

ADDRESS delivered by
Her Honour Mrs. Deborah Thomas-Felix
President of the Industrial Court of Trinidad and Tobago
at a SPECIAL SITTING OF THE COURT FOR THE 2013/2014 LAW TERM
on Monday 30th September, 2013
10:00 a.m.

We are now into the second decade of a new century, a century which has begun with and continues to have many global economic, environmental and social challenges. Globalisation, a driving force in economic development worldwide has brought with it increased competition from other markets. Government, enterprises, employers in all economic sectors and workers must continue to devise means to adequately address this competition. Globalisation affects businesses, households, governments and it certainly affects social partners. Traditional labour relations must now evolve to deal with and be a part of this new and dynamic evolution.

As practitioners of Industrial Relations and as citizens of this country, it is important that we acknowledge the interlinkages between the economy, social development and industrial relations. A stable industrial climate is a very strong link in the chain of economic growth which can serve as the foundation for improving social justice and the quality of life in the country.

I daresay that the private sector, the public sector and the trade unions strive for a stable industrial relations climate. As a nation we all share the desire to live in a country with dynamic and fair social justice principles, which is characterised by sound industrial relations practices and inclusive and equitable economic growth for the benefit of all citizens.

I want to publicly commend the Minister and the Ministry of Labour and Small and Micro Enterprise Development for some of the recent changes which have been made to improve social justice delivery in this country. There have been several initiatives and changes at that Ministry over the past years. I therefore will highlight those which impact directly on the Industrial Court.

- In November 2010, the Ministry of Labour and Small and Micro Enterprise Development established the HIV/AIDS Advocacy and Sustainability Centre (HASC). The Centre has responsibility for implementing the National Workplace Policy on HIV/AIDS and a Sustainability Plan for addressing HIV and AIDS in the workplace.
- As at January 1, 2011 the national minimum wage is increased from nine (\$9) dollars to twelve dollars and fifty cents (\$12.50) per hour.
- On March 9, 2012 the Minister of Labour and Small and Micro Enterprise Development officially appointed members to an Industrial Relations Advisory Committee which is tasked with the review and amendments of the Industrial Relations Act. Among the areas of the Act to be reviewed are the definition of “worker”; the recognition of Construction and Security Employees; the issue of Decertification of Trade Unions; and Appointments and the tenure of Judges of the Industrial Court. We look forward to the report of the Committee and its implementation.

- Another important legislative change was introduced in 2012 when The Maternity Protection Act Chapter 45:57 was amended by Act No. 7 of 2012. This Act of 2012 increased maternity leave entitlement for women from 13 to 14 weeks. With this amendment Trinidad and Tobago has met the established international standards of maternity protection.
- Also we must not forget that the Masters and Servants Ordinance, Chapter 22 No. 5 which became law on 8th December, 1938 and which has been regarded as very pro-employer and against the interests of workers was repealed in April 2012. The repeal of this Ordinance brings to an end a chapter of legislative repression against Workers and Trade Unions of this country.

These changes, in my respectful view, will assist in providing stability to the somewhat turbulent industrial relations climate in this country. While employers now pay an additional three dollars and fifty cents (\$3.50) per hour to minimum wage workers and this may be difficult for some; the increase of the minimum wage provides a basis for improved workplace relations and productivity. We look forward to further initiatives and policies from the learned Minister.

I want to pause for a moment to look at the Public Service of this country and what appears to be a growing trend in the widespread use of fixed-term contracts of employment in the public sector. I do urge the Honourable Minister of Labour and Small and Micro Enterprise Development, who has been addressing a number of social justice issues, to give some thought to the issue of fixed- term contracts in the public sector.

Many countries worldwide over the past few decades have been introducing reforms in the public sector. In fact, in the United States, public service reforms were implemented in 1993, and reportedly encouraged federal agencies to be more effective in carrying out their tasks. In the European Union (EU), various reforms have been put in place to promote efficiency in this sector. In Africa, Asia and Latin America, public service reforms underpinned the structural adjustment programmes that began in the 1980s. As a result of the reforms, public service labour relations have been modified in the countries concerned.

When I speak about the public sector today I refer to all the entities that are owned, funded and controlled by Government, including regional public authorities. Thus the employees to whom I refer can be found at all levels of Government, including local government and state-owned enterprises. In Trinidad and Tobago we loosely refer to these employees as “public servants”, these are employees in the service of the public who have traditionally enjoyed security of tenure and who have been guaranteed permanent employment and upward mobility, in the normal scheme of things, up to the statutory retirement age

In recent decades we have been witnessing a surge of what is referred to, as “privatising the public service”. This trend is characterised by what appears to be a proliferation of fixed-term contracts to persons who are not considered to be government employees and who do not enjoy job security. In addition, while some countries have been seeking models to match their economic growth and development, what is emerging in Trinidad and Tobago is a number of contracts awarded to persons

for very short periods, such as for three (3) months, six (6) months and twelve (12) months as opposed to longer-term contracts for between two (2) to five (5) years.

