

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P332 of 2017

Application No. GSD-A 009 of 2007

Between

CARIBBEAN AIRLINES LIMITED

Appellant

And

COMMUNICATION, TRANSPORT AND GENERAL WORKERS' UNION

Respondent

Date of delivery: April 22, 2024

PANEL:

A. Yorke-Soo Hon J.A.

M. Dean-Armorer J.A.

M. Holdip J.A.

Appearances:

Mr. R. Martineau SC and Mr. B. Reid instructed by Mr. K. Salim appeared on behalf of the Appellant

Mr. D. Mendes SC and Mr. I. Ali appeared on behalf of the Respondent

Introduction

1. In this appeal , the Appellant, Caribbean Airlines Limited (CAL), challenges the order of the Industrial Court (IC) that, CAL, as successor to British West Indian Airways (BWIA), be constrained to recognise the Respondent, Communication, Transport and General Workers' Union (the Union) as one of its Recognised Majority Unions (RMU) and that Certificates of Recognition 97 and 98 of 1976 as issued by the Recognition Board were binding on CAL.
2. In the course of this judgment, we considered the concept of successorship as contemplated by section 48 of the ***Industrial Relations Act (IRA)*** . In section 48, the ***IRA*** provides for bodies of workers, whose employers , for one reason or another, have ceased to exist and whose services have been engaged by another employer. In those circumstances , the workers are not rendered metaphorical orphans and they are not left without the protection of representation by a recognised majority union . Rather , the law provides that the new employer should be regarded as the successor of the former employer for the purposes of the collective agreement which had subsisted between the representative union and the former employer .
3. A finding of successorship is not automatic but falls to be decided by the IC, as guided by good conscience and the principles of good industrial relations. Over the years, however, the IC, still guided by good conscience and the principles of good industrial relations, has established a test for the determination of whether or not the new employer should be regarded as the successor of the old. This test has come to be known as the three substantial test, meaning that the new employer carries on substantially the same operation as the former employer, in substantially the same way with substantially the same employees. This test was endorsed by the

Court of Appeal in *Eastern Commercial Lands Ltd. v Banking Insurance and General Workers Union*.¹

4. In *Eastern*, the Court of Appeal also addressed many questions which arise when a Court is required to decide whether there should be a finding of successorship. For this reason it will be found that *Eastern* is frequently cited in the course of this Judgment. We have relied on *Eastern* in considering whether a finding of successorship is precluded by either the payment of severance benefits to the workers in question or by the expiration of a registered collective agreement.
5. We have also relied on *Eastern* in considering the consequences which flow from a finding of successorship and whether it was appropriate for the IC to order that the successor company be bound by Certificates of Recognition in favour of the RMU.
6. Having heard the arguments of Senior Counsel for CAL and for the Union respectively, we accepted the observation of both Senior Counsel that the expired collective agreement was deemed to continue only in respect of portions concerned with the avoiding and settlement of disputes as contemplated by section 48(2) of the *IRA*. Having regard to this observation, we are of the view that the first order of the IC ought to be varied to reflect the provision of section 48(2). We otherwise hold that the IC had not made any error of law so as to invest the Court of Appeal with the jurisdiction contemplated by section 18(2) of the *IRA*. The appeal is otherwise dismissed.

¹ Civil Appeal 78 of 2009

Background

7. CAL is a limited liability company registered under the ***Companies Act*** Ch. 81:01. Since January 1, 2007, CAL has been the national airline and flag carrier of Trinidad and Tobago.
8. Immediately prior to 2007, the national airline had been BWIA. BWIA, like CAL, was a company registered under the ***Companies Act*** and its principal shareholder was the Government of Trinidad and Tobago.
9. It was not disputed that certain categories of workers of BWIA were represented by the Union. The Union was the recognized majority union for certain BWIA workers and the Union was so recognised by the Recognition and Certification Board by Certificates of Recognition Nos. 97 and 98 of 1976.
10. In 2007, the Union applied to the Industrial Court for a declaration that CAL was the successor employer for BWIA and that Certificates of Recognition No. 97 and 98 of 1976 are valid.
11. On October 4, 2017, the Industrial Court delivered its ruling in favour of the Union. They held that CAL, as the successor to BWIA, was constrained by the provisions of section 48 of the ***Industrial Relations Act*** to recognise the Union as one of the Recognised Majority Unions and to honour the terms of the registered collective agreement between the Union and BWIA.²
12. In the course of its written judgment, the IC set out the undisputed facts which it took into consideration. They first noted that the Union was the RMU for certain categories of workers which had been employed by BWIA.

² See paragraph 44 of the Written Ruling of the Industrial Court.

Some workers held senior positions in the engineering and maintenance departments, while others were in support services.

13. They set out the negotiations which were held between BWIA and the Union towards the restructuring of BWIA. The IC noted that a number of BWIA employees were offered employment with CAL. Letters of offer were issued by Mr. Peter Davies, who was the CEO of BWIA and also the acting CEO of CAL.
14. The IC referred to the application by BWIA to the Canadian Transportation Agency included in the bargaining process that led to the replacement of BWIA, where BWIA represented that the staff, crew, mechanics and administrative support of CAL will remain the same as that of BWIA.
15. The IC also referred to negotiations between BWIA and the Union, culminating in a decision to close BWIA and to give separation packages to the workers.³ This agreement was contained in the Supplemental Agreement between BWIA and the Union. The terms of the Supplemental Agreement are set out in full in the discussion below. It is significant, however, that in their Judgment no mention was made of the document, which is the Supplemental Agreement.
16. In the course of its decision, the IC identified the arguments of the parties, stating that the the Union contended that CAL was the successor to BWIA within the context of good conscience and the principles of good industrial relations practice⁴. The IC noted that CAL, for its part submitted that the Industrial Court had no jurisdiction to hear the Union's application for the following reasons: that there was no registered collective agreement in existence between the Union and BWIA at the time of the filing of this

³ See paragraph 14 of the Judgment at page 9 of the ROA Vol 1 .

