JCPC 2025/1004

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' UNION

Respondent

RESPONDENT'S WRITTEN CASE

[References in this document are to the updated Record of Proceedings ROP-xxxx in which xxxx is the page number in the Record of Proceedings]

Introduction

1. This appeal raises three important issues of industrial relations law in Trinidad and Tobago:

    i) Whether an employer declared to be a successor pursuant to section 48 of the Industrial Relations Act [**ROP-1169-1280**] and deemed to be a party to a collective agreement to which a recognised majority union is the other party, is bound in law to recognise that union as the recognised majority union without the need for the union to apply to the Recognition Registration and Recognition Board ("the Board") for certification as the recognised majority union for the workers in the bargaining unit to which the collective agreement applies;

ii) Whether the Industrial Court is precluded from declaring an employer to be a successor pursuant to section 48 and therefore to be a party to a relevant collective agreement where that agreement has already expired;

iii) Whether the payment of severance benefits to all the workers in a bargaining unit employed by the predecessor employer upon the termination of their employment with the predecessor employer in full and final settlement of all issues and matters proposed by the union and arising out of the termination of their employment, precludes a finding of successorship.

SUMMARY OF FACTS

2. BWIA West Indies Airways Limited ("BWIA") was the national airline of Trinidad and Tobago, with the majority shareholder being the Government of Trinidad and Tobago.

3. The Respondent was one of three trade unions which held the status of recognised majority union for two bargaining units comprising specific categories of workers employed by BWIA.[1] The bargaining units were comprised mainly workers who provided maintenance and engineering, accounting and other support services to BWIA.

4. Being so recognized, BWIA was required by section 40 of the Industrial Relations Act (“the Act” or “the IRA”) to recognise the Respondent as the recognised majority and to treat with the Respondent for the purpose of collective bargaining. The Respondent and BWIA were, in fact, engaged in collective bargaining immediately preceding the closure of BWIA.

5. The last registered collective agreement between the parties expired in February 1998.[2]

6. Following years of operational losses, a Government-appointed task force recommended to the Government in May 2005 that there were three options for

[1] See Certificates of Recognition Nos. 97 and 98 at the Reproduced Record of Appeal, pp. 221-225. The categories of staff in the bargaining unit can be found at Exhibit “CATTU 1” to the Union’s Evidence and Arguments filed on 28 June 2007, at **ROP-0086**
[2] Para. 8, Evidence and Arguments of the Respondent, found at **ROP-0195**

the future of BWIA: (i) restructuring; (ii) cessation of operations; or (iii) establishment of a new national airline.[3] The Government initially chose option (i), and directed the Board of Directors of BWIA to proceed accordingly.[4]

7. BWIA sent draft proposals for new collective agreements to the recognized majority unions including the Respondent on 23 December 2005. Negotiations commenced in January 2006 but by June 2006, the parties had failed to reach agreement. The Government then instructed BWIA to cease operations by 31 December 2006, the intention being to establish a new airline, run by Caribbean Airlines Limited ("CAL"), the Appellant, to commence operations effective 01 January 2007.[5] The Appellant was incorporated for this purpose with the Government as the sole shareholder.

8. BWIA subsequently advised the Respondent of its decision to cease operations with effect from 31 December 2006. This announcement was formally delivered on 08 September 2006 by the Government-appointed management consultant, Dr. Shafeek Sultan-Khan, during an address to the Respondent and other representative trade unions. Dr. Sultan-Khan disclosed a joint decision by the Government and BWIA to "transition" from BWIA to Caribbean Airlines Limited. He indicated that, in order to facilitate this transition and to mitigate its impact on employees, the parties should enter into discussions aimed at agreeing upon voluntary separation packages. He said:

> "…I recommend to the parties that we make a sincere effort to achieve the second option, the closure of BWIA through the VSEP mechanism which would facilitate a seamless transition to the new company, Caribbean Airlines. In facing this challenge, the reality is if we are unable to achieve this objective it will inevitably lead to the first option, which is the closure of BWIA without enhanced severance benefits under the VSEP Proposal…"[6]

9. BWIA also wrote to the Minister of Labour on 08 September 2006 and informed the Minister of its intention to "initiate the negotiation of a Supplemental Agreement with the Communications, Transport & General Workers Trade Union

[3] See paras. 5-9 of the Evidence and Arguments of BWIA filed in the Industrial Court, found at **ROP-0211-0478**
[4] See paras. 10 and 11 of the Evidence and Arguments of BWIA filed in the Industrial Court
[5] See paras. 12 - 14 of the Evidence and Arguments of BWIA filed in the Industrial Court
[6] See Exhibit "CATTU3", found at **ROP-0089-0095**

for the conclusion of a Voluntary Separation of Employees Plan for employees comprised in a bargaining unit represented by it."[7]

10. Negotiations between BWIA and the Respondent resulted in a supplemental collective agreement[8] recording the parties' agreement on separation benefits for employees and the manner in which existing disputes between the Respondent and BWIA would be settled after BWIA ceased operations.

