



INDUSTRIAL COURT OF TRINIDAD AND TOBAGO

Address delivered by
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President of the Industrial Court of Trinidad and Tobago

On the Topic
**LOCAL JUDICIAL PERSPECTIVE:
MANAGEMENT PREROGATIVE: CONCEPT OR REALITY?**

At the ECA/ESC Conference

Tuesday 16 October, 2013

**Trinidad Hilton and Conference Centre
Lady Young Road, St. Ann's**

LOCAL JUDICIAL PERSPECTIVE: MANAGEMENT PREROGATIVE: CONCEPT OR REALITY?

The management of a business is principally a property right of its owner/s. Hence, enterprises possess inherent autonomy to direct their business operations efficiently and without unnecessary interference from either the government or workers, except as may be provided by law. This essentially is the rationale for the exercise of management prerogatives. Management prerogative is the right and unqualified authority which reside with employers and management to exercise their discretion in certain areas of decision-making in the business without discussions with or the agreement of a third party. Business owners have the right to receive reasonable returns on investment and an inherent right to expand and grow their business as they wish.

Management prerogatives include the right to hire, promote, suspend, or dismiss employees, the right to direct the work of employees; and the right to establish policy. Management has the right to increase or

reduce the workforce in support of the particular business and based on the availability of financial resources and to determine and decide on issues such as products availability, price and business methods. Management prerogatives are not subject to negotiations with any Union and are usually expressly stated in collective agreements. The employer's right to conduct the affairs of the business, according to his or her own discretion and judgment, is well-recognised and accepted as an inherent part of any employment relationship. Employers therefore enjoy a great deal of latitude to regulate all aspects of employment.

Historically, the relationship between employer and worker was one of power and control on the one hand and subordination and discipline on the other. The period of the Industrial Revolution in the 18th century which impacted on the lives of citizens in many countries and on social systems worldwide: was characterised by power, control, subordination and discipline in the place of work. These were the essential and managerial functions in employment relationships and management prerogatives were quite extensive in the days of old.

Today the management structure in most organizations remains hierarchical and the elements of control, subordination and discipline from centuries ago continue to exist. Workers to a large measure resist the control of management and the relationship between managerial control and this resistance cannot be understood without considering the nature and distribution of power between the parties. Managerial prerogatives have been one of the most divisive factors between labour and management, due to workers making an effort to challenge the authority of the manager, and the manager's attempts to maintain power and control.

Workers and Trade Unions generally acknowledge the role of management to manage however they do not usually consider the managerial functions as a "right" but as part of the job managers are paid to do. Management uses the term management prerogative to defend its role in the workplace, while trade unions use this term to place an element of responsibility upon management.

The evolution of industrial relations and globalisation are reshaping the world of work in profound ways and altered the approach to management prerogatives in businesses. Globalisation has brought with it the diffusion of innovations and novel technologies, the rapid flow of ideas and the internationalization of business and business processes; there is also the increased emphasis on skills, quality and productivity.

Globalisation also has an impact on Human Resource Management policies and practices in the workplace. Contemporary Human Resource Management is moving towards “*A change in power relations and highlights the supremacy of management. The management prerogative is rediscovered but in place of command and control the emphasis is on commitment and control as quality, flexibility and competence replace quantity, task and dumb obedience. To put it another way: the managerial agenda is increasingly focused on innovation, quality and cost reduction.*”¹

¹ John Purcell "Human Resources Management - Implications for Teaching, Theory, Research and Practice in Industrial Relations" (Paper presented at the Ninth World Congress of the International Industrial Relations Association, August-September, 1992, Sydney, Australia).

Today management prerogatives have been circumscribed by modern industrial relations principles and practices that speak to fairness, equity and the protection of fundamental human rights. Management is charged with the corporate responsibility to respect human rights, that is, to act with due diligence to avoid infringing the rights of others. It is therefore the duty and responsibility of employers to find a proper balance between the exercise of management prerogatives and respecting and upholding the rights of workers and the law.

In Trinidad and Tobago employment relationships are governed to a large measure by a robust legal framework and by international standards that help to promote a strong social dimension to industrial relations and places labour relations in an economic context. This country has been adhering to global standards in the promotion and fostering of international best practices; and the Industrial Court plays the role as an impartial arbiter.

Let us briefly examine the legal framework of Industrial Relations in this country and the role which the Industrial Court continues to play. You

may agree that much of what governs conduct and the core rules at the workplace in Trinidad and Tobago, and I daresay in many jurisdictions, is the content of individual collective agreements, informal understandings, the employee handbook and other formal instructions that originate within the workplace. It is safe to say that the day-to-day rules of the workplace are largely generated from within the individual organisations.

Legislation such as the Industrial Relations Act, the Maternity Protection Act and the Retrenchment and Severance Benefits Act define the legal parameters within which parties must operate. Their relevance assumes significance when there is a need to ensure that legal and equitable standards are maintained at the place of work. The legal framework consists not only of “labour laws” that govern the workplace. One must also look to constitutional law, civil law, the “common law”, company law and even the criminal law. In addition, International Conventions, many of which this country has ratified, help to determine

the international best practices and acceptable standards to be adopted by both parties at the workplace.

