9/17/2020

ADDRESS

delivered by

Her Honour Mrs. Deborah Thomas-Felix
President
Industrial Court of Trinidad and Tobago

at the

Special Sitting of the Industrial Court for the 2020/2021 Law Term

THURSDAY 17th SEPTEMBER, 2020
@ 10:00 AM
FIRST COURT, INDUSTRIAL COURT BUILDING
#7 ST. VINCENT STREET, PORT OF SPAIN

Good morning everyone. Thank you for sharing a moment of your time with us at this virtual opening of the Law Term of the Industrial Court for the year 2020/21.

We live in difficult times where the world is experiencing severe social, economic and environmental challenges such as climate change, youth unemployment, gender and economic inequality, refugees and migration issues, a decline in the demand for oil and gas and now, the COVID-19 pandemic. We know that throughout the course of history, pandemics and plagues have wreaked havoc on humanity and sometimes they have changed the course of history. Today, humanity is being ravaged by the COVID-19 pandemic.

This pandemic is causing an unprecedented scale of global disruption in the workplace. It has also created an unprecedented reduction in economic activities, productivity and working time, with severe impact on incomes and jobs, and has resulted in a significant rise in unemployment and underemployment globally. There is continued damage to labour markets mainly due to the imposition of lockdown measures which have been adopted to control the pandemic, including various forms of workplace closures. These workplace closures and the implementation of other containment measures, combined with the rapid deterioration of economic conditions, have caused immediate and massive losses in work hours in the first three quarters of 2020.

According to the International Labour Organisation (ILO), as at 15th June this year, most of a third of the world's workers which is thirty-two percent, were living in countries which required workplace closures for all but essential

workplaces. An additional forty-two percent were living in countries which required workplace closures for some sectors or categories of workers and a further nineteen percent lived in countries with recommended workplace closures. Taken together, the vast majority, namely ninety-three percent of the world's workers, continue to reside in countries with workplace closure measures of some kind still enforced.

While the unprecedented global nature of the pandemic's impact and the collective effort to fight it has triggered comparisons to the Great Wars of the twentieth century by various Heads of State around the world, other experts such as international economics professor, Tamas Vonyo, has described the impact of COVID-19 on the global economy, as the opposite of the mobilisation normally seen in wartime, noting the widespread mandatory demobilisation efforts undertaken to curb the spread of the disease. As Professor Vonyo has stated, hibernating economies for months at a time is being in a type of *terra incognita,* or uncharted territory*, for* Governments and businesses alike.

Additionally, while we have had to demobilise business and industry to fight COVID-19, we have kept and continue to keep our eyes trained toward the future, as Governments the world over, have sought to create conditions conducive to preserving enterprise and jobs. In that sense, I remain convinced that globally we are all singing from the same hymn book; a hymn to preserve lives and to seek, ultimately, stable, sustainable development and inclusive growth for all. For we would do well to remember, this too shall pass and **there is life beyond COVID-19**. Thus, while the war metaphors remind us to mobilise to fight a common, unseen enemy and underscore that

the situation we face is urgent and critical requiring our joint collective commitment, some countries and economies are already emerging from lockdown.

Trinidad and Tobago, like many countries across the globe, has taken extraordinary and unprecedented measures to cope with the COVID-19 pandemic. These measures include workplace closures and restrictions, bans from entering certain public places, like beaches, and restrictions on the numbers of persons at public gatherings. The country has also enacted legislation to address and enforce several COVID-19 restrictions including the wearing of masks when in public.

As a consequence of the pandemic, all Social Partners – trade unions, employers, governments - alike, now have to confront major policy challenges and changes at the workplace which, in some cases, will have long lasting implications for the world of work as we know it.

We should always bear in mind that there is life after COVID-19 and consider the immense value to be gained if we adopt and adhere to International Labour Standards, particularly social dialogue to assist, to promote and to maintain a system of opportunities for all and to obtain decent, productive work in conditions of freedom, equity, security and dignity in the future.

Social dialogue is key to the adjustment which the workplace has to make during and after this pandemic. I cannot overstate how important is a climate of robust discussions, genuine consultations and compromise, built through social dialogue for the effective implementation of measures to address this pandemic and its impact on the labour market. A commitment of employers

and trade unions to adjust to new and necessary workplace policy measures, and to do so in a spirit of respect and compromise, is important for the survival of businesses, the saving of lives and the saving of jobs.

