

Appeal No. JCPC/2025/0118

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

BETWEEN

SERVOL LIMITED

Appellant

AND

EARLY CHILDHOOD TEACHERS TRADE UNION

Respondent

THE APPELLANT'S WRITTEN CASE

References to the Record are in the Electronic Bundle format Page and paragraph [MS/X/Y]

Introduction

1. The Appeal concerns the proper invocation and exercise of the Industrial Court's power under section 10 (3) of the Industrial Relations Act ("the IRA"). in the absence of terms and conditions for terminal benefits/pensions for the affected workers upon their retirement and to award damages.
2. By this appeal Servol asks the Board to uphold the minority decision of Rajkumar JA) in the Court of Appeal that the Industrial Court did not lawfully nor properly invoke its power under section 10 (3) of the IRA .
3. There are other similar matters before the Industrial Court against Servol have been pending this appeal.

4. In summary, Servol respectfully submits that the Courts below (or either of them):
 - a. misconstrued and misapplied section 10 (3) of the IRA in determining that the Industrial Court had properly and lawfully exercised its residual discretion under section 10 (3) – see Civil Appeal No. P213 of 2015 **Carib Brewery Limited v National Union of Government and Federated Workers** - in circumstances where the teachers' contracts did not stipulate any retirement benefits in finding that the teachers were entitled to retirement benefits and made an award of damages;
 - b. erred in law and misapplied section 10 (3) of the IRA in the creation of retirement benefits as a wholly new cause of action and a new liability upon the Appellant not contracted for -see **Byron v Eastern Caribbean Amalgamated Bank [2019] UKPC 16**;
 - c. unfairly and in breach of natural justice determined that the parties need not be given notice of nor heard (whether in writing or otherwise) in respect of section 10 (3) of the IRA;
 - d. erred in failing to have any or any proper regard to **National Insurance Act 32:01**, and retirement benefits thereunder in their consideration of section 10 (3) of the IRA; and
 - e. the majority of the Court of Appeal further erred and misconstrued section 10 (3) of the IRA when it remitted the matters to the Industrial Court on the issue of damages/compensation only and failed to recognize that the Industrial Court's failure to consider section 10 (3) factors could not be cured by a remittal as to quantum.
5. The Appellant will respectfully develop its analysis in further detail below. The agreed facts are set out in the parties Agreed and Statement of Fact and Issues and Chronology.

The Industrial Relations Act – ss 2, 7 & 10

6. Section 2 defines trade dispute or dispute:

“trade dispute” or “dispute”, subject to subsection (2), means any dispute between an employer and workers of that employer or a trade union on behalf of such workers, connected with the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any such workers, including a dispute connected with the terms and conditions of the employment or labour of any such workers, and the expression also includes a dispute between workers and workers or trade unions on their behalf as to the representation of a worker (not being a question or difference as to certification of recognition under Part III);..”

7. Section 7 provides:

7. (1) In addition to the powers inherent in it as a superior Court of record, the Court shall have jurisdiction—

(a) to hear and determine trade disputes;...

(e) to hear and determine any other matter brought before it, pursuant to the provisions of this Act.

8. It is also helpful to the Board to set out below the terms of the section 10 of the IRA so that section 10 (3) may be seen in immediate context.

9. Section 10 provides as follows:

“10. (1) The Court may, in relation to any matter before it—

(a) remit the dispute, subject to such condition as it may determine, to the parties or the Minister for further consideration by them with a view to settling or reducing the several issues in dispute;

(b) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;

(c) without prejudice to and in addition to its powers under section 7(2), (6) and (7), award compensation on complaints brought and proved before it by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award of any term thereof (other than an order or award for the payment of damages or compensation);

(d) dismiss any matter or part of a matter or refrain from further hearing or from determining the matter, if it appears that the matter or part thereof is trivial, or that further proceedings are unnecessary or undesirable in the public interest.

(2) The Court shall make no order as to costs in any dispute before it, unless for exceptional reasons the Court considers it proper to order otherwise and, notwithstanding anything to the contrary in the Supreme Court of Judicature Act, relating to the award of costs, the Court of Appeal shall in disposing of any appeal brought to it from the Court make no order as to costs, unless for exceptional reasons the Court of Appeal considers it proper to order otherwise.

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

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

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

(4) Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the Court may, in any dispute concerning the dismissal of a

worker, order the re-employment or reinstatement (in his former or a similar position) of any worker, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such re-employment or reinstatement, or the payment of exemplary damages in lieu of such re-employment or reinstatement.

(5) An order under subsection (4) may be made where, in the opinion of the Court, a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

(6) The opinion of the Court as to whether a worker has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to subsection (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatever.

(7) Where, in any proceedings for the non-observance of an order or award or the interpretation or application of a registered agreement (within the meaning of Part IV), it appears to the Court that a worker of the employer has not been paid an amount to which he is entitled under such an order or award or such an agreement the Court, in addition to any other order, may order the employer to pay the worker the amount to which he is entitled and any such amount shall be deemed to be damages and be recoverable in the manner provided by section 14.

