INDUSTRIAL COURT
of Trinidad and Tobago

Keynote Address

by

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Review of 2025 Industrial Court Judgements: Key Decisions and Implications for Employers

at the

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Introduction

At the Chamber's forum in February, last year, on Navigating the Industrial Court: Key Considerations and Best Practices for Employers, I drew attention to the Court's powers under the *Industrial Relations Act*, Chapter 88:01 ("IRA"). I posited that the best approach for employers to take, in successfully steering their matters through the Industrial Court was to become well acquainted with the Court's jurisdiction and its powers as set out primarily in the IRA and other relevant statutes. That approach will also inform my address this, morning. This is so because although I have been asked to focus on judgments delivered in 2025, the principles and practices of good industrial relations which the Court is mandated to have regard to in our decisions, do not really change. What changes is the environment in which those principles and practices have to be applied and the phenomenon in that environment, such as COVID-19, AI, etc.

Therefore, the overarching principles in the Court's decisions in trade disputes would be the principles of fairness and justice, having regard to the interests of the persons immediately concerned and the community as a whole; and acting in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations. (Section 10 (3). The concepts of natural justice and due process are key in the determinations of the Court as well as in decisions of the Court of Appeal and the Judicial Committee of the Privy Council. (PC). Therefore, I have selected certain decisions of both these appellate Courts.

I will touch on decisions which addressed due process, natural justice, section 10 (3) of the IRA, mitigation and Occupational Safety and Health.

It is against this background that I propose to highlight some of the key decisions and the lessons which they hold for employers.

Due Process

Due process is one of the tenets of good industrial relations practice. It concerns the manner in which disciplinary action is undertaken. It requires the employer to follow a fair, orderly and transparent procedure before arriving at a decision that may have serious consequences for a worker.

In Trade Dispute no. GSD-TD 129 of 2023 *Government and General Workers Union and Willoughby's Travel Services* delivered on 30th July, 2025, the Court considered whether the Employer had applied due process in dismissing a worker. The Court found that a Worker with roughly twenty-six (26) years of service was summarily dismissed by letter dated August 4, 2022, effective August 5, 2022. Based on the facts and the evidence in that case, at no time prior to her dismissal was she made aware of the Company's decision to initiate further disciplinary proceedings in the matter, after having issued her

a warning letter on July 25, 2022, for the same issue[1]. The Company held an in-house management meeting but the Worker was not invited to attend. The Company failed to take the necessary procedural steps, in accordance with good industrial relations practice, before making the decision to dismiss the Worker and having made that decision it did not give her the opportunity to enter a plea of mitigation.

Based on the totality of evidence before it, the Court found the Employer's actions to be egregious. She was issued a first warning letter for an alleged offence of a separate nature from the second alleged offence. The Worker's second warning letter was for the very misconduct for which she was subsequently dismissed. The dismissal, therefore, represented a second penalty for the same offence, that is, double jeopardy. The Court determined that the Worker's dismissal was conducted in a manner that was contrary to the principles and practices of good industrial relations and was harsh and oppressive. She was awarded damages of two hundred thousand dollars ($200,000.00) payable in two equal tranches.

Trade Dispute No. GSD-TD 187 of 2021 between *Banking Insurance and General Workers Union and Eastern Credit Union Co-Operative and Society Limited* dated 31st July, 2025, concerns the termination of the services of a Control Room Operator. His services were terminated on December 31, 2020, on the grounds of gross misconduct following a disciplinary tribunal into charges of proceeding on unauthorized leave; intentional and deliberate misrepresentation; and breach of fidelity to the organization. His employment with the Society spanned approximately four (4) years.

Based on the Court's assessment of the written and oral evidence presented by both Parties, the Court was of the view that contrary to the Union's contention, the worker was afforded natural justice rights by his employer and was in support of the Society's no-case submission claim. The trade dispute was dismissed.

As you are aware under section 18 of the IRA, the Industrial Court's decisions are subject to appeal, mainly on points of law. The Court of Appeal has reviewed our decisions, just as we have viewed the decisions of employers from the perspective of due process.

In CA No. S218 of 2022 between *the National Gas Company of Trinidad and Tobago and Steel Workers Union of Trinidad and Tobago*, dated Friday 27 October 2023, the Court of Appeal considered:

1. Whether the Industrial Court acted without jurisdiction;
2. Whether the decision made by the Industrial Court, or its findings on the primary facts, were made in the absence of evidence; and

[1]See the landmark case of Trade Dispute 370 of 1997 *Bank and General Workers Union and The Unit Trust Corporation of Trinidad and Tobago* delivered by H.H. Mr. Addison M. Khan on February 01 ,1999

3. Whether the procedure followed by the Industrial Court was manifestly unfair or in breach of natural justice.

That case, dealt with a worker who was terminated on medical grounds. He was a Technician II of roughly 9 years. His job required him to work on the field. He had a mental health episode which required hospitalization at St Ann's. On discharge and further treatment all doctors including Psychiatrists and the Company's doctor indicated his fitness to return to work with some restrictions, including monitoring.

