[2025] UKPC 40
Privy Council Appeal No 0106 of 2023; 0010 of 2024

JUDGMENT

Public Services Association of Trinidad and Tobago (Appellant) *v* Trinidad and Tobago Civil Aviation Authority (Respondent) (Trinidad and Tobago); Public Services Association of Trinidad and Tobago (Respondent) *v* Trinidad and Tobago Civil Aviation Authority (Appellant) No 2 (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Briggs
Lord Hamblen
Lord Leggatt
Lord Richards
Lady Simler

JUDGMENT GIVEN ON
11 September 2025

Heard on 19 May 2025

Appellant/Respondent – Public Services Association of Trinidad and Tobago
Douglas L Mendes SC
John Z Heath SC
(Instructed by Allum Chambers (Trinidad))

Respondent/Appellant – Trinidad and Tobago Civil Aviation Authority
Seenath Jairam SC
Jerome Rajcoomar
(Instructed by Shantal Jairam of Victoria Chambers (Trinidad))

LADY SIMLER:

Introduction

1. The Public Services Association ("the Association") is a trade union registered under the Trade Unions Act Chap 88:02. The Association is the recognised majority union under the Civil Service Act Chap 23:01 for all monthly paid civil servants employed in different departments by the Government of Trinidad and Tobago. Until 2001 this included the department responsible for civil aviation services (defined as an essential industry in para 12 of the First Schedule of the Industrial Relations Act Chap 88:01, "the Industrial Relations Act"). It is also important to record that the Association was at all material times prior to the enactment of the legislation referred to below, the recognised majority union under the Industrial Relations Act for workers employed by two other essential services, namely the Water and Sewerage Authority and the Public Transport Service Corporation (see paras 2 and 11 of the First Schedule of the Industrial Relations Act).

2. In 2001 the Trinidad and Tobago Civil Aviation Authority ("the CAA") was established as a body corporate under the Civil Aviation Act No 11 of 2001 Chap 49:03 ("the Civil Aviation Act") to carry out the functions formerly performed by the government department responsible for civil aviation. Civil servants previously employed in that department who chose to transfer to the CAA ceased to be civil servants subject to the system of industrial relations under the Civil Service Act and became private workers employed by the CAA as a private employer.

3. As civil servants they had been represented by the Association which had recognition status on their behalf for the purposes of consultation and collective bargaining in relation to their terms and conditions of service. Upon transfer to the CAA that recognition status, together with associated representation rights, ceased. In other words, the Association ceased to be the recognised union for transferring former civil servants and those individuals lost their membership of a union with appropriate recognised union status (though they became eligible to be represented by a recognised majority union certified as such under the Industrial Relations Act in respect of an appropriate bargaining unit).

4. In order to obtain such certification, a trade union must apply to the Registration Recognition and Certification Board (referred to below for convenience as "the Recognition Board") established under the Industrial Relations Act. Before any such application was (or could have been) made by the Association, the Civil Aviation (Amendment) Act No 17 of 2003 ("the 2003 Act") was enacted on 12 June 2003, amending the Civil Aviation Act by the insertion of the following sections which are at the heart of this appeal:

> "26A. Subject to the Industrial Relations Act, the Public Services Association of Trinidad and Tobago shall be deemed to be the certified recognised majority union under Part III of the Industrial Relations Act for the bargaining unit comprising the monthly paid/monthly rated employees of the Authority.
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> 26B. An application for certification of recognition under Part III of the Industrial Relations Act shall not be entertained or proceeded with where the application is made earlier than two years from the date on which this amendment comes into force, but an application may be made with leave of the Court although two years have not expired since the amendment came into force, in which event the procedures set out under section 38(2) and (3) of the Industrial Relations Act shall apply.
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> 26C. Employees may form an association which may be registered as a trade union or may join a trade union."

5. Notwithstanding this deeming provision, on 26 July 2007, the Association applied under Part III of the Industrial Relations Act to the Recognition Board to obtain certification as the recognised majority union in respect of the bargaining unit comprising the monthly paid/monthly rated employees of the CAA. That application was withdrawn in December 2007.