⁴ See paragraph 12 of the Judgment at page 9 of the ROA Vol 1 .

application; that an order declaring successorship should not be made where suitable arrangements have been made for compensating workers for their past service; and that at December 31, 2006 the employees formerly represented by the Union were no longer employed by BWIA⁵.

17. The IC considered the evidence which had been filed by the Union. These consisted of five (5) witnesses for the Union and four (4) for CAL. The IC considered whether there was a requirement for a subsisting collective agreement before the Court can have jurisdiction and held that there is no requirement or precondition for the existence of a subsisting collective agreement before a determination of a successorship can be made.

18. By reference to section 47(2) and section 48(2) of the *IRA*, the IC held that the rights of collective bargaining remain whether or not there is a subsisting collective agreement and that certain terms of a collective agreement continue to have effect after the expiry of that agreement until another agreement has been executed.

19. The IC further stated that it is clear that section 48(3) places the determination of a successor squarely on the shoulders of the Court.⁶

20. In respect of the factor of severance payments, the IC held that payment of compensation to workers when their service has ended is not a determinative factor or a bar to the declaration of successorship. Instead, what it simply means is that the workers have received compensation for their past service as payments which they are entitled to receive at the end of their service with BWIA.

⁵ See paragraph 15 of the Judgment at page 9 of the ROA Vol 1 .

⁶ See paragraph 30 of the Judgment

21. The IC held that the bargaining units and the rights of the Union continued to exist after the closure of BWIA in December 2006 when the same categories of workers who comprised the bargaining units were absorbed into the new company, CAL.

22. The IC made the following findings of fact:

- i. The Union is one of the recognised majority unions of BWIA;
- ii. The Union and the other recognised majority unions were involved in negotiations with BWIA in 2006 and after a breakdown in these negotiations, BWIA ceased to operate;
- iii. Although the collective agreement which existed between the Union and BWIA expired, the certification of the Union remained in force;
- iv. The Chief Executive Officer of BWIA chaired the meetings to employ the staff of CAL and represented himself to be the CEO of CAL. He made offers of new contracts to the workers while BWIA was still operational. The business operations of BWIA together with its intangibles, physical assets and human assets continued to be used in substantially the same way by CAL who continued substantially the same operations as BWIA;
- v. Although there were, for the most part, insubstantial changes made, BWIA and CAL are essentially the same. The same categories of workers from BWIA were employed with CAL and they continued to perform substantially the same duties that they did when they were employed with BWIA. Some of the workers performed the same jobs at the same location and used the same equipment, systems and processes as they did when they were employed with BWIA;

- vi. No training was provided for workers before they commenced their duties with CAL on January 1, 2007; and
- vii. The retrenchment of the workers of BWIA and their re-employment in CAL took place seamlessly and almost simultaneously. CAL has retained some significant identifying features of BWIA and from the totality of the evidence CAL was created as a result of the restructuring of BWIA as mandated by the principal shareholder and the purpose of CAL was to replace BWIA as the national flag carrier.

23. In accordance with good conscience and the principles of good industrial relations practice, the IC held that:

- i. CAL is the successor employer of BWIA when it commenced its operations as Trinidad and Tobago's flag carrier on January 1, 2007;
- ii. CAL conducted substantially the same operations as BWIA in substantially the same manner and with substantially the same categories of workers;
- iii. There was substantial continuity in the business enterprise of BWIA by CAL; and
- iv. CAL cannot rid itself of a recognised majority union by ascertaining that there is no existing collective agreement and that the employees who are represented by the Union are no longer employed with BWIA.

24. Therefore, the Court ordered as follows:

“THAT CARIBBEAN AIRLINES LIMITED as the successor to BWIA [sic] WEST INDIES AIRWAYS LIMITED is hereby constrained by the provisions of Section 48 of the Industrial Relations Act, Chapter 88:01 to recognise the COMMUNICATION, TRANSPORT AND GENERAL WORKERS TRADE UNION as one of its Recognised

Majority Unions and to honour the terms of the registered collective agreement between [the Union] and [BWIA].

THAT the Certificates of Recognition Nos. 97 and 98 of 1976 are binding on the parties and the rights of [the Union] and that of its members are uninterrupted [and] therefore the successor employer, [CAL], is duty bound to honour these rights.

THAT [CAL] do hereby recognise [the Union] as the Recognised Majority Union of workers of the respective bargaining units for which Certificates of Recognition Nos. 97 and 98 of 1976 apply.”

25. CAL filed its Notice of Appeal on November 17, 2017 and identified 16 grounds of appeal. These are set out in full in the Appendix below. An examination of the grounds disclose that they canvass a number of challenges to the IC’s ruling. Firstly, the grounds of appeal have questioned the IC’s finding that CAL was the successor to BWIA, notwithstanding the expiration of the collective agreement between the Union and BWIA. There was also a challenge to the finding that a voluntary separation package was not a determinative fact in a finding of successorship, as well as to the IC ‘s assessment of the evidence before it.

Submissions for the Appellant

26. Mr. Martineau, Senior Counsel for the Appellant, submitted that the IC was fundamentally wrong in arriving at its decision, having failed to take account of relevant considerations, having misconstrued provisions of the **IRA** and having misunderstood relevant legal principles.⁷

⁷ See paragraph 10 of the Appellants Written Submissions

27. In particular, Mr Martineau submitted that the IC was wrong to hold that the payment of a separation package was not determinative of the issue of successorship.
28. Senior Counsel submitted that the IC was also wrong to hold that there were no substantial differences in the operation of CAL and BWIA.
29. Senior Counsel further submitted that there was no evidence that the Union represented any bargaining unit that carried over from BWIA into CAL and that the IC was wrong to order that CAL should recognise the Respondent as the majority union.
30. In his written and viva voce submissions, Mr. Martineau made extensive submissions on the meaning of section 48 of the *IRA* and submitted that following the expiration of a registered collective agreement, the agreement survives for a limited purpose only, that is to say for the avoiding and settling of disputes. Senior Counsel submitted that the IC gave too wide a meaning to section 48.
31. Mr. Martineau then addressed the Court on the effect of the payment of severance benefits. He relied on the words of Khan P in *National Union of Government and Federated Workers v Caribbean Bottlers (Trinidad and Tobago) Limited*⁸ to the effect that workers who have received separation benefits have already received the protection afforded by the principle of successorship.
32. Mr. Martineau submitted the findings of fact of the IC were not sufficient to establish CAL as the successor to BWIA.