After hearing the oral evidence and cross-examination of the worker and allowing submissions from both sides, the Court, acting pursuant to its powers under section 8(5), decided that it would hear no further oral evidence.

In its Analysis and Findings the Industrial Court stated, among other things, that the contemporary thinking on mental illness in the workplace is to be considered within the framework of human rights. In determining the harshness and oppression of an employer's decision, the Court would exercise its jurisdiction and powers in the way the Court contemplated in Trade Dispute No 161 of 1994 *Bank and General Workers' Union v Trinidad Express Newspapers Limited,* dated January 23, 1996, that is ***"dynamic and which would satisfy the circumstances prevailing at any particular time.***"

The Court found that there was no medical evidence to support the Worker's unfitness for work; the medical evidence was that he was fit for work, with some restrictions. The evidence of Dr. Hutchinson was that he was not a threat to himself or others.

The Industrial Court found that the Employer's dismissal of the Worker was harsh and oppressive and contrary to the principles of good industrial relations. It was similar to the case of a Worker who had sustained a physical injury and who had suffered no permanent or partial disability but for whom a short period of light duty was recommended, being denied employment, because no light duties could be found to accommodate him in the short term. However, in this case it was worse because a physical injury does not usually carry the stigma and fear attached to mental illness.

On the merits of the case the Court ordered the Company to pay the Worker, the sum of one million, two hundred thousand dollars ($1.2m) as damages for the termination of his employment.

In its appeal, NGC contended that the Industrial Court's decision was erroneous in law on the basis of 12 grounds of appeal. In essence, they are:

1. The Court did not determine the issue that was referred to it and acted outside of its jurisdiction,
2. The dispute referred to the Industrial Court concerned a termination of employment of the worker and not a dismissal of the worker.
3. The Industrial Court erred in law in interfering with NGC's managerial prerogative.

4. The Industrial Court failed to consider all the evidence.
5. Its decision was perverse and there was no evidence to support this conclusion; and
6. That the award was excessive and erroneous in law.

All of the grounds of appeal were dismissed.

In delivering its judgment, Kokaram JA, observed that the Industrial Court made the following main findings:- a) Dr. Ramcharitar did not express the opinion that the worker was likely to be unfit in his substantial position in the long-term or that NGC should consider terminating him; b) there was no evidence to show the nature of the worker's job made it unsafe for him to continue in the face of Professor Hutchinson's report; c) there was also an Employee Assistance Programme that he could have accessed. Further, the Industrial Court expressed the opinion that it seemed easier for NGC to eliminate the problem by eliminating the worker. The Industrial Court expressed their regret that NGC could not have made the necessary accommodation to keep the worker employed since his illness was not protracted. It was also observed that the worker was given a clean bill of health by his psychiatrist and his termination on medical grounds was not supported by the medical evidence. The Industrial Court made its award of $1, 200,000.00 in those circumstances.

Also, criticism was made that the Industrial Court erred in intervening in the management's exercise of its prerogative as it relates to the deployment of staff. The question before the Industrial Court, however, was whether the management's decision was exercised in a manner that was consistent with good industrial relations practice, which is a matter for the Industrial Court alone to decide.

In the final main ground of procedural unfairness, it was argued that the Industrial Court deprived the company of further cross-examining the worker by bringing the proceedings to a premature end. In their written submissions NGC also pointed out that in bringing the proceedings to a premature end, it deprived the company from leading further evidence in reply. The criticism was made that section 8(5) of the IRA, which I've already referred to, does not allow the Industrial Court to do so and reference was made to the comparable power in part 26 of the *Civil Proceeding Rules* ("CPR"). Now, quite apart from the fact that there was no ground of appeal to support these contentions, both parties fairly and openly addressed this issue and we find on this point that there is no merit in it.

Firstly, section 8(5) of the *IRA* confers on the Industrial Court specifically a wide power to decide what matters they will require for oral evidence. We agree that there is no time limit for receiving oral evidence; it is not time-sensitive. We observed that the process before the Industrial Court is largely inquisitorial and not adversarial and that the Appellant must demonstrate manifest unfairness in the process adopted by the Industrial Court, which it cannot do in the circumstances because on a fair reading of the cross-examination and on a fair reading of the notes of evidence, all that transpired was that

when the core issues were distilled between the exchanges with counsel and the panel, and the cross-examination of the worker, the dispute turned out to be a quite simple one on largely undisputed facts. Having heard the cross-examination of the worker and the exchanges between the panel and the company's representative, no further oral evidence was necessary. Because the case had come down to a question of resolving or expressing an opinion on whether the worker was dismissed in circumstances that were harsh and oppressive and contrary to good industrial relations practice based on accepted and agreed facts, facts such as the uncontested and agreed medical reports and testimony and on the company's own witness statements which was accepted without cross examination which provided evidence to demonstrate what the company did and how they approached the question of the further employment of the worker in light of the medical testimony.

