THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P281 of 2019

Trade Dispute No. ESD-TD 008/2018

Between

THE PUBLIC SERVICES ASSOCIATION

Appellant

And

THE WATER AND SEWERAGE AUTHORITY

Respondent

Panel: A. Mendonça, J.A.

P. Moosai, J.A.

P. Rajkumar, J.A.

Date of delivery: June 12, 2020

Appearances:

Mr. D. Mendes SC and Mr. K. Ramkissoon instructed by Mr. L. Kalicharan appeared on behalf of the Appellant

Mr. K. Garcia instructed by Ms. V. Jaisingh appeared on behalf of the Respondent

JUDGMENT

Delivered by A. Mendonça, J.A.

1. The issue in this appeal is whether the question or difference between the parties is a trade dispute within the meaning of the Industrial Relations Act (the IRA). The Industrial Court held that it is not. The Appellant, the Public Services Association of Trinidad and Tobago, has appealed and contends that the Industrial Court erred in so holding.

2. The relevant background to this appeal is relatively straightforward.

3. Mr. Steve Joseph (the worker) has since 1968 been employed with the Water and Sewerage Authority, the Respondent. The registered collective agreement between the Appellant and the Respondent contained terms and conditions of employment with respect to various positions at the Respondent. One of these positions is that of Regional Manager which, according to the evidence and arguments of the Appellant, by 2012 was held by the worker.

4. The collective agreement contained certain provisions relating to discipline and disciplinary procedure. Among them are articles 25 5 (b) and (c) which are as follows:

> "b) Upon receipt of the report from the Head of the Department, the Manager Employee Relations shall also issue a disciplinary proceedings notice to the worker with a copy being sent to the Association at the same time, which shall state clearly the nature of the offence, date, time, place and the name of the investigating officer appointed to investigate the allegation(s).
>
> c) Where, within a period of three (3) months from the date of issue of the notice as at (b) above, the worker has not been charged, such notice shall cease to have effect and shall thereupon be removed immediately from the official records of the Authority."

The collective agreement was for the period January 1, 2011 to December 31, 2013 and it therefore expired on December 31, 2013. However, by section 47(2) of the IRA the terms and conditions of the collective agreement are deemed to be the terms and conditions of the worker's individual contract of employment.

5. In or around 2002 the Respondent implemented a policy to enable its employees holding a position in range 68 (which includes the position of Regional Manager) to participate in the executive management of the Respondent. It appears that in 2012 the worker was one of the Respondent's workers who benefitted from this policy as, according to the Appellant's evidence and arguments, in that year the worker assumed the position of Director Operations (which is an executive management position).

6. By contract dated January 1, 2015 (the 2015 contract) and made between the Respondent and the worker, the Respondent further engaged the worker as Director Operations for a period of three years with effect from January 1, 2015 to December 31, 2017, to carry out and discharge the duties and functions particulars whereof were set out in the appendix to the 2015 contract.

7. The 2015 contract contained recitals one of which is as follows:

> "C. The Parties have agreed that all the rights, benefits and entitlements attaching to, arising from or by virtue of the said permanent employment shall be preserved and maintained as a pre-requisite to the said Steve Joseph entering these presents."

8. On assumption of the position of Director Operations the worker was on no pay leave from his substantive position with the Respondent.

9. By letter dated June 16, 2016 the Respondent wrote to the worker indicating that based on preliminary findings of investigations, allegations of misconduct,

which were outlined in the letter, were made against the worker. The letter further stated that in light of the allegations the worker was suspended with pay with immediate effect until July 31, 2016 or until the completion of any disciplinary process in relation to the allegations.

10. By letter dated December 21, 2017 the worker was formally charged with several acts of misconduct which were outlined in the letter. Some of the charges related to matters preceding the 2015 contract. These included (a) the implementation in 2013 of an "interim structure" for the operations division without the required approvals thereby committing the Respondent to undue and unbudgeted expense without benefit to the human resource component and (b) in 2013 and 2014 the engagement of selected contractors without prior approvals or without "conformance to the Respondent's tendering process". The worker was informed by this letter that he was required to attend a disciplinary hearing to enquire into the charges of misconduct. The hearing was scheduled to be held on January 10, 2018.