11. Prior to the transition, the Appellant required Air Operators' Certificates, for each jurisdiction in which it operated. Two significant documents concerning the applications for these certificates emerged and were entered into evidence at the hearing before the Industrial Court. The first document was a ruling issued by the Canadian Transportation Agency (CTA) on an application made by BWIA on December 14, 2006 [**ROP-0679-0680**] for the transfer to the Appellant of the licences which BWIA had obtained from the CTA to operate non-scheduled and scheduled international airline services between Trinidad and Tobago and Canada. BWIA applied for the Appellant to be exempted from being required to make a fresh application for the relevant licences on the grounds that:

    (i) BWIA was carrying on business as CAL;

    (ii) The shareholders of BWIA and CAL were substantially the same. The Government of Trinidad and Tobago owned 97.128 percent of the shares of BWIA and 100 percent of the shares in CAL;

    (iii) BWIA was being reorganised, to transfer "***substantially all of the business operations and assets of BWIA to Caribbean Airlines Limited***";

    (iv) The then existing BWIA management would continue to operate CAL, and "***no material change will occur in this regard as a result of the corporate reorganisation and creation of the new company***"; and

    (v) The then holders of the BWIA authorities and operating certificates and aircraft maintenance organisations would continue in CAL in the roles they

[7] See Exhibit "E" to the Evidence and Arguments of BWIA filed in the Industrial Court, found at **ROP-0239-0242**
[8] See Exhibit "CAL2" to the Evidence and Arguments of BWIA filed in the Industrial Court, found at **ROP-0203**

were in at the time at BWIA and "***the relevant staff, crews, mechanics, administrative support and all aircraft operated by BWIA will stay the same***". (Emphasis added)

12. The other document was an application made by CAL to the Department of Transportation, Washington D.C. for an exemption under relevant United States law to permit CAL to commence operations in and out of the United States [**ROP-0671-0678**]. Like the CTA ruling, this application contains material representations which were made by CAL to the Washington authorities. These representations were:

    (i) CAL would be replacing BWIA as this country's flag carrier;

    (ii) The Government had attempted to restructure BWIA but decided to wind up BWIA and create a new flag carrier "both with a financial clean slate and many of BWIA's talented personnel and useful assets";

    (iii) CAL would receive the "core personnel" of BWIA; and

    (iv) CAL would also use the aircraft which were being used by BWIA.

13. There was a wealth of other evidence adduced before the Court that BWIA intended its operations to transition seamlessly to CAL. This was implicit from the following:

    (i) Statements made by BWIA prior to the commencement of CAL's operations: Two press releases were annexed to the Respondent's Evidence and arguments which spoke to this. The first was included in Exhibit "CATTU 10"[9], and is a press release from BWIA dated 29 December 2006, in which the company stated:

    "…When Caribbean Airlines begins operating on 01 January 2007, ***it is our mission*** to achieve on-time performance…" (Emphasis added)

    The second is press release annexed to Exhibit "CATTU 12"[10], dated 08 September 2006, in which BWIA stated:

[9] **ROP-0120-0123**
[10] **ROP-0129-0130**

> "… BWIA will continue uninterrupted service to its valued customers whilst management ensures a seamless transition to Caribbean Airlines. Caribbean Airlines will inherit the long, safe and respected experience of BWIA West Indies Airways…"

There was no distinction made between BWIA and CAL.

(ii) Evidence from CAL's own witnesses: Mr. Colville Carrington, who was CAL's Director of Maintenance and Engineering, confirmed that, with the exception of maintaining avionics, electrical and radio components, engineering and maintenance under CAL remained the same as it did under BWIA when CAL assumed operations.[11] Significantly, he disclosed that when CAL began operating, all but one of the 226 employees in his department had been taken over from BWIA.[12]

(iii) CAL's Manager of Safety, David Ramnauth (taken over from BWIA, where he served as Senior Director Air Safety) disclosed that safety operations under BWIA included flight safety and industrial safety. Under CAL, both departments continued to operate as before, but were merged.[13] He confirmed that the department under CAL comprised several persons who had been previously employed by BWIA including the safety officer for industrial safety.[14]

14. The Industrial Court has developed what it refers to as the "three substantials" test to guide it in the determination of questions of successorship as may arise under sections 19 and 48(3) of the IRA. A company will most likely be held to be the successor of another where it carries on substantially the same business as its predecessor, in substantially the same way, with substantially the same employees. While satisfaction of the "three substantials" test will in most cases guarantee successorship, the Court is mindful that it is required to determine the existence of successorship in all of the circumstances of the case and therefore treats the "three substantials" as a guide and accepts that it could find

[11] See the cross-examination of Mr. Carrington in the Industrial Court, found at **ROP-0856-0858**
[12] See the testimony of Mr. Carrington a found at **ROP-0880-0881**
[13] See the cross-examination of Mr. Ramnauth in the Industrial Court, found at **ROP-0902-0906**
[14] See the cross-examination of Mr. Carrington in the Industrial Court, found at **ROP-0905**, lines 18-30

successorship even where the "three substantials" test is not satisfied or deny successorship where the "three substantials" are present.[15]

15. Given that in this case, it was always the intention, and the evidence established, that the Appellant would take over the national airline from BWIA with the same owner, operating in the same way, and employing substantially the same employees, it ought to be not at all surprising that the Industrial Court held that the Appellant was the successor of BWIA. Moreover, given that in this case the only real change was in the corporate entity under the cover of which the national airline was to be operated, this is a perfect case in which to test the proposition of law which this appeal has thrown up. Simply put, if successorship is precluded as a matter of law in this case, and if the Respondent has lost its certified recognised majority union status in circumstances where nothing substantial has changed, then it is unlikely that, in the future, businessmen would be unable to fashion their arrangements to take over businesses in such a way as to avoid the successorship protections under the Act.

Becoming a Recognised Majority Union

16. The fulcrum of the system of industrial relations established by the IRA is the relationship between employers and recognised majority unions.