The Industrial Court had in fact considered all the evidence as was shown in their judgment. It summarised the company's case and the worker's case in its entirety, made a decision on accepted facts and arrived at an opinion that there was no genuine attempt or no proper attempts and no proper efforts made by the company to accommodate the worker even accepting the company's untested evidence. That is exclusively within the province of the Industrial Court's judgment. That is something upon which there was sufficient evidence to base its decision. It is not a matter of whether we [the Court of Appeal] agree with it or not, so long as there was some stratum of fact to support that opinion.

Finally, the company was not prejudiced in the Industrial Court adopting that course. Its witness statements were tendered without cross-examination and were accepted on its face. And the only question that has to be determined is what value and what opinion the Industrial Court would now place on the attempts made by the company to accommodate the worker.

Finally, with regard to the award of damages, the CA found no merit in the challenge to the award as the grounds of appeal and the submissions fall within the prohibition that we have set out in section 10(6) and nothing has been raised which takes it out of that very limited scope of appeal. So, in conclusion, the Industrial Court was entitled to come to the decision which they made as the appropriate tribunal to decide what constitutes a dismissal that is harsh and oppressive and contrary to good industrial relations practice. The appeal, therefore, stands dismissed.

Natural Justice

Natural justice is not a technical or abstract doctrine. In the employment context, it goes to the very foundation of fairness in decision-making. It requires that a worker be informed of the case against him or her, be given a fair opportunity to answer it, and be judged by an impartial process. At the heart of many disputes concerning discipline and dismissal

lies a basic question: was the worker treated fairly? That question brings us directly to the principles of natural justice.

In the much cited dicta from the English case *John v. Rees [1969] 2 All ER 274 at page 309,* Megarry J stated:

> "*It may be that there are some who would decry the importance which the courts attach to the observance of the rules of natural justice. 'When something is obvious', they may say, 'why force everybody to go through the tiresome waste of time involved in framing charges and giving an opportunity to be heard? The result is obvious from the start.' Those who take this view do not, I think, do themselves justice. As everybody who has anything to do with the law well knows, that part of the law is strewn with examples of open and shut cases which, somehow, were not, of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determination that, by discussion, suffer a change."*

Thus, although an employer can dismiss an employee immediately for an infraction which has been committed, such a dismissal is only justified when the worker's act or inadvertence is of a very serious nature. Summary dismissal is rarely justified where a worker was not afforded the opportunity to be heard, and has not been told what are the shortcomings of his or her performance at the workplace.

In **TD 101 of 1992, Communication Workers Union and Busy Business Systems and Equipment Limited**, **H.H. Khan** stated:

> *"It is well known in industrial relations practices that there are varying degrees of dissatisfaction with a worker's services. For summary dismissal to result there must be dissatisfaction of a very serious nature and the company must have taken steps to bring the dissatisfaction to the worker's notice and allow a worker an opportunity to correct any deficiencies. There's also the matter of progressive disciplinary action. Summary dismissal is rarely justified where a worker has not been told beforehand of his shortcomings in performance and given an opportunity to improve his performance…"*

In Civil Appeal No. CA P067/2022 between *Oilfields Workers' Trade Union and Trinidad and Tobago Electricity Commission,* Kokaram JA underscored the importance of a worker being afforded the right to confront his accuser. He said:

> *"…the right to know and effectively challenge the opposing party's case is a fundamental feature of the judicial process. The right to a fair trial includes the right to be confronted by one's accusers and the right to know the reasons for the outcome… There may come a point where the line must be drawn when procedural choices of one kind or another have to be made. A distinction may be drawn between choices which do not raise issues of principle and choices that affect the very substance of a fair trial. There is no room for compromise. Where*

the choices are of the latter kind, the court cannot abrogate the fundamental common law right by the exercise of any inherent power. Any weakening of the law's defence would be bound to lead to a state of uncertainty, and sooner or later it attempts to widen the breach still further. The court has for centuries been the guardian of these fundamental principles and the rule of law depends on its continuing to fulfil that role …"

The facts in GSD-TD 082 of 2022 between *Colvin Refrigeration Services Limited and National Truckers Operators and General Workers Trade Union dated* April 16, 2024, gave rise to a number of issues related to natural justice, including suspension without pay, indefinite suspension, double jeopardy and the right to be heard prior to the termination of a worker's services.

The Worker's services were terminated by letter dated November 30, 2021, for gross misconduct involving an allegation of theft of two hundred and ninety-five thousand dollars ($295,000.00) from the Company. Her termination followed a period of lengthy suspension without pay from January 2021 until November 30, 2021. The Union contended that there was no proper investigation to conclude any wrong doing on the part of the Worker. However, the Company argued that it acted fairly and reasonably and adhered to the established principles and practices of good industrial relations.