⁸ National Union of Government and Federated Workers v Caribbean Bottlers (Trinidad and Tobago) Limited No. 5 of 1998

33. In his viva voce submissions, Mr. Martineau began by questioning the validity of the orders which had been made by the IC. Referring to sections 47 and 48 of the *IRA*, Senior Counsel argued that section 48 was narrow in its scope and envisaged successorship only in respect of one aspect of the collective agreement, that is to say provisions for the avoidance or settlement of disputes. In Senior Counsel's submission, therefore, the expired collective agreement is dead except for the terms concerning the avoidance and settlement of disputes. Mr. Martineau therefore submitted that the IC was wrong to order CAL to honour the terms of the registered collective agreement.⁹
34. Senior Counsel also challenged the breadth of the 2nd and 3rd orders and submitted that the *IRA* makes special provisions for successorship and it was wrong to imply that a consequence of successorship was that CAL became bound by the certificates of recognition.
35. Mr. Martineau proceeded to consider the proper test for determining the issue of successorship. He submitted that it was whether, having regard to good conscience and the principles of good industrial relations, the company was a successor.
36. Senior Counsel made extensive reference of the decision of the Court of Appeal in *Eastern*¹⁰ and submitted that in considering the factor of severance, each case depended on its own facts.
37. Mr. Martineau submitted further that the IC failed to give consideration to important facts. One of these was that both BWIA and CAL operated in a regulated industry and that there are only two (2) airports in Trinidad and Tobago. Mr. Martineau also submitted that the IC failed to have regard to

⁹ See page 8 of the transcript at line 1

¹⁰ *Eastern Commercial Lands Ltd v BIGWU* Civil Appeal 78 of 2009

the terms of the Supplemental Agreement between BWIA and the Union and that the agreement to pay Voluntary Separation from Employment Plan (VSEP) was in full and final settlement of all claims .

Submissions for the Respondent

38. Mr. Mendes, Senior Counsel for the Union, opened his written submissions by making observations as to the facts, evidence of which was led before the IC. Mr. Mendes drew this Court’s attention to the ruling of the Canadian Transportation Agency, in respect of an application made by BWIA on December 14, 2006 . In support of their application for CAL to be exempted, BWIA had submitted that they were being re-organised to transfer, substantially all of the business operations and assets of BWIA to CAL.¹¹ BWIA also certified in support of its application to the Canadian Transport Agency that:

“the relevant staff, crews, mechanics, administrative support and all aircraft operated by BWIA will remain the same.”¹²

39. Mr. Mendes referred as well to a similar application to the Department of Transportation, Washington D.C. This application had been made on December 8, 2006.¹³ BWIA represented that the management of BWIA will ensure a seamless transition to Caribbean Airlines.¹⁴

40. Mr. Mendes addressed the Court on the significance of successorship and commented on the decision of the Court of Appeal in *Eastern*¹⁵ to this Court. Mr. Mendes referred as to well to other authorities on the subject

¹¹ See Page 3 paragraph 5 of the Written Submissions of the Union

¹² Ibid

¹³ Record of Appeal IV Page 963

¹⁴ See the Respondent’s Submissions Page 5

¹⁵ Eastern Commercial Lands Ltd v BIGWU Civil Appeal No.78 of 2009

of successorship. The authorities will be considered in the discussion below.

41. In respect of the IC's findings of fact, Mr. Mendes submitted that findings of fact by the IC are not generally impeachable. Such findings of fact are only challengeable if the Court has made an error of law.

42. Mr. Mendes relied on section 48(3) of the *IRA* and argued that in determining the issue of successorship, the Court is required to act with good conscience to the principles of good industrial relations. These latter factors are both issues of fact to be determined by the IC. Mr. Mendes submitted that the Appellant failed to discharge the burden which it carried.

43. As to the factor of the payment of severance benefits, Mr. Mendes relied on the decision of the Court of Appeal in *Eastern*¹⁶.

44. Mr. Mendes suggested that the Appellant mischaracterised the evidence and submitted that it could not be said that the IC did not give consideration to the facts.

45. Mr. Mendes responded to the submissions concerning the correctness of the order that had been made by the IC. After taking the Court through the provisions of the *IRA*, Mr. Mendes submitted that the Act was not silent, as suggested by Mr. Martineau, and a successor "*must now recognise the status of an RMU*".¹⁷

46. Mr. Mendes summarised his submissions in this way:

¹⁶ Eastern Commercial Lands Ltd v BIGWU Civil Appeal 78 of 2009

¹⁷ See page 35 line 22-23 of the Transcript

*“...in summary, therefore, a finding of successorship is that you are a party to the registered agreement which means you are bound by it because that is what section 47(1) says. Under sections 48(2) you are certainly bound by the provisions for avoiding settling disputes and according to section 48(2) the agreement will be replaced by an agreement by the RMU, and the successor...”*¹⁸

47. Mr. Mendes then addressed the Court on the development of the principle of successorship and focussed his submissions on **Eastern**¹⁹ and the effect of the payment of severance on the operation of the principle of successorship.

48. At length, Mr. Mendes submitted:

*“The concept or principle of successorship is therefore not confined to the protection of rights to benefits for past services.”*²⁰

49. Mr. Mendes continued:

“The principle of successorship also involves the transfer or continuation of the rights of the Recognised Majority Union, qua Recognised Majority Union. That is to say it has the exclusive authority to bargain in which case the successor employer must recognised the union as such...”

