JCPC 2024/1004

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF APPEAL OF
THE REPUBLIC OF TRINIDAD AND TOBAGO

BETWEEN

CARIBBEAN AIRLINES LIMITED

Appellant

AND

COMMUNICATION, TRANSPORT AND GENERAL WORKERS' TRADE UNION

Respondent

CASE FOR THE APPELLANT

References to Record of Proceedings are given as ***[EB XX/YY]****, in which* ***XX*** *is the page number of the Record and electronic bundle page, and* ***YY*** *is the line or paragraph number where applicable.*

A. Introduction

1. This appeal concerns the limits of the Industrial Court's statutory jurisdiction under the Industrial Relations Act, Chapter 88:01 ("**the IRA**") **[EB 1169]** of Trinidad and Tobago. Specifically, it raises the question of whether the Industrial Court has the power, on a finding of 'successorship' under Section 48(3) **[EB 1218]**, to direct a successor employer to recognise a trade union as its Recognised Majority Union.

2. By its order the Industrial Court of Trinidad and Tobago **("the Industrial Court")**, upheld with one variation by the Court of Appeal, that the Appellant, Caribbean Airlines Limited **("CAL")**, is bound by Section 48 **[EB 1217]** of the IRA to recognise the Respondent, the Communication, Transport and General Workers' Trade Union **("the Union")**, as one of its Recognised Majority Unions **("RMU")**, and that Certificates of Recognition Nos. 97 and 98 of 1976 issued by the Registration, Recognition and Certification Board ("**the Recognition Board**") in respect of the Union's bargaining units at the predecessor airline, British West Indies Airways Limited **("BWIA")** are binding upon CAL [**EB/27/44-45**].

3. In summary, the Industrial Court and, on appeal, the Court of Appeal held that because CAL was the 'successor' employer to BWIA under Section 48(3) **[EB 1218]**, it was thereby obliged to recognise the Union as its RMU in respect of the bargaining units for which the Certificates had been issued, and to treat and negotiate with the Union for all purposes of collective bargaining. The Court of Appeal varied the order only to the extent of limiting the obligation to honour the terms of the registered collective agreement to those provisions relating to procedures for avoiding and settling disputes, as contemplated by Section 48(2) **[EB 1218]** of the IRA [**EB/65/113**].

4. It is submitted that the courts below erred in law in two respects.

5. First, the order goes beyond what Section 48 **[EB 1217]** empowers the Industrial Court to do. Section 48 is expressed to operate *"for the purposes of section 47"*: it defines who the parties to a *registered collective agreement* are, for the purpose of enforcing that agreement. It confers on the Industrial Court a limited jurisdiction to determine whether a party to such an agreement has a successor or assignee who is deemed to be bound by it. While it is the function of the Industrial Court to decide whether a party is a successor to a collective agreement, the Industrial Court cannot declare that a party is the RMU of any particular bargaining unit. That is reserved exclusively to the Recognition Board under Part III of the Act, which governs the recognition and certification of trade unions. The order made in these proceedings is, in substance, a determination of recognition, which is a matter which Parliament placed outside the jurisdiction of the Industrial Court.

6. Second, in the circumstances of this case, Section 48(3) **[EB 1218]** had no operative role to play. The relevant collective agreements had long since expired. The workers in the relevant bargaining units had their employment terminated by consent pursuant to a registered Supplemental Agreement and received severance benefits in full and final settlement of all issues arising out of the termination of their services. Those events brought to an end the only employment nexus by which sections 47(2) **[EB 1217]** and 48(2) **[EB 1218]** could have had further work to do. It was, therefore, wrong in law for the Court of Appeal to affirm CAL as the 'successor' to BWIA.

7. Even if CAL was the 'successor' to BWIA in respect of the expired collective agreements, it would not follow that CAL is bound to recognise the Union as its RMU.

The mechanism for the Union to obtain that status in respect of CAL's workers was an application to the Recognition Board under Part III of the IRA.

B. Background Facts

8. Until 31 December 2006, BWIA was the national airline and flag carrier of Trinidad and Tobago. It was registered under the Companies Act, Chapter 81:01, and its principal shareholder was the Government of Trinidad and Tobago. The Union was the RMU in respect of certain categories of workers employed by BWIA, and had been so recognised by the Recognition Board by Certificates of Recognition Nos. 97 and 98 of 1976, covering workers in the engineering, maintenance, and support services functions of the airline **[EB/9/1-2]**.

