

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' UNIONION

Respondents

STATEMENT OF FACTS AND ISSUES

References to the Record are in the format [Electronic Bundle page number/paragraph or line number, where applicable].

A chronology is annexed to this statement of facts and issues.

Statement of Agreed Facts

1. This appeal concerns whether Caribbean Airlines Limited (“**CAL**” or “**the Appellant**”) is the successor employer to BWIA West Indies Airways Limited (“**BWIA**”) pursuant to section 48(3) of the Industrial Relations Act, Chapter 88:01 (“**IRA**”), and the consequences that flow from such a finding.
2. The Communication, Transport and General Workers’ Union (“**the Union**” or “**the Respondent**”) is a registered trade union and was the Recognised Majority Union (“**RMU**”) for certain bargaining units of BWIA, having been so recognised by Certificates of Recognition Nos. 97 and 98 of 1976 [221 - 222]. The Union

represented workers holding positions in the engineering, accounting and maintenance departments as well as workers in support services [10/1].

3. BWIA was a company registered under the Companies Act, Chapter 81:01, and was the national airline and “flag carrier” of Trinidad and Tobago until 31 December 2006. Its principal shareholder was the Government of Trinidad and Tobago (“**the Government**”) [10/1].
4. CAL is a company registered under the Companies Act and incorporated on 27 September 2006. It has been the national airline and flag carrier of Trinidad and Tobago since 1 January 2007, and its principal shareholder is the Government of Trinidad and Tobago [34/7].
5. In April 2005 the Government appointed a Task Force to consider three options for BWIA and its future. These included, (i) the closure of BWIA, (ii) the closure of BWIA and formation of a new company, (iii) the restructuring of BWIA with a new mandate [91].
6. In January 2006, BWIA and its recognised majority unions, including the Union, entered into negotiations for new collective agreements (the existing collective agreement between the Union and BWIA having expired on 10 April 2000). These negotiations broke down in or around June 2006.
7. On 8 September 2006, the Government and Board of BWIA announced the closure of BWIA and the establishment of a new airline (CAL) and put forward a proposal for a voluntary separation from employment plan (“**VSEP**”) [92].
8. Between 8 and 25 September 2006, BWIA and each of the four recognised majority unions negotiated supplemental agreements for a VSEP. The supplemental agreement between BWIA and the Union (“**the Supplemental Agreement**”) was executed on 25 September 2006 [106]. The other three unions executed their agreements on 26 September 2006 [215].

9. The Supplemental Agreement provided, amongst other things, that upon BWIA paying the full amount of voluntary separation benefits to an employee, the employee's service would be deemed to have been terminated by consent (clause 15 **[108/15]**). Clause 25(a) provided that the Union and employees agreed to give full support and cooperation to achieve "*a seamless transition from the closure of the Company to the establishment and operationalisation of the new airline*" **[109/25]**.
10. Clause 26 stated that the Agreement was entered into "*in full and final settlement, resolution and determination of all issues and matters proposed 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*" **[109/26]**. 100 per cent of workers in the four bargaining units applied for voluntary separation **[355]**.
11. The Supplemental Agreements were registered under Section 49(1) of the IRA by the Industrial Court on 12 December 2006 **[435]** following an order of the Court of Appeal dated 11 December 2006 **[401]**, which reversed an earlier refusal by the Industrial Court to register them **[387 – 398]**.
12. BWIA ceased operations on 31 December 2006 **[99]**. CAL commenced operations as the national airline and flag carrier of Trinidad and Tobago on 1 January 2007 **[10/1]**.

Proceedings before the Industrial Court

13. On 22 March 2007, the Union filed an application with the Industrial Court **[75]** seeking a declaration pursuant to section 48 of the Act that CAL was the successor employer to BWIA.
14. By its Evidence and Arguments dated 26 June 2007 **[76 - 85]**, the Union sought orders to the effect that (i) CAL is the successor to BWIA under Section 48(3) of the IRA, (ii) the Certificates of Recognition Nos 97 and 98 of 1976 held by

the Union are valid, and (iii) CAL must recognised the Union as the recognised majority union with respect to workers in the functions for which the Union was the recognised majority union in BWIA [83/4].