Some of these contracts are poorly drafted and the person to whom the contract is awarded is sometimes at pains to understand the terms of engagement. In some public sector departments these contracts are renewed at the end of each expiry date for an indefinite period; in other departments, the contracts come to an end with the effluxion of time. There appears to be no standard policy regarding the terms of these employment contracts.

Now, don't get me wrong, there are advantages to employing persons on fixed-term contracts in the public sector. The public sector, generally speaking, has been characterized by bureaucracy at all levels. Bureaucratic management procedures in the public sector have created a widespread perception of inefficiency in the performance of its functions. So, when there is a specific task or job to be performed in the public sector, it may be more cost-effective and efficient to engage the services of an expert in a particular area, to add value and achieve results in a specific, time-bound task or project. However one must be mindful of the purpose of fixed-term contracts and what has in fact been happening in the public sector over the last two decades, or so. To illustrate, permit me to draw on some of the experiences that have been brought to the attention of the Court.

1. When a person on a fixed-term contract enters the public sector that person is usually trained either formally or informally to perform a specific task. After that training the individual is expected to apply this knowledge to the benefit of the

department and to the public that the Department serves. When the employment contract comes to an end six months or a year later, there is a void in the department; this department now has to get someone, in most cases on a new contract, and to embark on training to rebuild that lost capacity. This is a continuous process that is disruptive, undermines the building of strong effective teams, and can adversely affect the productivity of the Department. Indeed, it may not be the best way to utilise resources within a department, particularly a public sector department.

2. An obvious disadvantage to the person who is on a contract in the public sector is that he or she is not considered to be a public servant. Generally speaking a person with such a contract is not considered to be a “worker” within the meaning of the Industrial Relations Act of Trinidad and Tobago. The person therefore does not enjoy the same benefits and security of the tenure which traditional public servants enjoy. Moreover, that person is also not entitled, on the expiration of his contract, to representation by the Recognised Majority Union which represents permanent public sector workers. This denial of the legal right to representation and to collective bargaining to ordinary citizens is something which in my view should not be overlooked or be taken lightly. As you know Honourable Minister, more and more persons are seeking access to the Industrial Court through several Unions for adjudication on these salient issues. Good and equitable labour relations and social justice delivery within the public sector must, in my respectful view, become a major priority to all of us. This is the precondition if public services, such as education, health and sanitation, are to effectively fulfill their fundamental mission in the service

of this nation. They are services that are critical to economic development, social inclusion and equity.

3. On a social level, a number of citizens, many of them young persons, who are on short fixed-term contracts, cannot obtain bank accounts and secure mortgages. Some of them, particularly those on three-month (3) and six-month (6) contracts cannot meet the criteria to rent an apartment due to the very short duration of their employment contracts. The implications for social inclusion and quality of life are evident.
4. Then there are those persons whose contracts have been renewed continuously over time and they may now be considered “employed” with the public service for maybe ten (10) to fifteen (15) years and one day for reasons unknown, someone in key decision-making position will put an end to that long-standing employment relationship. This person then has to seek the intervention of the Court system for a hearing and relief.

In my respectful view, the role of international labour standards in promoting sound labour relations in the public service can be of great use when we address this issue of fixed-term employment contracts. In particular, the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No.98) which have been ratified by Trinidad and Tobago. These are core international labour standards which ought to be adhered to across all sectors of the working community and their contribution in

promoting good and equitable labour relations in the public sector worldwide cannot be overstated.

At this year's International Labour Conference in June, which Trinidad and Tobago attended, an International Labour Organisation (ILO) report on labour relations and collective bargaining in the public service was discussed. In that Report, the Committee of Experts on the Application of Conventions and Recommendations noted among other things that:

“The Committee notes that in some countries, it is very common for public servants to be employed on a temporary, recurrent fixed-term or part-time basis (and often to be allowed to hold other jobs in the private sector). In other countries, a large proportion of public servants are hired under civil or administrative contracts for the provision of services, including those engaged in performing tasks inherent in public administration. In other countries, the virtually absolute job security – “a job for life” – formerly enjoyed by public servants has been undermined or disappeared. In some countries, most of the employees in many public institutions are freely appointed and removed.”