11. The worker has denied any wrongdoing.

12. By letter dated January 5, 2018 (wrongly dated 2017) attorneys-at-law for the worker wrote to the Chief Executive Officer of the Respondent informing him that they considered the convening of the disciplinary hearing to be in breach of article 25 5 (c) of the collective agreement. The contention was that the worker was charged outside of the three-month period provided for in article 25 5 (c).

13. By letter dated January 3, 2018 the Appellant, pursuant to section 51(1) of the IRA, reported a trade dispute to the Minister over the Respondent's decision to lay charges against the worker in contravention of article 25 5 (c) of the collective agreement.

14. On January 25, 2018 the dispute was certified by the Minister as an unresolved dispute pursuant to section 59(2) of the IRA and referred to the essential services division of the Industrial Court in accordance with section 59(5).

15. We may mention that the disciplinary hearing, which was scheduled for January 10, 2018, has not yet taken place. This is because of an injunction that was obtained by the Appellant and subsequent agreements between the parties not to proceed with the disciplinary process pending the hearing and determination of the matter by the Industrial Court and subsequently pending the hearing and determination of this appeal.

16. It is the Appellant's case that articles 25 5 (b) and (c) apply to the worker. This, it says, is so in relation to the period prior to the 2015 contract by virtue of section 47(2) of the IRA, which deems the terms and conditions of the collective agreement to be the terms and conditions of the worker's individual contract of employment and in relation to the period after the 2015 contract by virtue of the recital of the 2015 contract, which the Appellants contends incorporated articles 25 5 (b) and (c) into the 2015 contract.

17. The Appellant says that the letter of June 16, 2016 constituted a disciplinary notice within article 25 5 (b) and that since three months had elapsed before the worker was charged, the notice of disciplinary proceedings ceased to have effect and should have been removed from the official records of the Respondent pursuant to article 25 5 (c).

18. The Respondent disputes that articles 25 5 (b) and (c) apply to the worker during his employment as Director Operations. The Respondent's case is therefore that the worker is not entitled to have the terms of article 25 applied to the disciplinary proceedings in relation to him while in the position of Director Operations.

19. When the matter came before the Industrial Court both parties were invited by the court to address it on a preliminary point, namely whether the matter

before the court was in fact a trade dispute within the meaning of the IRA. Pursuant to the court's invitation, both parties made submissions.

20. Before we refer to the findings of the Industrial Court, it is appropriate to set out the more relevant provisions of the IRA to this appeal.

> "**2.** (1) In this Act—
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> > "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);
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> (2) For the purposes of this Act—
>
> > (a) any question or difference as to the interpretation or application of—
> >
> > > (i) an order or award of the Court, or of any provision thereof; or
> >
> > > (ii) the provisions of a registered agreement (within the meaning of Part IV); and
> >
> > (b) any question or difference as to the amendment of a registered agreement (within the meaning of Part IV),
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> shall be deemed not to constitute a trade dispute.
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> **16.** (2) Where there is any question or difference as to the interpretation or application of the provisions of a registered collective agreement (within the meaning of Part IV) any employer or trade union having an interest in the matter or the Minister may make application to the Court for the determination of such question or difference.

(3) The decision of the Court on any matter before it under subsection (2) shall be binding on the parties thereto and is final.

43. (1) A collective agreement shall contain effective provisions concerning appropriate proceedings for avoiding and settling disputes and shall, subject to subsection (3), be for a term to be specified therein, being not less than three years or more than five years.

47. (2) The terms and conditions of a registered agreement shall, where applicable, be deemed to be terms and conditions of the individual contract of employment of the workers comprised from time to time in the bargaining unit to which the registered agreement relates.

