



ADDRESS

Delivered By

Her Honour Mrs. Deborah Thomas-Felix
President
Industrial Court of Trinidad and Tobago

17th September, 2021

at the

Special Sitting of the Industrial Court

for the

2021/2022 Law Term

16th September, 2021

Time: 10:00 am

1st Court, Industrial Court Building
#7 St Vincent Street,
Port of Spain

Welcome to the second virtual Special Sitting of the Industrial Court.

When this chapter of the world's history is written it will be an era of a global pandemic, real time and rapid communication, misinformation, social media dominance and great challenge as we struggle to cope with the onslaught of the COVID 19 pandemic and its attendant, social and economic consequence.

It will also be viewed as a time when the rule of law, which plays a crucial function in our democracy, is challenged.

No civil and modern society can function properly and maintain peace and order without adherence to the rule of law. While it is clear that the COVID 19 pandemic has highlighted the close links between the responses of governments against the crisis and the rule of law, I think it also highlights the weaknesses in existing governance systems, globally, and it has placed the spotlight on areas in need of improvement especially the health care system and the education system.

However, the pandemic should not only be seen as a challenge to the rule of law and human rights but also as an opportunity to better articulate and strengthen international standards and the laws of dealing with such crises.

As I stated earlier this year, there is a temptation sometimes to put international labour standards and good industrial relations practices aside and treat them as not important in times of crisis. We must never forget that fairness, equity and natural justice are principles on which the foundation our societies were built and which have assisted in stabilising our economies and countries over time.

This is the time, more than ever, where the adherence to proper labour standards assume even greater importance to minimise instability in the future and to safeguard the interests of all, in the world of work.

The Industrial Stabilisation Act of 1965 (ISA) was repealed and replaced by a new act, the purpose of which is to make “better provision for the stabilization, improvement and promotion of industrial relations” in Trinidad and Tobago. This new act, the Industrial Relations Act (IRA), from which the Industrial Court derives its power, is an integral part in industrial relations and operations of labour relations in Trinidad and Tobago. Therefore, the role of the Industrial Court to assist in the stabilisation, improvement and promotion of industrial relations and operations of labour relations in this country, which it has done and continues to do for the past fifty-six years, cannot be overstated.

At the Special Sitting of the Industrial Court last year, I spoke of the urgent need for tripartite dialogue among the social partners, namely; government, worker representatives and employers. I expressed the view then, that “we should always bear in mind that there is life after COVID 19 and consider the immense value to be gained if we adopt and adhere to International Labour Standards, particularly social dialogue to assist, to promote and to maintain a system of opportunities for all and to obtain decent, productive work in conditions of freedom, equity, security and dignity in the future.

Social dialogue is key to the adjustment which the workplace has to make during and after this pandemic. I cannot overstate the importance of discussions, genuine consultations and compromise, built through social dialogue for the effective implementation of measures to address this pandemic and its

impact on the labour market. A commitment of employers and trade unions to adjust to new and necessary workplace policy measures, and to do so in a spirit of respect and compromise, is important for the survival and sustainability of businesses, the saving of lives and the saving of jobs.”

I am sure that the stakeholders of this Court will agree that we all need to come together to fight this pandemic and that it is critical to create and to maintain safe and healthy conditions at work, which include taking all reasonable and practical steps to minimise and/or prevent the spread of the virus at the workplace. Therefore, employers and workers must act responsibly and collaboratively in this regard.

The data which is emanating from the Industrial Court on the filings of Industrial Relations Offences (IROs) since the beginning of the pandemic in March, 2020, is of great concern and does not paint a picture of collaboration between employers and workers, instead, it shows a lack of social dialogue in the workplace.

During the period of January to March 2020, only 6 Industrial Relations Offences were filed at the Court. In March 2020, Trinidad and Tobago began to adopt protective measures to combat the pandemic. It is noteworthy that from March 2020 to 14th September 2021, 178 COVID 19 related Industrial Relations Offences have been filed at the Industrial Court. Most of these Industrial Relations Offences are complaints related to the COVID 19 pandemic and the majority of them pertain to the lack of consultation by employers with workers, the unilateral alterations of terms and conditions of employment and the failure of employers to enter into collective bargaining with Unions to discuss and resolve COVID 19 related issues.