10. Servol respectfully submits that the words of Parliament are to be construed in accordance with the principles articulated for the Board by Lord Hodge in **Monteil v Board of Inland Revenue** [2024] UKPC 37 para 2 and Lord Burrows in **Maharaj v Minister of Finance** [2026] 4 WLR 25 para 24.

The Parties & the Background Facts

11. The Appellant -Service Volunteered for All (“Servol”), is a voluntary community-focused service Not-for-Profit organization founded 1970 to provide services to the underprivileged in the community. Servol has trained teachers employed in its Early Childhood Care And Education (“ECCE”) Centres nationwide **[EB 205-206]** for children between the ages of 3 and 5. **[EB133]**
12. For its operations Servol’s funding relies on government subventions **[EB 187-194]** donations from a number of local businesses, international foundations as well as its own productive efforts to run its centres **[EB Vol 327]**.
13. The Respondent, the Early Childhood Teachers’ Trade Union, is a registered Trade Union in Trinidad and Tobago (“the Union”) that represents the three ECCE teachers (“the workers or employees”) in the employ of Servol who attained or were about to attain the stipulated retirement age of 60. **[EB 139 & 338]**
14. The facts in respect of each of the three ECCE teachers as summarized in the Statement of Facts and Issues – paras 8 to 19 are adopted here without repetition.
15. In all three cases the Union initially claimed that:
 - a. the termination of Ms. Kamanee Jassant-Somai **[EB 338-341]**, Ms. Magdalene Stanislaus-Marshall **[EB 239-242]** and Ms. Hyacinth Rampersadsingh **[EB 312-5]** on the basis of a non-existent policy of retirement at age 60 was harsh and oppressive and that Servol as the

employer had refused to provide the workers with their terms and conditions of employment; and

- b. claimed damages for wrongful/harsh and oppressive termination, and retirement benefits for the teachers and loss of earnings from date of termination to date of judgment.

16. Upon the Union's claim of Servol's failure to have a clearly distinguishable retirement age being eventually abandoned **[EB 125-7 & 1271]**, the claim was reduced to the issue of terms and conditions treating with terminal benefits for these employees, being harsh and oppressive and not in keeping with good industrial relations practices.
17. Servol contended that each teachers' termination was due to the effluxion of time up to age 60 and relied upon the Ministry of Education policy to that effect **[EB351]**.
18. Servol defended these proceedings on the basis that the three teachers and the Respondent, were fully aware of the retirement age of 60 **[EB 120-7]** prior to their termination, and that termination was based on 'effluxion of time', as each of them had reached retirement age of - (60) years at the time of termination.
19. Servol thus argued that the termination of these employees was therefore not a dismissal but retirement; that there were no written terms and conditions of employment that treat with terminal benefits for these ECCE teachers given its reliance upon State subventions and donations and none of the workers were terminated in breach of Industrial Relations principle **[EB 239-242; 312-5 & 338-341]**.
20. This led to unresolved Trade Disputes between the parties being referred to the Industrial Court for their resolution.

Industrial Court Judgments

21. The Parties agreed that the Industrial Court was to resolve the issues by way of written submissions only as set out in the filed evidence and arguments **[EB 71, 83 & 97]**.

22. On 31 July 2023 and 21 September 2023, the Industrial Court delivered three judgments in similar terms **[EB 70-82; 83-95 & 96-106]**. In summary in all three cases the Industrial Court accepted that there was no basis for payment of retirement benefits under their contracts. Neither was there any collective agreement in existence nor any statute that provided for retirement benefits upon which it relied. However, the Industrial Court made awards to the employees in the total sum of \$473,000.00 in respect of retirement or terminal benefits which it characterized, wrongly it is submitted, as damages.

23. The Industrial Court reasoned **[EB 70-82]** as follows:
 - a. It identified the issues as (i) whether the teachers were entitled to any terminal benefits; (ii) whether it was contrary to the principles of good industrial relations practice to deny the workers terminal benefits; and (iii) whether the Industrial Court had jurisdiction to do so (that is, to order the payment of terminal benefits) **[EB 74]**;

 - b. Having observed that the employee reached the age of retirement her employment came to an end **[EB 71]**

 - c. It cited the decision **TD 97 of 2019 National Union of Government and Federated Workers v Servol** dated 17 October 2019 as determining - contractual payment of termination benefits for years of service, unlike the case before it, less National Insurance Scheme payments **[EB 73]**;

 - d. In response to the issues, it next cited the decision of the Court of Appeal (Sharma CJ, Hamel-Smith & Warner JJA) in Civil Appeal No. 83 of 2002 **Carib Development Company Limited v National Union of**

Government and Federated Workers dated 17 December 2003 in respect of the jurisdiction of the Court of Appeal to review an Industrial Court reinstatement decision **[EB 73-4]**;