6. On 28 September 2010, the Association made a second application in the same terms. On 12 August 2016, the Recognition Board purported to certify the Association as the recognised majority union. The six-year delay is unexplained. The CAA challenged the Recognition Board's decision on judicial review. It contended (among other things) that the Recognition Board had no jurisdiction to entertain the application for certification because the Association was already the recognised majority union for workers in at least one other category of essential industries, namely water and sewerage and public transport, and was applying for recognition in another essential industry (civil aviation) and section 38(4) of the Industrial Relations Act prohibits recognition in more than one essential industry.

7. The CAA was successful, and the High Court quashed the certificate of recognition issued by the Recognition Board. There was no appeal against that decision. The Association had argued, as an interested party in those proceedings, that it was already deemed to be the certified recognised majority union by section 26A of the Civil Aviation Act (as inserted by the 2003 Act) notwithstanding section 38(4), but that point was not decided by the High Court.

8. Thereafter, consistently with its position that it was deemed to be the certified recognised majority union under section 26A, the Association called upon the CAA to meet with it to negotiate a collective agreement for the monthly paid workers. The CAA refused and the Association made a complaint to the Industrial Court that the CAA had committed an industrial relations offence under section 40(2) of the Industrial Relations Act by failing to meet and engage in collective bargaining with it. In those proceedings, the CAA raised as a preliminary point the question whether the Association had certified recognised majority union status. If not, the complaint could not be pursued.

9. By a judgment dated 9 November 2022, the Industrial Court (Their Honours Mr L Achong and Mr A Stroude) ruled that the Association was not the certified recognised majority union and accordingly dismissed the industrial relations complaint against the CAA: IRO No 3/2018. The Association appealed to the Court of Appeal and, on 13 February 2023, the Court of Appeal (Smith and Kokaram JJA) held that the Association had to be entered on the register of trade unions under section 41 of the Industrial Relations Act before a court could find that it was the certified recognised majority union. Nonetheless, the Court of Appeal allowed the appeal and set aside the decision of the Industrial Court, directing the Industrial Court to "refer the following question to the Registration, Recognition and Certification Board that is whether to record the Public Services Association of Trinidad and Tobago as the certified recognised majority union consistent with the policies and objectives of the Industrial Relations Act as reflected in such sections as sections 36 and 38(4) of the Industrial Relations Act." (The ex-tempore judgment given by Kokaram JA has been transcribed and is cited as CA P No 271/2022).

10. Although the Association's appeal was formally allowed, it has appealed, and the CAA has cross-appealed against that decision to the Judicial Committee of the Privy Council. The Association's concern is the Court of Appeal's indication that to be deemed the certified recognised majority union for the bargaining unit, there must be consistency with section 38(4), and that on this basis the Recognition Board will have no choice but to refuse to record the Association's certification. Indeed, as indicated above, the High Court held that the Recognition Board acted without jurisdiction in certifying the Association as the certified recognised majority union because the Association was already certified for a bargaining unit in an essential industry.

The issues on this appeal to the Board

11. The central question that accordingly arises for the Board's decision is whether the Association is the deemed recognised majority union for the bargaining unit comprising the monthly paid/monthly rated employees of the CAA for the purposes of collective bargaining under the Industrial Relations Act. This matters because in the absence of certified recognition status the Association cannot engage in collective bargaining in relation to terms and conditions of work on behalf of former civil aviation civil servants now employed by the CAA, and they do not have the benefit of trade union representation.

The question depends on the proper construction of section 26A set out above and what effect the words "subject to" have on that deeming provision.

12. The principal rival contentions of the parties can be summarised shortly.

13. The Association contends that section 26A deemed it to be the recognised majority union without more and that the provisions of Part III of the Industrial Relations Act which set out the conditions and procedures for a trade union to apply to be certified do not apply to a situation where a union is deemed to be the certified recognised majority union. In particular, the Association's case is that the opening words in section 26A "subject to the Industrial Relations Act" cannot be construed as making section 38(4) applicable as this would nullify the deeming effect.