15. The Union called five witnesses and maintained that [489 – 512] CAL was the successor to BWIA within the context of good conscience and the principles of good industrial relations practice, on the basis that CAL was carrying on substantially the same operation as BWIA, in substantially the same way, with substantially the same employees [13/12]. The Union argued that the “three substantial test” had been met. Further it argued that (i) an expired collective agreement and severance payments are not bars to an application under Section 48(3) BWIA and (ii) CAL had taken steps in a deliberate and calculated manner to deprive the Union of its bargaining rights [14/13] and therefore the orders should be granted on the basis of good conscience and good industrial relations.

16. BWIA filed evidence and arguments but did not call any witnesses. BWIA contended that, following the acceptance of the VSEP by all of its former employees and the payment of benefits, BWIA was released from any and all claims or liability arising out of the relevant employees’ prior service with BWIA [218 – 219].

17. CAL called four witnesses and contended [513 – 555] that the Industrial Court lacked jurisdiction to determine the application because (i) there were no valid registered collective agreements in force, (ii) all BWIA employees had had their employment terminated such that the relevant bargaining unit no longer existed and the Union was no longer the recognised majority union (iv) the only means by which the Union could become a recognised majority union of CAL was by application to the Registration, Recognition and Certification Board (“**the Recognition Board**”) under Sections 32 and 33 of the IRA.

Further, CAL argued that the Supplemental Agreement and severance payments barred a claim under Section 48(3) as a matter of law, and, in any

event, the Union had not established that the “three substantial test” had been met.

18. The Industrial Court sat on various dates from 1 April 2014 to 20 September 2016.

Judgment of the Industrial Court

19. On 4 October 2017, the Industrial Court (Thomas-Felix P, Aberdeen, Rabathaly, Mahabir, and Seale Members) delivered its judgment **[9 - 28]** and order **[29 - 30]**, ruling in favour of the Union. The Court held that:

- (1) The Industrial Court was not deprived of jurisdiction to determine the Union’s application for an order under Section 48 of the IRA. There is no requirement or precondition for the existence of a subsisting collective agreement before a determination of successorship can be made. The rights of collective bargaining remain whether or not there is a subsisting collective agreement **[22/25]**;
- (2) Payment of compensation to workers when their service has ended is not a determinative factor or a bar to a declaration of successorship **[24/33]**;
- (3) The bargaining units and the rights of the Union continued to exist after the closure of BWIA when the same categories of workers were absorbed into CAL **[25/39]**;
- (4) From the totality of the evidence, CAL conducted substantially the same operations as BWIA, in substantially the same way and with substantially the same categories of workers, and there was substantial continuity of the business enterprise of BWIA by CAL **[27/42]**.

20. The Industrial Court ordered 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 RMUs and to honour the terms of the registered collective agreement. The

Court further ordered that Certificates of Recognition Nos. 97 and 98 of 1976 are binding on the parties [30] and that CAL must recognise the Union as the Recognised Majority Union of the workers of the bargaining units for which Certificates of Recognition Nos. 97 and 98 of 1976 apply.

Proceedings before Court of Appeal

21. CAL filed a Notice of Appeal on 7 November 2017 [974], identifying 16 grounds of appeal [67–70], namely:

- (a) The Industrial Court's decision was against the weight of the evidence, or alternatively, the court made findings based on inferences not justified by the evidence.
- (b) The decision was erroneous in law, as no court acting judicially and properly directed would have reached that determination.
- (c) The court erred in holding there was no requirement for a subsisting collective agreement before determining successorship, thereby misconstruing sections 47 and 48 of the IRA.
- (d) The court failed to appreciate that without a subsisting collective agreement, any individual terms and conditions saved by section 48(2) terminated when the workers' contracts of employment ceased.
- (e) The court erred in holding that a successor is bound by obligations of any collective agreement, failing to recognise that there must be an existing registered collective agreement specifically between the former employer and the union.
- (f) The court erred in ruling that CAL was a successor constrained by section 48 to recognise the Union and honour the terms of the registered collective agreement.
- (g) The court failed to appreciate there was no registered collective agreement since the previous one had expired on April 10, 2000.
- (h) The court erred in claiming there was uncontroverted evidence that bargaining units continued under CAL, as no evidence was actually adduced regarding those units.