17. A 'recognised majority union' is defined as "a trade union certified under Part 3 as the bargaining agent for workers comprised in a bargaining unit" – s. 2(1). A "bargaining agent" means "a trade union certified as such by the Board with respect to a bargaining unit for the purpose of collective bargaining" – s. 2(1). A "bargaining unit" is defined as "that unit of workers determined by the Board as an appropriate bargaining unit" – s. 2(1).

18. The process of certification under Part 3 begins with an application by a trade union to the Board – s. 32(2). The application must describe "the proposed bargaining unit in respect of which certification is sought" – s. 32(3)(b) [**ROP-1173**]. Upon an application for certification being made, the Board must first determine the bargaining unit it considers appropriate. It makes that

[15] See ***The Shipping Association of Trinidad v The Seamen and Waterfront Workers' Trade Union*** (1965-75) 1TTICR 331 [**ROP-1800-1807**]; ***Lake Asphalt Company of Trinidad and Tobago (1978) Ltd v Contractors and General Workers' Trade Union and Trinidad Lake Asphalt Company*** Application No. 4 of 1987, delivered on October 17, 1979 [**ROP-1431-1446**]; ***OWTU v Petroleum Company of Trinidad and Tobago*** Applications Nos. 6 – 9 of 1994 [**ROP-1487-1508**]; ***BIGWU v Venture Credit Union Co-Operative Society Ltd*** Application No. 1 of 1998 [**ROP-1309-1317**]; ***Mary Mathlen-Sue v Luciano Valley-Vue Hotel (1968) Ltd*** RSBD No. 4 of 1998, judgment delivered on April 19, 2002 [**ROP-1447-1480**]; ***Transport and Industrial Workers' Union v. Trinidad Electrical Manufacturing Corporation Ltd/ Electrical Industries Ltd*** Application No. 5 of 1999; judgment dated July 29, 2005 [**ROP-1827-1883**].

determination having regard to the factors listed in section 33(1) [**ROP-1206**], which include "the community of interest between the workers in the proposed bargaining unit, including work location and methods and periodicity of payment", and "the nature and scope of the duties exercised by the workers in the proposed bargaining unit."

19. Having determined the appropriate bargaining unit, the Board is mandated to certify as the recognised majority union "that trade union which it is satisfied has, on the relevant date, more than fifty percent of the workers comprised in the appropriate bargaining unit as members in good standing" – s. 34(1) [**ROP-1207**]. It is also required to issue a Certificate under its seal to the union and employer – s. 37(1) [**ROP-1209**]. The Certificate must contain the name of the employer and the trade union thereby certified, the category or categories and number of workers comprised in the bargaining unit and such other matters as may be prescribed - s. 37(2) [**ROP-1209**].

20. The Board is further required to enter the particulars recorded in the Certificate in a record of recognised majority unions – s. 41(1). Importantly, section 41(2) [**ROP-1212**] provides that a recognised majority union shall be treated as a recognised majority union only when such particulars are recorded in the record of recognised majority unions. It provides further that, subject to section 35, as long as those particulars are so recorded in the record of recognised majority unions, "***the trade union shall be deemed to continue always to be the recognised majority union***." (Emphasis added)

How long does Recognised Majority Union status last?

21. The permanency of recognised majority union status which section 41(2) bestows, is disturbed in only two instances. The first is provided for in section 35 [**ROP-1212]**, to which section 41(2) is made subject, namely, where the incumbent recognised majority union is displaced by another union which establishes that it has a majority of workers in the bargaining unit as its members and is so certified by the Board. Section 35 provides that where a trade union is certified as the recognised majority union it "replaces any other trade union that immediately before the certificate was the recognised majority union for the workers comprised in the bargaining unit" and the certificate of the union which is replaced "shall be deemed to be revoked in respect of the workers." **[ROP-1208]**

22. The second is where a trade union's certificate of recognition is cancelled by the Industrial Court where the trade union is found guilty of an industrial relations offence – s. 63(1)(b), and see Regulation 12 of the Industrial Relations (Certification of Recognition) Regulations.

23. A union therefore continues to enjoy its recognised majority union status in relation to a bargaining unit, undisturbed, until either it is replaced by another recognised majority union or its certificate of recognition is cancelled by the Industrial Court for taking illegal industrial action.

The powers and privileges of a Recognised Majority Union

24. A union certified as a recognised majority union is vested with the "exclusive authority to bargain collectively on behalf of workers in the bargaining unit and to bind them by a collective agreement registered under Part IV so long as the certification remains in force" – s. 35(a). "Collective bargaining" is defined as "treating and negotiating with a view to the conclusion of a collective agreement or the revision or renewal thereof or the resolution of disputes" – s. 2(1). A "collective agreement" is defined (in s. 2(1)) as:

> "an agreement in writing between an employer and the recognised majority union on behalf of workers employed by the employer in a bargaining unit for which the union is certified, containing provisions respecting terms and conditions of employment of the workers and the rights, privileges or duties of the employer or of the recognised majority union or of the workers, and for the regulation of the mutual relationship between an employer and the recognised majority union." **[ROP-1176]**

25. A recognised majority union's authority to bargain collectively on behalf of workers in a bargaining unit is buttressed by the obligation imposed on the employer of those workers i) to "recognise that trade union as the recognised majority union", that is to say, as the bargaining agent for the workers comprised in the bargaining unit, and ii) "in good faith" to "treat and enter into negotiations" with the recognised majority union "for the purpose of collective bargaining" – s. 40(1) **[ROP-1212]**.