14. The CAA emphasises the penal consequences of a failure to consult with a certified recognised union and submits that the conditional deeming provision in section 26A should be narrowly construed and taken only so far as is necessary to give effect to the legislative purpose, but no further. It contends that the opening words in section 26A "subject to the Industrial Relations Act" qualify the deeming provision in important ways and mean that a union remains bound to comply with the policies and object of Part III (and in particular with sections 34, 37, 38(4) and 41 which are further discussed below) which must be determined and supervised by the Recognition Board. The result is that the Association is not the recognised majority union for former civil servants now employed by the CAA. It also follows that the Association is not competent to pursue a complaint against the CAA pursuant to section 40 of the Industrial Relations Act.

15. The CAA pursues an alternative case by way of cross-appeal; namely, that even if the Association is deemed by section 26A to be the certified recognised majority union, it could not yet have been treated as such because there are procedural requirements that have not yet been fulfilled (for example, a certificate containing prescribed particulars has not been issued by the Recognition Board and those particulars have not been entered in the recognised majority union record as required by the Industrial Relations Act). Accordingly, the CAA submits that the obligation imposed on it by section 40(1) of the Industrial Relations Act to recognise the Association and enter into negotiations with it for the purposes of collective bargaining has not yet arisen. It follows that no industrial relations offence can have been committed by the CAA and the Industrial Court's dismissal of the complaint ought to be upheld, albeit for different reasons.

16. For the reasons explained below, the Association concedes the CAA's alternative case but maintains its arguments on the appeal.

The statutory framework for recognition under the Industrial Relations Act

17. Section 21 of the Industrial Relations Act established the Recognition Board. Its duties are set out in section 23 as follows:

> "23. (1) The Board shall be charged with responsibility for –
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> (a) the determination of all applications, petitions and matters concerning certification of recognition under Part III, including the taking of preferential ballots under section 34(2);
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> (b) the certification of recognised majority unions;
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> (c) the recording of the certification of recognised majority unions in a book to be kept by it for the purpose;
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> (d) the making of agency shop orders under Part VI and the conduct of ballots and proceedings in connection therewith;
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> (e) the cancellation of certification of recognition of trade unions; and
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> (f) such other matters as are referred or assigned to it by the Minister or under this or any written law. …
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> (7) Subject to this Act, and in particular to section 31, the Board shall be the sole authority competent to expound upon any matter touching the interpretation and application of this Act relating to functions and responsibilities with which the Board is charged by the Act or any other written law; and accordingly, no cause, application, action, suit or other proceeding shall lie in any Court of law concerning any matter touching the interpretation or application of this Act."

18. The relationship between an employer and a certified recognised majority union for workers in a bargaining unit is central to the system of industrial relations under the Industrial Relations Act. Once certified as such by the Recognition Board, the union in question has 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": section 35(a) of the Industrial Relations Act. Once certified for workers in a bargaining unit, the employer of those workers is obliged to recognise the union as the recognised majority union and that union and the employer are required in good faith to treat and enter into negotiations with each other for the purposes of collective bargaining: section 40(1). It is an industrial relations offence to fail to comply with these obligations: section 40(2).

19. Where collective bargaining results in the conclusion of a collective agreement, and that collective agreement is registered by the Industrial Court, its terms are binding on the parties and are directly enforceable in the Industrial Court: section 47. Where the parties fail to arrive at an agreement governing all the terms of a collective agreement, they may report the existence of a trade dispute to the Minister of Labour for conciliation (section 51) and where conciliation fails to result in an agreement, either party may within a stipulated period of time institute industrial action or agree to submit their dispute to the Industrial Court for adjudication: section 59(3). Industrial action outside the stipulated time period or by employers or trade unions in respect of workers not represented by a recognised majority union is an industrial relations offence punishable in the Industrial Court: sections 60 and 63 of the Industrial Relations Act.

20. Part III of the Industrial Relations Act is headed "Certification of recognition" and sets out the procedural requirements and process for certification of recognition. The Recognition Board is required to determine all applications for certification brought before it in accordance with Part III expeditiously: section 32(1).