51. (1) Subject to this section, any trade dispute, not otherwise determined or resolved may be reported to the Minister only by—

(a) the employer;

(b) the recognised majority union;

(c) where there is no recognised majority union, any trade union, of which the worker or workers who are parties to the dispute are members in good standing,

and, subject to sections 11(b)and 19, such persons only shall for all the purposes of this Act be treated, respectively, as parties to a dispute; and the Minister shall acknowledge receipt of any such report and deal with it in accordance with this Act and the Regulations.

54. (1) Where there is any question or difference between an employer and a trade union as to whether a dispute that has been reported is—

(a) one that concerns the application to any worker of that employer of existing terms and conditions of employment or the denial of any right applicable to the worker in respect of such employment; or

(b) one that concerns the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any worker of that employer,

either party or the Minister may make application to the Court for the determination thereof and the Court may determine the matter in a summary manner, whether or not by way of hearing witnesses in the matter.

(2) The decision of the Court on any question before it under subsection (1) shall be binding on the parties to the question and is final.

(3) Where a matter is determined by the Court under subsection (1), the dispute shall be deemed to have been first reported to the Minister on the date when the decision of the Court on the question is given.

59. (1) A dispute, reported pursuant to section 51(1) or deemed to have been so reported under this Part, that remains unresolved after the time within which the Minister may take steps by means of conciliation to secure a settlement thereof, including any extension of such time under section 55(2), has expired, shall be so certified in writing by the Minister (referred to in this Part as an "unresolved dispute") and notice thereof served on the parties to the dispute and the Minister may also state any reasons which in his opinion have prevented a settlement.

(2) Where the unresolved dispute concerns the application to any worker of existing terms and conditions of employment or the denial of any right applicable to any worker in respect of his employment or the dismissal, employment, non-employment, suspension from employment, refusal to employ, re-employment or reinstatement of any worker, either party to the dispute may make application to, or the Minister may refer the matter to, the Court for the determination of the dispute.

(3) Where the unresolved dispute is between the employer and the recognised majority union concerning matters, other than those referred to in subsection (2), the dispute may be dealt with in the following manner:

(a) where both parties request him to do so, the Minister may refer the dispute to the Court for the determination thereof; or

(b) either or both of the parties may, subject to this Act, take action by way of strike or lockout in accordance with this Part.

(4) Nothing in this section shall be construed so as to permit—

(a) a union, other than a recognised majority union, to take action by way of strike; or

(b) an employer to take lockout action in relation to a dispute with his workers who are not represented by a recognised majority union for a bargaining unit of that employer.

(5) Nothing in subsections (2) to (4) shall apply in the case of any unresolved dispute in an essential service between an employer and any trade union, and every such unresolved dispute shall be referred by the Minister to the Court for settlement.

21. In its judgment, the Industrial Court referred to the definition of "trade dispute" at section 2(1) and also referred to section 2(2). It noted that the dispute which was referred to the court by the Minister concerns the decision to lay charges in contravention of article 25 5 (c) of the collective agreement. The court stated that there was a difference of opinion between the parties on the application of article 25 5 (c) of the collective agreement. These differences the court said, "can only be resolved if there is a proper interpretation of the said article as it relates to the issues as arose in this 'alleged dispute'". The court then stated:

> "It is indeed unfortunate that parties to the collective agreement have allowed it to expire, but be that as it may, the Court cannot deem the instant matter to be a dispute (which it clearly is not) if it is an interpretation matter. The fact that this instant matter cannot be dealt with because the Collective Agreement has expired does not in any way mean that it is not a matter that must properly be dealt with as an ICA."

22. The court concluded that what was before it was not a trade dispute. The reasoning of the Industrial Court is not entirely clear, but it seems that the court was of the view that as the matter before it entailed the interpretation or application of the collective agreement, it was deemed by section 2(2) of the IRA not to constitute a trade dispute.

23. The Industrial Court accordingly dismissed the matter. The court did not determine the merits of the matter but dismissed it on the preliminary point that it was not a trade dispute.

