bank Employees Union v Bank of Commerce (Trinidad and Tobago) Ltd delivered on December 7, 2001.***

**Jurisdiction of the Industrial Court**

The Industrial Court as a creature of statute has the powers conferred on it by the Act. Section 7 of the Act has the marginal note ***"Jurisdiction of Court"*** and provides as follows:

> ***"7.(1) In addition to the powers inherent in it as a superior court of record, the Court shall have jurisdiction –***
>
> ***(a) to hear and determine trade disputes;***
>
> ***(b) to register collective agreement and to hear and determine matters relating to the registration of such agreements;***
>
> ***(c) to enjoin a trade union or other organisation or workers or other persons or an employer from taking or continuing industrial action;***
>
> ***(d) to hear and determine proceedings for industrial relations offences under this Act;***
>
> ***(e) to hear and determine any other matter brought before it, pursuant to the provisions of this Act".***

In thus providing for the jurisdiction of the Court, the Act recognizes that its jurisdiction is

> ***"in addition to the powers inherent in it as a superior court of record."***[1]

[1] See ESD IRO No. 2 of 1993 Water and Sewerage Association delivered on June 24, 1994

The Act also provides for the powers of the Court at Section 10. In this paper the jurisdiction of the Court will not be discussed as if its jurisdiction and its powers are in practice separate or distinct. This point is recognized by Alcalde Warner J.A. at pages 19 and 20 of ***C.A. No. 106 of 1986 Caribbean Tyre Company Ltd v Oilfields Workers Trade Union*** delivered on July 27, 1988 in which he says:

> ***"Section 10 (3) does not speak of "powers" under the same section, it speaks of "its powers", the powers of the court. The powers in section 10 are by no means the only powers of the court under the Act. Section 7 (1) refers to powers inherent in the court as a superior court of record and then goes on to outline other powers as the jurisdiction of the court, using the term "jurisdiction" in its narrow sense. Later, in section 7 the words "powers" and "jurisdiction" are used interchangeably.***
>
> ***In my judgment, the "powers" of the court referred to in section 10 (3) embrace all the powers which may be exercised by the court and include the powers within the jurisdiction under section 7 (1) (d) to hear and determine proceedings".***

## Structure of the Court

An aspect of the jurisdiction of the Court has to do with its structure. This aspect is not the focus of this paper and will be dealt with in brief descriptive terms, identifying the relevant provisions of the Act.

Section 4 of the Act provides for a Court comprising the two Divisions - General Services and Essential Services. Also provided for Is a Special Tribunal comprising judges belonging to the Essential Services Division:

> ***"(2B) The two Divisions are-***

***(a) the General Services Division which shall have and exercise the jurisdiction of the Court as set out in section 7 with respect to services other than essential services; and***

***(b) the Essential Services Division which shall have and exercise the jurisdiction of the Court as set out in section 7 with respect to essential services.***

***(2C) The Special Tribunal established by the Civil Service Act, and referred to in the Police Service Act, the Fire Service Act, the Prison Service Act, the Education Act, the Supplemental Police Act and the Central Bank Act, shall consist of the Chairman of the Essential Services Division and two other members of that Division selected by him, and hall hear and determine disputes arising in the Civil Service, the Police Service, the Fire Service, the Prison Service, the Teaching Service, the Supplemental Police and the Central Bank as if those disputes arose in essential services.***

Section 7 (10) is a little-noted provision of the Act which deals with the special case of a dispute involving a bargaining unit comprising workers in an essential service as well as workers of other kinds:

> ***"(10) Subject to section 4 (2C), where a dispute involving a bargaining unit comprising workers in essential services as well as workers in services other than essential services is referred to the Court by the Minister, then where the Minister advises in writing that the dispute arose in an essential service the dispute shall be heard by the Essential Services Division; in every other case the dispute shall be heard by the General Services Division".***

An example of this ***"mixed"*** category may arise in certain matters coming before the Court in which the Public Transport Service is a party. This is so because the Public Bus Transport Service is on the First Schedule of the Act which comprises Essential Industries whereas the Public School Bus Service ***(operated by the Public Transport Service)*** is on the Second Schedule of Essential Services.