- e. It next adopted the decision of the Court of Appeal (A. Mendonça; J. Jones & P.A. Rajkumar JJA) in Civil Appeal No. P213 of 2015 **Carib Brewery Limited v National Union of Government and Federated Workers** dated 19 February 2020 on section 10 (3) of the IRA which it claimed permitted it jurisdiction **[EB 74-8]**;
 - f. It observed that in the cases cited that damages were awarded arising from dismissals due to misconduct were neither harsh, nor oppressive nor contrary to good industrial relations under section 10(3) of the IRA. It opined that cases that arose from termination upon retirement gives rise to a greater entitlement to terminal benefits/ damages than dismissal for misconduct **[EB 78-9]**;
 - g. It further asserted that the payment of such terminal benefits/ damages was in the interests of both the workers and the employer; and the employees being so satisfied, was in the interests of the community especially given that Servol was geared as a teaching institution towards community building **[EB 79]**; and
 - h. It also cited the decision of the Court of Appeal (A. Mendonça, V. Kokaram & M. Wilson JJ.A.) in Civ Ap P405 of 2019 **North Central Regional Health Authority v National Union of Government and Federated Workers** and awarded damages at one month for each year of service **[EB 80-2]**.
24. The Appellant respectfully submits that the Industrial Court erred and/or misdirected itself in law in that:

- a. It misconstrued the jurisdiction under section 10(3) of the IRA to order the payment of terminal benefits that did **not** form part of any contract of employment term –see **National Union of Government and Federated Workers v Servol**;
- b. It failed to recognize any limits to, and failed to apply the principles as to section 10(3) of the IRA factors as set out in the leading judgment of Rajkumar JA in Civil Appeal No. P213 of 2015 **Carib Brewery Limited v National Union of Government and Federated Workers**;
- c. It misapplied and failed to distinguish the decision in Civil Appeal No. 83 of 2002 **Carib Development Company Limited v National Union of Government and Federated Workers**;
- d. It failed to appreciate the distinction between a consensual and predictable termination of a contract of employment upon retirement and an unpredictable and unilateral termination by dismissal (justifiable though it may be) on the ground of misconduct;
- e. It did not hear nor invite the parties to address it in writing, or otherwise, on the exercise of its jurisdiction under section 10 (3) of the IRA or the issues thereunder and specifically did not consider the financial impact upon the Community nor Servol; and
- f. In further particular it did not hear the parties upon and did not apply and thus failed to take into account its own decision **National Union of Government and Federated Workers v Servol** and the availability of National Insurance scheme benefits.

Court of Appeal Proceedings

25. On 25 August & 27 October 2023, the Appellant appealed to the Court of Appeal against each of the three (3) decisions. **[EB 12-69]**.
26. On 21st March 2025, the Court of Appeal (R. Boodoosingh & G. Henderson JJA; & P. Rajkumar, dissenting,) determined the Consolidated Appeals and gave detailed judgements **[EB 1132- 1193]**.
27. The issues before the Court of Appeal were as follows **[EB 1134]**:
 - i) Whether jurisdiction under section 10 (3) of the IRA was lawfully assumed, invoked and /or exercised;
 - ii) Whether a sufficient right to be heard was afforded to the parties before the invocation of jurisdiction under section 10 (3) of the IRA; and
 - iii) Whether the decision of the Industrial Court improperly devised a wholly new cause of action or ground of substantive liability.
28. The Majority (R. Boodoosingh & G. Henderson JJA) **[EB1171 -1193; paras 121-193]** allowed the Appeal **in part** and remitted the matter to the Industrial Court for re-examination of the issue of quantum only -see paras 185 to 188.
29. The Minority (P. Rajkumar JA) allowed the appeal **EB 1132-1171; paras 1-120]** and set aside the decisions below in all three cases, finding that the Industrial Court assumption and exercise of its powers under section 10 (3) (a)-(b) was legally flawed.
30. In summary, Servol respectfully submits that the majority of the Court of Appeal erred:

- a. In failing to correct the errors of the Industrial Court as set out above at paragraph 23 above;
 - b. In failing to find that jurisdiction under section 10 (3) of the IRA was not lawfully invoked;
 - c. In failing to find that the decision of the Industrial Court improperly created a right to terminal benefits and awarded damages in respect of the same;
 - d. In failing to apply the principles as to section 10(3) of the IRA factors as distilled in the leading judgment of Rajkumar JA in Civil Appeal No. P213 of 2015 **Carib Brewery Limited v National Union of Government and Federated Workers**;
 - e. In failing to find - that no or no sufficient right to be heard was afforded to the parties before the invocation of jurisdiction under section 10 (3) of the IRA; and
 - f. having correctly found, at paragraph 185, that the Industrial Court had been deprived of evidence from Servol on the section 10(3) further erred in failing to appreciate that factors that might impact upon it, if such awards were made, and to what extent this scenario might impact on other employees, wrongly failed to set aside the entire decision as flawed.
31. The detailed reasoning of the Majority of the Court of Appeal under distinct headings for the purpose of analysis.
32. Ronnie Boodoosingh, JA (as the Chief Justice then was) delivered the Majority Judgment and reasoned as follows **[EB 1171- 1193]**:

Industrial Court Reasons

- a. The main issue in dispute was whether the teachers were entitled to any retirement benefits either by way of pension or lumpsum payment / gratuity on retirement, they not having any written contracts stipulating any retirement benefits and whether the Industrial Court had jurisdiction to determine that issue under section 10 of the IRA. The Industrial Court did not decide that the employees were dismissed nor were such dismissal made in harsh and oppressive circumstances The Industrial Court had before it an unresolved dispute and it was exercising a jurisdiction conferred by section 10 (3) IRA to make an order or award - paras 125 to 140;
- b. The Industrial Court has in the past, in an appropriate case, made orders and awards where there was no finding of a dismissal under harsh and oppressive circumstances or not in accordance with good industrial relations practice -see **Carib Brewery Limited v National Union of Government and Federated Workers; TD 43 of 1994 OWTU v National Petroleum Marketing Company Limited and Civ App 33 of 2000 Lever Brothers v OWTU** - paras 141 & 159;

Was the issue of the failure to make provision for retirement benefits a dispute properly before the Industrial Court

- c. The dispute was whether the absence of provision of retirement benefits was contrary to good industrial relations practice was before the court. Servol raised both entitlement to benefits, and jurisdiction of the Court to entertain the issue - para 142 - 6;
- d. The parties to the dispute left it to the Industrial Court to decide the issue without providing any additional written submissions on the law to assist the Industrial Court. Thus, Servol cannot complain on appeal that they were not given an opportunity to address the issue of whether the failure

to provide for a retirement benefit constituted a breach of good industrial relations practices for which an award was justifiable. Servol gave general evidence as to it being a voluntary, not for profit, organisation and in receipt of government subventions. However, Servol put no specific evidence before the Industrial Court as to the effect payment of retirement benefits would have on its operations or about any hardship or impact payment of a retirement benefit would have on Servol - para 147-8;

Did the Industrial Court have jurisdiction to decide whether retirement benefits should be paid in circumstances where there was no written contract providing for benefits and was such jurisdiction exercised lawfully;

- e. Trade dispute included a dispute connected with terms and conditions - see section 2 of the IRA. If Servol's argument that the absence of a stipulated provision for retirement benefits meant that the Industrial Court had no jurisdiction to decide the issue was rejected, then the Industrial Court had to decide what retirement benefits should follow -. If there is jurisdiction to make an award for a justifiable dismissal taking account of years of unblemished service, there is no reason in principle why an award cannot be made taking account of unblemished service where there was no dismissal, but a retirement -paras 150- 60;
- f. The workers had contended that their retirement was thrust upon them as their age of 60 years approached and had to request information about their terms and conditions of employment suggested that they were not told earlier in their careers that they had no retirement benefit and that their retirement age. In this case, there was no written contract which stated that there were to be no retirement benefits. The Industrial Court is a specialist Court mandated by Parliament to resolve the dispute before it as pleaded. Servol had simply not provided for retirement benefits. It is correct that the law generally does not provide a right of a

worker to a retirement benefits; some written contracts of employment provide for them, some do not - paras 157, 161- 4 & 168

Had the Industrial Court conducted a proper section 10 (3) analysis with adequate reasons

- g. The Industrial Court took account of the interests of both Servol and that of the workers in resolving the trade dispute. It balanced their interests in accordance with its exclusive statutory mandate. It discussed the community interest requirement. Servol advanced no specific evidence about any special community interest point relevant to the disposition of the case, such as the effect on other employers – para 165;
- h. The Industrial Court is the body with the expertise, experience and exclusive mandate to decide what constitutes good industrial relations principles. The Industrial Court had to decide whether, given the length of service of these three workers, it was contrary to good industrial relations, for them to be terminated (whether before the retirement age or by the effluxion of time) with no provision for retirement benefits for them. The Industrial Court decided it was contrary and awarded damages – para 166 -9;
- i. The Industrial Court considered what was fair and just in the circumstances, acknowledging that Servol was a not for profit, voluntary organisation, but also having no specific evidence before it of any consequences which may result by determining it would be contrary to good industrial relations practice not to provide for a retirement benefit. The Industrial Court also considered that the workers had unblemished records of service as teachers for many years, were unexpectedly retired at 60, and that it would be in the interests of workers in Servol as a whole to make some provision for retirement benefits. The Court had the

documented history of the dispute and had the agreement of the parties to decide the issues in accordance with the evidence put forward without the need for cross-examination of the witnesses. No further written submissions were filed apart from the Evidence and Arguments. There was no error of law as the Court had the jurisdiction to decide the dispute because it was put before them -see section 18 (2) of the IRA - paras 169-70;

- j. The Industrial Court's decision need not adopt a particular format as long as they were sufficient to establish what requirements of section 10 (3) of the IRA were clearly in mind as to the dispute before them was, the requirements of section 10 (3) and their analysis of the section 10 (3) requirements based on the evidence and arguments placed before them. Overly detailed analysis was unnecessary. Weight of the different factors was a matter for the Industrial Court. Not every point need be traversed but the Industrial Court must explain its reason for the benefit of employment stakeholders para 171 -2;
- k. In this case the Industrial Court took account of the evidence placed before it and had a rational basis for its decision, and identified: undisputed facts; the contentions of the parties; analysis of the law including the basis for making an award under section 10 (3) where there was no finding of a dismissal under harsh and oppressive circumstances; application of section 10 (3); discussion of good industrial relations practice in relation to the facts; conclusions and findings; the requirements for making an award; and, the statement of the award. para 173;