24. The Appellant has appealed. It contends that the Industrial Court erred in concluding that what was before it was not a trade dispute. It seeks an order of this court setting aside the order of the Industrial Court and remitting the matter to the Industrial Court for its determination on the merits of the parties' positions as to the applicability and interpretation of articles 25 5 (b) and (c) on the facts of this case. The Respondent's position is that the conclusion of the Industrial Court that the matter is not a trade dispute is correct. It asks that the appeal be dismissed.

25. We wish to emphasise that the sole issue before this court is whether the question or difference between the parties is a trade dispute within the meaning of the IRA. Whether articles 25 5 (b) and (c) of the collective agreement are terms and conditions of the worker's terms and conditions of employment is not for our decision. Neither is the issue whether the laying of the charges against the worker contravenes the articles should it be found they are terms and conditions of the worker's employment, a matter for us on this appeal. These are matters for the determination of the Industrial Court should we find that this is a trade dispute and the matter is remitted to the Industrial Court. Our remit is therefore the relatively more straightforward issue to determine whether the Industrial Court was correct to hold that the question or difference between the parties is not a trade dispute within the

meaning of the IRA. This is a question of law and an appeal from that decision properly lies to this court.

26. The question or difference between the parties is therefore whether article 25 5 (b) and (c) are terms and conditions of the worker's employment, and if so, how are they to be interpreted and applied in the circumstances of this case.

27. The IRA defines "trade dispute" at section 2(1) which we have set out above. That definition defines a trade dispute to include a dispute connected with the terms and conditions of employment of any worker. We do not think that it can gainsaid that a question or difference between the parties as to whether articles 25 5 (b) and (c) are terms and conditions of the worker's employment, and if so, what is their proper interpretation and application is a dispute connected with the terms and conditions of employment of the worker. The dispute, in our judgment, is therefore within the definition of a trade dispute. This was conceded to be so by Mr. Garcia who appeared on behalf of the Respondent.

28. Mr. Garcia, however, argued that section 2(1) of the IRA is subject to section 2(2). He submitted that the effect of section 2(2) is to deem any question or difference as to the interpretation or application of the provisions of a collective agreement not to constitute a trade dispute. He argued that the question or difference in this case is the interpretation and application of the provisions of a collective agreement. The effect of section 2(2) is, therefore, to deem the question or difference between the parties not to constitute a trade dispute.

29. It is clear from section 2(1) and section 2(2) that section 2(1) is to be read subject to section 2(2). Mr. Garcia is correct on that point. Mr. Mendes for the Appellant, however, submitted that section 2(2) does not apply to a dispute in relation to the interpretation and application of a registered collective agreement which has expired as is the case here. Where the question or

difference between the parties involves the interpretation or application of a collective agreement that has expired, that question or difference is not caught by section 2(2). He referred to cases to support that submission, to which we will make reference below, in relation to the meaning and effect of section 16(2) of the IRA which uses similar language as section 2(2). Those cases have decided that section 16(2) does not apply to an expired registered collective agreement save where the dispute arises out of facts which were in existence during the currency of the agreement. He submitted that section 2(2) should be interpreted in the same way as section 16(2).

30. The first such case is the decision of the Industrial Court in **ICA 11 of 1986 OWTU v Alstons Building Enterprises Limited** (the ABEL case). In that case, the union applied under section 16(2) of the IRA for the determination of a difference between the union and the employer over the interpretation and application of the provisions relating to severance payments contained in the collective agreement. The collective agreement expired on December 31, 1984. The difference between the parties arose in relation to workers who were terminated on grounds of redundancy from July 13, 1985 after the expiration of the collective agreement. The employer challenged *in limine* the jurisdiction of the Industrial Court to entertain the union's application on the ground that the collective agreement did not apply to the workers because it had expired prior to the date on which the services of the workers were terminated. The Industrial Court upheld that challenge. It was of the view that it had no jurisdiction to entertain the application since a collective agreement (save for provisions relating to procedures for avoiding and settling disputes) is binding and enforceable only during its currency or continuance. The Industrial Court went on to say that:

> "…while the Union is disabled by the expiry of the Agreement from seeking the Court's determination under Section 16(2) of a "difference" between itself and the Company as to the interpretation and application of the Agreement in relation to the

> workers, the Union is, subject to it overcoming the impediment relating to time contained in Section 51(3) of the Act, able to report a trade dispute between itself and the Company over the issue of the Company's decision to deduct the Company's contributions to the Provident Fund from the workers' severance payments and/or benefits under the Provident Funds. On the invocation of the trade dispute procedure the Court will be enabled to exercise its jurisdiction to enforce the workers' individual contracts of employment despite the expiry of the Agreement."