At this critical juncture in our history, trade unions, employers and workers, in all sectors, may want to consider the value of reviewing some terms of the existing collective agreements, workplace policies and individual contracts of employment. There might also be a need to re-examine and re-think some of the workplace arrangements, such as leave entitlement, health and safety rules and regulations, retrenchment, layoffs (if provided for in collective agreements), and other terms and conditions of employment. Day to day management issues such as the provision of personal protection equipment for workers, arrangements for staff to work remotely, the possible rotation of staff, the re-examining of the supply chain, new customer service approaches, and new health and safety practices are now front burner issues for all enterprises to consider.

In instances where there is no recognised majority union present in the business, it is extremely important for employers to have discussions, consultations and meetings with workers, so that the workers can have a proper understanding and appreciation of the challenges and the issues at the workplace, and have first-hand knowledge of any changes which are contemplated before the actual decision-making.

Kindly permit me now to address some of the issues - I cannot address all of them - which have arisen in the workplace in the past few months in Trinidad and Tobago as a result of this pandemic.

I have noted that several cases related to Industrial Relations Offences have been filed at the Industrial Court since the pandemic. Some of these offences relate to business owners who have unilaterally implemented measures such as reduction in the hours of work, layoffs, and termination, among other things. Some of these measures are not part of the terms of the individual contracts of employment nor are they contained in collective agreements yet they are implemented at the workplace without any form of discussion with the Unions or with the workers.

The pandemic ought not to be used as an excuse to flout the principles and practices of good industrial relations, to flout labour standards and to flout the laws of this country. The jurisprudence of this Court is very consistent on the issue of the unilateral imposition of new terms of employment and the unilateral variation of the existing terms of contracts of employment. It is settled law, that is, it is unlawful for an employer to unilaterally alter the existing terms and conditions of employment of workers. Employers are reminded that they must respect and adhere to the rule of law when making these tough decisions which affect the livelihood of workers and the survival of their businesses. In times like this, employers should not consider a unilateral approach to the resolution of issues in the workplace; this is the time to have discussions, and to get buy-in from everyone, especially the workers, and to encourage peaceful resolutions to these unexpected problems which have arisen as a result of the pandemic.

I urge employers, in all sectors, to appreciate the need for workers to be kept informed, consulted and to be made aware beforehand of decisions to introduce new policies and changes to the workers terms and conditions of

employment. Additionally, workers should be informed what on steps they can take for their own protection, the protection of their colleagues and at the same time contribute to the containment of this pandemic.

The second issue which I would like to discuss relates to COVID-19 restrictions and Unions activities. A few months ago, there were protests and gatherings by some Unions which were said to be related to the breakdown of negotiations and collective bargaining. These protests and gatherings took place during the period of the restrictions of the movement of citizens. Trinidad and Tobago has ratified the Freedom of Association Convention which is one of the fundamental conventions of the ILO and it is considered to be one of the ILO's primary safeguards of peace and social justice. This Convention gives Trade Unions, among other things, the right to collective bargaining. As we know, during collective bargaining if there is a breakdown of negotiations, Trade Unions may protest, march, and essentially exercise the right to freedom of association. Freedom of opinion and expression, in particular the right of Trade Unions not to be penalised for raising their voices through public protests, are essential corollaries of freedom of association. However, freedom of association and the related fundamental rights are not unfettered and may be subject to restriction and suspension during certain periods of crisis. I think we can all agree, that the restriction of those fundamental rights ought to be done only in circumstances of certain gravity, and in conditions that, any measures affecting the application of those rights are limited in scope and duration to what is strictly necessary to deal with the situation in question. As noted before, there have been lockdown measures and restrictions on the movement of the public imposed by the Government to combat the pandemic

in Trinidad and Tobago. As a result, the number of persons who can participate in large public gatherings have been restricted. These restrictions should be seen in the context of the gravity of the COVID-19 pandemic and justifies, in my view, the reason to restrict the crowd gatherings to a minimal number. Although these restrictions will affect large gatherings by Unions, it is my respectful view that they do not amount to an abuse by the State but rather a decision by the State to protect citizens. I urge Trade Unions to bear this in mind when there is collective bargaining, or breakdown in negotiations, and I do respectfully suggest, that they create new ways for their voices to be heard and to voice their protests during the pandemic.