26. Further, a recognised majority union's exclusive bargaining authority on behalf of workers in a bargaining unit is confirmed, firstly, by the provisions in Part IV of the Act governing the procedure for the negotiation and conclusion of collective agreements. Particularly, only a recognised majority union may initiate negotiations of a collective agreement on behalf of workers – s. 44(1).

27. The recognised majority union's exclusive bargaining authority is also confirmed by the trade dispute reporting and resolution procedure provided for in Part V of the Act. Thus:

i) Only a recognised majority union may report a trade dispute to the Minister for onward resolution by the Industrial Court. A union which is not certified as a recognised majority union may only report a trade dispute where there is no recognised majority union representing workers in a bargaining unit – s. 51(1);

ii) Where there is no recognised majority union, a trade union other than a recognised majority union is competent to pursue trade disputes concerning the application of existing terms and conditions of employment or the denial of employment rights, or matters concerning the termination of employment (referred to in the Industrial Court jargon as "a rights dispute"), and no other – s. 51(5). Thus, a trade union other than a recognised majority union may not report a trade dispute (referred to in the Industrial Court jargon as "an interest dispute") over what terms and conditions a collective agreement are to contain, or what the terms and conditions of an individual contract of employment ought to be;

iii) An interest dispute, that is to say, a trade dispute concerning the content of a collective agreement may accordingly be pursued on behalf of workers in a bargaining unit only by the recognised majority union.

iv) In this regard, section 59(3) makes clear that only a recognised majority union on behalf of workers in a bargaining unit may take strike action in support of its proposals for a collective agreement and section 59(4) makes clear that a union, other than a recognised majority union, may not take strike action, and an employer may not take lockout action in relation to a dispute with workers who are not represented by a recognised majority union;

v) The recognised majority union's exclusive authority to resolve a trade dispute by strike action is further confirmed in section 60(1).

28. An early description of the operation of these provisions is given by the Industrial Court in ***Trinidad Footwear Limited v Transport and Industrial Workers Union*** (C 8 of 1974, 22 July 1974) [**ROP-1884-1891**].

The registration of collective agreements and their effect

29. Part IV of the Act provides for the registration and effect of collective agreements.

30. While the terms and conditions which are to be included in a collective agreement are matters for the parties to determine, the Act does require each collective agreement to contain certain compulsory provisions. Thus, a collective agreement must contain "effective provisions concerning appropriate proceedings for avoiding and settling disputes" – s. 43(1) – and must also contain "a provision for the settlement of all differences between the parties thereto arising out of the interpretation, application, administration or alleged violation thereof" - s. 43(2) [**ROP-1214**].

31. Collective agreements must also contain duration clauses of not less than three or more than five years – s. 43(1), unless there are special circumstances as determined by the Industrial Court which warrant a period of less than three years – s. 43(3).

32. Section 47(1) and (2) are important. They provide that:

> **"47.** (1) The terms and conditions of a collective agreement registered under section 46 (referred to in this Part as a "registered agreement") shall be binding on the parties thereto and shall be directly enforceable, but only in the Court.
>
> (2) The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment of the workers comprised from time to time in the bargaining unit to which the registered agreement relates." [**ROP-1217**]

33. The proper construction and effect of section 48 is in issue before your Lordships' Board. Section 48 [**ROP-1217-1218**] provides as follows:

> **“48.** (1) For the purposes of section 47, ***the following persons shall be deemed to be the parties to a registered agreement***:
>
> *(a)* the recognised majority union;
>
> *(b)* the employer who has entered into the registered agreement or on whose behalf and with whose concurrence the agreement has been entered into;
>
> *(c)* any successors to, or, in the case of an employer, assignees of, such employer or recognized majority union, as the case may be.
>
> (2) Notwithstanding section 43(1) ***the terms and conditions of a registered agreement shall, in so far as they relate to procedures for avoiding and settling disputes, be deemed to continue to have full force and effect until another collective agreement between the parties or their successors*** or, in the case of an employer, assignees, as the case may be, has been registered.
>
> (3) For the purposes of this section any question whether a person is a successor or assignee of another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all the purposes connected therewith.” (Emphasis added)

Applicable principles of construction

34. The modern approach to statutory interpretation is to have regard to the purpose of a particular provision and interpret its language, so far as possible, in a way which best gives effect to that purpose. In seeking the purpose of a statutory provision, the interpreter is not confined to a literal interpretation of the words, but must have regard to the context and scheme of the relevant Act as a whole - per Lewison LJ in ***Pollen Estate Trustee Co Ltd v Revenue and Customs Comrs*** [2013] 1WLR 3785[16], [24]. In ***R (Quintavalle) v Secretary of State for Health*** [2003] 2 AC 687[17], [8], Lord Bingham of Cornhill said:

> “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

[16] **ROP-1509-1523**
[17] **ROP-1728-1749**

> whole should be read in the historical context of the situation which led to its enactment."[18]

35. Similarly, in ***Bloomsbury International Ltd v Department for Environment, Food and Rural Affairs*** [2011] 1 WLR 1546[19], [10], Lord Mance JSC stated:

> "In matters of statutory construction, the statutory purpose and the general scheme by which it is to be put into effect are of central importance… In this area, as in the area of contractual construction, "the notion of words having a natural meaning" is not always very helpful (Charter Reinsurance Co Ltd v Fagan [1997] AC313, 391C, per Lord Hoffmann), and certainly not as a starting point, before identifying the legislative purpose and scheme."