Byron v Eastern Caribbean Amalgamated Bank [2019] UKPC 16

- l. This case is distinguishable from **Byron v Eastern Caribbean Amalgamated Bank** [2019] UKPC 16 and not within para 30. There was no evidence that non-provision of a retirement benefit was a term of

their contract of employment. The dispute began over the retirement age of 60 years and not 65, but the retirement age issue seemingly fell away. Servol asserted there was no retirement benefit. There was no evidence that this had previously been told to the workers. The issue before the Industrial Court whether the workers should be entitled to a retirement benefit in accordance with good industrial relations practice and what that might be in a specific context and factual circumstance. Accordingly, the Industrial Court did not, in these circumstances “*devise a wholly new cause of action or ground of substantive liability*”. It was carrying out its section 10 (3) function of resolving the dispute placed before it -paras 174-6;

- m. The Court of Appeal must not substitute its views on the dispute for that of the Industrial Court. The Industrial Court’s decision is not unreasonable on the evidence before it, there was no material failure to take account of relevant evidence and there was not any taking account of irrelevant evidence. Ordinarily there would be no basis to interfere with the decision in any event. But, far more importantly, the Court of Appeal has no jurisdiction to second guess the Industrial Court on what constitutes good industrial relations practice in Trinidad and Tobago or to prescribe what considerations it should take into account in arriving at its conclusion -paras 177-9;

The National Insurance Act Scheme

- n. The National Insurance Act scheme provides state pension benefits to workers based on the contributions of employers and employees. It was not considered by the Industrial Court in any way as a reason why the lack of a retirement benefit in their employment contract would not be a breach of good industrial relations practice. Such a benefit was within the term “*notwithstanding any other rule of law to the contrary*” in the IRA and was not an answer to the question of whether the lack of a retirement benefit in this case constituted a breach of good industrial relations principles or practice -para 180

Should the Industrial Court have invited submissions on the award or damages?

- o. In Civil Appeal No. P213 of 2015 **Carib Brewery Limited v NUGFW** Rajkumar JA for the Court of Appeal at para 23 that the effect of prior decisions of the Industrial Court and the Court of Appeal is that the Industrial Court has jurisdiction under section 10(3) to make an award compensating a worker in respect of past service, despite dismissal in circumstances that were not harsh or oppressive, or not contrary to good industrial relations principles. The **Carib Brewery** case was founded on a dismissal and not a termination by retirement, it stands to reason that if an award of compensation may be given to a dismissed worker who, on the evidence, was justifiably dismissed, then one whose employment was terminated in circumstances where a breach of good industrial relations practice occurred should also be entitled to seek an award of compensation – paras 181-3;

- p. Servol did not contemplate that the Industrial Court would go on to make an award in the sums it did. Had they considered the wide ambit of section 10 (3) they may have considered it appropriate to advance evidence and submissions on the effect such awards might have had on the operations of Servol so that the impact on the parties might have been more fully considered. The Industrial Court was deprived of evidence from Servol on factors that might impact on it if such awards were made and to what extent this scenario might impact on it in relation to other employees -paras 184-185; and

- q. The exceptional circumstances include the fact that Servol is a not for profit company; that it provides important national service; it was not represented by legal Counsel; the case was novel in the sense of seeking to establish a retirement benefit when none was stated before; and this decision may impact on other employees of the company,

quantum should be remitted to make such award as it thinks fit -paras 186-190.

Submissions - The Industrial Court had no power/jurisdiction to make the order that it did

33. By way of preliminary and overarching submissions Servol respectfully submits that given jurisdiction was in issue, the majority of the Court of Appeal was wrong to conclude – para 142- 8 - that it was clear that the issue of the failure to make provision for retirement benefits was a trade dispute properly before the Industrial Court without the resolution of that issue.
34. Servol respectfully further submits, that the Court of Appeal Majority misconstrued section 10 (3) of the IRA in deciding that the Industrial Court had properly and lawfully exercised its power under section 10 (3) in circumstances where the employees did **not** have any contractual terms providing for any retirement benefits.

Retirement & Not Dismissal

35. Firstly, the Courts below correctly found that the jurisprudence on section 10 (3) of the IRA had been extensively considered - see S.T. No. 1 of 1999 **Estate Police Association v Airport Authority of Trinidad and Tobago**; **OWTU v National Petroleum Marketing Company Limited** both considered in Civil Appeal No. P213 of 2015 **Carib Brewery Limited v National Union of Government and Federated Workers**. Further the Courts below correctly noted that these were all dismissal cases.
36. Servol respectfully submits that Rajkumar JA in **Carib Brewery Limited** faithfully summarized that jurisprudence - paras 4, 27 & 46-7 as follows:
 - a. The jurisdiction under Section 10 (3) is wide but not unlimited ;