9. Negotiations between BWIA and the Union for a new collective agreement commenced in January 2006 but broke down in June 2006. The existing collective agreement between the parties had expired by effluxion of time as long ago as 10 April 2000 **[EB/68/g]**. There was therefore no registered collective agreement in force between the Union and BWIA at the time negotiations broke down **[EB/14/14].**

10. BWIA had been operating with a substantial financial loss and following several capital injections by the Government as principal shareholder in BWIA, it was decided that BWIA would cease operating on 31 December 2006. In September 2006, the trade unions representing BWIA's employees, including the Union, were informed of the majority shareholder's decision to close BWIA's operations.

11. Prior to the closure of BWIA at the end of December 2006, a 17-day period of mandatory negotiations took place, culminating in the execution of a Supplemental Agreement between BWIA and the Union on 25 September 2006. This was one of several Supplemental Agreements entered into between BWIA and the various unions representing its workers. The Supplemental Agreement established a Voluntary Separation from Employment Plan **("VSEP")**. By clause 15 of that Agreement, upon the payment of the full VSEP benefit to an employee, that employee's service with BWIA was deemed to have been terminated by consent. Clause 26 of the Supplemental Agreement confirmed that the Supplemental Agreement was:

> *"entered into in full and final settlement, resolution and determination of all issues and matters propsed by the Union in the course of negotiations for this Supplemental Agreement or arising out of the termination of the services of the employees in the bargaining unit and the payment of voluntary separation benefits to them."*

12. The Supplemental Agreement was registered with the Industrial Court pursuant to Sections 46 and 49 of the IRA. Although the Industrial Court initially refused to register the Supplemental Agreements, on 11 December 2006 the Court of Appeal overturned the decision and ordered the registration of the agreements.

Proceedings before the Industrial Court

13. On 21 March 2007, the Union applied to the Industrial Court for a declaration that CAL was the successor employer to BWIA. By the time of final hearing, the Union's application included declarations that Certificates of Recognition Nos. 97 and 98 of 1976 were valid and binding on CAL, and for associated relief.

14. CAL resisted the application on several grounds **[EB/14-15/15]**. It submitted that the Industrial Court had no jurisdiction to hear the application because: (i) a successorship application under Section 48 relates only to the enforceability of an unexpired collective agreement, and no collective agreement was in existence between the Union and BWIA at the material time; (ii) a current registered collective agreement is a precondition to a successorship application; (iii) the payment of VSEP benefits under the Supplemental Agreement should preclude a finding of successorship; (iv) the employees formerly represented by the Union were no longer employed by BWIA; and (v) the relevant bargaining units no longer existed and the Union was therefore no longer the RMU.

15. The Industrial Court, in its judgment delivered on 4 October 2017, rejected all of CAL's submissions. It found that there was no requirement for a subsisting collective agreement as a precondition to a successorship determination **[EB/22/25]**. It held that the payment of severance to workers was not a determinative factor or bar to a declaration of successorship **[EB/24/33]**. It found that the bargaining units and the rights of the Union continued to exist after the closure of BWIA, when the same categories of workers transferred to CAL **[EB/25-26/37-39]**.

16. The Industrial Court concluded that CAL was created as a result of the restructuring of BWIA as mandated by the principal shareholder, and that the purpose of CAL was to replace BWIA as the national flag carrier. It found that CAL conducted substantially the same operations as BWIA, in substantially the same way and with substantially the same categories of workers **[EB/26-27/40-42]**.

17. The Industrial Court's ruling and consequent order were expressed in the following terms **[EB/27-28/44-46]**:

> *"It is the ruling of this Court that CAL as the successor to BWIA, is constrained by the provisions of Section 48 of the Act to recognise the Union as one of its Recognised Majority Unions and to honour the terms of the registered collective agreement between the Union and BWIA."*

18. The Industrial Court further ordered that Certificates of Recognition Nos. 97 and 98 of 1976 were binding on the parties and that the successor employer, CAL, was duty bound to honour the Union's rights. Formally, the order directed that CAL do recognise the Union as the RMU of workers of the respective bargaining units for which the Certificates applied **[EB/28/46]**.

Proceedings before the Court of Appeal

19. CAL appealed to the Court of Appeal on a number of grounds (which are set out in full at Appendix I of the Court of Appeal's judgment **[EB/67/App.I]**). The Court of Appeal delivered its judgment on 22 April 2024.

20. The Court of Appeal identified two major issues **[EB/46/57-58]**: first, whether the Industrial Court was wrong in law in finding that CAL is the successor to BWIA for the purpose of Section 48 **[EB 1217]**, and second, what orders may be made consequent upon such a finding - in particular, whether the Industrial Court was erroneous in law to direct that CAL was bound by the certificates of recognition.