50. Mr. Mendes made a concession concerning the orders of the IC in these words:

“I will say immediately that the Union...does not ask that the Court uphold the order of the Court that the terms of the registered collective agreement other than those governing

¹⁸ See page 35 – 36 of the transcript

¹⁹ Eastern Commercial Lands Ltd v BIGWU Civil Appeal 78 of 2009

²⁰ See page 38 line 11 – 14 of the Transcript

the settlement of disputes be held to be binding on the employer.”²¹

Mr. Mendes proceeded to clarify that the Union was only interested in its status of Recognised Majority Union.

51. Mr. Mendes clarified that he was asking the Court of Appeal to vary the order of the Industrial Court to say that the Registered Collective Agreement will continue in so far as it relates to procedures for the avoiding and settling of disputes.
52. Mr. Mendes referred to the “three substantial test” and submitted that none of the factors were cast in stone. Senior Counsel reminded the Court that the factors of good conscience and good industrial relations are questions of fact for the IC.²² Mr. Mendes emphasised that the Court of Appeal could only overturn a question of fact if it amounted to an error of law.
53. Mr. Mendes alluded to Mr. Martineau’s submission that the IC failed to take into account relevant considerations. Mr. Mendes submitted that the Appellant’s submission should be treated as a ground of irrationality in judicial review.
54. Senior Counsel submitted further that the question of whether BWIA and CAL were in a regulated industry was irrelevant and de minimis. He made the same submission in respect of the factor that Trinidad and Tobago has two airports.

²¹ See page 38 line 31 of the Transcript

²² See page 41 line 43 of the Transcript

55. Mr. Mendes submitted that the points made by the Appellant would not attain the level of error of law on the part of the IC, since they had failed to establish that the findings of the IC amounted to irrationality.²³

56. Mr. Mendes submitted that there could not be a clearer case of successorship.²⁴

Discussion

57. Two major issues arise in this appeal. The first is whether the IC was wrong in law in its finding that CAL is the successor to BWIA for the purpose of section 48 of the **IRA**. This finding is challenged in 3 ways. They are:

- whether the existence of a valid subsisting collective agreement is a pre-condition to a finding of successorship
- whether the payment of severance packages preclude a finding of successorship
- whether the IC was correct in its finding of fact that CAL was the successor of BWIA for the purpose of section 48 of the **IRA**.

58. The second major issue assumes that the answer to the first question is that the Industrial Court was not wrong in its decision that CAL was the successor to BWIA. In that event, the final question is what orders may be made consequent upon a finding of successorship and in particular whether the Industrial Court was erroneous in law to direct that CAL was bound by the certificates of recognition.

59. At the outset, it is necessary to delimit the boundaries of the jurisdiction of the Court of Appeal in determining an appeal from the IC. The grounds

²³ See page 47 line 45 of the Transcript

²⁴ See page 50 line 28 of the Transcript

upon which such a challenge can be made are set out at section 18 of the *IRA*, which provides:

“ (1) Subject to subsection (2), the hearing and determination of any proceedings before the Court, and an order or award or any finding or decision of the Court in any matter (including an order or award)—

(a) shall not be challenged, appealed against, reviewed, quashed or called in question in any

Court on any account whatever; and

(b) shall not be subject to prohibition, mandamus or injunction in any Court on any account whatever.

60. Following this almost absolute prohibition, subsection (2) sets out those circumstances when the order of the IC may be challenged:

“(2) Subject to this Act, any party to a matter before the Court is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:

(a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;

(b) that the Court has exceeded its jurisdiction in the matter;

(c) that the order or award has been obtained by fraud;

(d) that any finding or decision of the Court in any matter is erroneous in point of law; or

(e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.”

61. It is therefore necessary for us to act only on the grounds as set out in section 18(2). In summary, these grounds are: lack or excess of jurisdiction, errors of law and fraud. There was no suggestion of fraud in this matter. The Appellants have however contended that the IC made errors of law and acted without jurisdiction.

Whether the existence of a collective agreement is a precondition to a finding of successorship

62. We turn to consider the first ground of challenge against the finding of successorship, that is to say whether the existence of a collective agreement is a precondition to such a finding.

63. The sections of the **IRA** which concern successorship are sections 19, 43, 47 and 48. Because the statute must be read as a whole, we have set out these sections below and have considered how they relate one to another.²⁵

64. A finding of a successorship is made by the IC pursuant to section 48(3) of the **IRA** which provides:

“For the purposes of this section any question whether a person is a successor....shall be determined by the Court from all the circumstances in accordance with good conscience and the principles good industrial relation practice...”

²⁵ See Appendix II below

65. This provision is echoed at section 19(3) which provides : *“For the purposes of this section, any question whether a person is the successor to, or an assignee of, another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all purposes connected with the order or award.”*

66. None of these provisions require the existence of an unexpired collective agreement and for this reason we are inclined to agree with the IC on this issue.

67. We are strengthened in our view by these words of Stollmeyer JA in ***Eastern***²⁶:

“34. ... the effect of Section 48 (1) (c) of the Act is that a successor employer is deemed to be a party to a registered agreement. Section 48(2) provides that despite a registered collective bargaining agreement having expired by the provisions of S.43 (1) of the Act, the terms of the registered agreement, insofar as they relate to procedures for avoiding and settling disputes, are deemed to continue until another collective agreement has been registered. This is so even if the original collective agreement has already expired (see, for example, CACiv No. 9 of 1995 Bank Employees Union v Republic Bank Ltd. per Jones JA at page 11).

35. It cannot therefore be said that with the expiration of a collective bargaining agreement the employer/union relationship comes to an end. That is the effect of Section 48 (2), and if there is a new employer whom the Industrial Court is satisfied on all the

²⁶ Eastern Commercial Lands Ltd. V BIGWU Civil Appeal 78 of 2009

*particular facts of the particular case, and in accordance with good conscience and good industrial relations practice should be declared a successor, **then the union will continue to be the recognised bargaining unit for the workers concerned.***"

[Emphasis mine]

68. The collective agreement does not cease to exist until it is replaced by another. It is deemed to continue through the individual contracts of employment (see section 47(2) of the *IRA*). Further, by section 48 (2), the registered agreement is deemed to continue to have full force and effect until another collective agreement is registered. We therefore agree with the IC that there is no merit in the argument that the IC has no jurisdiction to find successorship in the absence of an unexpired collective agreement.²⁷

Whether the payment of severance benefits precludes a finding of successorship

69. We proceed to consider the second challenge against the finding of successorship, that is to say, whether the payment of severance benefits presents an impediment to a finding of successorship.