31. In the judgment of the Industrial Court, therefore, not only did section 16(2) not apply to disputes arising after the collective agreement had expired but it was appropriate to report a trade dispute in relation to whether the provisions relating to the payment of severance, the source of which was the expired collective agreement but which were deemed to be the terms and conditions of the workers' individual contracts of employment, were properly interpreted and applied by the employer.

32. In **Civil Appeal No. 9 of 1995 Bank Employees' Union v Republic Bank Limited** (the Bank Employees' Union case) the Court of Appeal had to consider the identical question as was before the Industrial Court in the ABEL case.

33. In the Bank Employees' Union case three matters were heard together by the court. Two were on an application under section 16(2) of the IRA and the other was before the court on the normal trade dispute procedure. The two section 16(2) matters were concerned with whether payments were due to workers for overtime in accordance with the provisions of the collective agreements. In those two matters the difference between the parties arose after the expiration of the registered collective agreement. In relation to those two matters, objection was taken by counsel for Republic Bank Limited that the Industrial Court had no jurisdiction to entertain the application made pursuant to section 16(2) as the collective agreement had expired. In so doing, reliance was placed on the Industrial Court's judgment in the ABEL case.

34. The Court of Appeal reviewed the applicable provisions in Part IV of the IRA. It noted that section 43(1) of the IRA determines the lifespan of the collective agreement. This, the court observed, is subject to section 48(2) of the IRA which provides that terms and conditions of a registered agreement relating to procedures for avoiding and settling disputes shall continue after the expiration of the agreement until a new collective agreement has been registered. But save for that, Jones JA, speaking on behalf of the majority of the Court of Appeal, stated that "The remainder of the collective agreement qua collective agreement dies, but the terms and conditions of the individual contracts of the workers do not die with the expiration of the collective agreement. They continue on until those terms are replaced, amended or confirmed by the new collective agreement. They survive, not as terms of a registered collective agreement, but as the terms and conditions of the individual contracts of employment of the workers."

35. Jones JA further stated:

> "Let me now go to section 16(2) and a consideration of the question whether its provisions can be invoked with respect to the interpretation of any provision of an expired collective agreement. In my view it is clear on a reading of section 16(2) that it is available for instance, where parties including the Minister, in order to avoid a full scale dispute seek the Court's assistance in interpreting or explaining the application of any provision of a collective agreement. It is by no means an alternative route to the Court where a trade dispute exists. In the subsection, a registered collective agreement is defined as one within the meaning of Part 4 of the Act. It has a fixed life span – section 43(1). At the expiration of this period either 3 or 5 years, the agreement loses its character as a registered collective agreement and can no longer have force as such. In other words, there is no longer a collective agreement regulating the relationship between the workers and the employer. It can for all practical purposes be taken off the register of collective agreements and section 16(2) can no longer be invoked in respect of any term contained therein. The jurisdiction of the Court is ousted."

Jones JA then said with specific reference to the ABEL case:

> "On this point, the decision of the Court in **Abel** was the correct one. I endorse a passage from the judgment of the Court in that matter where it ruled –
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> > 'It is quite clear from a consideration of the conjoint provisions of Section 43(1) and 48(2) of the Act that a collective agreement registered under the Act is binding and enforceable only during its currency or continuance. It ceases to be binding on the parties thereto after the expiration of its agreed duration save in the case of procedures contained therein for avoiding and settling disputes. By Section 48(2), such procedures continue to have full force and effect until another collective agreement between the parties or their successors or assignees, as the case may be, has been registered.'"