The Committee further noted that the repeated use of short-term temporary contracts and their non-renewal *“deny workers access to freedom of association and collective bargaining rights, particularly when they hide a real and permanent employment relationship ...”* and that moreover, *“Some forms of precariousness can dissuade workers from trade union membership.”*¹

What is emerging in Trinidad and Tobago is a systematic dismantling and weakening of the public service. This is a trend whereby a number of citizens live with a great deal of uncertainty about the sustainability of their incomes, their livelihood and

¹ ILO: *General Survey concerning labour relations and collective bargaining in the public service* (Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) Report III (Part 1B), 2013), paragraphs 559 and 560.

their very existence. I think you will agree that the economic wealth and stability of this country are inextricably linked to our capacity to generate inclusive economic growth and a dynamic and stable Industrial Relations climate. As a nation we should strive for social peace, social justice and a model of development that would ultimately propel us in the region and the world as a vibrant emerging economy with a solid social infrastructure.

The question then is: does the very silent yet growing use of fixed-term contracts in the public service achieve this? Should we merely follow what is being done in certain contexts or should we instead, in the second decade of a new century, be adopting systems which are suitable to our local needs and our national development goals?

In the aforementioned report on the ILO general survey, the Committee called on member States concerned to examine, *“within a tripartite framework, the impact of these forms of employment on the exercise of trade union rights”*.² In my respectful view, there seem to be compelling reasons to look at this issue, as well as other social and economic impacts of the use of these contracts, given their consequences for a significant number of citizens, for Government as employer as well as for productivity and the quality of public services. I leave these thoughts, respectfully, for your consideration.

² ILO: *General Survey concerning labour relations and collective bargaining in the public service* (Third item on the agenda: Information and reports on the application of Conventions and Recommendations Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) Report III (Part 1B), 2013), paragraphs 559 and 560.

OUTSTANDING JUDGMENTS

I know there are concerns by members of the public about the delay in the delivery of judgments at the Industrial Court. I do understand and share the concerns of litigants who have not received a judgment in their disputes. I did report last year that the delivery of judgment is a priority to me as President. When I assumed office, timelines were given to member Judges to ensure that the backlog of judgments be cleared in the earliest timeframe. Statistics at the Court reveal that for the year 2009, 119 judgments were delivered, in 2010, 146 judgments were delivered, in 2011, 160 judgments were delivered, and last year 2012, the highest number of judgments were delivered since 2009, a total of 203. There is still a backlog of judgments however; the Court is assiduously working to resolve this, without sacrificing on quality of output. I daresay that at the end of this calendar year this issue should be resolved.

Initiatives of the Court for 2012- 2013

The Meet with the Court Symposium

The Court held this Symposium at the Hyatt Regency Hotel on 4th May 2013. The idea was to bring stakeholders of the Court together for informal discussions on a range of issues. We were very pleased at the large number of persons in attendance. The positive feedback and the requests for the hosting of another event of this kind, as soon as possible, have been overwhelming. The Court is committed to hosting similar symposiums in the future and we are open to ideas for future topics. I wish to thank the

Honourable Minister of Labour and Small and Micro Enterprise Development, the Honourable Minister of Finance and the Economy and the Government of Trinidad and Tobago by extension, for making the much-needed funds available for the event.

Industrial Court Kiosk Information Project: 2013

The Industrial Court is the only Court in Trinidad and Tobago which has an Information Kiosk. The Information Kiosk, which has been recently introduced, is a simple user interface which allows any member of the public to touch a screen to access certain information. It is user friendly, self-explanatory and one does not require the skill and training in the use of a computer to use the Kiosk.

The information which is currently provided by the Kiosk will assist the public with obtaining simple information such as a directory of the floors of both branches of courts and the location of a particular office or department. One can also view the current court list on the Kiosk, receive information on the steps and procedure to initiate a matter at the Court, and access a sample of a collective agreement without having to go to the Internet. This in our view, is a very simple and user friendly way for the Industrial Court to provide information to the public.

Training

The initiative which began last year to train all members of staff in the area of 'Professionalism at the Workplace' ended in August 2013. I can report that all members of staff have received training the area. In addition, members of staff and management continue to receive training in their specific areas of expertise. One member of staff

was sent to Washington, D.C. to be trained in the area of productivity as we move closer to realising the goal of providing stakeholders and the public with a Wage and Productivity Statistical Bulletin.