Section 7 of the Act makes provision for the assignment of judges to benches and for the exercise of the jurisdiction of the Court by one or more judges on a particular case. It is also in this section, at subsection 2, that the Court is given ***"the same power to punish contempts of Court as is possessed by the High Court of Justice"***. How in practice this power is to be exercised is provided for at Section 7 (6) and (7). These provisions were interpreted by M. Ibrahim J in ***H.C.A. No. 606A of 1988 between Newton James Applicant and the Attorney General of Trinidad and Tobago, Her Honour Mrs. Cynthia Riley-Hayes and Her Honour Mrs. Ursula Gittens delivered on June 27, 1988.***[2]

## S. 2 Definitions

**"worker"**

It would be tedious to do such research but few judges would doubt that the single issue most frequently raised as a point ***in limine*** as to the Court's jurisdiction is based on a claim that the aggrieved employee is not a worker within the meaning of the Act.

The taking of this point is often the occasion of a great sense of frustration to all concerned in the proceedings apart from the Employer – invariably the party to take this point. What causes the frustration is the improbability that realization that the employee concerned in the dispute is a manager and not a worker is of recent onset. All too often a dispute progresses through conciliation at the Ministry of labour, directions at the Court and the filing and exchange of written statements of evidence and arguments without the employer party being aware that the employee was not a worker. Oftentimes the trial is already underway when enlightenment comes to the employer and a submission is made that the person concerned in the dispute is not to

[2] This judgment was the subject of C.A. No. 19 of 1989 between the Attorney General of Trinidad and Tobago and Ors v Newton James delivered on June 26, 1996

be regarded as a worker because he is, pursuant to S. 2 (3) (e) of the Act:

> ***"(e) a person who, in the opinion of the [Registration Recognition and Certification] Board –***
>
> ***(i) is responsible for the formulation of policy in any undertaking or business or the effective control of the whole or any department of any undertaking or business; or***
>
> ***(ii) has an effective voice in the formulation of policy in any undertaking or business".***

But what to do? By S. 18 (2) of the Act any party to a matter before the Court is entitled as of right to appeal to the Court of Appeal on the grounds set out in that section. If the ground to be relied on in the appeal is an objection to jurisdiction the party is required by S. 18 (2) to raise it formally

> ***"at some time during the progress of the matter before the making of the order or award".***

The position at present is as it was when in a judgment ***T.D. No. 43 of 2001 Oilfields Workers Trade Union v National Petroleum Company of Trinidad and Tobago Limited delivered on March 19, 2003*** then President of the Court Addison Khan, after reviewing relevant Court of Appeal judgments had this to say:

> ***"We agree with the Court of Appeal, however, that the Registration, Recognition and Certification Board is the sole authority for determining whether or not a person is excluded from the definition of worker by reason of being a person referred to in section 2. (3) (e) of the Act. In any event, we are bound by the Court of Appeal's decision which we must respect.***
>
> ***We are accordingly of the view, and so hold, that once an issue is justifiably raised before the Court that a person or persons are not workers within the meaning of s. 2 (3) (e) of***

***the Act, the Court does not possess the jurisdiction to deal with that issue".***

Clearly then, S. 2 (3) (e) is a ***"no-go"*** area for the Court. Happily there remain many fields in which the Court may frolic with jurisdictional questions arising from the other subsections of the definition of ***'worker'*** in the Act. In S.2 (3), of subsections (a) to (g) it is only the aforementioned (e) that is ***"out of bounds"*** to the Court. S. 2 (3) (b), for instance, suggests an interesting hypothetical jurisdictional issue. Under that subsection a policeman is a person not to be regarded as a worker.