36. In both the ABEL and the Bank Employees' Union cases referred to above, the courts were dealing with cases where the question or difference between the parties had arisen after the expiry of the collective agreement and was in relation to facts which arose after the expiration of the collective agreement. In **Caribbean Ispat Limited v Steel Workers' Union of Trinidad and Tobago** (1998) 55 WIR 478 de la Bastide CJ (as he then was) voiced the opinion in obiter remarks that there was logic in treating the jurisdiction of section 16(2) as limited to applications for the purpose of interpreting or applying the provisions of a collective agreement in relation to facts which were in existence during the currency of the collective agreement. He stated:

> "All I will say is that there is at least some basis in logic for treating the jurisdiction under section 16(2) as limited to applications which are made for the purpose of interpreting or applying the provisions of a registered agreement in relation to facts which were in existence during the currency of the agreement, as opposed to facts which have arisen after the expiration of the agreement, since upon its expiration it loses its status as a registered collective agreement, even though its terms are incorporated in the

individual contracts of employment of the workers to which the agreement applied (see section 47(2))."

37. That is entirely consistent with the ABEL and the Bank Employees' Union cases where the courts were dealing with disputes that had arisen in relation to matters occurring after the expiration of the collective agreement and is now accepted as settled law in this jurisdiction.

38. Two other cases in relation to this point were mentioned during the course of the argument before this court, namely: **Civil Appeal No. 207 of 1997 Transport and Industrial Workers' Union v National Maintenance Training and Security Company Limited** and **Civil Appeal No. 96 of 1994 Republic Bank Limited v Bank Employees' Union** (the Republic Bank Limited case). Neither of them disapproved nor questioned the correctness of the ABEL or the Bank Employees' Union cases. Indeed, to the contrary, the Court of Appeal in Transport and Industrial Workers' Union (supra) referred with approval to the ABEL case (see paragraphs 46 to 49).

39. In the Republic Bank Limited case, the issue there was whether the Industrial Court's decision as to the interpretation or application of a term or condition of the worker's individual contract of employment which was the same term and condition in the recently expired collective agreement and which by section 47(2) was deemed to be a term and condition of a worker's individual contract, was binding on the parties and final for the purpose of section 16(3) of the IRA. The court held that it was. No mention was made in that case of the interpretation of the Court of Appeal of section 16(2) in the Bank Employees' Union case. And clearly nothing said in the Republic Bank case was meant to detract or question the interpretation of the Court of Appeal of section 16(2) in the Bank Employees' Union case.

40. The Republic Bank Limited case is instructive in relation to the issue in this appeal. It seems, from the judgment of the Court of Appeal in that case, that

the dispute between the parties concerned the refusal by the employer to pay profit-sharing to part-time workers. The dispute arose after the expiration of the relevant collective agreement. Whether the workers were entitled to profit-sharing was dependent on the interpretation and application of terms in their individual contracts of employment which were precisely in the same terms as the recently expired collective agreement. This was so by virtue of section 47(2) which deemed the terms and conditions of the collective agreement to be the terms and conditions of the workers' individual contracts of employment. What is instructive is that the dispute was reported as a trade dispute pursuant to section 59(2). The parties took no objection to that course and the Court of Appeal did not see a problem with it. This supports what the Industrial Court said in the passage quoted from its judgment in the ABEL case (see para 30 above) that such a dispute may be reported as a trade dispute. Of course the relevance is that that is what was done in this case, which also concerns the interpretation and application of terms in the worker's individual contract of employment that are in the same terms as in the expired registered collective agreement.

41. Be that as it may, it is clear from the ABEL, Bank Employees' Union and Caribbean Ispat cases that section 16(2) which gives the Industrial Court jurisdiction to determine any question or difference as to the interpretation or application of the provisions of a registered collective agreement does not apply to registered collective agreements that have expired, save where the facts giving rise to the question or difference were in existence during the currency of the agreement as opposed to facts that have arisen after the expiration of the agreement. We do not understand Mr. Garcia to be disputing that that is what the ABEL, Bank Employees' Union, and Caribbean Ispat decided nor the correctness of those decisions.