70. It was undisputed, in this appeal, that the workers of BWIA received severance benefits pursuant to a Supplemental Agreement dated September 25, 2006. The Supplemental Agreement was stated to have been in full and final settlement of all issues proposed by the Union.

²⁷ See paragraph 25 of the Judgment at page 21 of ROA Vol 1

71. What is disputed is whether the agreed severance payments would prevent the IC from finding that CAL was the successor to BWIA.

72. The IC is empowered to make a declaration of successorship by section 48 of the **IRA**. Section 48 is crafted in relation to section 47. Accordingly, both sections are set out here:

“47. (1) The terms and conditions of a collective agreement registered under section 46 (referred to in this Part as a “registered agreement”) shall be binding on the parties thereto and shall be directly enforceable, but only in the Court.

(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.

(3) Registration of a collective agreement shall be deemed to constitute actual notice of all the provisions thereof.

(4) The foregoing provisions of this section shall have effect notwithstanding section 6 of the Trade Unions Act, or of any other rule of law to the contrary.

48. (1) For the purposes of section 47, the following persons shall be deemed to be the parties to a registered agreement:

(a) the recognised majority union;

(b) the employer who has entered into the registered agreement or on whose behalf and with whose concurrence the agreement has been entered into;

(c) any successors to, or, in the case of an employer, assignees of, such employer or recognised majority union, as the case may be.

(2) Notwithstanding section 43(1) the terms and conditions of a registered agreement shall, in so far as they relate to procedures for avoiding and settling disputes, be deemed to continue to have full force and effect until another collective agreement between the parties or their successors or, in the case of an employer, assignees, as the case may be, has been registered.

(3) For the purposes of this section any question whether a person is a successor or assignee of another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all the purposes connected therewith.”

73. The circumstances in which the Court will find that one employer is the successor of another has been considered by the IC since 1969, with the decision of Braithwaite, P in ***The Shipping Association of Trinidad v The Seamen and Waterfront Workers’ Trade Union.***²⁸

74. Braithwaite P had this to say:

“Under the industrial relations principle of successorship, a new employer who carries on substantially the same operation as a previous employer, in substantially the same way with substantially the same employees, must grant those employees terms and

²⁸ (1965-75) 1 TTICR 331

conditions of employment no less favourable than those they previously enjoyed with credit for previous service with the former employer as that the assessment of any benefits dependent upon length of service would take into account that previous service. It is based on the fact that such an employer has the benefit of the expertise and experience acquired by the workers' previous service, as well as the advantage of the established arrangements and relationships of a settled working environment and is thereby saved the time, trouble and considerable expense of recruiting and training a whole new work force and establishing smooth working relationships between them...."

75. Braithwaite P continued:

"It is considered unfair that a worker should have his experience and service wiped out by a transaction in which he had no part and which he quite probably did not even know was taking place."

76. In those words, Braithwaite P brought into being the test of the three (3) substantials as a method of resolving the issue of successorship.

77. Braithwaite P went further, however, and introduced the possibility of an exception to the three (3) substantials test where there had been a payment of severance benefits. In his words, Braithwaite P said:

"The situation would of course be different if as part of the transaction acceptable arrangements were made for compensating the workers for service with the previous employer..."

78. In the years which followed ***Shipping Association***, the IC continued to use and refine the three (3) substantial test. Notably, there was ***Yorke Holdings Limited v Union of Commercial and Industrial Workers***.²⁹

79. In January 2000, the impact of the payment of severance benefits was again revisited in ***National Union of Government and Federated Workers v Caribbean Bottlers (Trinidad and Tobago) Limited***³⁰. Here, President Addison Khan made strong findings as to the effect of the payment of severance benefits on the issue of successorship. He held:

“In my judgment, it would be contrary to both good conscience and the principles of good industrial relations practise for these workers to receive severance benefits and carry over with them the same status and privileges which they enjoyed with the former employers...”

80. Ten years later, the issue was authoritatively considered by the Court of Appeal. In ***Eastern Commercial Lands Limited v Banking Insurance and General Workers Union***³¹, the Court of Appeal revisited the impact of the payment of severance benefits on the issue of successorship. Stollmeyer JA, who delivered the sole judgment, with which the other members of the panel agreed, examined the authorities beginning with ***Shipping Association*** and ending with ***Caribbean Bottlers***.

81. Stollmeyer JA, referred to the decision of Khan P in ***Caribbean Bottlers*** and quoted these words,

“In my judgment it would be contrary to both good conscience and the principles of good industrial relations practise for these workers

²⁹ TD 172 of 1986

³⁰ National Union of Government and Federated Workers v Caribbean Bottlers (Trinidad and Tobago) Limited No. 5 of 1998

³¹ Civil Appeal No. 78 of 2009

*to receive severance benefits and carry over with the same status and privileges which they enjoyed from the former employers....*³²

82. Stollmeyer JA rejected the interpretation which was placed on **Shipping Association**³³ by Khan P in **Caribbean Bottlers Limited**³⁴ and held that the interpretation was not correct. He had this to say.

“33. The interpretation given to the decision in Shipping Association, however, is not correct. First, the Industrial Court was dealing there with the question of entitlement to compensation and whether in that context there was successorship. The latter statement in the judgment which I have referred to (“The situation would of course...”) represents an exception to the general rule first stated. Liability for past service with a previous employer can be a consequence of successorship. It is a factor to consider in deciding whether there is successorship, but payment of severance benefits by the previous employer is not necessarily determinative of successorship.”

Stollmeyer JA held that the the payment of severance benefits is not determinative of successorship but is a factor to be considered.