Let us suppose that a trade dispute concerns an aggrieved person who is a policeman whose complaint concerns an issue that arose in a job in ***"moonlighting"*** employment. The obvious jurisdictional point arises from this subsection 2 (3) (b) according to which he is not a worker. Less obvious but also relevant is the question of his membership in good standing of a trade union which is a requirement at S. 51 (1) (c) and S. 51 (6). The policeman cannot have membership in good standing of a trade union because of S. 33 of the Police Service Act Ch. 15:01 which provides as follows:

***"A police officer shall not be a member of any trade union, or any body or association registered under the Trade Union Act".***

S. 2 (1) (c) and S. 2 (4) (b) make provision for a worker employed under a labour only contract. Cases to which this provision applies may require the Court to exercise its jurisdiction in order to bring into the the proceedings a party other than the nominal or ostensible employer. An example of such a case is ***T.D. No. 140 of 1982 Rio Claro Brick Works and Cyril Thomas and All Trinidad Sugar and General WorkersTrade Union*** **delivered on July 28, 1983.**

**S. 16 Interpretation**

On the face of it, this section does not appear to be a likely source of jurisdictional issues as matters brought under this section are not trade disputes pursuant to the definition at S. 2 (2) of the Act. Moreover the decision of the Court in Section 16 matters is said to be ***"binding on the parties"*** and final.

Nevertheless two important jurisdictional issues have arisen with respect to section 16 in determined cases.

In the first of these, ***I.C.A. No, 11 of 1986 Alston s Building Enterprises Ltd. v Oilfields Workers' Trade Union*** delivered on November 26, 1987, it was held by the Court that an application under S. 16 for interpretation of a collective agreement cannot be entertained by the Court, if the agreement is expired at the time the application is made. This judgment was quoted with approval by the Court of Appeal in CvA No. 9 of 1995 Bank Employees Union v Republic Bank Limited delivered on April 3, 1998 .

Another jurisdictional question arising from a S. 16 matter was the subject of ***C.A. No. 202 of 2000 Hydro Agri Trinidad Limited v Oilfields Workers Trade Union*** delivered on February 8, 2002.

In that case the Court found that the employer had wrongly interpreted a collective agreement provision and awarded under S. 10 (3) of the Act the sum of $90,000 as damages to a worker who had suffered loss as a result of the wrong interpretation. The Court of Appeal found that ***"the award of damages was outside the jurisdiction of the Court"*** because:

> ***(1) there was no issue before the Court as to the application of the provisions of the agreement and***

***(2) the parties "never led any evidence or submitted any arguments on the issue of damages".***

**S. 47 The Collective Agreement As Statutory Code**

The effect of S. 47 of the Act is that a registered collective agreement is binding on the parties to it. There is a judgment of the ***Court of Appeal Texaco Trinidad Inc v Oilfields Workers Trade Union 516 [1973], 22WIR*** which was made under the Industrial Stabilization Act ***(ISA)*** but which holds with no less force since the Industrial Relations Act came into force in 1972 when the ISA was repealed. According to this judgment the registered collective agreement is a statutory code the provisions of which cannot be altered by the parties or even by the Court itself during its currency.

It was put thus by Clement Phillips J. A.

> ***"The resulting legal position, in my judgment, is that the terms of a registered industrial agreement are intended to operate as a statutory code in relation to the rights and obligations of the parties and, accordingly cannot be varied by the court during its continuance. It follows, therefore, that in the instant case the court had no jurisdiction to make an award in respect of a bonus payment to which the workers in question were not entitled under the terms of the relevant industrial agreement".***

It follows from the doctrine of the collective agreement as statutory code:

***(1) that the Court cannot make an order varying a term in a collective agreement during its currency.***

***(2) that a new term in a collective agreement or an alteration of a term in an expired agreement can only be accomplished when a successor agreement is negotiated by the***

***parties or when the Court makes an award in a dispute over a breakdown of negotiations.***

***(3) that a term in a collective agreement cannot be fixed in isolation. This point was made with great clarity in IRO Nos. 2 et al of 1987 CPO and Ors v NUGFW and Ors delivered on August 20, 1987.***

In this judgment the Court said:

> ***"The charge is that there was a failure to bargain over a term of employment of the workers. We must therefore look at the provisions of the Act in this regard. Under these provisions no term of employment can be established in isolation. It must be set out in a collective agreement which when registered by the Court is by s 47(1) directly enforceable, but only in this Court."***

**Section 51 of the Act**

Section 51 of the Act is the source of a rich variety of jurisdictional issues.

**1. Limitation Issues**

At the simplest level this section operates as a statute of limitation imposing a six-month deadline for the reporting of trade disputes to the Minister of Labour.

In practice, issues concerning S. 51 as a statute of limitations are, for the most part, the concern of the Minister of Labour to whom a report of a trade dispute must be made.