21. The first step in becoming certified as a recognised majority union is a requirement on the union to apply in writing to the Recognition Board in the prescribed form and to describe in its application the proposed bargaining unit in respect of which certification is sought: section 32(2) and (3). The claimant union must also serve a copy of the application on the employer and the Minister. The Recognition Board must then determine the bargaining unit which it considers appropriate in the circumstances, having regard to the factors set out in section 33(1) (a) to (e) which include the nature and scope of the duties exercised by the workers in the proposed bargaining unit and the views of the employer as to its appropriateness: section 33. Having done so, section 34(1) provides:

> "34. (1) Subject to this Act, the Board shall certify as the recognised majority union that trade union which it is satisfied has, on the relevant date, more than fifty per cent of the workers comprised in the appropriate bargaining unit as members in good standing."

22. The words "the relevant date" mean "such date as the Board considers appropriate for the purpose of determining any matter before it under this Part": section 36(2).

23. As indicated above, section 35 makes provision for the effect of certification of a trade union as a recognised majority union. It provides that where a trade union is certified as the recognised majority union, it shall immediately replace any other trade union that immediately before the certification was the recognised majority union for the workers comprised in the bargaining unit and (subject to paragraph (c) which is not material to this appeal) shall have 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: section 35(a). If another trade union had previously been certified or was deemed to have been certified under section 86 in respect of workers comprised in the bargaining unit, the earlier certification of that trade union is deemed to be revoked in respect of the workers: section 35(b).

24. The Recognition Board is not permitted to certify more than one trade union as the recognised majority union for workers comprised in a bargaining unit: section 36(1).

25. Importantly, the Recognition Board is prohibited from considering or proceeding with an application for certification in circumstances described by section 38. This section provides so far as material:

> "38. (1) Subject to this Act, no application for certification of recognition under this Part shall be entertained or proceeded with where—
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> (a) there is a recognised majority union for the same bargaining unit or any part thereof described in the application for certification; and
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> (b) the application is made earlier than two years from the date on which the recognised majority union obtained certification as such, but an application may be made with leave of the Court although two years have not expired since the certification was obtained.
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> …
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> (4) Subject to this Act, and in particular to sections 85 and 86, no application for certification of recognition under this Part shall be considered where the application relates to workers comprised in a bargaining unit in one category of essential industries and the claimant union is already certified as the

> recognised majority union for workers comprised in a bargaining unit in another category of essential industries.
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> Where, however, the claimant union is, under or by virtue of sections 85 and 86, already certified as the recognised majority union for workers comprised in bargaining units in more than one category of essential industries, nothing in this subsection shall apply to any application for certification of recognition under this Part, if the application relates to workers comprised in a bargaining unit in any of those categories of essential industries for which the claimant union is already so certified."

26. The Board notes that sections 85 and 86 are transitional provisions. So far as relevant to this appeal, section 85(7) provides that collective agreements registered by the court under the earlier Act, and in force immediately prior to the commencement of the Industrial Relations Act, are deemed to have been registered under and in conformity with the latter Act, which applies to those agreements. Section 86(1) provides (among other things) that where a collective agreement is at the commencement of the Industrial Relations Act deemed to have been registered under section 85(7), the trade union that is a party to it is deemed to be recognised as the bargaining agent for workers comprised in the bargaining unit contemplated by the collective agreement; and the Recognition Board "shall issue a certificate of recognition to that trade union as the recognised majority union with respect to that bargaining unit under and for the purposes of this Act".

27. Section 37(1) concerns the issuance and contents of certificates required to be issued by the Recognition Board (under its seal) to the claimant union and to the employer in every case in which it certifies a trade union as the recognised majority union. The certificate must contain certain particulars set out in subsection (2) as follows: "(a) the name of the employer and of the trade union thereby certified; (b) the category or categories, if any, of workers comprised in the bargaining unit; (c) the number of workers comprised in the bargaining unit at the relevant date; (d) such matters other than the foregoing as are prescribed."