83. In the judgment now under appeal, the IC applied the three (3) substantial test and gave consideration to the factor of the payment of severance benefits. In keeping with the decision in **Eastern** , severance was but one factor considered. They relied on the learning in **Eastern**. Their decision was based on their findings of fact as to the similarity between the two companies, BWIA and CAL. These were findings of fact that the business operations of BWIA together with its intangibles, physical assets and

³² See **Eastern Commercial Lands** at paragraph 3

³³ IBID

³⁴ IBID

human assets continued to be used substantially the same way by CAL who continued substantially the same operations as BWIA.

84. The IC also found as a matter of fact that the same categories of workers from BWIA were employed with CAL and they continued to perform substantially the same duties that they did when they were employed with BWIA. Some of the workers performed the same jobs at the same location and used the same equipment, systems and processes as they did when they were employed with BWIA. The IC found as a fact that no training was provided for workers before they commenced their duties with CAL on January 1, 2007. They held that the retrenchment of the workers of BWIA and their re-employment in CAL took place seamlessly and almost simultaneously. Moreover CAL has retained some significant identifying features of BWIA and from the totality of the evidence CAL was created as a result of the restructuring of BWIA as mandated by the principal shareholder and the purpose of CAL was to replace BWIA as the national flag carrier.

85. It is true, as Mr. Martineau submitted, that they did not consider that both BWIA and CAL belonged to a regulated industry or that there were only two (2) airports in Trinidad and Tobago, that is to say Piarco and Crown Point. These factors, in our view, would not have diminished the substantial similarities between BWIA and CAL. They would rather have provided explanations for the similarities. In other words, the fact that both BWIA and CAL are both part of regulated industries provides an explanation as to why they are similar. In like vein, the fact that there are only two (2) airports demonstrates why the two (2) airlines would have operated from the same airports. These factors in our view do not detract from the substantial similarities.

86. It therefore follows that we find no good reason to depart from the findings of fact of the IC. Even if we found ground for disagreement with those findings, the authorities are myriad which exhort the Appellate Court to defer to finding of fact of first instance tribunals. This is a *a fortiori* the case where the findings of fact have been made by the IC and the jurisdiction of the Court of Appeal is delimited by section 18(2).

87. In so far as the challenge was to the IC's findings of fact, it is now well-established that a finding of fact will be overturned on appeal only if it amounts to an error of law.

88. The circumstances in which the Court of Appeal will find an error of law were helpfully set out in ***Watling v William Bird and Son Contractors Limited***³⁵, an authority referred to by Mr. Martineau. In ***Watling***, Phillips J sitting in the Queen's Bench Division held that the Appellant who claims that there is an error of law must establish one of three (3) things:

".....he must establish either that the tribunal misdirected itself in law, or misunderstood the law, or misapplied the law; or, secondly, that the tribunal misunderstood the facts, or misapplied the facts; or, thirdly, that although the tribunal apparently directed themselves properly in law, and did not mis-state, or misunderstand, or misapply the facts, the decision was "perverse" or that there was no evidence to justify the conclusion which they reached."

89. We proceed to consider each of the ***Watling*** factors in order to assess their applicability to the case before us. Firstly, we consider whether the IC misdirected itself in law. From the Judgment, we hold the view that the IC understood sections 47 and 48(2) and the way in which it has been

³⁵ (1976) 11 ITR 70

interpreted by the Court of Appeal in *Eastern*. It cannot therefore be argued that the IC misunderstood the law.

90. In respect of the ground of misunderstanding the facts, Mr. Martineau pointed to the IC's omission to consider two (2) factors mentioned above. As stated, we do not see those factors as being sufficiently significant to suggest that the IC misunderstood the facts.

91. Mr. Martineau alluded to one additional factor which in our judgment requires special consideration. That is the fact of the Supplemental Agreement between BWIA and the Union.³⁶ It is correct that no mention was made of the Supplemental Agreement in the Judgment of the IC. We therefore consider whether the Supplemental Agreement negates the terms of successorship.

92. The salient provisions of the Supplemental Agreement are paragraph 2 of the recitals, clauses 15, 25 (a) and (b) and 26. These are set out below :

"...AND WHEREAS the Company and the Union desire to enter into a Supplemental Agreement pursuant to section 49. (1) of the Act to make provision for the establishment of a Voluntary Separation from Employment Plan ("VSEP") by virtue of which voluntary separation benefits will be available to all employees of the bargaining unit represented by the Union ("the bargaining unit")

15. Upon the Company paying the full amount of the voluntary separation benefits to an employee, the employee's service with the Company will be deemed to have been terminated by consent on the date determined by the Company pursuant to the

³⁶ See page 169 of the ROA Vol 1 .

provisions of this Agreement without the requirement for any formal notice of termination.

...

25. This VSEP Proposal from the Company is being offered on the understanding of the following:

a. The Union and employees of the Company agree to give full support and cooperation to the Company to achieve a seamless transition from the closure of the Company to the establishment and operationalisation of the new airline to be established.

b. During the period October 1, 2006 – December 31, 2006 the Company shall take such action as it deems necessary for its closure whether through restructuring, rationalizing, outsourcing or otherwise to ensure uninterrupted customer service and to achieve the objective of a seamless transition from the Company's operations to the operations of the new airline.

...

26. This Supplemental Agreement contains the entire agreement between the Company and the Union on the terms and conditions of the VSEP and is entered into in full and final settlement, resolution and determination of all issues and matters proposed by the Union in the course of negotiations for this Supplemental Agreement or arising out of the termination of the services of the employees in the bargaining unit and the payment of voluntary separation benefits to them.”

The Supplemental Agreement established the Voluntary Separation from Employment Plan (“VSEP”). It was entered into in full and final settlement, resolution and determination of all issues and matters proposed by the Union in the course of negotiations for the VSEP or arising out of the termination of the services of the employees in the bargaining unit and the payment of voluntary separation benefits to them.

93. We considered whether the terms of the Supplemental Agreement effectively prevented a finding of successorship. In other words, was the effect of the Supplemental Agreement an undertaking by the Union, on behalf of the workers, to forego all claims against the successors of BWIA. In our view, the answer must clearly be in the negative. The Supplemental Agreement was between the Union and BWIA. The workers received their severance packages in full and final settlement of all claims against BWIA. The workers could not therefore reopen the issue of separation compensation against BWIA.