42. Mr. Garcia, however, submitted that the ABEL, Bank Employees' Union, and Caribbean Ispat cases all deal with the interpretation of section 16(2) and not

section 2(2). His submission was that section 2(2) applies also to a registered collective agreement that has expired. Therefore, any question or difference as to the interpretation or application of a term in a registered collective agreement, whether or not expired, is deemed by section 2(2) not to be a trade dispute. He submitted that that is what this case is all about. The question or difference between the parties clearly involves the interpretation or application of articles 25 5 (b) and (c) of the expired collective agreement.

43. We however see no warrant to construe the reference in section 2(2) to "the provisions of a registered agreement (within the meaning of Part 4)" differently than was done in the cases to which we have referred to above which interpreted section 16(2). The two sections use very similar language. They both include the words "any question or difference as to the interpretation or application of the provisions of the registered agreement (within the meaning of Part 4"). The sections are obviously related and in our view section 16(2) is the corollary to section 2(2). Whereas section 2(2) deems such a question or difference not to constitute a trade dispute, section 16(2) provides an avenue through which that question or dispute may be brought before the Industrial Court for its determination. And that is by application by any employer or trade union having an interest in the matter or by the Minister.

44. Section 2(2) of the IRA like section 16(2) in our judgment therefore does not apply to a registered collective agreement that has expired and the facts giving rise to the difference or question between the parties were not in existence during the currency of the collective agreement. There is no issue in this case in our view that the facts were not in existence during the currency of the collective agreement. As we mentioned, the collective agreement expired on December 31, 2013 and the dispute concerns the laying of charges in 2017. In our judgment, section 2(2) does not apply to this matter so as to deem the question or difference between the parties not to constitute a trade dispute.

45. Mr. Garcia further submitted that even if the dispute between the parties is within the definition of a trade dispute, it is not a trade dispute that can be reported by the Minister to the Industrial Court for its determination. The Minister was therefore wrong to report the trade dispute to the Industrial Court in this case. Mr. Garcia submitted that section 59(2) gives the Minister the authority to refer unresolved disputes to the Industrial Court but that section refers to a dispute which concerns the application to any worker of "existing terms and conditions of employment". He argued that that means that a dispute which concerns whether or not the term or condition exists is not a dispute that concerns an existing term. He reminded the court that the Respondent's case is that articles 25 5 (b) and (c) were not incorporated into the terms and conditions of the worker's contracts of employment. The dispute, he submitted, was therefore not about an existing term and condition but whether the term and condition exists and is therefore not a dispute that could have been referred by the Minister to the Industrial Court for its determination. We however do not agree with this submission.

46. The meaning attributed to "existing terms and conditions" in section 59(2) by Mr. Garcia is one that says the term and condition is existing only if there is agreement between the parties that the term and condition is one of the terms and conditions of the worker's employment. To accept that that is what section 59(2) means would require reading too much into the language of the section and if that were the intention of the legislature that could easily have been stated. In our view "existing" is used in its ordinary English meaning to mean in existence or operation at the current time. In that light, the section is referring to a term that is in existence or operation. It is difficult to conceive of a dispute over a term that is not in existence or in operation. The section further refers to a dispute that concerns the application to any worker of such a term. "Concerns" is a word of wide import. In our judgment, a dispute that concerns the application to any worker of an existing term or condition of

employment is wide enough to include a dispute whether the disputed term is a term or condition of the worker's employment.

47. In any event, it is relevant to note that section 59(2) does not only refer to a dispute that concerns the application to any worker of existing terms and conditions of employment. The section also refers to a dispute that concerns the denial of any right applicable to a worker in respect of his employment. In this case, the worker is saying that he has been denied a right to which he is entitled by articles 25 5 (b) and (c) not to have charges brought against him. Looked at in that way, it is clear to us that the dispute is one that concerns the denial of a right applicable to a worker and on that ground also is within section 59(2).