After reading the pleadings, hearing the testimonies of the two witnesses, the Worker for the Union and the Managing Director for the Company and considering the oral submissions of the parties, the Court concluded that the Union had proved its case. The Worker was unshaken in cross-examination. However, the Company's witness, displayed an ignorance of the procedure required by an employer to conduct a fair disciplinary process. His evidence revealed that, as the Union contended, the Worker was suspended without pay and at the time she was suspended she was not told when her suspension would end. She was never presented with the results of the Company's investigation and specific charges were never put to her. Further, she was dismissed for the same reasons for which she was suspended without pay.

The Court found that the Worker was dismissed in circumstances which were harsh and oppressive and contrary to the principles of good industrial relations practice. The Court found an award of damages to be appropriate in the case and based on the merits of the case, awarded the Worker three hundred and eighty-five thousand dollars ($385,000) as damages for her dismissal to be paid on or before June 14, 2027.

The Company appealed. In Civil Appeal P163 of 2024. There was an application for a stay before the CA. However, the application for a stay of execution was dismissed. The Appellant was ordered to pay the Respondent's costs in the sum of Fourteen Hundred dollars ($1400.00) in an Order dated November 7, 2024 made by Madame Justice MA. Wilson.

GSD-RSBD 020/2020 between *Eastern Engineering and Marketing Services (1994) Limited and Graduate Professional Association of Trinidad and Tobago*, dated February 06, 2025, as certified by the Minster of Labour and Small Enterprise Development, in Certificate of Unresolved Dispute, dated January 21, 2019, concerned "the wrongful dismissal of a worker using retrenchment as a remedy in circumstances that were harsh and oppressive and contrary to good industrial relations practice on April 23rd, 2018".

The Company asserted that in or about December 2017, it experienced severe financial hardship, as a consequence of the proclaimed economic recession in Trinidad and Tobago around December 2015. The loss of business affected the Company's cash flow and it suffered rising operating costs, directly attributable to a slump in demand for new construction projects. There was a correlation between the drop in construction activity and job retention. The Employer faced the challenge of being incapable of offering continued employment to most of its workers, whose services were required for its dwindling construction projects.

In the Worker's letter of retrenchment dated April 23, 2018, the Employer thanked the Worker for his "*dedicated services throughout the years and your continued interest in being part of the Company's Work Force in the future if and when the current conditions are abated*." However, he admitted that he never called the Worker back to work. He also testified that he employed unskilled Venezuelan nationals in May 2021, which indicated that there was an improvement in the fortunes of the Company.

At the end of the first day of trial, the Court gave an interim Order pursuant to section 10 (1) (b) of the Industrial Relations Act, ("IRA"). The Employer was ordered to compute the severance benefits due and owing to the worker, inclusive of the notice period of forty-five (45) days; his severance benefits were to be calculated from the date of his employment, the 9th day of June, 2009 to the date of his termination the 23rd day of April, 2018. The computation of the said severance benefits were ordered to be completed and a copy provided to the Union on or before the 16th of June, 2023. The total computed sum of the said severance benefits were ordered to be paid to the worker in two (2) equal tranches.

The Court found that the retrenchment notice to be seriously flawed. It deprived the Worker of the opportunity to make representations regarding his selection. It also left him completely in the dark regarding his date of retrenchment and other relevant information including the calculation of his severance benefits. He testified that he was given a blank page to sign regarding his severance benefits but did not sign it since he did not know to what he was signing.

The Court found that there was credible evidence that the Employer was experiencing financial difficulties arising from, among other things, outstanding monies owed to him by the Government. While impecuniosity is not of itself a reason for retrenchment, in that case, the evidence was that the Employer's financial difficulties led him to cut his workforce and certain positions became redundant. The position of Labourer was a

position made redundant. The Union itself accepted that the Worker was retrenched. The Employer made some attempt to inform the Worker, as well as other workers of his difficulties and the likelihood that his job would have been affected. That conduct was in keeping with the spirit of the RSBA and was to his credit.

The Employer indicated that there was the possibility of calling the Worker back out to work if things changed. From the evidence there was an improvement in 2021. However, instead of recalling the Worker as indicated in the letter of retrenchment, the Employer opted to employ Venezuelan nationals in the same position of Labourer that the Worker held. He gave no reason for his departure from the indication given to the Worker for his future prospects with the Company. The Worker whom the Employer accepted had a good disciplinary record was willing to be recalled to work. From his testimony he had not been gainfully employed since his retrenchment.

On all of the evidence, the Court found that the manner of retrenchment, was not in keeping with the requirements of the RSBA in a number of key areas, including the minimum period of notice. The evidence also cast serious doubt on the selection criteria. Altogether the flaws rendered his retrenchment contrary to the principles and practices of good industrial relations. Moreover, it was not until ordered by the Court at trial that the Worker was paid his severance benefits.