36. More recently, in ***Rossendale Borough Council v Hurstwood Properties (A) Ltd*** [2022] AC 690, at [10], Lord Briggs and Lord Leggatt JJSC, referring in their joint judgment to the passages just quoted, stated:

> "There are numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose."[20]

37. In construing an Act, it is also the modern approach to avoid a construction that produces an absurd result, or one which would operate in a way that is unworkable, impracticable, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief, since this is unlikely to have been intended by Parliament – per Lord Kerr of Tonaghmore JSC in ***R v McCool*** [2018] 1 WLR 2431[21], [24], (endorsing passages from Bennion on Statutory Interpretation, 6th ed. (2013), section 312); per Simler LJ (as she then was) in ***Eynsham Cricket Club v Revenue and Customs Comrs*** [2021] 1 WLR 3220[22], [45]; per Lord Scott of Foscote in ***Gumbs v Attorney General of Anguilla*** [2010] 2 LRC 221[23], at [44]; and per Lord Millett in ***R (on the application of Edison First Power Ltd) v Central Valuation Officer*** [2003] 4 All ER 209[24], at [116].

38. But the strength of the presumption that Parliament did not intend a provision to operate in any of these ways depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it - per Lord Scott in ***Gumbs v***

[18] **ROP-1736**, at D-E
[19] **ROP-1318-1341**
[20] **ROP-1772**, at E
[21] **ROP-1546-1593**
[22] **ROP-1373-1398**
[23] **ROP-1411-1430**
[24] **ROP-1660-1727**

Attorney General of Anguilla [2010] 2 LRC 221, at [44]; per Lord Millett in ***R (on the application of Edison First Power Ltd) v Central Valuation Officer*** [2003] 4 All ER 209, at [117]; and per Lord Kerr JSC in ***R v McCool*** [2018] 1 WLR 2431, at [25].

The continued recognition of the recognised majority union upon a declaration of successorship under section 48

39. It is the Appellant's case that the Industrial Court has jurisdiction under section 48 to determine only that an employer is the successor of another, whereupon the successor is deemed to be a party to a registered collective agreement for the purposes of section 47. The Appellant says that section 48 goes no further. It does not impose any obligation on the successor employer to recognise the recognised majority union. The declaration by the Industrial Court that the Respondent continues to be the recognised majority union and must be recognized by the Appellant as such, usurps the exclusive authority of the Board to certify recognised majority unions and is accordingly made without jurisdiction. In effect, therefore, it is the Appellant's case that the Respondent does not enjoy recognised majority union status in relation to the Appellant as successor and must apply to the Board under Part III to gain such status.

40. Respectfully, when read properly in context, the effect of a declaration of successorship under section 48 is to continue the union's recognised majority union status and to bind the successor employer to recognise the union as such.

41. First of all, a declaration that an employer is the successor of another does not extinguish the certification of recognition of a recognised majority union. Section 41(2) makes clear that a recognised majority recorded as such in the record of recognised majority unions is "deemed always to be the recognised majority union" [**ROP-1212**], except for the limited circumstances in which de-certification is provided for under the Act. This means that, as defined in the Act, the union continues to be certified as the bargaining agent for workers comprised in the bargaining unit in respect of which it is certified.

42. Secondly, section 48(1) deems a successor employer to be a party to a registered collective agreement as defined, that is to say, an agreement between an employer and the recognised majority union on behalf of workers employed in a bargaining unit for which the union is certified. A successor employer, therefore, becomes a party to a collective agreement containing terms and conditions respecting workers in the bargaining unit covered by the collective agreement. Obviously, the successor cannot be held to be a party to a collective agreement in relation to workers which it does not employ. As such, the effect of deeming a successor to be a party to a collective agreement is that it must apply

to terms of that agreement to the workers it employs in the bargaining unit covered by the agreement.

43. Thirdly, the opposing party to the collective agreement to which the successor is deemed a party is by definition the recognised majority union of the workers employed by the successor in the bargaining unit for which the union is certified.

44. Fourthly, as recognised majority union for the workers employed by the successor in the bargaining unit, the recognised majority union continues to enjoy the exclusive authority to bargain collectively on behalf of those workers, including the exclusive authority to conclude collective agreements on their behalf.

45. Fifthly, as provided for in section 48(2), a registered collective agreement, in so far as it relates to procedures for avoiding and settling disputes, continues to have full force and effect until another agreement between the parties or their successors has been registered. Implicit in section 48(2) is that upon a declaration of successorship under section 48(3), the parties to the collective agreement, that is to say, the recognised majority union and the successor employer, would engage with each other in collective bargaining for the replacement of the now expired agreement. This means that it is envisaged that in the event of a dispute over the terms of the agreement, the recognised majority union may report a dispute to the Minister and may take strike action in support of its position, or refer the dispute to the Industrial Court for resolution. The Act envisages, in other words, that the union's recognised majority union status continues in relation to the workers in the bargaining unit and therefore in relation to those workers employed by the successor.

46. And finally, under section 40, "the employer" is required to recognise as the recognised majority union, a trade union which obtains a certificate of recognition for workers comprised in a bargaining unit. "The employer" referred to in section 40 must be a reference to the employer of the workers comprised in the bargaining unit for which the trade union has obtain certification. The employer who, as successor, is deemed to be a party to a collective agreement governing the terms and conditions of employment of workers employed by the successor in the bargaining unit to which the collective agreement applies, must be construed as "the employer" for the purposes of section 40.