The data for one year March 2020 to March 2021 reveal that 124 new Industrial Relations Offences have been filed. If we examine the data for the period 2013 to 2019 and the filing of Industrial Relations Offences, which are the only criminal complaints in the Act, the lowest number of Industrial Relations Offences filed during that period was 24, these offences were filed for the period 2015/2016. The highest number of Offences filed in that period was 70, this was during the period 2016/2017. The filing of 124 Industrial Relations Offences in one year and 178 offences in 18 months is a cause of concern, and it is a reflection of the absence of social dialogue (whether face to face or virtually) by many at the workplace. Unilateral COVID 19 related decisions are causing a deterioration of labour management relations which is very troubling and does not augur well for industrial relations and productivity in the post-COVID 19 economy. I strongly urge all participants of the labour market to take note of this development and to make efforts to reverse this.

What we have been witnessing in the world of work, worldwide, and here in Trinidad and Tobago, is employers asserting their rights and unions asserting the rights of workers. I wish to remind stakeholders that the rights of the employer and the rights of the worker which are strongly discussed and debated publicly are not absolute rights. The devastating effects and the need to combat the spread of this pandemic assume far greater importance than the assertion of these individual rights at this time. Moreover, in the event that the rights of employers and those of workers are at odds, neither will automatically take precedence over the other.

VACCINATIONS

May I begin by saying, that if the issue of mandatory vaccination to populations were a simple one, governments across the globe may have already implemented national mandatory vaccination policies. Instead, what we are seeing is that most governments are educating their population about the different types of vaccines, the importance of taking a vaccination to fight the COVID 19 virus and they are encouraging their citizens to get vaccinated. We do know that in some parts of the United States of America there have been sector/industry-specific mandatory vaccination policies. However to date, only Tajikistan, Turkmenistan, the Vatican City and Indonesia have made vaccination compulsory for all adults. The World Health Organisation (WHO) from its very statement does not recommend making vaccinations mandatory explaining that it can add to distrust about the process, as one of the WHO's experts explained to Reuters "We are much better served to present people with the data, present people with the benefits and let people make up their own mind, within reason."

In Trinidad and Tobago, there have been many videos and pieces of correspondence circulating in the news and on social media, which give the public a glimpse of the attempts by some companies to treat with the issue of vaccination and to put policies in place to address health and safety issues in the workplace. It is not for me to comment and to express an opinion on the debate of whether or not vaccination policy should be mandatory or voluntary in the workplace, except to say what the laws provide if such policies are to be implemented. For the sake of clarity, I have never expressed the view that vaccinations cannot be a protective measure at work. In fact, the International Labour Organization (ILO) Committee of

Experts on the Application of Conventions and Recommendations, of which I am a Member for the past 6 years, examines country reports on certain international standards that, among other things, cover the issue of immunisation in relation to the safety and health of workers in specific occupations and sectors.

It is also important to note that discussions of vaccination policies in the world of work are always subject to the discrimination laws of each country.

While generally speaking, a vaccination policy may be included as a condition for new employment, there are much heated public debates on whether mandatory vaccinations policies can be added in the workplace to existing terms and conditions of employment.

The main issue, as I see it, is whether a mandatory COVID 19 vaccination policy can be introduced as a new term of employment to existing employees without discussion or consultation. In other words, can such a policy be introduced unilaterally by employers in the workplace? The short answer to that question is NO.

The laws of this country do not directly address the issue of a COVID 19 vaccination as a condition for employment; in fact there is no known existing law worldwide, which I can find, which addressed this issue, before the pandemic.

While there is no expressed provisions in the Industrial Relations Act (IRA) of Trinidad and Tobago for COVID 19 vaccinations policies to be introduced in the workplace as new terms and conditions of employment, our legal framework provides for the introduction of new policies, new terms and conditions of employment and new working arrangements through the collective

bargaining process; such policies and arrangements, in my view, include vaccination policies.

It is settled law that an employer ought not to unilaterally make any material change or alteration to a worker's contract of employment. The introduction of a COVID 19 vaccination policy or any new policy can amount to a material change in the terms and conditions of employment and ought not to be imposed unilaterally. Moreover, if the particular business enterprise is considering the introduction of a mandatory vaccination policy as a term of employment, there should be collective bargaining between the employer and the workers' representatives, which of course, is the Union.

In fact, the Industrial Relations Act makes collective bargaining between employers and trade unions mandatory. The term collective bargaining extends not only to wage negotiations but encompasses the resolution of all issues of common interest in the workplace. Moreover, our legal framework and the practice of good industrial relations provide for parties to have consultation and dialogue and to treat in good faith on workplace issues. In the practice of industrial relations, social dialogue is particularly important and useful when one of the partners proposes a material change, alteration and/or removal to existing terms and conditions of employment at work. That is the Law.