- (i) The court erred in not rejecting the Union's witnesses, as none were shown to be members of the Union while employed at BWIA.
- (j) The court failed to appreciate that the bargaining units no longer existed after BWIA's operations ceased on December 31, 2006.
- (k) The court failed to appreciate that the proper authority for determining a bargaining unit (if none existed) was the Recognition Board.
- (l) The court erred in ruling that Certificates of Recognition Nos. 97 and 98 of 1976 were binding on CAL, and that CAL was duty-bound to honour them.
- (m) The court erred in holding that the negotiated and enhanced VSEP was not a determinative factor or bar to successorship.
- (n) The court failed to appreciate that the Supplemental Agreement was entered into in "full and final settlement, resolution and determination of all issues and matters arising out of the termination of the services of the workers".
- (o) The court failed to appreciate that it is contrary to good industrial relations principles to carry over terms and union representation rights to a new employer when the union and previous employer had already negotiated an agreement to terminate all such matters.
- (p) The court erred in its assessment of evidence regarding substantial differences in operations, failing to account for the fact that similarities were inevitable due to the highly regulated nature of the airline industry.

22. The appeal was heard by Dean-Armourer, Holdip, and Yorke-Soo Hon JJA on 16 June 2023.

23. In the Court of Appeal, CAL argued that:

- (1) The Industrial Court erred in finding that the payment of enhanced voluntary separation benefits was not a determinative factor barring successorship [989/16 – 19]. CAL distinguished Eastern Commercial Lands on the basis that in that case the transaction was found to be a disingenuous device to eliminate the union, whereas here the Union voluntarily participated in the separation process and the Supplemental Agreement was entered into in *"full and final settlement, resolution and*

determination of all issues and matters arising out of the termination of the services of the workers" [991/20 -21].

- (2) The Industrial Court had misapplied the "three substantial test" in failing to account for the heavily regulated nature of the airline industry **[992/22]**. Where the regulatory framework permitted flexibility, CAL had adopted materially different approaches in its departmental structures, reporting lines, and operations from BWIA **[994/27]; [995-998/30-33]**.
- (3) The Industrial Court was wrong to find that bargaining units had 'carried over' to CAL, since Cross-examination revealed that none of the Union's witnesses were actually members of the Union's bargaining units **[1000/37 -39]**. Further, it was argued that a Section 48 application required a workforce to supply the necessary nexus between the employer and the union and there was no such nexus in this instance **[1002/40-41]**.
- (4) The Industrial Court had exceeded its jurisdiction in ordering CAL to recognise the Union as a majority recognised union of CAL since that was exclusively a determination for the Recognition Board under Sections 32 and 33 of the IRA **[1002/42 – 46]**
- (5) Even if CAL was the successor to BWIA pursuant to Section 48(3) the Industrial Court erred in ordering CAL to honour terms of registered collective agreements that had expired in 2000, and any order should be limited the dispute resolution procedures under Section 48(2) **[1004/ 47 – 50]**

24. The Union argued before the Court of Appeal that:

- (1) The CAL could not challenge the Industrial Court's factual findings as a matter of law, pursuant to Section 18(2) of the IRA, and, in any event, the finding of successorship, which was a discretionary decision for the Industrial Court, was supported by the evidence **1020/25 – 27]** and was

applied in accordance with the statute with good conscience and good industrial relations practice **[1025/35 – 37]**

(2) The payment of severance benefits does not defeat a finding of successorship, as set out in Eastern Commercial Lands **[1024/31 -32]** and severance did not destroy the collective bargaining relationship **[1027/40]**.

(3) The obligation for CAL to recognise the Union flows as a matter of practical common sense and good industrial relations practice, from a finding of successorship, since the new employer takes the place of the previous employer on the certificate of recognition **[1032/55 - 56]**.

(4) The expiry of the collective agreement is irrelevant to successorship since Section 48(2) contemplates a new collective agreement being negotiated with a successor and the relevant union, and the terms of the collective agreement survive through individual contracts of employment **[1033/58 – 60]**.

25. At the hearing of the appeal, the Union conceded that the Order made by the IC that CAL must honour the terms of the registered collective agreement between BWIA and the Union ought properly to have been narrowed to apply only to those terms which relate to procedures for avoiding and settling disputes as stated in Section 48 (2) of the IRA.

Judgment of the Court of Appeal

26. In a judgment delivered on 22 April 2024 by Dean-Armorer JA (with Yorke-Soo Hon JA and Holdip JA concurring) **[31 - 74]**, the Court of Appeal identified two major issues: first, whether the Industrial Court was wrong in law in its finding that CAL is the successor to BWIA; and second, what orders may be made consequent upon a finding of successorship **[46/57–58]**.