The Employer was ordered to pay damages of ninety-seven thousand two hundred dollars ($97,200.00) in two equal tranches.

The Employer appealed to the Court of Appeal. In CA P083/2025 dated December 12, 2025, the Honourable Justice C. Pemberton, JA, the Honourable Justice V. Kokaram, JA and the Honourable Justice E. Donaldson-Honeywell, JA struck out the appeal for non-compliance. There was no order as to costs.

Section 10 (3) of the IRA

Section 10 (3) of the IRA states: -

(3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall—

(a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;

(b) act in accordance with equity, good conscience and the substantial merits of the case before it, having regard to the principles and practices of good industrial relations.

Section 10 (3) is a much traversed section in decisions of the Industrial Court and of the Court of Appeal.[2] In a judgment dated September 25, 2025, the Court of Appeal made certain pronouncements on section 10 (3) in CA P024/2024 between *Urban Development Corporation of Trinidad and Tobago and National Union of Government And Federated Workers,* delivered by Boodoosingh JA, now the Honourable Chief Justice. The appeal concerned the compensation awarded to an employee whom the Industrial Court had found was dismissed in circumstances that were harsh and oppressive and not in accordance with good industrial relations practice. The Industrial Court awarded her compensation, and the appeal was narrowed to the issue of whether that compensation had been properly assessed.

The central issue before the Court of Appeal was whether the Industrial Court had sufficiently demonstrated that it considered the factors set out in section 10 (3) of the Industrial Relations Act, namely fairness, justice, equity, good conscience, the substantial merits of the case, and the interests of the parties and the community as a whole. UDECOTT argued that the Court had failed to do so and that the matter should therefore be sent back for reconsideration.

The Court of Appeal rejected that argument. It held that while section 10 (3) contains overarching principles that must inform the Industrial Court's decision-making, those principles are not a checklist that must be mechanically addressed in every judgment. Rather, they may be reflected in the judgment as a whole, in the Court's reasoning, and in the way the proceedings were conducted. The Court made clear that fairness and justice are often demonstrated by the totality of the judgment and the process followed, rather than by expressly reciting each statutory factor.

A particularly important aspect of the decision was the Court of Appeal's reaffirmation of the strength of section 10 (6) of the Act. The Court emphasised that, where the Industrial Court finds that a dismissal was harsh and oppressive or contrary to good industrial relations practice, and makes an award of compensation under sections 10 (4) and 10 (5), that finding and assessment are generally not open to appeal. Only narrow exceptions have been recognised, such as where there is no evidence to support a material finding, or where there has been a procedural irregularity or error of law affecting the process.

The Court also examined the facts surrounding the dismissal and noted that the worker had been subjected to what the Industrial Court described as an egregious process. She was not told the true purpose of the meeting she was called to attend, the allegations against her were never properly investigated, she was not given a fair opportunity to respond, the Chief Financial Officer who made the allegations was not required to substantiate them, and the employer failed to take account of her unblemished record of

[2] *See* Civil Appeal No. P 213 of 2015 *Carib Brewery Limited v National Union of Government and Federated Workers (Mendonca JA, Jones JA and Rajkumar JA),* delivered 19 February 2020; Civil Appeal No. P405 of 2019 *North Central Regional Health Authority v National Union of Government and Federated Workers* (Mendonca JA, Kokaram JA, Wilson JA), reasons dated 25 May 2021,

service and outstanding performance history. In those circumstances, the Court of Appeal held that the compensation award was rationally explainable, particularly as it reflected an award made in lieu of reinstatement.

Ultimately, the appeal was dismissed. The significance of this judgment lies in its clarification that section 10 (3) must inform the Industrial Court's reasoning, but does not require a formulaic analysis in every case.

In Trade Disputes Nos. 040 and 104 of 2019 (S) between *Oilfields Workers' Trade Union and Petrotrin Fyzabad Sporting Club and Petroleum Company of Trinidad and Tobago* delivered on 23rd July, 2025, the Court said the merits of the disputes justified the exercise of its powers under section 10 (3) of the IRA. In that matter, the Court considered disputes brought by the Oilfields Workers' Trade Union against the Petrotrin Fyzabad Sporting Club and Petrotrin, arising from the non-payment of severance pay and claims of unfair dismissal by way of retrenchment in respect of workers whose employment came to an end on November 30, 2018.

Among the issues the Court had to determine were: 1) Who is the Employer of the Workers in the Trade Disputes? 2) Who was responsible for the termination of the employment of the Workers/were they retrenched? 3) Was it fair, just and equitable to compensate the Workers for the termination of their employment? 4) Who should be responsible for such compensation?