The practice of industrial relations speaks to a world of work, where employers and workers representatives meet, consult and discuss any proposed material changes to terms and conditions of employment and in so doing, arrive at consensus on what is most suitable for the particular business enterprise. In fact, good industrial relations supports and embraces ongoing discussions, consultation and dialogue at the workplace whether or not there is the presence of a Recognised Majority Union (RMU) at the establishment.

I wish to remind Industrial Relations practitioners that where the collective bargaining process breaks down, the grievance process begins and the aggrieved party (the union or the employer) can take the dispute to the Ministry of Labour or they can go directly to the Industrial Court by means of an Industrial Relations Offence. The policy of the Court is to treat Industrial Relations Offences with dispatch. Also, going forward at the bipartite level, parties may wish to consider adding COVID 19 related clauses to new Collective Agreements.

I will now address international labour standards as they relate to the issue of voluntary or mandatory vaccinations policies and the News release from the International Labour Organisation (ILO) on the subject. However, before I do, I would like to first remind stakeholders of the ILO and its global importance and its role and functions to the 187 member states. The ILO is the only tripartite United Nation's Agency. Since 1919 the ILO has brought together governments, employers' and workers' organisations (the tripartite partners) from these 187 member states. These tripartite partners; government, employers and workers organisations work together to set global labour standards, develop policies and devise

programmes. Therefore, the labour standards of the ILO represent the consensus of the tripartite constituents of the 187 states which are members of this United Nations specialised agency. Trinidad and Tobago is a longstanding member of the ILO and has ratified 22 of its conventions including the ILO's 8 fundamental conventions.

Although the International Labour Standards do not directly address the question of vaccinations as a condition for work, the ILO, in April 2021, has provided guidance on 'ILO Standards and COVID 19', the related news release states, among other things, that the legal basis for such measures to be introduced in the workplace would largely depend on the national regulatory framework.

For the ILO membership, the issue of vaccination should be based on a standards-based approach underpinned by tripartism and social dialogue that involves bipartite consultations between employers and workers.

The ILO further states that if a decision on mandatory vaccination is made by an employer, (of course such a decision should only be made after proper consultation) it should be implemented in a non-discriminatory manner, in line with the requirements of Convention No. 111, (the Discrimination Employment and Occupation Convention) and with due regard for specific circumstances that may require exemptions and accommodations.

Occupational Safety and Health at Work

In Trinidad and Tobago, like in most countries, the issue of health and safety in the workplace during a pandemic is of grave concern to all and has been hotly debated by stakeholders and the public in general.

It is an accepted policy in the area of occupational safety and health for protective measures to include vaccination. However, the ILO's tripartite constituents are reminded that Convention No. 155 (the Occupational Safety and Health Convention) and Convention No. 187 (the Promotional Framework for Occupational Safety and Health Convention), which are the core global standards on occupation safety and health, specifically require co-operation between management and workers at the enterprise level. The ILO states that while employers have a general obligation to ensure that workplaces are safe; consultations with workers on all aspects of Occupational Safety and Health are an essential element for decision-making, and the co-operation of workers is key for the implementation of workplace-related prevention measures.

In Trinidad and Tobago, Section 6 of the Occupational Safety and Health Act provides that it shall be the duty of every employer to ensure, so far as is "reasonably practicable", the safety, health and welfare at work of all his /her employees.

The Act also places several other duties on the employer including "(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

(c) the provision of adequate and suitable protective clothing or devices of an approved standard to employees who in the course

of employment are likely to be exposed to the risk of head, eye, ear, hand or foot injury, injury from air contaminant or any other bodily injury and the provision of adequate instructions in the use of such protective clothing or devices;

(d) the provisions of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his/her employees;

(f) the provision and maintenance of a working environment for his/her employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards amenities and arrangements for their welfare at work;”

Among the issues which are currently debated in the public is whether employers can fulfil their legal duty and obligations to provide safe work environments during this pandemic and what steps they should take to discharge the duty to provide a safe working environment.

In my view, in order to discharge the legal duty to provide a safe environment as the law requires, an employer should ensure that he/she takes all “reasonably practicable” steps to help to prevent the spread of COVID 19, such as (amongst others) to ensure that employees wear masks, provide hand sanitizers, promote and maintain social distancing at all times at the workplace, maintain clean and sanitary surroundings and require that any employee with symptoms associated with the virus should stay at home and advise the said employee to contact the health authorities promptly. In addition to this, in workplaces where there are Occupation Safety and Health committees in accordance with the Act, these Committees can play an important role in education and

informational activities related to the pandemic .In short an employer's duty can only be considered to be discharged when he/she applies and upholds the requirements of the public health laws the Occupational Safety and Health Act and the laws of the country in general.