- b. The Court **must** act within the parameters of section 10 (3) (a) and (b);
 - c. The Court **must** have regard to the matters that it was required to in the exercise of that Jurisdiction; and
 - d. Failure to do so in compliance with its statutory mandate is an **error** of law reviewable by the Court of Appeal.
37. Secondly, Servol respectfully submits that the Industrial Court correctly found, and the Court of Appeal unanimously affirmed, that there was no dismissal of the three teachers **[EB 1178/140]** whether harsh or oppressive or not in accordance with good industrial relations.
38. Thirdly, Servol respectfully submits that the Courts below **[EB 71;1138-9 & 1172 & 1176]** correctly found that it was undisputed that each teacher had reached the age of retirement – see *Chitty on Contracts Vol II Specific Contracts 31st Edition, page 1193, paragraph 39-170* **[EB 1138/13 & 1140/18]** and that there were no terms and condition for retirement or terminal benefits.
39. Fourthly, Servol respectfully submits that that the Industrial Court and the Majority, in the context of section 10(3) of the Act, improperly equated dismissal with retirement and further improperly equated damages for dismissal with provision for retirement. Servol respectfully further submits that it was illogical for the Industrial Court and the majority of the Court of Appeal to assert that there was a greater entitlement to retirement benefits than upon an employee's successful claim arising from a dismissal.
40. Fifthly, Servol further respectfully submits that the Industrial Court, in error, failed to identify any underlying contractual or other entitlement to retirement benefits. Servol respectfully submits that the majority of the Court of appeal failed to correct that error.

41. Sixthly, Servol respectfully thus submits the assumption by the Industrial Court of a jurisdiction to make any award in respect of terminal or retirement benefits which did not previously exist, was not a course open to the Industrial Court within the ambit of s10 (3) or otherwise as it, and not the parties, in substance, **rewrote** the parties' contractual terms and then adjudicated upon those terms.
42. Seventhly, Servol further respectfully submits that the Industrial Court erred when it misapplied **Carib Brewery Limited v National Union of Government and Federated Workers** to the circumstances where the teachers' contracts did not stipulate any retirement benefits in finding that the teachers were entitled to retirement benefits and made an award of damages. Section 10(3) did not empower the Industrial Court to determine the parties' contractual terms with **retroactive** effect. Servol respectfully submits that the Court of appeal wrongly failed to correct that error.
43. In conclusion, Servol respectfully submits that section 10 (3) of the IRA did not confer upon the Industrial Court the power or jurisdiction to impose upon an employer an unforeseen liability to make retirement benefits for which it had neither contracted nor had imposed upon it by statute (e.g. National Insurance contributions). Servol submits that the Courts below erred in deciding otherwise.

Byron v Eastern Caribbean Amalgamated Bank -New Cause of action - retirement benefits

44. Eighthly, Servol submits the Industrial Court below purported to exercise jurisdiction under section 10(3) of the IRA in circumstances where the employees did **not** have any contractual terms providing for any retirement benefits amounted in law to the improper creation of a new cause of action.
45. Ninthly, Servol relies upon the legal analysis of Lady Hale for the Board in **Byron v Eastern Caribbean Amalgamated Bank** [2019] UKPC 16 – see para 30-1 to the effect that nothing in the Antiguan section 10 (3) of the Industrial Court Act 1992 (Cap 214) permitted the Industrial Court to devise a wholly new

cause of action or ground of substantive liability. Servol respectfully accepts that the facts are distinct but submits that section 10 (3) of the Industrial Court Antigua Act 1992 (Cap 214) and section 10(30 of the IRA are for all intents and purposes identical

46. Tenthly, Servol respectfully submits that lower courts' determination that the employees were now entitled to retirement benefits, was a new source of liability and as a matter of law was unreasonable, procedurally unfair (as will be developed below and unsupported by the evidence.

Section 10(3) factors

47. In summary, Servol respectfully submits that the Courts below in error failed to apply the binding jurisprudence as to section 10(3) of the IRA factors and reason -see **Carib Brewery Limited v National Union of Government and Federated Workers** per Rajkumar JA.
48. Firstly, Servol respectfully submits and accepts that the Industrial Court is the body with the expertise, experience and exclusive statutory mandate in respect of industrial relations. Further, the Court of Appeal does not lightly interfere with the Industrial Court's assessment as to what constitutes good industrial relations, for employees to be terminated with no provision for retirement.
49. Secondly, Servol further respectfully says the majority of the Court of Appeal correctly identified the policy for the giving of proper reasons within a reasonable time, is necessary for accountability, transparency and to promote trust and confidence in the justice system as the Industrial Court is responsible for promoting such practices, explaining their decisions is vital for employers, employer associations, trade unions and employees to be appropriately guided.

50. Thirdly, Servol respectfully further submits that the Industrial Court below failed - to comply with these policy criteria and that such falling short amounted to an error of law.
51. Fourthly, Servol respectfully submits that the Court of Appeal failed to require of the Industrial Court an examination of whether, in all the circumstances of the present case and having regard to the interests of the company, the worker and the community as a whole, it would be fair and just to make an order under s.10 (3) as would do equity to all concerned – see **Carib Brewery Limited v National Union of Government and Federated Workers** para 4(iii) &17. Such a failure was an error of law.
52. Fifthly, Servol respectfully submits that in the exercise of the section 10 (3) jurisdiction the Industrial Court is enjoined to pay regard to specific factors and must show that it consciously, in the exercise of that discretion, considered the matters that it was required to do so by expressly referring in its analysis– see **Carib Brewery Limited v National Union of Government and Federated Workers** para 18 to 21,& 33-48.
53. Sixthly, Servol respectfully submits that the Industrial Court
 - a. failed to demonstrate under the first limb of section 10 (3) of the IRA that it meaningfully addressed the factors set out showing that it considers it fair and just having regard to the interests of the persons immediately concerned and the community as a whole by identifying who in its view were the persons immediately and directly concerned and what their interests were;.
 - b. failed to demonstrate any consideration of the financial impact of its decision upon those persons immediately concerned and the community as a whole such as the beneficiaries of Servol's service; other employers and employees;