28. Provision is made in section 39 for the variation of the bargaining unit and the record of certification of recognition under section 41. Both may be varied in accordance with section 39(4).

29. Finally, and importantly in this appeal, section 41 makes provision for a record to be kept of trade unions certified as recognised by the Recognition Board. It provides as follows:

> "41. (1) Where a trade union is certified by the Board as the recognised majority union, the particulars referred to in section 37(2) shall be entered in a record of such trade unions to be kept for that purpose by the Board in the prescribed form for the purposes of this Act; and the production of the record or of a copy of the relevant portion thereof, certified by the Secretary of the Board, shall be admissible in all Courts and shall be conclusive proof of the matters therein stated.
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> (2) Notwithstanding any rule of law to the contrary, a recognised majority union shall, for the purposes of this Act, be treated as such only when such particulars are recorded under subsection (1) and, subject to section 35, as long as so recorded the trade union shall be deemed to continue always to be the recognised majority union."

The decisions of the lower courts

30. As indicated above, the Industrial Court ruled that the Association was not the recognised majority union and dismissed the complaint. In doing so it did not consider the proper construction of section 26A and the reasons it relied on were correctly rejected by the Court of Appeal and neither side has sought to defend them. The Board does not address them further.

31. In the Court of Appeal, Kokaram JA acknowledged that the effect of the deeming provision in section 26A was to create a legal fiction. He was concerned, however, to ensure that the legal fiction was not carried further than necessary to achieve the intended legislative purpose. He was also concerned to give full meaning and effect to the opening words of section 26A which made the operation of section 26A "subject to the Industrial Relations Act" and was keen to ensure that any interpretation put on those opening words did not render them meaningless.

32. Reconciling these propositions, he held that the effect of the deeming provision was to truncate the certification process under the Industrial Relations Act, and with that the powers and functions of the Recognition Board, to the extent necessary to facilitate the balancing of the "smooth successorship of representation … with the main provisions of the Industrial Relations Act".

33. Kokaram JA reasoned that this meant that section 26A had done away with the need for the Recognition Board to determine whether the bargaining unit was an appropriate bargaining unit and that other formal requirements of the certification provisions were captured in the language of deeming in section 26A. There was no

absurdity in that conclusion. However, since the creation of the legal fiction remained subject to the Act, it would be contrary to section 36 for the Association to be deemed to be the recognised majority union when there was already a recognised majority union in existence. Likewise, the certification of the Association as the recognised majority union where it is already certified as the recognised majority union for a bargaining unit in an essential industry would contravene section 38(4).

34. Kokaram JA therefore held that the proper construction of section 26A is that the Association is "deemed to be the certified recognised majority union as set out under section 26A, for the bargaining unit comprising the monthly paid employees of the CAA, to such extent necessary which is consistent with the policies and objects of the Act which must be determined and supervised by the Recognition Board". To that extent, the Industrial Court was wrong to decline jurisdiction and the appeal was allowed. The Court of Appeal set aside the order made by the Industrial Court and directed the Industrial Court to refer the decision as to whether the Association should be recorded as the certified recognised majority union consistently with the policies and object of the Act (as reflected in sections 36 and 38(4) of the Industrial Relations Act) to the Recognition Board.

The approach to construction of section 26A

35. The principles of statutory construction are well known and not in dispute. It is well established that courts are to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: see, for example, *R (Quintavalle) v Secretary of State for Health* [2003] 2 AC 687, para 8 (per Lord Bingham of Cornhill); *R (O) v Secretary of State for the Home Department* [2023] AC 255, paras 29-31 (per Lord Hodge).

36. As Lord Bingham said in *Quintavelle* (para 8):

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

The central importance in interpreting any legislation of identifying its purpose has been emphasised in subsequent cases.