94. At the time of the Supplemental Agreement, however, no successor was in existence. The Supplemental Agreement did not purport to bind the successor. Moreover, by its terms, the Supplemental Agreement did not purport to remove from the Union, and indeed the workers, the rights which section 48 was designed to preserve. Those rights alluded to by Stollmeyer JA in *Eastern* (supra) were the union's right and ability to represent the employees and more importantly the worker's right to representation. These rights are distinct from a worker's entitlement to benefits, including severance.

95. Accordingly, it is our view and we hold that the Supplemental Agreement would not have presented an obstacle to a finding of successorship, even if the IC had taken it into account.

96. Finally, it cannot be suggested that there was no evidence upon which the IC made its finding of successorship. There was adequate evidence referred to in the judgment of the three (3) substantials. In our view, this evidence supported the almost twin like similarities between the two (2) companies. Indeed, it may have been perverse and contrary to good conscience to disregard those similarities.

97. In our judgment, the IC decided this case from all the circumstances in accordance with good conscience and the principles of good industrial relations practice.

98. For these reasons, we find no ground to allow the appeal against the IC's finding on the issue of successorship.

Whether the IC was erroneous in law to direct that CAL was bound by the certificates of recognition.

99. The IC ruled that CAL, as the successor to BWIA, is constrained by the provisions of section 48 of the **IRA** to recognise the Union as one of its recognised majority unions and to honour the terms of the registered collective agreement between the Union and BWIA. The Court further ruled that Certificates of Recognition Nos. 97 and 98 of 1976 are binding on the parties.

100. The parties made submissions on the Court's order that CAL be constrained to honour the terms of the registered collective agreement between the Union and BWIA.

101. Mr. Martineau submitted that there was no existing registered collective agreement to be honoured, and to the extent that terms and conditions of any collective agreement have survived, they are limited to being terms and conditions of individual contracts only insofar as they relate to procedures for avoiding and settling disputes. As such, if CAL is the successor, successorship should be limited specifically for the purpose of avoiding and settling disputes and no more. Mr. Mendes submitted that this order of the IC should be qualified insofar as the terms relate to procedures for avoiding and settling disputes.

102. The parties, therefore, appear to be in agreement that this Order of the Court should be varied to include such limitation/qualification.

103. The larger question is, however, whether certification and recognition are necessary consequences of successorship.

104. In *Banking Insurance and General Workers' Union v. Eastern Commercial Lands Ltd*³⁷, the IC declared that Eastern Commercial Lands Ltd. was the successor employer to Tru Valu Supermarkets Ltd. under the provisions of **section 48 of the Act**. The IC ordered further that Eastern Commercial Lands Ltd. must: *"1. recognize the union as the recognised majority union for the relevant bargaining units; 2. in good faith enter into negotiations with the union for the purpose of collective bargaining including, but not limited to, negotiations for new collective agreements."*³⁸ The IC in *Eastern Commercial* in effect held that a consequence of successorship was recognition.

³⁷ Trade Dispute No. 14 of 2003

³⁸ See para 1 of the judgment of Stollmeyer in *Eastern Commercial Lands Ltd v BIGWU Civil Appeal No. 78 of 2009*

105. It is important to note that the appeal in **Eastern** was dismissed and the order of the IC stands.

106. In our view, it is clear from section 48 and from the interpretation placed upon that section by the Court of Appeal in **Eastern** that successorship relates not only to the immediate obligation of the predecessor employer to its workers. Successorship relates also to the right of the Union to represent the body of workers in respect of which one employer has been held to succeed another. It is an avenue for preserving the right of a body of workers to be represented.

107. In other words, successorship under the Act is therefore equally concerned with perseveration of a union's right and ability to represent the employees, and consequentially the right of the individual employee to be represented .

108. Of similar effect is the statement of his Honour Mr. Rabathaly in **Transport and Industrial Workers' Union v. Trinidad Electrical Manufacturing Corporation Limited/Electrical Industries Limited**³⁹ that "the purpose of successorship...has to do with the continuation of a collective bargaining relationship" and the statement of Khan P. in **Oilfield Workers' Trade Union v. Petroleum Company of Trinidad and Tobago Limited** (A 6, 7, 8, and 9 of 1994) that:

"Successorship in industrial relations is not confined merely to honouring the contracts of employment or the workers and the previous collective agreements. Under the industrial relations principle of successorship, the new employer not only inherits the workers in the bargaining units, and, consequently, must

³⁹ Application No. 5 of 1999

apply the terms and conditions of employment to them, but he also inherits the recognised majority union and must treat and negotiate with the recognised majority union for all the purposes of collective bargaining. The recognised majority union is inseparable from the bargaining units in respect of which it obtained and holds its certificate of recognition as such from the Board so long as its certification continued to subsist. Its bargaining status and authority as the recognised majority union for the bargaining units are not interrupted because the workers in the bargaining unit become the workers of the new employer otherwise there would be no smooth transition from the previous to the new employer. The Union's status does not terminate or is affected or diminished by the fact that its certificate of recognition has not been altered to reflect the name of the new employer".

109. Given the object, purpose and effect of successorship, the Union's right and ability to represent the employees in the collective bargaining process has been preserved and the collective bargaining relationship continues between the Union and CAL.

110. The IC having found that the bargaining units which existed under BWIA continued at CAL when it commenced operations, the Union is inseparable from the bargaining units for which Certificates Nos. 97 and 98 of 1976 apply and therefore CAL has inherited the Union as the recognised majority union of those bargaining units and must treat and negotiate with the Union for all the purposes of collective bargaining. Therefore, it was open to the Industrial Court to order that CAL, as the successor to BWIA, is constrained by the provisions of section 48 of the Act to recognise the

Union as one of its recognised majority unions, and that Certificates of Recognition Nos. 97 and 98 of 1976 are binding on the parties.