How the six month period in S. 51 (3) ***(with extensions where applicable)*** is counted has been settled by ***C.A. No. 42 of 1969 Texaco Trinidad Incorporated v Oilfields Workers Trade Union*** delivered on February 8, 1972.

The Court of Appeal held that in the expression ***"issue giving rise to the trade dispute"*** the word ***"issue"*** is to be interpreted as meaning ***"event"***. The jurisdictional implications of this decision are set out by then President JAM Braithwaite ***in A No. 70 of 1981 Citibank N.A. v Bank and General Workers Union*** delivered on July 22 1981 as follows:

> ***In that matter the dispute was over a dismissal and the Court of Appeal held that the dismissal was the event, and therefore the "issue", giving rise to the dispute.***
>
> ***The effect of this ruling is that where a trade dispute over a dismissal is held to be invalid because it was reported six months after the dismissal, then that dismissal would stand and any avenue for challenging it under the Act would be forever extinguished. The same result would ensue in any 'rights' dispute, that is to say, any dispute over the alleged violation of an existing right. The worker concerned would have forever lost his right to seek redress for that particular violation of that particular right.***
>
> ***This is all well and good for a 'rights' dispute, but it might be thought that a similar result would be unreasonable in an 'interests' dispute, that is to say, a dispute over the creation of a right. If, for example, the report of a dispute over a claim for increased wages was invalidated because out of time, it would be most unfortunate if the result was that the bargaining unit concerned was forever barred thereafter from claiming an increase in wages. In this way a Union's lapse in making a report could extinguish forever the right of a bargaining unit under the Act to conduct collective bargaining over its terms of employment.***

The Application from which this passage is taken was a referral of a question by the Minister of Labour under s. 51 (4) of the Act whereby guidance was sought on how to count the six month period in S. 51 (3) where the report of a trade dispute concerns an ***'interests'*** dispute.

That guidance is given as follows by President Braithwaite:

> ***In an 'interests' dispute therefore the event giving rise to the dispute is the submission by one party to the other of proposals for the conclusion, revision or renewal of a collective agreement or for a supplementary agreement. It may well be true, as stated in the Minister's referral, that negotiations over a collective agreement often take more than six months.***

2. In ***T.D. No. 28 of 2009 (s) All Trinidad General Workers Trade Union v Petroleum Company of Trinidad and Tobago Limited*** delivered on May 19 2010, the Court was called upon to make a decision as to whether it has jurisdiction when the time bar figured in the proceedings in an unusual manner. The Minister of Labour's certificate of unresolved dispute said clearly that there was no extension of time either under S. 51 (3) or S. 55 (2).

The Court upheld a submission on behalf of the employer that it had no jurisdiction to hear the dispute for the following reasons:

> ***"There can be no implied extension of the time within which a report of a dispute must be made to the Minister. The Minister's mind must be directed to the exercise of his discretion and, in this case, the filing of the appropriate column of the certificate of unresolved dispute with the word "None" shows that the Minister did direct his mind to the issue of an extension of time and refused to exercise his discretion to grant it.***
>
> ***In the circumstances the Court has no jurisdiction to hear and determine the dispute, the Union having failed to comply with the limitation period mandated by section 51 (3) of the Act".***

**3. Dispute Already Determined or Resolved?**

S. 51 provides that

"***Any trade dispute, not otherwise determined or resolved may be reported to the Minister……."***

It is possible, when a trade dispute comes on for trial, that evidence may be led of a kind to raise the issue as to whether or not the matter reported as a trade dispute had been ***"otherwise determined or resolved"***.

While the determination of such an issue would turn largely on the facts, the decision to be made by the Court would necessarily be as to whether it has jurisdiction if there is evidence that the dispute was otherwise determined.

**4.** S. 51 may also raise the jurisdictional question as to the competence of the trade union party to report the dispute. At the simplest level the Court would have no jurisdiction to hear a matter if it had evidence before it that there was a recognised majority union in place and the report of the trade dispute was made by an union other than the recognised majority union.