21. On the first issue, the Court of Appeal affirmed the Industrial Court's conclusions. It held that the existence of a subsisting collective agreement is not a precondition to a finding of successorship under Section 48(3) **[EB/49/66]**. It upheld the Industrial

Court's reliance on 'the three substantials' test and found no ground to interfere with the finding of fact that CAL was the successor to BWIA **[EB/57/86]**.

22. On the question of the Supplemental Agreement, the Court of Appeal held that it was between the Union and BWIA only, did not purport to bind any successor, and did not purport to remove from the Union or its members the rights which Section 48 was designed to preserve **[EB/60/93-95]**.

23. On the second issue, the Court of Appeal held that recognition of the Union as RMU is a necessary consequence of a successorship finding **[EB/63/106-107]**. It relied on dicta of Khan P in Oilfield Workers' Trade Union v Petroleum Company of Trinidad and Tobago Limited (A 6, 7, 8, and 9 of 1994) **[EB 1487]** to the effect that successorship entails not merely adherence to the terms of the collective agreement but also the obligation to recognise and treat with the RMU **[EB/63/108]**. It considered itself bound by the Court of Appeal's earlier decision in Eastern Commercial Lands Ltd v Banking Insurance and General Workers Union, Civil Appeal No. 78 of 2009 (*"Eastern"*) **[EB 1359] [EB/65/111]**.

24. The Court of Appeal varied the first paragraph of the Industrial Court's order to reflect the concession made by Senior Counsel for the Union that the obligation to honour the terms of the registered collective agreement should be limited, in accordance with Section 48(2) **[EB 1218]**, to provisions relating to procedures for avoiding and settling disputes. In all other respects, the appeal was dismissed **[EB/65/113-114]**.

C. Legal Principles

25. The question raised by this appeal is one of statutory construction: what does Section 48(3) of the IRA empower the Industrial Court to do? That question is to be resolved by reference to the well-established principles governing the interpretation of statutes, which were recently set out in Sheikha Amena Ahmed H A Al-Thani v Sheikha Aisha Mohammed Ali Abdullah Al Thani [2024] UKPC 35 at paragraphs 23-28 **[EB 1790-1792]**.

26. As noted by Lord Bingham of Cornhill in R (Quintavalle) v Secretary of State for Health; [2003] 2 AC 687 (paragraph 8) **[EB 1736]**:

"The basic task of the court is to ascertain and give effect to the true meaning of what Parliament has said in the enactment to be construed.

…

Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem, or remove some blemish, or effect some improvement in the national life. The court's task, within the permissible bounds of interpretation, is to give effect to Parliament's purpose. So the controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment."

27. In R(O) v Secretary of State for the Home Department; [2023] AC 255, Lord Hodge set out the contextual approach (at paragraph 29) **[EB 1714]**:

> *"Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament had chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained."*

28. In R(O) at paragraph 31 **[EB 1714]**, the court further described the court's task as an objective one:

> *"Statutory interpretation involves an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered."*

29. In R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd [2001] 2 AC 349, Lord Nicholls of Birkenhead (at pp. 396-398) **[EB 1641-1643]** explained the constitutional reason for having regard primarily to the statutory words and their statutory context:

> *"Citizens, with the assistance of their advisers, are intended to be able to understand parliamentary enactments, so that they can regulate their conduct accordingly. They should be able to rely on what they read in an Act of Parliament."*

D. The Mechanics of the IRA

Precursor to the IRA

30. After several instances of labour unrest, which ultimately led to a state of emergency in Trinidad and Tobago, the government of the day enacted the Industrial Stabilisation Act **("ISA"**) 1965 **[EB 1281]**, which dramatically curtailed the circumstances in which trade unions could call strikes and established an Industrial Court to settle labour-management disputes.[1]

31. Under Section 3 **[EB 1283]** of the ISA, an employer was to recognise a trade union representing more than 51% of workers, but could challenge the assertion of a majority with the relevant minister (section 3(3) **[EB 1284]**), and, if there was still a dispute, the matter could be referred to the Industrial Court established under the ISA as a trade dispute (section 3(4) **[EB 1284]**).

32. Industrial agreements were regulated under Part IV **[EB 1295]** of the ISA. After an industrial agreement has been executed it is to be passed on to the relevant Minister who may raise any objections. It is sent to the court for registration at its discretion (sections 22 – 23 **[EB 1295-1296]**). Under the ISA, industrial agreements only had validity if they were registered under the ISA (section 24 **[EB 1296]**), and they could bind successors to any employers or trade unions (section 25(b) **[EB 1296]**).