‘Judicial Education Training’ continued in the year in review for all Judges and Registrars of the Court as we continue to strive towards improved capacity and efficiency in the determination of disputes. Member Judges, the Registrar and the Assistant Registrar attended ‘Judicial Education Training’ from July 30, 2013 to August 01, 2013. This training was held at Marriott Courtyard and facilitated by Dr. Leighton Jackson, Deputy Dean of the Faculty of Law, UWI Mona Campus. Ms. Anne Knowles, Senior Specialist at the ILO Sub-Regional Office also contributed to the training on the topic of ‘Health and Safety in the Workplace’. On behalf of the Members and management of the Court I wish to personally thank Dr. Jackson and Ms. Knowles for their important contributions to this year’s training.

Training was also provided to individual Judges of the Court as we continue to build and strengthen capacity to enhance the quality and effectiveness of our services to the public.

In October 2012 Their Honours Mr. Albert Aberdeen and Mr. Dinesh Rambally attended a training seminar on Employment Conflict and Dispute Resolution in Development which was conducted by the International Law Institute in Washington DC. USA.

In April 2013 His Honour Mr. Albert Aberdeen and His Honour Mr. Gregory Rousseau attended a course on ‘Logic and Opinion Writing’ at the National Judicial College in Reno, Nevada USA. In July 2013, His Honour Mr. Ramchand Lutchmedial Vice

President and His Honour Mr. Patrick Rabathaly also attended a 'Decision Making' course at the National Judicial College in Reno, Nevada, USA.

Earlier this month, Her Honour Mrs. Heather Seale, His Honour Dr. Selwyn Samaroo and Her Honour Mrs. Judy Rajkumar-Gulbance and Registrar of the Court Mr. Noel Inniss attended the 'International Labour Organisation Sub-Regional Gender Equality Workshop for Judges of the Caribbean', in Bridgetown, Barbados.

.ACCESS TO JUSTICE IN TOBAGO

The Court continued its access to justice initiative in Tobago which began last year. The Industrial Court convened sittings in Tobago for four (4) days from 2nd September, 2013. Their Honours Mr. Herbert Soverall, Mr. Albert Aberdeen, and Ms Bindimattie Mahabir were the presiding members of the Court and they heard, determined and delivered judgments in nine (9) Trade Disputes. I thank these Judges for their dedication and for foregoing their vacation leave to resolve these disputes in Tobago.

I wish to thank the learned Chief Justice of Trinidad and Tobago, Mr Justice Ivor Archie for his support and for allowing us the use of the facilities at the Supreme Court in Tobago.

Thank you to Mr. Teddy Stapleton, Mr. Codrington Winchester, Ms. Lois Pollidore, Mr Kiel Taklalsingh, Ms Nydia Joseph and Mr Lindhurst Murray for their participation at these hearings.

DEPARTURES FROM THE COURT

His Honour Mr. Augustus Ramrekersingh departed from the Court when his contract of service expired on 22nd March 2013. Mr. Ramrekersingh, an excellent Conciliator and Judge served the Court for a little more than ten years. Mr. Harigobin Jhinkoo recently tendered his resignation as a Member of the Court after serving for two years and five months. On behalf of the Members and the staff of the Court I extend best wishes to Mr. Ramrekersingh and Mr. Jhinkoo in their future endeavors

TRIBUTES

I take this opportunity to remember my predecessor, His Honour Mr. Cecil Bernard, who passed away on August 20, 2013. His invaluable contribution to the Court has helped to lay foundations upon which I continue to build. Mr. Bernard's contribution to the development of the jurisprudence of a Court which is critical to the social and economic development trajectory of Trinidad and Tobago will not be forgotten.

We mourn the very sudden and recent passing and pay tribute to the memory of Her Honour Mrs. Yvette Simon who served as a member of the Industrial Court from January, 2006 to April 5th, 2011. Our thoughts and prayers are with her family.

FINAL THOUGHTS

Among the messages that I have conveyed in this address, there is one that I would like to emphasise for deeper reflection and possible follow up by all concerned – and that is the need to revisit the persistent and widespread use of short-term and fixed-term

contracts of employment in the public sector. Given the importance of the Government as employer and the role of the public sector in national development, we should strive for employment and human resources policies and practices that would foster an efficient and productive public sector that delivers high-quality services and supports good stewardship.

For our part, we at the Industrial Court remain committed to the ideals of the framers of the Industrial Relations Act which are to make “better provision for the stabilisation, improvement and promotion of industrial relations” in this country. We are also committed to the promotion and protection of fundamental principles and rights at work.

I thank the judges, management and staff of the Court for their continued hard work and I also thank all practitioners and stakeholders for their continued support of the Court.

Thank you for your attention

May God bless you all.