**5.** Perhaps the most fertile ground for potential jurisdictional pitfalls in Section 51 is to be found at S. 51 (1) (c) when this is read together with S. 51 (5) which provides as follows:

> ***"(5) For the purpose of this Act and in particular subsection (1) (c), a trade union other than a recognized majority union, is competent to pursue the following types of trade dispute, but no other, in accordance with this Act-***
>
> ***(a) any dispute or difference between the employer and the union or between workers and workers of that employer, in each case being on behalf of***

***members of the union, concerning the application to any such worker of existing terms and conditions of employment or the denial of any right applicable to any such worker in respect of the employment; and***

***(b) a dispute between the employer and the union as to dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment, or reinstatement of a worker or workers".***

It is clearly intended by the Act that whether the Court has jurisdiction to hear a dispute will depend on the nature of the dispute and the status of the reporting trade union. The intention is that when a trade dispute is reported by a trade union pursuant to S. 51 (1) (c) it is only in respect of the kinds of dispute specified at S. 51 (5) that the Court has jurisdiction to hear it.

***T.D. 198 of 1977 Harold Lee Chung v Shipbuilders, Ship Repairers and Allied Workers Union*** delivered on April 17, 1978 is an example of a case in which the Court was alert to the nature and limits of its jurisdiction in this regard.

In this case with lay representatives on both sides a trade union that was not a recognised majority union claimed severance pay for an aggrieved worker in the absence of an existing term providing for that benefit and in the days before the Retrenchment and Severance Benefits Act, Ch 88:13 was in force. Although the representative of neither party raised the issue the Court was alert to its jurisdiction and held as follows.

***"The Union is not a recognised Union and therefore could only seek on behalf of the worker remedies for violation of any right that existed as a condition or term of service.***

***.....***

> ***The Union is not competent to seek any other basis for the computation for the remuneration as this would in fact be seeking to settle new terms of service.***
>
> ***The Union is not certified and therefore not qualified to move the Court to make such a decision. In the circumstances, we hold that the Union failed to make a case for payment on the basis contended for by the Union. We accordingly dismiss the dispute".***

Such is the importance attached to allowing unions to pursue disputes strictly in accordance with their representative status that the Act provides at S. 54 for the Court to determine questions or differences between employer and trade union as to the nature of the trade dispute reported.

***A. No. 1 of 1977 Paramount Transport Trading Company and Oilfields Workers Trade Union and Minister of Labour*** delivered on February 25, 1977 is of interest as being one of the rare cases in which the Court was required to exercise the powers given to it under S. 54. The purpose of the provision is succinctly explained in the second paragraph of the judgment as follows:

> ***Under the Act there are two types of dispute and they are handled differently; one of them is the type of dispute set out in section 54 (1) and the other is a dispute other than as set out in s. 54 (1). The difference is that in the latter type a union taking up the matter, or an employer for that matter, can decide to take strike or lock-out action as the case may be, whereas in those described in section 54 (1) the Act doesn't allow strike or lock-out action; and the purpose of section 54 (1) is merely to decide in any border-line case whether it is one or the other so that the parties will know what rights they have and be protected from taking improper action.***

**Section 59 - Certificate of Unresolved Dispute**

It is settled by a Court of Appeal decision that the existence of a certificate of unresolved dispute which the Minister of Labour is required

to issue by S. 59 of the Act, is not necessary to activate the Court's jurisdiction in trade disputes.

***In Cv.A. No. 247 of 1998 Steel Workers Union of Trinidad and Tobago v Ispat*** delivered on April 30, 2001 Sharma J.A. said:

> ***"There is nothing in the sections 59 (1) and (2) of the Act, to lead us to conclude that the certificate of the Minister is mandatory for the purpose of jurisdiction".***

Justice Sharma went on to explain his decision, saying:

> ***"It can only be a blot on our system of justice that access by a trade union, should depend on the act of a third party (the Minister) in order to access the Court. It is not to the point that the matter could be resolved by the trade union taking steps by way of mandamus to compel the Minister to do his duty as the Court held. Further, one could see the havoc such an approach could wreak if for instance, the particular Minister, or for that matter the executive was at odds with a particular trade union.***
>
> ***Indeed it may arguably be urged that any restraint in access to the Courts which depended on the fulfilment of a duty by a Minister to do something, can be said to breach the doctrine of the separation of powers. The Court is a Superior Court of Record. I make this remark only in passing since the issue was not agitated before us, but in my view it helps to show that Parliament could never have intended the certification to be mandatory before the Court could entertain jurisdiction.***
>
> ***I think the approach taken by Mr. Mendes is a more pragmatic one and fulfils all the requirements laid down by the law in the construction of statutes.***
>
> ***In my judgment, the Court has jurisdiction to hear the trade dispute if it is satisfied that all the requirements of section 59 have been satisfied and the dispute remains unresolved, either party to the trade dispute can write to the Court requesting that the Court summon the parties for directions with respect to the future conduct of the trade dispute. Of course, the other side must be notified and the Minister as well.***

## OTHER JURISDICTION MATTERS

### Conciliation

1. Section 12 of the Act makes provision for conciliation before a judge of the Court.

2. **On Workmen's Compensation Liability**

In ***Application No. 117 of 1992 National Union of Government and Federated Workers v Trinidad and Tobago Forest Products Company Limited*** delivered on July 14, 1993 the Court recognized that it had no jurisdiction to determine whether the employer was liable to pay damages to worker injured in the course of employment. The Court acknowledged that this was a matter falling under the Workmen's Compensation Act which provides that such matters are to be determined by a Commissioner of Workmen's Compensation.

3. **Jurisdiction of the Special Tribunal in disputes under the Police Service Act**

It took then President JAM Braithwaite no more than a 1-page oral judgment to settle the question of the Special Tribunal's jurisdiction. In ***S.T. No. 1 of 1977 between the CPO and the Trinidad and Tobago Police Association*** delivered on June 10, 1977. The Tribunal dismissed a matter concerning the grievance of a constable who had been transferred from detective work to ordinary police duties. Approximately one half of the judgment is reproduced as follows:

> ***"But we are satisfied that this is a grievance over action taken in relation to the work and conduct of a member of the police service. Such grievances are not grievances within the meaning of the Police Service Act which is confined to grievances over classification, remuneration, or terms and conditions of employment.***
>
> ***Questions relating to appointments, promotions, transfers and disciplinary control in general over the work and conduct of members of the police service are by the Constitution placed in the hands of the Police Service Commission, and any grievances relating to those matters should be directed to the Police Service Commission. They cannot fall within the term 'grievance' in s. 12 of the Police Service Act and therefore we hold that we have no jurisdiction in this matter and we accordingly dismiss dispute S.T. 1 of 1977".***

**S. 46 and S. 58**

Under S. 47, the provisions of a collective agreement registered under S. 46 of the Act are enforceable, but only in the Industrial Court.

Under S. 58 a memorandum of agreement entered in accordance with that provision ***"may have all proceedings taken thereon as upon an order or award of the Court".***

Enforcement evidently raises issues of jurisdiction for some of which the judgment ***IRO No. 12 of 2004 Oilfields Workers Trade Union v Trinidad and Tobago National Petroleum Marketing Company Limited*** delivered on October 6, 2004 is a source of valuable information and analysis. Especially helpful in this judgment is a comparison of the registered collective agreement with the memorandum of agreement entered under S. 58 of the Act.

**S. 40, S. 63 S. 84**

**Industrial Relations Offences**

Under sections 40 and 63 industrial relations offences are defined in respect of which applications are to be made pursuant to S. 84 of the Act. The time limit in this section gives rise to jurisdictional questions, not always simple as in the case of an offence said to be a continuing offence.

## Conclusion

In short, therefore, this paper modestly proposes that jurisdiction does matter, not only for the reasons set out above but because a court acting outside its jurisdiction may actually be doing injustice. An order or award made by a Court acting outside its jurisdiction becomes an imposition, not made less onerous by the fact that nothing can be done about it once the opportunity to object under S. 18 (2) has been missed. Some discerning person is certain to see the jurisdictional error in the eternity available after delivery of a judgment for reading, re-reading and second guessing. Identification of such error can be corrosive of confidence in the Court.

In a court such as ours where it is frequently the case that representatives on both sides of a dispute are lay persons, the responsibility of the bench for jurisdictional rectitude is all the greater.

**V.E. Ashby**

**04.05.2013**