27. On the first issue, the Court of Appeal:

(1) Agreed with the Industrial Court that there is no requirement in the Act for the existence of an unexpired collective agreement as a precondition to a finding of successorship. The Court noted that none of the provisions of sections 19, 43, 47 and 48 require the existence of an unexpired collective agreement and relied on the judgment of Stollmeyer JA in Eastern Commercial Lands [48–50/64–67];

(2) Held that, following the decision in Eastern Commercial Lands the payment of severance benefits is not determinative of successorship but is a factor to be considered by the Industrial Court [55/82]. It further held that as the Supplemental Agreement was concluded between the Union and BWIA, it did not purport to bind BWIA's successor, and it did not purport to remove the Union [60/93 – 94]

(3) The factors which the Industrial Court was said to have failed to consider relating to the nature of the regulated industry and that there are only two airports in Trinidad and Tobago, would not have diminished the substantial similarities but rather “*provided explanations for the similarities*” [56/85]. Further, applying the test in Watling v William Bird and Son Contractors Limited the Cour of Appeal found no misdirection in law, no misunderstanding of the facts, and no perversity. There was adequate evidence of the “three substantials” [61/96].

28. Regarding the second issue, the Court of Appeal held that successorship under the Act is “*equally concerned with perseverance of a union's right and ability to represent the employees, and consequentially the right of the individual employee to be represented*” [63/107]. The Court of Appeal found no fault with the Industrial Court's order that CAL is obliged to recognise the Union as the recognised majority union and that Certificates of Recognition Nos. 97 and 98 of 1976 are binding on CAL [65/112]. The Court of Appeal noted that it regarded itself as bound by the pronouncements of the Court of Appeal in Eastern Commercial Lands [65/111].

29. Having taken note of the Union's concession that Union was not asking for the terms of the registered collective agreement to bind CAL other than those governing the settlement of disputes, the Court of Appeal varied the first paragraph of the Industrial Court's order to read:

"That Caribbean Airlines Limited as the successor to British West Indian Airways Limited is hereby constrained by the provisions of Section 48 of the Industrial Relations Act to recognise the Communication, Transport and General Workers' Trade Union as one of its Recognised Majority Unions and to honour the terms of the registered collective agreement ... in so far as they relate to procedures for avoiding and settling disputes as stated in Section 48(2) of the Industrial Relations Act." [65/113]

30. The appeal was otherwise dismissed with no order as to costs [66/114–115].

Appeal to the Judicial Committee

31. Conditional leave to appeal to the Judicial Committee was granted by the Court of Appeal on 7 June 2024 [1063]. Final leave was granted on 14 October 2024 [1066]. CAL filed its Notice of Appeal to the Judicial Committee on 16 December 2024 [1068].
32. On 28 July 2025 the Board directed that the case should be listed for a case management hearing and CAL was to file and serve submissions in advance of the hearing addressing why the grounds of appeal should be heard by the Board, in particular, whether certain grounds were seeking to challenge concurrent findings of fact by the courts below and whether others had been raised below. CAL was directed to reformulate its grounds of appeal, and the Union was required to file any response in advance of the hearing.
33. On 19 February 2026 CAL filed its written submissions and reformulated grounds of appeal in advance of the Case Management Hearing listed for 16 March 2026.
34. On 24 February 2026 the Board directed CAL to file its case in support of its new grounds of appeal by 12 March 2026 and directed the Union to file a note

of its position as to whether any grounds of appeal still fall within the principle in Devi v Roy by the same date.

35. On 12 March 2026, the Board directed that the case management hearing for 16 March 2026 was vacated and that the grounds of appeal which CAL may rely on in the appeal are limited to those set out in its written case dated 11 March 2026.

Statement of Issues

36. The issues in the appeal to the Judicial Committee are as follows:

- (1) In the context of expired collective agreements, does the lawful termination of all employment contracts within a bargaining unit, accompanied by full severance payments under a registered Supplemental Agreement, extinguish the operation of Sections 48(2) and/or 48(3)?
- (2) Does Section 48(3) of the IRA empower the Industrial Court to direct a successor employer to recognise a trade union as its Recognised Majority Union?
- (3) Can certificates of recognition issued by the Recognition Board in respect of one employer (BWIA) be declared by the Industrial Court as binding on a different employer (CAL) by operation of Section 48(3)?

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