33. In the Privy Council decision of Collymore v Attorney General [1970] A.C. 538 **[EB 1342]**, the Board rejected a challenge to the constitutionality of the ISA despite it being clear that its process of registering collective bargains before they could be enforceable abridged the freedom to bargain collectively (see p.548 **[EB 1352]**).

The IRA

34. The IRA's stated purpose was to "*repeal and replace the Industrial Stabilisation Act 1965, and to make better provision for the stabilisation, improvement and promotion of industrial relations"* and it made some important changes to the structure of labour relations legislation. Most significantly, the IRA established the Registration,

[1] Recent Labor Legislation in Trinidad Its Economic and Political Implications, Frances Henry, *Anthropologica*, New Series, Vol. 8, No. 2 (1966), pp. 269-289 **[EB 1901]**

Recognition and Certification Board as a specialist body with exclusive jurisdiction over matters of union recognition, bargaining unit determination, and the certification of recognised majority unions. The establishment of the Recognition Board represented a deliberate legislative choice to vest these sensitive and complex decisions in a dedicated body.

35. Under Section 23 **[EB 1199]** of the IRA, the duties of the Recognition Board include, among other things, "*the determination of all applications, petitions <u>and matters</u> concerning certification of recognition under Part III*" (emphasis added). Unlike under the ISA, where the Industrial Court could determine whether a union should be a recognised majority union under a trade dispute, the Industrial Court has no such power under the IRA. The Recognition Board's functions under Part III **[EB 1205]** of the Act are set out between Sections 32 to 41 **[EB 1205-1212]**. Three of those functions are of particular importance for the present appeal.

36. First, pursuant to Section 33 **[EB 1206]** of the IRA, when an application for certification of recognition is made, the Recognition Board is required to determine what constitutes the appropriate bargaining unit for the purposes of collective bargaining. The Act sets out specific criteria for this determination, including community of interest, nature of duties, and the views of the employer and trade union concerned. The Recognition Board's determination of what is an appropriate bargaining unit is, by Section 32(4) **[1205]** of the IRA, *"final for all purposes"*.

37. Second, under Section 34 **[EB 1207]** of the IRA, the Recognition Board certifies the union that represents more than fifty per cent of the workers in the bargaining unit as members in good standing as the recognised majority union for that unit. Where two or more unions compete, the Recognition Board conducts a preferential ballot under Section 34(2) **[EB 1207]**.

38. Third, and relatedly, under Section 37 **[EB 1209]** of the IRA, the Recognition Board issues a certificate of recognition which names the employer, the category of workers comprising the bargaining unit, and the union that has been certified. The certificate is recorded in the Recognition Board's register. It is this certificate that confers upon the union, under Section 35(a) **[EB 1208]** of the IRA, the exclusive authority to bargain collectively on behalf of workers in the bargaining unit, and that confers upon the

employer, under Section 40 **[EB 1212]** of the IRA, the obligation to recognise and negotiate with the union. Without the certificate, there is no RMU and there is no obligation to bargain.

39. These three functions are exclusively assigned to the Recognition Board (subject, as noted above, to parliamentary intervention). The finality clause in Section 32(4) **[EB 1205-1206]** is reinforced by the extraordinary ouster clause in Section 23(6) **[EB 1200-1201]** of the IRA, which provides that *"no decision, order, direction, declaration, ruling or other determination of the Board shall be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever."* Parliament thereby took every available step to insulate the Recognition Board's jurisdiction from judicial interference.

Collective Agreements under the IRA

40. The industrial agreements under the ISA receive a nomenclature change to 'collective agreements' under the IRA. Subject to various exceptions, they are to be limited to no less than 3 and no more than 5 years (section 43(1) **[EB 1214]**). As with the Part IV of the ISA **[EB 1295]**, executed collective agreements are submitted to the Minister who may raise objections, but are then submitted to the Industrial Court to determine whether they should be registered pursuant to section 46 **[EB 1216-1217]**.

41. Sections 47 **[EB 1217]** and 48 **[EB 1217-1218]** presuppose that a collective agreement already exists and has been registered, and they address the separate questions of the enforceability of such agreements and the identity of those bound by them.

42. Section 47(1) **[EB 1217]** provides that the terms and conditions of a registered agreement *"shall be binding on the parties thereto and shall be directly enforceable, <u>but only in the Court</u>."* (emphasis added) The Industrial Court is the exclusive forum for enforcement, therefore the question of whether an industrial agreement is binding or not is significant only in relation to a trade dispute before the Industrial Court. Section 47(2) **[EB 1217]** further provides that the terms of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contracts of employment of the workers in the bargaining unit.