48. Mr. Mendes submitted that the effect of Mr. Garcia's submissions in relation to section 59(2) is to effectively deny the Appellant any access to the Industrial Court for the determination of the dispute between the parties. He argued that there are two routes where a dispute or a question or difference relating to the terms and conditions of the employment of a worker can be brought before the court. One is by section 16(2) where there is an extant collective agreement or the dispute relates to facts arising during the currency of an expired collective agreement which does not apply here. The other is the route of a trade dispute which was the one that was adopted in this case due to the inapplicability of section 16(2). If, however, Mr. Garcia's interpretation of section 59(2) is correct, all that has to be done to shut off that route is for one party to deny that the term or condition on which reliance is placed by the other party does exist. The result, according to Mr. Mendes, would be that either party would then be in a position to take industrial action either by strike or lockout (see section 59(3) of the IRA). This could be the result in relatively trivial disputes if access is not provided to the court. This, he submitted, cannot be the intention of the IRA which is an Act intended to make

better provision for the stabilisation, improvement and promotion of industrial relations.

49. Mr. Garcia argued that it is not correct to say that there is no other remedy if the routes of section 16(2) and the trade dispute are not available. He pointed to section 54(1)(a). But all that section does is to give the court the jurisdiction to determine the nature of the dispute. It does not seek to provide relief so far as the dispute itself is concerned. So that if Mr. Garcia is correct that for the purposes for section 59(2) the dispute cannot be one that relates to whether a term exists or not, then section 54(1)(a) takes the matter no further. The dispute on Mr. Garcia's submission still cannot be reported under section 59(2).

50. In our view, Mr. Mendes' submissions are persuasive. On that basis too, in our judgment it could not have been the intention of the legislature to give to the expression "existing terms and conditions" the meaning contended for by Mr. Garcia.

51. Finally, Mr. Garcia submitted that what was referred by the Minister to the Industrial Court was a dispute concerning the contravention of article 25 5 (c) of the registered collective agreement. This is clear from the Minister's certificate. He argued therefore that such a dispute is within section 2(2) as it is one concerning the question or difference as to the interpretation or application of a collective agreement and is deemed by that section not to constitute a trade dispute. Further, he pointed out that the case as pleaded by the Appellant in its evidence and arguments refers to the contravention by the Respondent of article 25 5 of the collective agreement. On the Appellant's pleading the dispute is also within section 2(2) of the IRA.

52. Mr. Garcia is correct on both his observations in relation to the Minster's certificate and the Appellant's evidence and arguments. The Minister's certificate and the Appellant's pleadings are open to criticism for the way the

dispute is described. We accept that it could have been more precisely described. But we do not think the nature of the dispute was lost on any of the parties. It was not disputed that the registered collective agreement had expired and that the dispute did not relate to facts which arose during the currency of the agreement. That meant that the dispute was not one concerning the interpretation and application of the provisions of the collective agreement as that agreement no longer regulated the relationship between the worker and the Respondent. The dispute was one connected with the terms and conditions of employment of the worker as those terms may be applicable to him by virtue of his individual contract of employment.

53. The Appellant's position that article 25 of the collective agreement was incorporated in the worker's terms and conditions of employment was indicated by it to the Respondent at a very early stage in the letter from the Appellant's attorneys-at-law of January 5, 2018. That article 25 is a term and condition of the worker's terms and conditions of employment is disputed by the Respondent and it has provided extensive reasons in its evidence and arguments for disputing that the article applies to the worker as Director Operations. Plainly, there was no doubt or confusion as to the real dispute between the parties. In our judgment, it would not be appropriate to focus on the Minister's certificate or the description of the dispute in the Appellant's pleading when the parties appreciated the real nature of the dispute. We therefore do not believe that this submission takes the matter anywhere and it certainly cannot be a ground for us to say that this is not a trade dispute.

54. In the circumstances, we allow the appeal, set aside the order of the Industrial Court and remit the trade dispute to the Industrial Court (Essential Services Division) for its determination.

A. Mendonça, J.A.

P. Moosai, J.A.

P. Rajkumar, J.A.