The Court held that: 1) the Petrotrin Fyzabad Sporting Club was the Employer of the Workers in the Trade Disputes; 2) Petrotrin was responsible for bringing about the closure of the Club and by extension causing the employment of the Workers to be terminated; 3) the Workers were not retrenched; 4) the Club was closed, not at the instance of the Management Committee, it has never re-opened and all Workers were sent home. There was no retrenchment. The Court held that it was just and equitable that the qualifying workers of the Club should receive the same treatment as Petrotrin's workers in relation to terminal payments, with Petrotrin being liable for those sums.

Significantly, that agreement extended beyond the workers of the Fyzabad Sporting Club and also covered workers of the Clifton Hill, Palo Seco, and Pointe-a-Pierre Clubs, whose disputes had been stayed pending the outcome of the Fyzabad Sporting Club matter.

Thereafter, in its final order, the Court directed Petrotrin to pay terminal benefits to the qualifying former workers of the Fyzabad Sporting Club on or before 6th March, 2026. The judgment therefore reflects the Court's determination to ensure that workers affected by the closure of the Club were treated fairly.

In its reasoning for its decision, the Court said, among other things:

> "*But for Petrotrin's and the predecessor companies' existence, the Club would not have existed. Its core function was for the recreation of the Company's staff. Historically, the Companies were all concerned with what is now much heralded*

as 'work life balance' for their staff. The Club and the other staff clubs were set up primarily for that purpose. From all appearances when there was no longer such a need to be served, the Club was closed and on the said day that Petrotrin ceased its operations. The sudden closure of the Club resulted in immediate loss of income and benefits. There was no evidence before the Court that the Management of the Club and or Petrotrin had consulted with the Union on the likely closure of the Club and its effects on the Workers, which was the case with Petrotrin."

The Court said that it did not make the decision lightly because the workers of the Club were not Petrotrin's employees. However, it was convinced that there was a close dependent relationship between the Company and the Club's existence, bearing some similarity to a parent company and a subsidiary.

The Court considered the approach of courts in Lifting the veil in groups of companies noting that while there were movements for treatment of groups of companies as a single economic entity[3], the preferred approach was still the principle of separate corporate personality laid down by *Salomon v A Salomon & Co Ltd.*[4] Any departure from corporate personality has been on special facts.

The Court considered the English case of *Examite Ltd v Whittaker* [5] where a trade union called a strike against Baldwins Industrial Services which brought the Company's business to a standstill. A new company was formed with two shares being issued. The new company took over Baldwins business and employed some of its former employees. The union continued the strike against Examite as it was considered to be a sham. Examite sought an injunction against the Union to restrain the officials from intimidating the workers and to restrain them from procuring a breach of contract. It was held that a trade dispute existed between the trade union and Examite. There was sufficient evidence to show that the company had been formed to take over the business carried on by Baldwins.

The Court noted that the survival of the Club was tied to Petrotrin's existence and when the Company closed its operations, the need for the Club diminished completely.

Mitigation

Mitigation is a critical part of fairness in disciplinary decision-making. It recognises that even where wrongdoing is found, the circumstances surrounding the conduct, the

[3] *DHN Food Distributors Ltd v London Borough of Tower Hamlets* [1976] 3 All ER 462, CA.

[4] [1897] AC 22, HL.

[5] [1977] IRLR 312, CA

worker's record, and other relevant considerations may bear directly on the appropriate penalty.

An important element which the Industrial Court must consider when examining the conduct of the employer is whether or not the employer afforded the worker an opportunity to make a plea in mitigation prior to the penalty being imposed. The Court of Appeal has been emphasising in recent times, with increasing frequency, that employers should afford a worker the opportunity to make a plea in mitigation before imposing the penalty.

In Civil Appeal No. P013 of 2018*, between the Public Services Association and Water and Sewerage Authority*, dated October 31, 2023, a matter in which the Industrial Court in ESD Trade Dispute No. 20 of 2014, dismissed a trade dispute, the Court of Appeal remitted the matter to a differently constituted panel of the Court to consider the submissions of the Union in relation to the issue of mitigation, specifically whether the omission of WASA to hear the worker in mitigation before the imposition of the penalty rendered the dismissal harsh and oppressive, or contrary to the principles of good industrial relations practice, or not.

COVID-19

The COVID-19 pandemic had a serious impact on the world of work as it did on the world at large. Some organisations and persons in general are still recovering from its effects. The Court has had to determine quite a few trade disputes which had their genesis in the Pandemic. I will highlight two such cases.

In Trade Dispute No. GSD-TD 322 of 2021 *Oilfields Workers' Trade Union And Long Beach Hotel Trading As Rex Turtle Beach Hotel* dated: June 6, 2025, the dispute concerned the unilateral decision to extend the temporary lay-off of three workers by letter dated June 22, 2020, effective June 26, 2020.