37. It is also important to avoid a construction that produces an absurd result, or one which would operate in a way that is unworkable or impracticable, since this is unlikely to have been intended by Parliament. This presumption against absurdity was explained in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] 1 WLR 2594 ("*PACCAR*") at para 43 (per Lord Sales):

> "The courts will not interpret a statute so as to produce an absurd result, unless clearly constrained to do so by the words Parliament has used: see *R v McCool* [2018] 1 WLR 2431, paras 23-25 (Lord Kerr of Tonaghmore JSC), citing a passage in *Bennion on Statutory Interpretation*, 6th ed (2013), p 1753. See now *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), section 13.1(1): 'The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature.' As the authors of *Bennion, Bailey and Norbury* say, the courts give a wide meaning to absurdity in this context, 'using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief'. The width of the concept is acceptable, since the presumption against absurdity does not apply mechanistically but rather, as they point out in section 13.1(2), '[t]he strength of the presumption … depends on the degree to which a particular construction produces an unreasonable result'. …"

38. Section 26A is a deeming provision. Lord Briggs summarised the correct approach in general to statutory deeming provisions in *Fowler v Revenue and Customs Comrs* [2020] 1 WLR 2227, in the following passage (para 27):

> "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] 1 WLR 637, *Marshall v Kerr* [1995] 1 AC 148 and *Jenks v Dickinson* [1997] STC 853. 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.

(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.' "

The interpretation of section 26A

39. The Board starts with the clear words of section 26A. They deem the Association to be "the certified recognised majority union under Part III of the Industrial Relations Act for the bargaining unit comprising the monthly paid/monthly rated employees of the Authority". But for the qualification in the opening words to section 26A no dispute as to the meaning and effect of the deeming provision could reasonably have arisen.

40. The purpose of section 26A is also plain. The particular problem that occurred on the establishment of the CAA was that the Association ceased to represent its former members and was prevented by section 38(4) of the Industrial Relations Act from applying to become the certified recognised majority union because it already held that

status in respect of workers in two other essential industries. The purpose of section 26A was to address this problem by giving the Association rights of successorship in respect of former civil aviation civil servants who transferred from the government service to the CAA.

41. The main argument advanced by the CAA, based on the opening words "subject to the Industrial Relations Act" in section 26A, is that these are words of restriction limiting the application of the deeming provision. But as the CAA itself recognises, those words do not mean subject to everything in the Industrial Relations Act. If that were so, the deeming provision would be rendered wholly inoperative and effectively disregarded. The CAA does not contend for this result, recognising that some effect must be given to the deeming provision. Instead, the CAA submits that Parliament intended that section 26A should override the need for compliance with certain provisions of Part III of the Act whilst leaving other provisions of the Act untouched. The real question therefore is the precise extent to which the deeming provision overrides the provisions of the Industrial Relations Act, and more particularly to what provisions it is subject.

42. The CAA submits that section 26A seeks to achieve a balance between ensuring successorship of representation and at the same time maintaining compliance with the main provisions of the Industrial Relations Act. It does so, as the Court of Appeal held, by interpreting section 26A as abrogating the formal requirements of the certification process in provisions such as sections 33 and 34, while maintaining the requirements in sections 36 and 38(4) so that the Association is deemed to be certified as recognised only "to such extent necessary which is consistent with the policies and objects of the Act" as supervised by the Recognition Board. In support of this argument, the CAA emphasised the need for certainty given the penal consequences that would flow from its failure to meet and treat with the Association if the Association is deemed without more to be the certified recognised majority union. It pointed to the importance of compliance with section 41 of the Act as crystallising the moment an employer becomes exposed to potential liability for such a failure, relying on the words of section 41(2) that, "a recognised majority union shall, for the purposes of this Act, be treated as such only when such particulars are recorded under subsection (1)".

43. Leaving aside the effect of section 41 for the moment, if the deeming provision in section 26A is subject to section 38(4) that would plainly defeat the purpose of the deeming and nullify its effect. The CAA's response to this was an argument that the Recognition Board would not be bound by section 38(4) to refuse to certify but would have a limited discretion to exercise which takes account of the policy of section 38(4).