Thus in my view, when all measures which are “reasonably practicable” are taken to protect the workforce from possible infection, this can discharge employers of their legal duty under the Occupational Safety and Health Act. Measures which are “reasonably practicable” should include the measures which have been prescribed by the law.

According to the ILO guidelines, social dialogue and consultations would appear to be the best means to establish whether vaccination might indeed be required for designated jobs, based on objective criteria. The ILO reminds its constituents that where international labour standards do specifically touch on measures of immunisation, they focus on the importance of protective measures in the workplace being accessible and available, rather than being obligatory. For example, the Nursing Personnel Recommendation, 1977 (No. 157), provides that immunisation should be provided for nursing personnel regularly exposed to special risks; and the Occupational Health Services Recommendation, 1985 (No. 171), states that occupational health services might, where possible and appropriate, carry out immunisations in respect of biological hazards in the working environment.

The ILO further states that any required Occupational Safety and Health measures introduced and adopted by the employer shall not involve any expenditure for the workers, as required by Convention No. 155 Occupational Safety and Health Convention. The

Occupational Safety and Health Act of Trinidad and Tobago also provides that expenditure for safety and protective measures in the workplace shall not involve any expenditure for workers.

It is important that each individual workplace be treated as distinct and separate (since what pertains in one may not apply to the other) and that the introduction of additional and/or enhanced health and safety measures apart from those mandated by law should be considered after due regard is given to each individual workplace environment. If, for example, the workplace comprises of two persons who do not have direct contact with the public or with each other, apart from the mandatory public health requirements which must be adopted, the business owner may not want to adopt additional measures and may not want to feel pressured to do so. The converse may pertain in a large workforce where one may want to consider additional measures which may be appropriate and necessary. The measures taken must be case and fact specific. This is where the engagement of management and the workers representatives in comprehensive bilateral consultation plays a critical role.

We can agree that the world of work as we knew it will not be the same, because of the social and economic impacts of this pandemic. Therefore, there may be the need for employers and workers representatives to re-examine and revise the duties and the functions of some employees, and to address the new issues which may present themselves at the workplace. This, of course, can only be done after consultation with the employees or if there is a Union, through the collective bargaining mechanism. I urge unions and employers to meet, to be open to dialogue and consensus even if the discussion may initially cause a level of

unease and discomfort. Always remember that social dialogue is a very important tool in industrial relations as you try to resolve these very troubling issues of common interest.

Apart from the much needed dialogue about whether or not there should be a mandatory or voluntary vaccination policy, it may help for each employer, in collaboration with the Union and technical support from other relevant actors as appropriate, to conduct a risk assessment of each individual workplace with a view to determining whether there are compelling reasons to adopt a policy which distinguishes between the non-vaccinated and vaccinated workers. The risk of discrimination should be among the factors to be considered if such an assessment is undertaken and so too should the training needs of workers, especially training and education on vaccines. If a risk assessment policy is considered and contemplated by a company, the Union should be consulted at the very initial stages, and collective bargaining should commence on the issue. If there is no Union at the company, there will be a need for discussions and dialogue, not monologues, with workers.

I do hope that this discussion on vaccination in the workplace and Occupation Safety and Health issues provide adequate guidance to all the relevant stakeholders who may have to address these concerns.

In August 2021, the main trade union bodies namely: The Federation of Independent Trade Unions and NGOs (FITUN), The Joint Trade Union Movement (JTUM) and The National Trade Union Centre of Trinidad and Tobago (NATUC), announced the commencement of bilateral discussions with organisations representing the business community namely: American Chamber of Commerce of Trinidad and Tobago (AMCHAM T&T), Energy

Chamber, Trinidad and Tobago Chamber of Industry and Commerce and Trinidad and Tobago Manufacturers Association . I have been informed that these umbrella trade union organisations also held bilateral discussions with the Employers' Consultative Association.

According to a news release from the Trade Union Movement, these bilateral meetings are aimed at having dialogue about safety and other challenges at the workplace "in a COVID 19 environment". These tripartite meetings mark a very important first step of tackling the issues created by the pandemic, and I do wish that they bear fruit and assist in providing the much needed guidance in the workplace.

It is public knowledge that the National Confederation of Trade Unions has withdrawn from the National Tripartite Advisory Council for what they consider to be good reason. However, this is the time in our nation's history where there is a need for the workforce to be guided by the decisions of the tripartite leaders.

The current unprecedented challenges in the world of work which have been presented by this pandemic require strong leadership to assist and to navigate the workforce through these difficult, uncharted and myriad issues and also to assist in stabilising the labour market. The workforce needs to be reassured and comforted in the knowledge that the tripartite leaders (government, employers and trade unions) are engaged in regular discussions with a view to reaching agreement on the path to be followed in the workplace to address the issues created by the pandemic. This much needed guidance can only be achieved in a climate of mutual respect and compromise, facilitated through social dialogue.