43. Section 48(1) **[EB 1217]** is expressed to operate *"for the purposes of section 47"* i.e. exclusively for the purposes of identifying who is bound by and may enforce a registered collective agreement in the Industrial Court. It deems the following persons to be parties to a registered agreement:

(a) the recognised majority union;

(b) the employer who entered into the agreement; and

(c) *any successors to, or, in the case of an employer, assignees of, such employer or recognised majority union*.

44. Section 48(2) **[EB 1218]** provides, notwithstanding the duration provisions in Section 43(1) **[EB 1214]**, that the terms of a registered agreement shall, *in so far as they relate to procedures for avoiding and settling disputes*, be deemed to continue in full force and effect until a new collective agreement between the parties or their successors has been registered. This provision ensures that there is never a complete vacuum in the dispute-resolution machinery between bargaining cycles. However, it does not create or preserve the status of RMU. It merely keeps alive the dispute avoidance and resolution process of an expired agreement for the specific purpose of resolving disputes.

45. Section 48(3) **[EB 1218]** gives the Industrial Court jurisdiction to determine, from all the circumstances in accordance with good conscience and the principles of good industrial relations practice, whether a person is a successor or assignee *"for the purposes of this section" i*.e. solely for the purposes of determining who may be bound by and enforce a collective agreement in the Industrial Court per paragraph 43(c) above. It is, after all, the Industrial Court which has the discretion to determine whether or not to register a collective agreement in the first place.

46. It is submitted that the words of Section 48(3) **[EB 1218]** do not extend to determining questions that fall within the Recognition Board's exclusive jurisdiction, such as the composition of a bargaining unit or the certification of an RMU.

E. Why the Orders Below Cannot Stand

Orders to Recognise the Union and be Bound by Certificates of Recognition Exceed the Jurisdiction Conferred by Section 48

47. The orders made by the Industrial Court, and affirmed by the Court of Appeal at [**EB/63-65/106-112**] that CAL is bound by the Union's certificates of recognition and must recognise the Union as one of its Recognised Majority Unions, go beyond what Section 48 empowers the Industrial Court to do and cut across the statutory scheme of the IRA. This issue is the heart of the appeal, since if CAL is merely the 'successor' to expired collective agreements, unmoored from any workers' contracts of employment, then that would be a hollow victory for the Union. As Counsel for the Union conceded below, "*the Union was only interested in its status of Recognised Majority Union*." [**EB/45/50**]

48. The Court of Appeal's reasoning for upholding the Industrial Court's orders on Union recognition appears premised on:

    (a) An **i**nterpretation of section 48 **[EB 1217]** that it *"relates not only to the immediate obligation of the predecessor employer to its workers …* [but] *also to the right of the Union to represent the body of workers in respect of which one employer has been held to succeed another. It is an avenue for preserving the right of a body of workers to be represented."*[**EB/63/106**]*;* and

    (b) The Industrial Court making a finding that the bargaining units which existed under BWIA continued at CAL, and because the Union is inseparable from the bargaining units, CAL inherited the Union.

49. The Court of Appeal's decision is flawed for the following reasons:

50. The Court of Appeal's interpretation of section 48 (which it appears to derive from the Court of Appeal decision in Eastern Commercial Lands Ltd v BIGWU, Civil Appeal No. 78 of 2009) **[EB 1359]**, is not grounded in the words of section 48 **[EB 1217-1218]** or the context of the Part IV **[EB 1214]** or the IRA as a whole. Indeed, the Court of Appeal's decision did not engage with CAL's arguments about the mechanics of the IRA at all.

51. As noted above, Section 48(1) **[EB 1217]** is expressed to operate "*for the purposes of section 47*". Section 47 **[EB 1217]** is concerned exclusively with the binding force and direct enforceability of a registered collective agreement in the Industrial Court. Section 48(3) **[EB 1218]** is only answering the question of who is bound by, and who may enforce, a particular registered collective agreement. It cannot answer the further and quite distinct question of which union is the RMU for a particular employer.

52. In fact, that is not a question for the Industrial Court at all. It is a question reserved exclusively to the Recognition Board under Part III **[EB 1205]** of the IRA, following the statutory processes for determining the appropriate bargaining unit (section 33 **[EB 1206-1207]**), conducting a ballot if required (section 34 **[EB 1207-1208]**), and issuing a certificate (section 37 **[EB 1209]**). Parliament reinforced that exclusive allocation of jurisdiction by the finality clause in section 32(4) **[EB 1205-1206]**, which makes the Recognition Board's determination of bargaining unit composition final for all purposes, and by the comprehensive ouster in section 23(6) **[EB 1200-1201]**, which places the Recognition Board's decisions beyond challenge in any court on any ground.