From the perspective of the Industrial Court, the legal framework from which we operate is a fundamental guarantee for the protection and for upholding the rights of employers and workers in order to have fair and equitable resolutions to disagreements. It is our view that it is in the enlightened self-interest of both the employer and the worker to adopt and adhere to industrial relations practices which are in accordance with the laws of this country and international labour standards.

One of the roles of the Industrial Court is to guide parties, through its judgments, on how to find and achieve a balance in the exercise of management prerogatives. The Court has pronounced in several of its judgments that the exercise of management prerogatives must be in accordance with the legal procedural requirements intended as safeguards against their abuse.

Let us quickly examine two scenarios: assume that for financial reasons

a Company decides to retrench its workers, a decision which is entirely within its prerogative to make. However the exercise of that prerogative must be conducted within the limits and confines of the law. The second scenario is as follows: employers inherently have the right to discipline workers, which I imagine is a routine and sometimes daily exercise of management prerogative. However the law provides that disciplinary action can only be for just cause, simply put, the law does not condone the whimsical and arbitrary use of management prerogative. Unlike some jurisdictions where there is no written legislation, this country provides statutory safeguards to prevent employers from treating workers unfairly and without just cause.

The legal framework does provide for and preserves the processes for the exercise of management prerogatives by employers. However these prerogatives cannot and ought not to be exercised without due consideration of the rights and obligations of both parties. The exercise of management prerogatives requires due regard to the principles of good industrial relations and international best practices. Employers

should therefore be guided in their deliberations and in the exercise of management prerogatives by principles of equity, fairness and good industrial relations.

In the local context, the unfettered prerogatives which management once enjoyed historically have been circumscribed over time by the laws of this country and by international best practices and standards. Trinidad and Tobago has repealed the Masters and Servants Ordinance and is part of the international community which subscribes to a body of national laws and international standards which speak to justice and equity at the workplace. These are standards that have been adopted by employers and workers worldwide. In my respectful view, it is in a company's interest to adopt and embrace the principles of corporate responsibility that encourage compliance with the spirit of the law, ethical standards, and adherence to international norms. Those principles will ultimately redound to the efficient use of the company's human resource and to the overall success of the business.

To answer the question is “management prerogative” a concept or

reality; if the question has not already been answered; I will say that management prerogative is not a mere concept but a reality which is necessary in the operation of any business. Management needs to be allowed to make decisions about the day-to-day operations of the business and its future without the interference of workers or their representatives.

The Industrial Court of Trinidad and Tobago in I.C.A. 8 of 1995 stated that management prerogatives *“are inherent in the very fabric of employer/employee relationships. They are the unwritten and unspoken part of every contract of employment, and indeed they came into being on the very first day that one human being engaged another in a contract of service.”*²

However these prerogatives are circumscribed by the laws and legal framework of this country. As a consequence, there is a need for employers to appreciate the difference between management prerogatives and the rights of employees to participate and assist in

² ICA No. 8 of 1995 Bank Employees Union and Republic Bank Limited, Industrial Court of Trinidad and Tobago

achieving and preserving industrial peace for their mutual benefit.

Employers' organisations such as the ECA play a very important role in influencing employment relationships. These employer's organisations examine the internal workings of the businesses of their members and advise and guide their membership on best practices and standards in the workplace. In so doing they assist in raising awareness about changes in the law and in enhancing the capacity of their members to deal with developments in their operating environment.

I am sure that the ECA's message is similar to mine, which is, that management prerogative is a reality in the global economy and in this country, but it must be balanced with fairness, good industrial relations principles and practices and corporate responsibility based on international labour standards and the laws of this country. Employers must be ever mindful of the duties, obligations and rights of workers and the duties, obligations and rights which they possess as employers when asserting management prerogatives.

Earlier this year, the international business community submitted a report to the UN on ‘Corporate Sustainability and the United Nations Post-2015 Development Agenda’. In that Report business representatives acknowledged that: “Companies ... are increasingly aware that they need to earn and maintain a social license to operate, as well as a legal one. Corporations face increasing expectations from stakeholders to manage their societal impacts, including on human rights [and] labour ...”³

I have no doubt that considerations of this kind would be uppermost in the minds of management worldwide, including in this country, as they exercise their prerogative. As you traverse the employment relationship, always bear in mind that duty and obligations cannot be separated from respect of rights at work as human rights.

Thank you for your listening.

³ See, ‘Report to the United Nations Secretary-General Corporate Sustainability and the United Nations Post-2015 Development Agenda Perspectives from UN Global Compact Participants on Global Priorities and How to Engage Business Towards Sustainable Development Goals’ Submitted by United Nations Global Compact, 17 June 2013, p. 4.