This may be the time for the National Tripartite Advisory Council to revisit its working mechanisms and also for the Federation of Trade Unions to reconsider the timing of its collective stance of non-participation in the Council. Additionally the Trade Union movement and the government may wish to iron out their differences in order to begin meaningful consultation, along with the employers, on the effects of the pandemic on the world of work and industrial relations over the past 18 or so odd months, and the role of employers' and workers' organisations in forging a path of economic and social recovery for our nation during and after the pandemic.

I am aware that the Industrial Relations Advisory Committee held meetings and prepared a report on the issue of COVID 19 vaccination in the workplace however, there is an urgent need for the tripartite partners to convene and discuss not only vaccination policies, but also labour relations in this country, the survival and sustainability of businesses, the social and economic impact of the pandemic and the path to recovery after the pandemic.

I cannot overstate the need for the Ministry of Labour, the various employers' organisations and the trade union federation to assist in their own way to educate the workforce on the different vaccines and the importance of vaccination in order to clear up some of the misinformation which prevails among workers.

At the June 2021 International Labour Conference, a conference governments, workers' and employers' delegates from 181 countries adopted a 'Global Call to Action for a human-centered recovery' that is inclusive, sustainable and resilient. At the national level, bipartite and tripartite dialogue will be key to the processes for drawing up policies and strategies; legal and institutional

frameworks based on international labour standards, must provide the foundations for such initiatives.

THE WORK OF THE COURT FOR THE YEAR IN REVIEW

In the year in review (14th September 2020 to 14th September 2021), **966** new cases were filed at the Industrial Court, which is **61** cases more than the previous year when **905** cases were filed.

The Court disposed of **1037** cases, which is **330** more than the cases disposed of in 2019/2020.

The disposal rate for this year is **107.3%**, which is **29.2** percentage points higher than the previous year when the disposal rate was **78.1%**.

A breakdown of the cases disposed in the year in review are as follows: **304** Judgments were delivered, **396** cases were withdrawn, **297** cases were settled through the conciliation and bilateral process and **35** cases were dismissed.

A look at the category of disputes which were filed at the Court reveal that **591** Trade Disputes were filed, **146** Industrial Relations Offences were filed, **101** Retrenchment and Severance Benefits cases were filed and **74** Occupational Safety and Health cases were filed.

I know that since the start of the pandemic there have been numerous requests from stakeholders for the virtual hearing of cases.

Unfortunately, the Industrial Court does not have the technology and the equipment to facilitate virtual hearings at this time.

In the year in review, there were open court sittings from September 2020 to April 2021.

There were no sittings of Court from May to July this year except for the hearing of one urgent Application for injunctive relief. In the first 20 days of the month of August 2021, there were open court sittings for Judges to complete part heard matters and to hear urgent IROs.

It is of note that Case Management hearings and matters of Mention and Reports are conducted virtually. However, Conciliation is conducted in person for the most part. The filing of documents at the Registry continue to be done by the use of drop boxes in an effort to minimize contact between staff members and the public.

As I stated last year, there is a rigorous regime of cleaning and sanitising each day at the Court, which is augmented from time to time by the members of the San Juan/Barataria Regional Corporation who I continue to thank for their kind support and service.

Last year, very early in the pandemic, the Court approached Dr. Saed Rahaman, Director of Veterinary and Public Health, Ministry of Health, to visit the Court and to educate us about the virus and the precautions which should be taken during the pandemic at the various workstations and in the Courtrooms. This very important lecture, was attended by all the Judges of the Court, all Head of Departments, the cleaners from the National Maintenance Training and Security Company and a few other members of staff. I wish to

publicly thank Dr. Saed Rahaman, for this very important guidance which we have been closely following.

Tributes

It is with deep sadness we mourn the loss of two of our colleagues His Honour Mr. Kyril Jack and our beloved (Mrs) Tamara Choonoolal-Ramlogan. His Honour Mr Jack was a well-respected judge and Tamara who was loved by all was a very professional and an outstanding member of staff. Our prayers and thoughts are with their families. They are greatly missed.

As I conclude, I wish to reiterate that as we navigate this very deadly pandemic and discuss issues of common interests such as the survival and sustainability of businesses and the livelihood of workers, social dialogue plays a critical role in these discussions and in forging a path of economic and social recovery. I am reminded of the saying “alone we can do so little, together we can do so much”. May God bless you all. Thank you for listening.