53. Nothing in section 48 **[EB 1217-1218]**, or elsewhere in the IRA, confers on the Industrial Court the power to issue what amounts to a certificate of recognition, or to direct an employer to recognise a union as its RMU. A certificate of recognition names the employer, the category of workers comprising the bargaining unit, and the certified union (section 37 **[EB 1209]**). It is the certificate, and only the certificate, which confers upon a union its status as RMU under section 35(a) **[EB 1208]**, and which generates the employer's obligation to recognise and negotiate with the union under section 40 **[EB 1212]**. Without a certificate properly issued by the Recognition Board, there is no RMU and no legally enforceable obligation to bargain.

54. The Court of Appeal relied at paragraph 108 [**EB/63/108**] on the statement of Khan P in <u>Oilfield Workers' Trade Union v Petroleum Company of Trinidad and Tobago Limited</u> (A 6, 7, 8, and 9 of 1994) **[EB 1487]** that a successor employer "*inherits the recognised majority union and must treat and negotiate with the recognised majority union for all the purposes of collective bargaining.*" **[EB 1504]** Those words, properly read, go no further than identifying what a successor employer must do in relation to the registered collective agreement which it has been found to have inherited: it must deal with the union that is the other party to that agreement. They are a statement about

the contractual consequences of successorship, not a statement that the Industrial Court has the power to issue what is in substance a fresh certificate of recognition.

55. Similarly, whether or not a bargaining unit is to be certified in relation to a given employer is solely a matter for the Recognition Board. A bargaining unit is defined in Section 2(1) as "*the unit of workers determined by the* [*RPecognition*] *Board an appropriate bargaining unit"*. As noted above, Section 33 **[EB 1206-1207]** of the IRA leaves the determination of the appropriate bargaining unit solely to the Recognition Board, who takes into account the views of the relevant employer in doing so. Pursuant to section 32(4) **[EB 1205-1206]**, such a determination is "*final for <u>all</u> purposes"*(emphasis added). By section 37(2) **[EB 1209]**, the Union's certificate is tied to a specifically named employer: BWIA. The only possibility of varying the certificate is by section 39 [**EB 1211**], and that is only in respect of variation of the relevant bargaining unit.

56. The recognised majority union is, therefore, only acquired upon certification by the Recognition Board, or as the Privy Council held in <u>Public Services Association of Trinidad and Tobago v Trinidad and Tobago Civil Aviation Authority</u> [2025] UKPC 40 at paragraph 47 **[EB 1542]**, by primary legislation designed to side-step the Board's certification process. Indeed, not even primary legislation entitled the relevant union to be recognised as the majority union for collective bargaining purposes (see paragraph 55 **[EB 1544]**), until a fully compliant certificate is issued by the Recognition Board. If an express statutory deeming cannot bypass sections 37 and 41, section 48 cannot do so indirectly.

57. Recognition as an RMU under the IRA carries substantial statutory advantages. A union certified as RMU acquires, by section 35(a) [**EB 1208**], the exclusive authority to bargain collectively on behalf of the workers in the bargaining unit and to bind them by a registered collective agreement; the employer then comes under the section 40 [**EB 1212**] duty to recognise and negotiate in good faith with that union; and, by sections 37 [**EB 1209**] and 41 [**EB 1212**], the union's status is formalised by the issue and recording of a certificate, with section 41(2) [**EB 1212**] providing that a union is to be treated as RMU only when those particulars are recorded. Where a collective agreement is already in force, section 35(c) [**EB 1208**] also substitutes the certified union as a party to it. Those are significant statutory incidents which Parliament has entrusted

exclusively to the Recognition Board under Part III [**EB 1205**], after it has determined the appropriate bargaining unit and majority support under sections 33[**EB 1206-1207**] and 34 [**EB 1207-1208**]. They cannot properly be conferred obliquely through section 48(3) [**EB 1218**], which is concerned only with successorship for the purposes of sections 47 [**EB 1217**] and 48 [**EB 1217-1218**] and not with certification or recognition.

58. In the circumstances, it was outside the Industrial Court's jurisdiction and wrong in law to order CAL to be bound by the Union's certificates of recognition and recognise it as one of its RMUs.