I will now address the issue of job losses in a general sense because the Industrial Court adjudicates upon individual cases related to job losses.

Globally, there is what can only be described as chaos, in the world of work: a number of people have been losing their jobs, some job functions have been suspended, some people have reduced work weeks, some people's jobs have been retrenched, some jobs have become redundant and some workers have been terminated. Generally speaking, workers whose employment is terminated due to the economic impact of COVID-19 or for health and safety reasons, should be entitled, if they qualify, to severance benefit or some type of separation benefit.

On the other hand, some small businesses have not survived the effects of the pandemic and may not have the resources to pay workers who qualify for severance or ex gratia payments. These are issues which require discussions so that the workers can get an understanding of the true picture

of what is happening in the business. This is why social dialogue is so important.

As a basic principle, the employment of a worker should not be terminated, in the absence of a valid reason for such termination, connected with the capacity or the conduct of a worker, or based on the operational requirement of the undertaking. The temporary absence from work due to illness such as COVID-19 or family responsibility during the pandemic does not constitute a valid reason for termination. It is important for employers to understand that termination is different to retrenchment, the latter occurs mainly due to economic reasons and the law provides a structure and a process when it is contemplated. The provisions in the Retrenchment and Severance Benefit Act may be useful to those employers who are contemplating retrenchment as a solution to the economic crisis.

I pause to add that the Government which is the largest employer of workers, has taken the progressive step, and put in place leave arrangements within the public service for workers who were absent from duty from March 16 to June 21, as a consequence of circumstances associated with the COVID-19 pandemic.

The effects of COVID-19 particularly the layoff and retrenchment of workers and the reduction in work hours of some, have widen the economic inequality gap globally, and some families are struggling to cope financially during this pandemic. There is no social protection or benefits for workers who are victims of COVID-19, or any crises in Trinidad and Tobago. The National Insurance Scheme provides protection and benefits for sickness, maternity, injury, retirement, invalidity, employment injury death, survivors and funeral

grant. However, the National Insurance Scheme does not provide benefits and protection to workers who have lost their jobs due to no fault of their own, and in this case, the workers who have lost their jobs due to the pandemic. In March this year the Government introduced a temporary unemployment relief grant for persons during the period of lockdown who have lost their jobs due to the pandemic.

A related issue and one which is of concern to several employers and workers is the bureaucracy involved in the payment of severance benefits. Several persons have been recently retrenched due to the impact of COVID-19 on businesses and some have not yet received their severance packages. This is so, not because the employers have not processed and computed the severance payment, but due to the fact that the documents have not been processed speedily at the Board of Inland Revenue; workers cannot receive their benefits until that process is completed. Some employers have expressed grave concerns about the legal obligation to make severance payments within the statutory period and at the slow pace of processing these applications by the Board of Inland Revenue. While I am not defending the Board of Inland Revenue, these are not normal times, the reality, as I see it, is that there is an ongoing rotation of public servants including the staff at the Board of Inland Revenue due to the COVID-19 pandemic. I daresay that this, together with the increased volume of severance applications which have been submitted by employers at this time, can cause delay. However, I know that employers and workers are very anxious to have this issue resolved urgently.

On a lighter note, there is a paradigm shift at the workplace, more and more people all across the globe are embracing new working methods and employers are implementing new training and reskilling policies. One such working method is remote work. In Trinidad and Tobago since the pandemic there have been meetings between trade unions and employers to discuss the myriad issues which have arisen at workplaces. As a consequence, several employers have embraced remote work and they have allowed their employees to work outside the traditional office environment.

It is my hope that the social partners will pool their collective wisdom to identify the modalities of remote work in Trinidad and Tobago in order to have a smooth transition to this new working method. For example, they may need to examine issues which may appear to be simple but which in fact can prove to be problematic. Issues such as who absorbs the cost of electricity, internet charges, workstations, among other things and what measures are in place to address the general security and integrity of the job such as cyber security.

The main take away from this crisis is that the workplace, and the world of work as we know it, have changed forever and that employers and trade unions play a key role in assisting workers to navigate these uncharted territory and in assisting to stabilize the labour market. Social dialogue at the tripartite level where government is involved is critical and allows for policy engagement and policy making through the National Tripartite Advisory Board.