At a General Staff Meeting held on the 18th of March 2020, the Workers were informed of the Hotel's situation of very low occupancy due to the impact on the Travel and Tourism Industry of COVID-19. Subsequently, by letters dated March 24th 2020, the Workers were all informed that they will be "Laid off effective March 26th, 2020 for a period of three (3) months." Just before the expiration of the first three-month temporary lay-off, the Hotel contacted the Workers and asked them to collect letters dated June 22nd 2020, which informed them of an extended temporary lay-off, which lasted four months and one week. The Hotel eventually reopened on 7th November, 2020, which was communicated to the Union by letter dated 30th October, 2020.

The Union contended that the workers were unlawfully laid off. It also contended that the Company failed to communicate effectively with the workers, as it was two (2) days before the end of the first three months lay-off that they received the letter for the extended three-month Temporary Lay-off. The Union furthermore submitted that the Company failed to

act in good faith by refusing to meet in advance with the Recognized Majority Union and unilaterally made decisions. They sought orders from the Court that the actions of the Company were harsh, oppressive, and contrary to the principle of good industrial relations practices. An order that the Workers be paid for the extended temporary Lay-off period of four (4) months and one (1) week. An order that these payments be made with interest accrued from the date of the extended Temporary Lay-off. Any further relief which the Court deemed fit.

The Company's position was that the temporary layoff of staff due to the closure of the hotel amidst the COVID-19 Health Restrictions implemented by the Government of Trinidad and Tobago, was not a breach of good industrial relations practice. It cited IRO No. 23 of 1987 – *Transport & Industrial Workers' Union v. Bata Trinidad & Tobago* to support its contention that temporary lay-off was an accepted practice. It also stated that an employer was entitled to lay-off temporarily the requisite number of workers, where in the course of business, circumstances arise which made this necessary. It said that the lay-off may occur as a result of some occurrence which was outside the control of the employer. The Company submitted that at all material times the closure and ceasing of the Hotel's operation were on account of circumstance outside of its management's control. It pointed to the decision to lockdown Trinidad and Tobago, with the closure of its borders, the issuing of the stay-at-home Order, except for essential staff and the restriction on public gatherings and in-door dining, all matters over which the hotel and its management had no control.

In its decision the Court stated that Industrial Relations is a dynamic process, subject to change. The Industrial Relations System may be influenced by changes in the external environment (the social, economic and political system) and in turn the industrial relations system influences the external environment by its judgments, rulings, collective agreements and management decisions. It commented that the COVID-19 Pandemic by its devastative unannounced attack on the world rocked the world's social, political and economic systems. It shattered the global economic, health, social and political system. Therefore, as a result of the extreme pressure from the external environment in order to survive the industrial relations system was forced to take stringent decisions. It took cognisance of the stringent public health regulations implemented by the Government in its attempt to curtail the devastating effect of the virus's transmission which inevitably affected the tourist industry and more specifically hotels and restaurants. Therefore in order to ensure the mere survival, businesses directly affected by these regulations would have been forced to make harsh adjustments affecting their industrial relations policies and procedures.

The Court went on to state that under normal conditions the norm for a layoff period should not be more than three (3) months. However, during the Pandemic it was extended to four (4) months and one (1) week. This change occurred because of the fact that on the 6th April, 2020 the "stay at Home" order was extended to 30th April, 2020. This further prevented the operation of bars and hotels. The restrictions subsequently extended to

May 2020." Additionally, in June and July even though the Government took steps to relax the said restrictions the borders remained closed. Public gatherings and the operations of certain Sectors such as the Hotel and Tourism industries continued to be prohibited, thereby forcing the Hotel to extend the layoff period for an additional four (4) months and one (1) week. Even though the Hotel was forced to alter the Workers' terms and conditions of service by the extension of the period of layoff, the Hotel was required to do so in consultation with the Union. It acknowledged that "… the General Manager held a Zoom conference call with the Union to discuss the Hotel's intention to extend the temporary layoff because of the restrictions. Thereafter, the Hotel informed its workers of this by letter dated 22nd June 2020.

The Court concluded that given the dynamic nature of the Industrial Relations System the Hotel was forced to respond to the harsh realities imposed upon it on account of the Covid-19 Pandemic.

In Trade Dispute No. GSD-TD 9 of 2021 between *Communication Workers' Union And Crown J's Limited*, another COVID-19 related matter, in an oral decision dated January 6, 2025, the Court made the finding and Order that the Worker's dismissal by the Company was wrongful, harsh and oppressive and contrary to the rules of good industrial relations. The Court further ordered that damages were to be paid by the Company to the Worker in the amount of $100,000.00 on or before January 31st, 2025. The Court gave its written reasons on January 14, 2025. That matter was heard ex-parte, The Company did not appear.