59. It appears to have been suggested by the Court of Appeal at [**EB/63/106-107**], that if 'successorship' was not expanded beyond the enforceability of collective agreements, then that would impact "*the right of the individual employee to be represented*". With respect, this takes the argument nowhere because:

(a) It would always have been open to the Union to apply for certification with CAL under Part III of the IRA. The Recognition Board is required to act expeditiously and may issue an interim certificate. It is noted that, as a matter of fact, it took more than 3 months from the start of CAL's operations for the Union to apply to the Industrial Court under section 48(3) [**EB 1218**].

(b) As recognised in <u>Collymore</u> [**EB 1342**] with respect to the *ISA* [**EB 1281**], legislation which regulates the registration and enforceability of industrial agreements invariably abridges the rights of workers to bargain collectively. Requiring unions to adhere to the processes set out in the IRA [**EB 1169**] is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. In any event, there is no challenge to the constitutionality of the legislation.

Section 48(3) Has No Role to Play

60. The Court of Appeal's varied order at [**EB/65/113**] included a requirement that CAL, as a 'successor' employer, honour the expired collective agreement between BWIA and the Union insofar as they relate to procedures for avoiding and settling disputes per Section 48(2) **[EB 1218]**. It is submitted that in circumstances where the relevant collective agreements have expired, the individual contracts of the workers have been

lawfully terminated and fully compensated, and there is no scope for a dispute requiring avoidance or resolution under those expired agreements, then section 48(3) [**EB 1218**] simply does not operate.

61. The courts below held that the collective agreement between the Union and BWIA continued to subsist, notwithstanding its expiry in April 2000, by operation of two provisions:

(a) Section 47(2) **[EB 1217]**, which deems the terms of a registered agreement to be terms and conditions of the individual contracts of employment of workers in the relevant bargaining unit; and

(b) Section 48(2) **[EB 1218]**, which preserves an expired collective agreement's terms and conditions "*in so far as they relate to procedures for avoiding and settling disputes*" until another collective agreement is registered. The courts below have misunderstood the interaction of those provisions with section 48(3) **[EB 1218]**.

62. As set out above, Section 47 **[EB 1217]** governs the binding force and enforceability of a registered collective agreement. While Section 47(2) **[EB 1217]** deems the terms of a registered agreement to be terms and conditions of individual contracts of employment, those terms can only survive as long as the underlying employment contracts subsist. Similarly, Section 48(2) **[EB 1218]** preserves an expired collective agreement's terms "*in so far as they relate to procedures for avoiding and settling disputes*", but limits this preservation "*until another collective agreement... has been registered*" as a bridging provision.

63. However, it had been recognised in several Industrial Court decisions (prior to Eastern), that once the workers within a bargaining unit had taken severance payments, effectively emptying the bargaining unit and breaking the nexus of employment between the original employer and the relevant union, Section 48(3) [**EB 1218**] has no application.

64. See, for example[2]:

[2] See also Shipping Association of Trinidad and Tobago v Seamen and Waterfront Workers Trade Union (Dispute No. 20 of 1969) **[EB 1800]**, TD No. 172 of 1986 - Yorke Holdings Limited v Union of Commercial and Industrial Workers **[EB 1892]**, R. 1 of 1974 Damus Limited v Oilfield Workers' Trade Union and Contractors and General Workers Union **[EB 1356]**

(a) Application No. 5 of 1998 - NUGFW v Caribbean Bottlers Limited **[EB 1481]** where the President of the Industrial Court, His Honour Mr. Khan rejected an application under section 48 [**EB 1217-1218**] to bind Caribbean Bottlers Limited to collective agreements signed between the union and the former owners of the business. The former owners had terminated the services of the former workers by retrenchment and payment of severance benefits. The President held that:

> *"In my view, the industrial relations principle of successorship is intended to protect workers against the loss of benefits based on length of service. If these benefits have been paid and their services lawfully terminated, as occurred in this case, no need arises to give any such protection. Having been paid their severance benefits by the former employer, the workers who accepted employment with the Company entered into new employment arrangements with the Company. In my judgment, it would be contrary to both good conscience and the principles of good industrial relations practice for these workers to receive severance benefits and carry over with them the same status and privileges which they enjoyed with the former employers. The Company, as the new employer, was free to offer employment to the workers on mutually acceptable terms, and this is what in fact occurred. Upon the termination of the workers' employment by the former employers, collective agreements were no longer applicable to them and could not be carried over to the Company since there was no nexus between the Company and the collective agreements."* [Emphasis added] **[EB 1485-1486]**