44. This argument was realistically and correctly abandoned by Mr Jairam SC in the course of argument. There is nothing in section 38(4) and no provision made elsewhere by the statute for the Recognition Board to exercise discretion in these circumstances. In any event, it seems to the Board that section 38 has no application in a situation where

certification is deemed. Section 38 only applies where an application for certification is made: see subsections (1) and (4). These subsections expressly provide that "no application for certification" shall be entertained in the circumstances described. Where certification is deemed, there is no application.

45. Construing the opening words of section 26A as not bringing section 38(4) of the Industrial Relations Act into play does not mean that the opening words are stripped of all meaning, as the Court of Appeal appears to have thought. On the contrary, it must have been intended that some provisions of the Industrial Relations Act would apply to the Association's deemed status, though obviously not those provisions which would deny it the recognised majority status the deeming provision is otherwise intended to achieve. As the Association submitted, the legislation is not to be presumed to give with one hand and to take away with the other and therefore to act in vain.

46. That the Association's deemed certification is subject to certain provisions in the Industrial Relations Act has a number of important consequences.

47. First, it seems to the Board that the Industrial Relations Act distinguishes between on the one hand determining whether to certify and the act of certifying (in particular, section 34 requires that the Recognition Board "shall certify") and on the other hand, the issuance of a certificate as required by section 37. Section 34 involves the decision by the Recognition Board, on an application by the claimant union under section 32(2) and following a determination of the appropriateness of the bargaining unit under section 33, to certify. In a deeming case where there is no such application, sections 32-34 must be sidestepped by the deeming. Put another way, the deeming encompasses the steps up to and including section 34. But having so certified (including by deeming) the Recognition Board is required to issue a certificate under section 37, under its seal, to the union and the employer "in every case in which it certifies a trade union as the recognised majority union". There is no reason to think that the deeming goes so far as to encompass the steps in section 37. On the contrary, the requirements of certainty suggest that it ought not to go that far. The result is that section 37 remains to be fulfilled: the Recognition Board has been under an obligation to issue a certificate under section 37 in respect of the Association as the certified recognised majority union ever since the deemed certification took effect. The particulars in section 37(2) should then have been entered pursuant to section 41(1) in the record kept by the Recognition Board in accordance with section 23(1)(c) which charges the Recognition Board with responsibility for "the recording of the certification of recognised majority unions in a book to be kept by it for the purpose". This is important as the CAA submits, for certainty so far as both union and employer are concerned, particularly given the penal consequences that flow from a failure to accord collective bargaining rights to the recognised majority union.

48. Secondly, it entails that the Association may have its certification cancelled by the Recognition Board under section 67(5)(a) of the Industrial Relations Act if it calls for or

causes industrial action to be taken (because civil aviation is an essential service and industrial action in essential services is prohibited by section 67), or if it is replaced by another union which after the requisite period applies for and obtains certification from the Recognition Board as envisaged by section 38. The effect of making section 26A subject to the Industrial Relations Act, in other words, is also to make clear that the Association was not being bestowed with recognised majority status in perpetuity.

49. Accordingly, by deeming the Association certified under Part III, section 26A treats as satisfied the entire certification process. It effectively sidesteps the Recognition Board's powers to determine the appropriate bargaining unit for itself; section 26A determines the category of workers comprised in the bargaining unit. It sidesteps the Recognition Board's power to certify only if there is majority support and it treats the Association as certified even if the Recognition Board has no power itself to do so under the Industrial Relations Act.

50. Construing the opening words of section 26A in this way and so as not to bring section 38(4) into play does not produce an absurd, anomalous or illogical result. Rather, it gives effect to the plain meaning and purpose of the scheme of section 26A-C. These provisions are expressly directed at enabling successorship as the certified recognised union for the Association by immediate deeming, in order to protect employees who would otherwise have transitioned to the CAA without any protection from the union that had previously been recognised for collective bargaining on their behalf. The premise of section 26B is that there was on its enactment (by virtue of section 26A) a deemed certified recognised majority union in place, namely the Association, despite the words "subject to the Industrial Relations Act" in section 26A. The effect of section 26B was that any other union wishing to replace the Association had to wait two years in the first instance before applying for certified recognition status. There is nothing in these provisions that contemplates the possibility that the Industrial Relations Act would prevent the Association from being deemed immediately on enactment to be the certified recognised majority union.