It was the evidence of the Union that the Worker had been employed as an Accountant with the Company from January 2007 to May 31, 2020. She was paid a monthly salary of $5,000.00 and at the time of her alleged dismissal, she was not entitled to any vacation leave. In March 2020, in accordance with Emergency Regulations made necessary by the COVID-19 Pandemic, the Worker was sent home as the Company was a non-essential service and it halted its operations. In May 2020, however, when construction companies were allowed to resume operations, the Worker was told by the Company that its business had not resumed. The Worker having had access to the Company's emails, however concluded that the Company had in fact resumed its operation. Upon confronting the owner, on the issue of why she was not advised to return to work, he maintained that the Company had not resumed its operations. The Company failed to respond to further communication from the Worker and she determined that she had been terminated. The matter was thereafter reported by the Union to the Ministry of Labour.

The Court found that the Company to have been dishonourable and this was only made more egregious by the Worker's many years of service. Notwithstanding the effect of the COVID-19 restrictions on the construction sector and on the economy generally, the Court stated that it could not allow employers to ignore their obligations both to employees and to the law. The Court was satisfied that the actions of the Company displayed a wanton

disregard of those obligations. The Worker was wrongfully dismissed and the Company in so doing, ignored good industrial relations practice.

Complaints under the Occupational Safety and Health Act, Chapter 88:08 (The OSH Act")

The University of the West Indies v Occupational Safety and Health Authority and Agency [2025] UKPC 42

A very important decision for complaints brought under the OSH Act was delivered by the Judicial Committee of the Privy Council in September, 2025, namely *The University of the West Indies v Occupational Safety and Health Authority and Agency* [2025] UKPC 42. That case is significant for its clarification of the limitation provisions under the OSH Act.

The Privy Council clarified the applicable limitation periods. Safety and health offences under section 83(1) are subject to the six-month time limitation period prescribed by section 93, running from the date on which the alleged commission of the offence came to the knowledge of an inspector. By contrast, section 83A which permits an aggrieved person to apply to the Industrial Court for redress, has a two-year limitation period as provided at section 97B applicable to civil proceedings under the Act, no more than two years after the cause of action has arisen.

Further, in cases involving a fatality, a coroner's inquest or commission of enquiry, section 91(2) underscores the importance of these processes in the aftermath of an industrial accident. It contemplates that, where it appears from the report of a commission of enquiry or from the proceedings at an inquest that the Act was not complied with at or before the time of the accident, summary proceedings may still be brought against the person liable for that non-compliance. Such proceedings may be commenced within six months of the making of the report or the conclusion of the inquest. In that way, the section preserves the possibility of enforcement where non-compliance is only revealed through those proceedings.

Artificial Intelligence (AI)

In remarks I made last year at another forum, I pointed to the fact that organizations are increasingly adopting artificial intelligence (AI) and automation technologies. These technologies have substantial implications for the workforce and may be even more severe in economies such as ours. While AI systems can analyze vast amounts of data to streamline decision-making processes, automate routine tasks, and enhance overall productivity, these advancements may prove costly in terms of job displacement. AI also

raises a number of ethical and similar considerations, such as potential biases in algorithmic decision-making, and privacy concerns.

Last year a case was highlighted in the print media[6] a case in which High Court Judge, the Honourable Westmin James, referred two attorneys at law to the Disciplinary Committee of the Law Association (LATT) after uncovering multiple fictitious legal authorities cited in court submissions in a lawsuit over the dismissal of a Lab Assistant in 2023. The fictitious legal authorities were purportedly decisions of our own Industrial Court. Justice James said in his ruling on the breach of contract lawsuit

> *"Irresponsible use of internet sources or generative AI tools undermines not only individual cases but also the credibility of the legal system as a whole. If such conduct is not condemned and appropriately addressed, it could lead to a dangerous erosion of the rule of law,"*

This is possibly the first case locally involving the use of AI, resulting in sanctions. In his ruling, Justice James described the incident as a serious breach of professional ethics. AI seems certain to be a part of the future of the world of work and industrial relations in Trinidad and Tobago. Until our laws provide specifically for the use of AI, employers and Unions would be well advised to have policies and collective agreements which govern its use at work. In terms of guidance to Courts, early out of the blocks in tackling the use of AI in courts in our region is the Caribbean Court of Justice (CCJ), which issued 'PRACTICE DIRECTION NO. 1 OF 2025, THE USE OF GENERATIVE ARTIFICIAL INTELLIGENCE TOOLS IN COURT PROCEEDINGS'. This Practice Direction provides guidance on the permissible use of Generative Artificial Intelligence ('GenAI') tools by attorneys, parties, witnesses, self-represented persons, and other court users. It applies to all proceedings before the CCJ.

Conclusion

I trust that I have whet your appetite and have given you sufficient food for thought on the principles I have pointed to and the cases I have cited to inform your discussions throughout the day.

HER HONOUR MRS. HEATHER SEALE
President Industrial Court of Trinidad and Tobago
Wednesday 15th April, 2026

[6] See Article by Jada Loutoo, Judge slams AI use in case, refers lawyers to disciplinary committee for fake citations in the Trinidad and Tobago Newsday, May 1, 2025