- c. failed to demonstrate any consideration of the necessary balancing exercise that included that the employment relationship came to an end without wrongdoing on the employer's part; and
 - d. failed to demonstrate any consideration the financial impact of its awards upon Servol; similarly circumstanced employers and upon the community services that Servol provided as a whole and all the stakeholders. .
54. Seventhly, Servol respectfully further submits that the Court of Appeal failed to identify these errors on the part of the Industrial Court and that these failures were fatal to the lawful exercise of its discretion under section 10(3) of the IRA -see Civ App P092 of 2021 S.M. Jaleel v Government Industrial and General Workers Union (C. Pemberton, M. Wilson & Henderson JJA) paras 85-7 .

National Insurance Act Scheme

55. In summary, and in any event, Servol respectfully submits that the majority erred in law in failing to hold that that the Industrial Court had erred in law in failing to have regard to National Insurance Act 32:01 and the retirement benefits payable to registered employees.
56. Firstly, Servol respectfully submits that the Industrial Court, in error, made no reference to this long established existing statutory scheme, which pursuant to sections 36 (1) and 38 (1) of the National Insurance Act, contributions are made partly by the employee and partly by their employer which provided for statutory retirement benefits.
57. Secondly, Servol respectfully further submits that the Industrial Court had the statutory power, which it did not exercise, to consider and invite Servol's attention to and seek evidence - in respect of the statutory state retirement

benefits under the compulsory¹, national insurance system which was a relevant matter in the context of section 10(3) of the IRA.

58. Thirdly, Servol respectfully further submits that while the majority of the Court of Appeal :

- a. noted that It is correct that the law generally does not provide a right of a worker to a retirement benefit and that some written contracts of employment provide for them, some do not (para 168);
- b. further correctly observed that, retirement benefits under the national insurance system were within the term “notwithstanding any other rule of law to the contrary” in section 10(3) the IRA (para 180); but
- c. in error, misdirected themselves in failing to conclude that retirement benefits payable to registered employees pursuant to the National Insurance Act 32:0 was directly relevant to the residual discretion under section 10(3) of the IRA; and

in further error failed to have regard to the Industrial Court’s decision in **TD 97 of 2019 National Union of Government and Federated Workers v Servol** which considered National Insurance Scheme payments.

59. Fourthly, Servol respectfully further submits that the Industrial Court disregarded that the National Insurance Act 32:01 and the retirement benefits payable to registered employees amounts to judicial legislation of a liability upon employers generally whether in the charity sector or otherwise.

¹ “**36. (1)** *There is hereby established a system of **compulsory national insurance** under which subject to subsection (2) employed persons registered or eligible to be registered under Part II shall be insured under this Act in respect of the several contingencies in relation to which benefits are provided under section 46(1) and there shall be payable to or in respect of such persons in the prescribed circumstances, any benefit so payable.*”

Breach of Natural Justice

60. In summary, Servol respectfully submits that both the Courts below unfairly and in breach of natural justice determined that the parties need not be given notice of nor heard (whether in writing or otherwise) in respect of section 10 (3) of the IRA contrary to section 4 of the Constitution and the common law principles of fundamental justice and section 9 of the IRA;
61. Secondly, Servol respectfully cites section 4 (b) of the Constitution which provides: *section 4 (b) the right of the individual to equality before the law and the protection of the law*-see Lord Slynn in **Rees v Crane** [1992] AC 173, 188 & 195 and Lord Kerr in **Sam Maharaj v Prime Minister** [2016] UKPC 37 paras 24 to 32.
62. Thirdly, Servol respectfully submits that the Industrial Court had the statutory power under section 9² of the IRA to seek from Servol input on its proposed invocation of section 10(3) of the IRA before judgement but failed to provide Servol with such an opportunity-see f Lord Clarke in **Blackburn v LIAT (1974) Ltd [2020] UKPC 9** para 57 to 69 on the equivalent provision in Antigua and Barbuda.
63. Fourthly, Servol respectfully submits that it is not in dispute that the parties before the Industrial Court were not given any opportunity to address the Industrial Court on the invocation of its residual powers under section 10 (3) of the IRA. The record shows that the Industrial Court did not at anytime raise this matter with the parties.

² “9. (1) *In the hearing and determination of any matter before it, the Court may act without regard to technicalities and legal form and shall not be bound to follow the rules of evidence stipulated in the Evidence Act, but the Court may inform itself on any matter in such manner as it thinks just and may take into account opinion evidence and such facts as it considers relevant and material, but in any such case the parties to the proceedings shall be given the opportunity, if they so desire, of adducing evidence in regard thereto.*”

64. Fifthly, Servol respectfully submits that the Court of Appeal's Majority misdirected itself in law in failing to identify the Industrial Court 's error and in failing to direct itself as to section 9 of the IRA or section 4(b) of the Constitution or the common law principles of fundamental justice that Servol should have been heard upon the invocation of section 10(3) of the IRA and was not.