51. It is true that the consequence of deemed certification under section 26A is that the Association will be the recognised majority union for bargaining units in three separate essential industries, but that result merely reproduces the status quo ante the passage of the Civil Aviation Act and the creation of the CAA. For many years the Association was certified in relation to two essential industries under the Industrial Relations Act at the same time as it enjoyed appropriate recognised association status under the Civil Service Act in relation to the civil aviation department.

52. Further, the recognition status which it is deemed to have under the Industrial Relations Act for monthly paid/monthly rated employees, including former civil aviation civil servants, has not given the Association any additional advantage. It is under the same prohibitions in relation to causing or calling for industrial action to be taken by civil

aviation workers employed by the CAA as applied to it in relation to the civil aviation civil servants employed by the Government. It follows that there is nothing absurd or anomalous in interpreting section 26A in such a way as to continue in substance the recognition status which the Association had enjoyed for many years.

53. Recourse to Hansard is neither necessary nor appropriate in this case. Put shortly, there is no ambiguity that would justify such recourse under *Pepper v Hart* [1993] AC 593, 640.

The cross-appeal

54. It follows that the Association is the recognised majority union for the relevant bargaining unit (see the definition in section 2 of the Industrial Relations Act: it is the trade union deemed certified under Part III as the bargaining agent for workers comprised in a bargaining unit).

55. However, as the CAA submits and the Association accepts, the deeming provision in section 26A only takes the Association as far as certification as the recognised majority union; it does not treat it as having the benefits of such certification, including the right to be recognised as the recognised majority union by the CAA for collective bargaining purposes under section 40(1). In other words, the requirements of section 37 still fall to be fulfilled. The Recognition Board has been and remains under the obligation imposed by section 37 to issue to the Association and the CAA a certificate under its seal in which it certifies the Association as the recognised majority union. The certificate must contain the particulars set out in section 37(2). The Recognition Board is then obliged by section 41(1) to enter those particulars in the recognised majority union record.

56. Again, as the CAA submits and the Association accepts, section 41(2) makes clear that a recognised majority union shall only be treated as such for the purposes of the Industrial Relations Act when the section 37(2) particulars are entered in the recognised majority union record. That entry has not yet taken place. Accordingly, despite the Association being deemed to be the recognised majority union by section 26A, the Authority is not yet obliged to treat the Association as the recognised majority union for its workers and the collective bargaining obligations imposed by section 40 have not yet crystallised.

57. The inevitable result is that despite the Board's conclusion that the Association is the recognised majority union of the bargaining unit in question for the purposes of the Industrial Relations Act, the industrial relations complaint should nonetheless be dismissed as Mr Jairam SC submitted. The Recognition Board must now do all that is necessary to comply with sections 37 and 41 of the Act. In particular, it must issue the requisite certificate under section 37(1) and enter the section 37(2) particulars in the

record in accordance with section 41(1). At that point, the CAA will be subject to the obligations imposed by section 40 of the Industrial Relations Act.

Conclusion

58. For all these reasons the Board is in no doubt that on a proper interpretation of section 26A the Association is deemed to be certified as the recognised majority union of the monthly paid/monthly rated workers employed by the CAA. Further the opening words "subject to the Industrial Relations Act" are not to be construed as making section 26A subject to the prohibition in section 38(4) of the Industrial Relations Act and thereby nullifying its deeming effect.

59. The Board accordingly allows the appeal to the extent of declaring that the Association is the recognised majority union of the monthly paid/monthly rated workers employed by the CAA by virtue of section 26A of the Act as inserted, and that the Industrial Court was wrong in law to hold otherwise.

60. The Board also allows the cross-appeal of the CAA with the consequence that the Association's complaint to the Industrial Court that the CAA committed an industrial relations offence under section 40(2) of the Industrial Relations Act by failing to meet and engage in collective bargaining with it is dismissed.