WORK OF THE COURT

The Industrial Court like so many other businesses in Trinidad and Tobago closed its offices to the public In March 2020, and re-opened on June 8 due to COVID-19. Since that time we, have instituted a rigorous sanitizing regime for the Court's buildings. My sincerest thanks to the National Maintenance Training and Security Company Limited (MTS) maintenance crew who have given us their much needed support, and I must make special mention and say thank you to Mr. Anthony Roberts, Chairman of the San Juan Regional Corporation and the workers of the Co-operation for making arrangements to have the Port of Spain building sanitised in the month of May and again in the month of August. There are new practice directions and protocols with respect to the entry and use of the court's buildings like in many other places since the COVID-19.

REMOTE HEARING

This year, on 29th June 2020, the Court embarked on a pilot project for the remote hearing of Case Management Conference cases and Mention and Reports. To date we have adjudicated on five hundred and three (503) case management hearings, remotely. We have also been conducting an online survey with you, the stakeholders, to determine whether this is the best approach for the future and to address any concern which you may have. The feedback we have received so far is very encouraging with 23.4 percent of the users rating their experience as excellent, 54.7 percent rated the

experience very good, 20.3 percent good and 1.6 percent thought the experience was fair.

There have been concerns expressed about the waiting room by some persons and we are actively addressing these concerns. Currently, we have been making use of the ZOOM platform. We do intend to begin using MICROSOFT TEAMS, as well, in about two weeks time.

There have been several requests by the legal practitioners for open court hearings and conciliation to be conducted remotely, however, the Industrial Court currently does not have the resources and equipment to provide those services.

I wish to thank you, the stakeholders, for your support in this pilot project and for the feedback you have provided to us about your experience thus far.

LIBRARY

The Library's digitization project which began in 2012 continues and to date, out of a collection of four thousand six hundred and three (4603) judgments which span from the year 1965 to present, two thousand nine hundred and twenty-one (63.5%) of the Industrial Court's judgment collection has been digitized.

Additionally, in spite of the interruption in the library's work calendar due to the COVID-19 pandemic, there was an increase demand for online access to the Court's library this year and the Court received subscription payments of two hundred and fifty-nine thousand, eight hundred and fifty dollars

($259,850.00). The sum collected last year was less: two hundred and twenty-six thousand, nine hundred dollars ($226,900.00). These subscription payments are deposited into the Consolidated Fund.

STATISTICS

There has been a marked decrease in new cases filed at the Industrial Court in the year in review which is September 15th, 2019 to September 14th, 2020. This is mainly due to the fact that the Court and the Ministry of Labour closed their offices to the public for approximately three months as a result of the pandemic. A total of nine hundred and five (905) new cases were filed, which is five hundred and five (505) cases less than the same period last year, 2018/2019.

The Court disposed of seven hundred and seven (707) cases this year and the disposal rate of cases for this year is 78.1% which is 17 percentage points higher than the period 2018/2019 when the disposal rate was 60.9%.

Two hundred and forty (240) judgments were delivered this year, ninety four (94) of which were delivered when the Court re-opened in the months of June to August. I want to congratulate and thank the judges and the staff of the Court, particularly the Court Reporting section, for utilising the period when the Court was closed in March to May to prepare the notes and deliver judgments.

CHALLENGES

As I reported last year, the Court continues to face challenges for space, human resource and financial resources to manage its operations. These challenges continue to hinder in the Court's ability to provide the best quality service to the public.

CONCLUSION

As I close, it will be remiss of me not to mention that health experts both locally and internationally have provided guidelines and protocols to help fight this silent, unseen killer called COVID-19. The main guidelines and protocols deal with personal hygiene, the wearing of masks and the social distancing of 6 feet or more from persons. I urge stakeholders and, the public in general to follow these guidelines, because by following the guidelines we protect ourselves, we protect our families, we protect our friends and loved ones, and we can save lives.

As we look to the future, the reality is, for us to survive the gathering storms on the economic and health front, stakeholders at all levels and in all sectors, need to engage in a sustained collective effort to stabilise the labour market and to strive to maintain our current economic and social gains. This engagement will be testimony to genuine social dialogue and a test to the strength of our social partnerships. This is the time to rise to the occasion, as we have done in past crises, and we no doubt will continue to do so, as we draw inspiration from our national watchwords, discipline, production and tolerance.

I thank you for listening.