(b) In Application No. 5 of 1999 - Transport and Industrial Workers' Union v. Trinidad Electrical Manufacturing Corporation Limited/Electrical Industries Limited **[EB 1827]**, His Honour Mr Rabathaly summarised the position:

> "*Where severance benefits have been paid and the employment nexus broken, the Court has stated that there is no successorship; thereby eliminating the Union (the former RMU). In such a case, however, the Union (with majority membership) should be only inconvenienced until such time*

that the RRCB declares it to be the RMU (upon application) after which collective bargaining could resume" **[EB 1882]**

(c) In Application No. 3 of 1991 Transport and Industrial Workers Union v Fres Meats Company Limited (In Receivership) and Fine Choice Meats Limited **[EB 1827]**, a case about Section 19 [**EB 1196**] successorship, the Industrial Court noted that for successorship under Section 48 [**EB 1217-1218**] (as opposed to section 19), where:

"*the determination of successorship is necessary for the enforceability of a collective agreement with the new employer, hence the need for a workforce to supply the necessary nexus between the new employer and the Union.*" **[EB 1825]**

65. These decisions focus partly on the 'protective' purpose of successorship being otiose when severance payments have terminated the employment relationship. While not fully articulated in these cases, it is submitted that, by focusing on the 'nexus' between a putative successor employer and the union, part of the rationale is:

(a) Section 47(2) [**EB 1217**] is of no effect, because there are no longer contracts of employment which carry the terms of the collective agreements. Relatedly, once there has been a lawful severance of employment, and the bargaining unit is without workers, there is no longer an old 'employer' of workers capable of being succeeded to;

(b) Section 48(2) [**EB 1218**] is of no effect because there are no more workers on whose behalf a new collective agreement can be bargained for under the old bargaining unit, which has been emptied. Further, because severance benefits have been paid, there is no further possibility of needing to avoid or settle a dispute.

66. While Stollmeyer JA in Eastern Commercial **[EB 1359]** held that payment of severance is a factor rather than an automatic bar to successorship, with respect, this cannot be the case in circumstances where an old employer terminates the employment of an entire bargaining unit and has paid severance benefits and where there is no extant collective agreement. Following such actions, section 48(3) **[EB 1218]** has no more work to do.

67. Similarly, on the facts before the Industrial Court in this case, section 48(3) **[EB 1218]** could not operate. The collective agreement between BWIA and the Union had already expired by effluxion of time in April 2000, over six years before BWIA ceased operations.

68. The employment of every worker in the relevant bargaining units was terminated by consent pursuant to the Supplemental Agreement. Under Clause 15 of that

Supplemental Agreement, upon the payment of the Voluntary Separation from Employment Plan (VSEP) benefit, the employee's service with BWIA was deemed terminated by consent. Further, Clause 26 explicitly confirmed that the Supplemental Agreement was "*entered into in full and final settlement, resolution and determination of all issues and matters proposed by the Union... or arising out of the termination of the services of the employees in the bargaining unit and the payment of voluntary separation benefits to them*".

69. The Court of Appeal's reliance on Section 48(2) **[EB 1218]** ignores the limitation of that provision that the dispute avoidance and settlement procedures survive only "*until another collective agreement... has been registered*". By terminating the employment of the entire bargaining unit *via* the VSEP and settling all claims under the registered Supplemental Agreement, the collective bargaining relationship between BWIA and the Union came to an end. Consequently, the negotiation and registration of "*another collective agreement*" for that empty bargaining unit was not a possibility. To hold otherwise, would be to permit CAL to be bound by 'zombie' terms and conditions for settling disputes which could not arise. While that puts no burden on CAL, it submitted that it is still wrong in law.

70. There is also a circularity to the position, that, if the dispute avoidance and settlement provisions apply to CAL, so too does the registered Supplemental Agreement, pursuant to section 49(2) **[EB 1218]** and (3) [**EB 1218**], the Supplemental Agreements. These explicitly resolved all matters between BWIA and the Union over the termination of "*employees of the bargaining unit*" then represented by the Union.

71. As a matter of law, therefore, the Court of Appeal were wrong to hold that section 48(3) **[EB 1218]** applied, even to the limited extent of binding CAL to the dispute avoidance and settlement provisions of the long-defunct collective agreements.

F. Conclusion

72. For all these reasons, the appeal should be allowed, and the orders of the Industrial Court and Court of Appeal should be set aside.

11 March 2026

ANAND RAMLOGAN SC
DANIEL GOLDBLATT

GANESH SAROOP
FREEDOM LAW CHAMBERS (TRINIDAD AND TOBAGO)