47. For all these reasons, a successor employer deemed to be a party to a collective agreement becomes obliged to recognise its counterpart to the collective agreement as the recognised majority union of the workers in the bargaining unit covered by the collective agreement, and the Court of Appeal was right to uphold the Industrial Court's finding in this regard.

48. The obligation on the successor employer to recognise the recognised majority union as such operates as a matter of the proper construction and therefore as a matter of law. The fact that the successor employer is not yet named in the certificate of recognition or in the particulars recorded in the record of recognised majority unions is therefore besides the point. The certificate and record must now be read as substituting the successor employer for the predecessor employer, just as the collective agreement must be deemed to be read as having the successor employer as a party thereto.

49. Section 48(1) is a deeming provision. It deems a successor employer to be a party to a collective agreement when as a matter of fact it is not. The proper interpretation and effect of deeming provisions was summarised by Lord Briggs JSC in ***Fowler v Revenue and Customs Comrs*** [2020] 1 WLR 2227[25], [27], in the following passages:

> "There are useful but not conclusive dicta in reported authorities about the way in which, in general, statutory deeming provisions ought to be interpreted and applied. They are not conclusive because they may fairly be said to point in different directions, even if not actually contradictory. The relevant dicta are mainly collected in a summary by Lord Walker of Gestingthorpe JSC in DCC Holdings (UK) Ltd v Revenue and Customs Comrs [2011] 1 WLR 44, paras 37—39, collected from Inland Revenue Comrs v Metrolands (Property Finance) Ltd [1981] 1WLR637, Marshall v Kerr [1995] 1AC148 and Jenks v Dickinson [1997] STC853. They include the following guidance, which has remained consistent over many years:
>
> "(1) The extent of the fiction created by a deeming provision is primarily a matter of construction of the statute in which it appears.
>
> "(2) ***For that purpose the court should ascertain, if it can, the purposes for which and the persons between whom the statutory fiction is to be resorted to, and then apply the deeming provision that far, but not where it would produce effects clearly outside those purposes***.
>
> "(3) But those purposes may be difficult to ascertain, and Parliament may not find it easy to prescribe with precision the intended limits of the artificial assumption which the deeming provision requires to be made.

[25] **ROP-1399-1410**

"(4) A deeming provision should not be applied so far as to produce unjust, absurd or anomalous results, unless the court is compelled to do so by clear language.

"(5) ***But the court should not shrink from applying the fiction created by the deeming provision to the consequences which would inevitably flow from the fiction being real***. As Lord Asquith of Bishopstone memorably put it in East End Dwellings Co Ltd v Finsbury Borough Council [1952] AC 109, 133: 'The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.' "[26] (Emphasis added)

50. Section 48(1) creates the fiction of a successor employer being a party to a collective agreement. A court ought not to shrink from applying the fiction to the consequences which would inevitably flow from the fiction. One inevitable consequence of the fiction is that the successor must now deal with and indeed is expected to deal with its opposing number who by definition is the recognised majority onion with exclusive authority to bargain on behalf of the successor's workers in the bargaining unit. It is but a small step from being deemed to be a party to a collective agreement and being required in law to recognise the recognised majority union as such. It is a step which is also consistent with the purpose of successorship. As the Industrial Court held in ***OWTU v Petroleum Company of Trinidad and Tobago*** (Applications Nos. 6 – 9 of 1994; judgment dated July 18, 1994)[27]:

"Successorship in industrial relations is not confined merely to honouring the contracts of employment or the workers and the previous collective agreements. ***Under the industrial relations principle of successorship, the new employer not only inherits the workers in the bargaining units, and consequently, must apply the terms and conditions of employment to them, but he also inherits the recognised majority union and must treat and negotiate with the recognised majority union for all the purposes of collective bargaining***. The recognised majority union is inseparable from the bargaining units in respect of which it obtained and holds its certificate of recognition such from the Board so long as its certification continued to subsist. Its bargaining status and authority as the recognised majority union for the bargaining units are not

[26] **ROP-1408**, at C-G

[27] See also ***Banking Insurance and General Workers Union v Venture Credit Union Co-Operative Society Ltd*** Application No. 1 of 1998; judgment delivered on March 16, 2001; **Transport and Industrial Workers' Union v. Trinidad Electrical Manufacturing Corporation Limited,** A. 5 of 1999 [**ROP-1827-1883**]

interrupted because the workers in the bargaining unit become the workers of the new employer. ***The union's status does not terminate or is affected or diminished by the fact that its certificate of recognition has not been altered to reflect the name of the new employer***..."[28] (Emphasis added)

The expiry of the Collective Agreement

51. It does not appear that the Appellant is pursuing the issue of the expiry of the collective agreement as a distinct ground of appeal. Rather, there appears now to be an amalgamation of the grounds alleging that successorship is precluded because of the expiry of the agreement and the termination of the workforce with enhanced compensation.