Not Heard on Quantum

65. Firstly, Servol respectfully submits that the majority in the Court of Appeal correctly characterized the cases as “*novel*” and “*exceptional*” -see paras 184-185 - but erred when it failed to set aside the whole of the section 10(3) decision or otherwise permit Servol to be heard.
66. Secondly, Servol respectfully submits that upon the majority in the Court of Appeal correctly ruling that Servol was entitled to be heard by the Industrial Court on quantum, failed to appreciate that such limited remittal would not properly address the lack of fairness to Servol by being deprived of the opportunity to address on the section 10 (3) of the IRA factors.
67. Thirdly, having correctly found, at paragraph 185, that the Industrial Court had been deprived of evidence from Servol on the section 10(3), Servol respectfully submits that the Court erred in failing to appreciate those factors that might impact upon - on Servol, other employers and employees, and wrongly failed to set aside the entire decision as flawed.

Correct Minority Reasoning

68. Servol respectfully invites - the Board to prefer the reasoning of P. Rajkumar JA, who, in a detailed and authoritative judgment properly and exhaustively reasoned that:

- a. The Industrial Court properly acknowledged the absence of stipulated terms and conditions of terminal benefits and correctly analysed that retirement was the predictable consequence of the employment relationship coming to a natural and consensual contractual end - see *Chitty on Contracts paragraph 39-170*. [EB 1137-8];
- b. The Industrial Court failed to consider the statutory limits of section 10(3) (a) of the IRA, did not engage in the necessary analysis required by **Civil Appeal No. P213 of 2015-Carib Brewery Limited v NUGFW**. Correctly opined that the Industrial Court's reasoning was not based on evidence [EB 1146-52];
- c. The Court of Appeal would defer to the Industrial Court on what constitutes good industrial relations within section 10(3) (b) of the Industrial Relations Act, but treat as an error of law the Industrial Court's disregard of the financial impact upon Servol and the community as a whole of substantial awards and other stakeholder in respect of unplanned and unexpected retirement expenditure not provided for under the contracts of employment; The Industrial Court failed to apply TD 43 of 1994 **OWTU v National Petroleum Marketing Company** or otherwise comply with the statutory conditions of section 10(3) (a) of the Industrial Relations Act [EB 1151-5];
- d. The Industrial Court failed to afford any party the opportunity to address it on s. 10(3), depriving the parties, of any opportunity to address it on the financial impact of such an award. Further the Industrial Court failed to observe that the dispute referred to it was not on the basis of section 10 (3) and neither party's submissions addressed this jurisdiction and rendered the decision and any award based thereon procedurally flawed. [EB 1155];
- e. Unlike **Carib Brewery** case where there was an underlying right to payment for the equity in the workers' contracts, the Industrial Court identified no underlying right in this case to terminal benefits [EB 1155];

- f. The Courts therefore had no underlying basis to create financial obligations where none existed under contract, statute, collective agreement or common law and he correctly applied **Byron v Eastern Caribbean Amalgamated Bank [2019] UKPC 16** para 30 **[EB Vol 1155-1156]** ;
- g. The Industrial Court's reasoning created legal uncertainty and disregarded the statutory context of the National Insurance Act provision of an NIS retirement pension or retirement grant. **[EB 1161-1164]**;
- h. This is not a matter where remitting it to the Industrial Court would be appropriate because the parties did not argue the applicability of section 10(3) and the Industrial Court provided no advance notification that it proposed to base its decision on section 10(3) ; and no evidence had been invited or led before the Industrial Court on this issue. Remitting the matter therefore would be an invitation to the parties and to the Court to consider an entirely new case - see **Ashmeed Mohammed v Mary Gomez [2019] UKPC 46**. The Industrial Court effectively legislated termination benefits in the absence of statute or in the absence of an applicable contractual provision, and that failing would be endorsed by remitting it **[EB 1165-1166]**; and
- r. The Court of Appeal's deference to the Industrial Court on the principles and practices of good industrial relations that in fact provides basis for reconsideration by the Industrial Court. Rather, the Industrial Court's failure to consider adequately the matters that it was required to take into account under section 10(3)(a), and the impermissible extension of its jurisdiction by the creation of a new cause of action meant this appeal must be allowed. **[EB/Vol III/1166]** .

Conclusion

69. The majority of the Court of Appeal did not consider sufficiently or at all the overall impact of the Industrial Court's ruling to the extent that it predetermines employment contracts in Trinidad and Tobago. The Industrial Court by these rulings mandates retirement benefits without Parliament's intervention. As a consequence, there can be no question that all retirees are now entitled to terminal benefits without the need to have any prior agreement with their employer.
70. The Appellant respectfully prays that:
- a. The appeal is allowed;
 - b. The decision of the majority be set aside; and
 - c. The minority decision be affirmed.

Dated this 31st day of August 2026

.....
Ian L. Benjamin SC
Delroy Burris
Counsel for the Appellant