52. Respectfully, the contention that successorship under section 48 is precluded because the term of the collective agreement expired is a non-starter. Section 48(1) deems the recognised majority union, the employer who entered into the agreement and any successor to the employer, to be the parties to a registered agreement. Section 48(1) is of course premised upon the existence of a registered agreement. There is no dispute in this case that the Respondent and BWIA entered into a collective agreement which was registered and that a registered agreement existed. As required by the IRA, that agreement was for a fixed term which has long expired. The simple answer to the expiry of the agreement ground of appeal is that section 48(2) of the IRA deems the registered agreement to continue to have full force and effect in so far as it relates to terms and conditions relating to procedures for avoiding and settling disputes, notwithstanding section 43(1) which requires the agreement to be for a fixed term. In the result, there was in existence at all material times a registered agreement to which section 48(1) could be applied. And since one of the entities deemed to be a party to a registered agreement is the successor to the employer who entered into the agreement in the first place, there was no bar to the Court proceeding to determine in accordance with section 48(3) whether the Appellant was a successor to BWIA, the predecessor employer.

53. In any event, it is respectfully submitted that a registered agreement does not cease to be such because its term has expired. A registered agreement is simply

[28] **ROP-1504**

a collective agreement as defined under the IRA which has been registered as such by the Industrial Court under Part IV of the IRA. – s. 47(1). The expiry of the term of the agreement does not change the fact of its registration or its physical existence as an instrument registered with the Court. There is no provision in the Act which de-registers a collective agreement the term of which has expired. The expiry of the term of a registered collective agreement may render the agreement unenforceable *qua* collective agreement (subject to section 48(2)), but does not change the fact of its existence as a registered agreement. Indeed, the Act itself recognises a distinction between an agreement registered with the Court and one which is 'in force' – ss 43(4) and 85(6). Thus, a collective agreement which was registered with the Court before the commencement of the IRA is only deemed to be registered under and in conformity with the IRA if it was in force immediately prior to the commencement of the Act.

54. Furthermore, even aside from continuation in force of the procedural provisions for the avoidance and settlement of disputes, a collective agreement whose terms have expired continues to impact upon workers in a bargaining unit. Section 47(2) deems the terms and conditions of a registered agreement to be the terms and conditions of the individual contracts of employment of the workers comprised from time to time in the bargaining unit to which the registered agreement relates. Upon the expiry of the term of a registered agreement, its terms and conditions (subject to section 48(3)) may cease to be in force and become unenforceable *qua* collective agreement, but the contracts of employment of the workers covered by the registered agreement continue in force and effect on the terms and conditions deemed by section 47(2) to be contained therein. It would be a strong thing to suggest that the IRA is to be read as emptying the individual contracts of employment of all content upon the expiry of the term of the collective agreement.

55. Even without section 48(2), therefore, the existence of a registered collective agreement, the term of which has expired, is of significant importance to the continued relationship between the employer and the individual workers who comprise the bargaining unit, and is of equal importance to the relationship

between a successor employer and the individual workers who that employer has retained in the bargaining unit.

56. Respectfully, it would produce an absurd result to construe the IRA as precluding the operation of the successorship provisions where the term of the collective agreement has expired. If that were the correct interpretation of the Act, it would be a simple matter for the putative predecessor and successor employers to arrange the transfer of business operations to take place after the agreement has expired and so defeat the operation of the protection afforded by the successorship provisions.

The termination of the entire workforce by BWIA

57. It is no doubt because the expiry of the collective agreement point is by itself untenable that the Appellant attempts to fashion a jurisdictional bar to the operation of section 48(3), not apparent on the face of the words used, out of a combination of the expiry of the agreement and the termination of the workforce by BWIA. The argument appears to be that neither section 47(2) nor section 48(3) can be prayed in aid to overcome the expiry of the collective agreement because, i) with the termination of the entire workforce, there are no underlying employment contracts in respect of which the terms of the expired agreement can survive – see [62] & [65(a)]; and ii) once the workers within the bargaining unit took severance payments, the bargaining unit was effectively emptied of workers and the nexus of employment between the original employer and the recognised majority union broken, thus rendering section 48(3) inapplicable. Put differently, once there is a lawful severance of employment with the 'old' employer and the bargaining unit is without workers, there is no longer an 'old' employer of workers capable of being succeeded to – [65(a)].

58. Furthermore, section 48(2) 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. In addition, because severance benefits have been paid, there is no further possibility of needing to avoid or settle a dispute – [65(b)]. In the circumstances, where the entire workforce has been terminated by the old employer and compensated, and there is no extant

collective agreement, "section 48(3) has no more work to do", and so presumably, successorship cannot as a matter of law arise – [66]. As the Appellant puts the point in the round (at [69]):

> "The Court of Appeal's reliance on Section 48(2) 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."

59. It is to be noted that the logic of the Appellant's argument would preclude successorship in every case where the employment relationship between the workers in the bargaining unit and the 'old' employer is severed before the 'new' employer takes over. The argument is not dependent on the payment of severance benefits or on an agreement by the terminated workers to accept enhanced benefits in full settlement of any pre-existing claims or claims arising from termination. Successorship is precluded once the bargaining unit is emptied by the termination of the workforce. But if that is the correct interpretation of the IRA, the legislature will have created a rouge's charter for potential successor employers intent on escaping the provisions of pre-existing collective agreements and the relationship with a recognised majority union. All that needs to be done is to arrange for the termination of the workforce by the 'old' employer prior to the purchase or transfer of a business.

60. Moreover, given that it could always have been anticipated that the employment relationship between the 'old' employer and the workers in the bargaining unit could come to an end before purchase or transfer, thereby emptying the bargaining unit, the protection introduced by the successorship provisions would be rendered otiose. The usual anticipated scenario in which a successorship potentially occurs begins with the closure of the business of the 'old' employer and the consequent termination of the employment of the workers in the

bargaining unit, with or without the payment of severance benefits. Negotiations for the purchase of the business by the 'new' employer may then begin or be continued, with the transfer of assets and operations taking place at a later point in time. In accordance with the Appellant's submission, even in satisfaction of the "three substantials" test as developed by the Industrial Court, the 'new' employer carries on substantially the same business as the 'old' employer, in substantially the same way, with substantially the same employees, successorship will be precluded because the bargaining unit will already have been emptied by the severance of the employment relationship between the 'old' employer and the entire workforce. The same result would occur even if there is a seamless transfer of the business from the old to the new employer, as in this case, since as a matter of law, the employment relationships between the 'old' employer and the workforce will have terminated at the instant the 'old' employer recedes from the scene and the 'new' employer takes over.

61. Respectively, the successorship protection afforded by section 48(3) can only be read sensibly on the premise that the employment relationship of the workers in the bargaining unit with the 'old' employer has already been severed. If not, there is as yet no need for successorship. The collective agreement would continue to bind the 'old' employer and the workers would continue to turn to the 'old' employer to vindicate their contractual rights. Indeed, the need for successorship protection arises precisely because the 'old' employer is out of the picture and the workers in the bargaining unit are now employed with the 'new' employer. This is why one of the factors which the Industrial Court considers when determining successorship is whether the new employer has retained or employed the workers in the bargaining unit. It is the workers employed by the 'new' employer in the bargaining unit who are in need of protection. Indeed, in this case, the evidence is clear that there never was any intention not to continue the employment of at least a substantial portion of the workforce and the Industrial Court found as a fact that the Appellant did so.

62. In those circumstances, which are not usual, there continues to be work for section 47(1) to do to deem the terms of the collective agreement to be the terms and conditions of the individual contracts of employment between the workers in

the bargaining unit covered by the collective agreement and the 'new' employer. Likewise, there is work for section 48(2) to do because there will be disputes between those workers and the 'new' employer to which the procedures in the collective agreement for the avoidance and settlement of disputes will apply.

63. Respectfully, the payment of severance benefits to the workforce by the old employer and the acceptance of those payments in settlement of all outstanding claims have no impact on this analysis. Given that under section 19 of he Act, a successor employer may be held liable for debts owed by its predecessor, it is likely that the potential successor will insist that all outstanding debts to the workers owed by its predecessor are settled before the successor takes over the predecessor's operations. Again, to interpret the Act as precluding successorship where this occurs is to denude the protection intended by the operation of section 48(3).

64. Section 48(3) requires the Industrial Court to make a successorship determination taking into account "all the circumstances in accordance with good conscience and the principles of good industrial relations practice." This means that the Court must take into account the fact that the workers were all terminated by the old employer and paid enhanced benefits in satisfaction of outstanding claims. There is nothing in section 48(3) which limits the broad discretion of the Court and makes it inapplicable where the workers have all been terminated by the predecessor employer and paid off. It would be a strong thing and indeed subversive of the protection intended to be afforded by section 48(3) to read in such a limitation.

A footnote on decisions of the Industrial Court cited by the Appellant

65. The Appellant has cited previous decisions of the Industrial Court, not followed by the Industrial Court itself in recent times, and now overruled by the Court of Appeal in the decision under appeal and in the Court of Appeal's previous decision in ***Eastern Commercial***[29], also cited by the Appellant. Among those previous decisions are ***National Union of Government and Federated***

[29] **ROP-1359-1372**

Workers v. Caribbean Bottlers Limited (Application 5 of 1998)[30] and **Yorke Holdings** (T.D. No. 172 of 1986)[31]. In them, His Honour Mr. Khan was of the view that the purpose of successorship was to protect workers against the loss of benefits based on their length of service and that where severance benefits had been paid their prior service would have been bought out and there was accordingly no need for a successorship finding. It is clear from these authorities that Khan P was of the view that the Court's earlier decision in ***The Shipping Association case*** was authority for this proposition. But the fact is that the Court in the ***The Shipping Association case*** made no such finding and therefore the authority of the ***Yorke*** and ***Caribbean Bottlers*** cases were in any event undermined.

66. ***The Shipping Association case*** was a dispute between the union and the employer involving a claim for severance pay for certain workers. The question was whether in calculating their severance benefits the service with the predecessor employer was to be taken into account. In that case the Court stated at pages 5 to 6 of the judgment:

> "It is considered unfair that a worker should have his experiences and services wiped out by a transaction in which he had no part and which he quite probably did not even know what was taking place. The situation would of course be different if as part of the transaction accepted arrangements were made for compensating the workers for service with the previous employer."[32]

67. That is the dicta which inspired the view that the purpose of successorship is to protect workers against the loss of benefits based on their length of service and that where severance benefits have been paid successorship cannot be found. It was accepted by the Court of Appeal in the ***Eastern Commercial*** appeal that that passage must be understood in the context of the dispute to which it related. That dispute was whether severance pay should be calculated by reference only to the service with the successor employer or to both the successor and the predecessor employer. The Court was therefore saying that if arrangements had

[30] **ROP-1481-1486**
[31] **ROP-1892-1900**
[32] **ROP-1806**

been made to compensate the worker for his service by the predecessor company then in calculating severance pay upon termination by the successor the service to the predecessor company will not be considered. That accords with principle. The Court was not saying that if severance pay is paid by the predecessor there can be no finding of successorship.

Conclusion

68. For all of the above reasons, it is respectfully submitted that this appeal ought to be dismissed.

Dated: 25 May 2026

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