111. It is noteworthy that as an appellate panel we are bound by previous decisions of the Court of Appeal upon questions of law, until a contrary determination has been made by the Judicial Committee of the Privy Council (see **Young v Bristol Aeroplane Company Limited** [1946] A.C. 163). We regard ourselves as bound by the pronouncements of the Court of Appeal in **Eastern**.

112. Therefore, we find no fault with the IC's order that CAL is obliged to recognise the Union as the recognised majority union of workers of the respective bargaining units for which Certificates Nos. 97 and 98 of 1976 apply.

Disposition

113. Having regard to the concession made by Mr.Mendes as to the terms of the order under section 48 , it is ordered that the first paragraph of the Order of the IC is varied in the following way :

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

114. The Appeal is otherwise dismissed .

115. There will be no order as to costs. ⁴⁰

Dated the 22nd day of April 2024

Mira Dean Armorer⁴¹

Justice of Appeal

⁴⁰ See section 10(2) *IRA*

⁴¹ Ricardo Ramnath JRC II

APPENDIX I

Grounds of Appeal

- (a) The decision of the Industrial Court is against the weight of the evidence. Further and/or alternatively the Industrial Court made the findings described above on the basis of inferences that were not justified by the evidence.
- (b) The decision of the Industrial Court is erroneous in law in that no Court acting judicially and properly directed as to the relevant law would or could have come to the determination reached.
- (c) The Industrial Court erred in holding that there was no requirement in law or precondition that there must be a subsisting collective agreement before the Court can determine successorship in that it misconstrued the effect of sections 47 and 48 of the Industrial Relations Act in failing to recognise that the aforesaid sections referred to a registered collective agreement.
- (d) The Industrial Court erred in failing to appreciate that in the absence of a subsisting collective agreement, any individual terms and conditions of employment that were saved by section 48(2) of the Industrial Relations Act were terminated upon the cessation of the workers' contracts of employment.
- (e) The Industrial Court erred in holding that the full import of a declaration of successorship is that the employer who obtains a successor business is bound by the obligations pursuant to any

collective agreement between the former employer and employees in that it failed to recognise that there must be an existing registered collective agreement between the former employer and the recognised majority union and not the employees.

- (f) The Industrial Court erred in ruling that the Appellant is a successor to BWIA and is constrained by section 48 of the Industrial Relations Act to recognise the Respondent and to honour the terms of the registered collective agreement between the Respondent and BWLA.
- (g) The Industrial Court erred in failing to appreciate that there was no registered collective agreement between the Respondent and BWIA in light of the uncontroverted evidence that the former collective agreement had expired on 10th April, 2000.
- (h) The Industrial Court erred in holding that there was uncontroverted evidence of the Respondent that the bargaining units that it represented under BWIA continued under Appellant in that it failed to recognise that no evidence was adduced by the Respondent with respect to the bargaining units allegedly represented by it.
- (i) The Industrial Court erred in failing to reject the evidence of the Respondent's witnesses on the basis that none of those witnesses were shown to be members of the Respondent while they were employed with BWIA.
- (j) The Industrial Court erred in failing to appreciate that the bargaining units which the Respondent represented under BWIA no longer existed cessation of subsequent to BWIA's operations on 31 December, 2016.

- (k) The Industrial Court erred in failing to appreciate that, there being no bargaining units in existence, that the proper authority for determining such a bargaining unit was the Registration Recognition and Certification Board.
- (l) The Industrial Court erred in ruling that the Respondent's Certificates of Recognition Nos. 87 and 98 of 1976 in relation to BWIA were binding on the Appellant, that the rights of the Respondent and its members were uninterrupted and that the Appellant was duty bound to honour those rights.
- (m) The Industrial Court erred in holding that the payment of a negotiated and enhanced voluntary separation package and/or compensation to workers of BWIA was not a determinative factor or bar to a declaration of successorship in that it failed to address its mind to the evidence that the compensation was a negotiated settlement between BWIA and the Respondent pursuant to a Supplemental Agreement which was filed at the Industrial Court.
- (n) The Industrial Court erred in failing to appreciate that the Supplemental Agreement was entered into in *"full and final settlement, resolution and determination of all issues and matters arising out of the termination of the services of the workers"*.
- (o) The Industrial Court erred in failing to appreciate that in circumstances where a recognised majority union and an employer negotiated and agreed to the termination of all of the issues and matters arising out of the termination of the services of workers, it would be contrary to good industrial relations principles to find that those * and conditions of employment, including the right of those workers to have a union

represent them, carry over to a new employer simply on the basis that that new employer may carry on a similar business with the previous employer's employees.

- (p) The Industrial Court erred in its assessment of the Appellant's evidence that there were substantial differences in the manner that the Appellant operated as compared with BWIA notwithstanding that, given the highly regulated nature of the airline industry, operations would have undoubtedly been similar.

APPENDIX II

Industrial Relations Act from 88:01

19. (1) An order or award of the Court shall be binding on—
- (a) all parties to the dispute who appear or are represented before the Court;
 - (b) all persons who have been summoned to appear as parties to the dispute, whether they have appeared or not;
 - (c) in the case of employers, any successor to, or assignee of, the business of the employer who is a party bound by such order or award, including any company that has acquired, or taken over the business of such a party;
 - (d) any trade union on whom such order or award is at any time declared by the Court to be binding, as well as on its successors; and
 - (e) all workers belonging to a bargaining unit to

which such order or award refers.

(2) The Court may, during the course of any dispute pending before it, direct that any successors to, or any assignees of, the business of the employer who is a party to the dispute shall be joined or substituted as a party to the dispute; and any order or award of the Court in such dispute (whenever made) shall, save to the extent that it is otherwise expressly provided in such order or award, be binding on the successors or assignees of that employer.

(3) For the purposes of this section, any question whether a person is the successor to, or an assignee of, another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all purposes connected with the order or award.

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.

(2) In addition to the requirements of subsection (1), every collective agreement shall contain a provision for the settlement of all differences between the parties thereto arising out of the interpretation, application, administration or alleged violation thereof. The terms for avoiding and settling disputes contained in any collective agreement deemed to have been registered under this Act by section 85(7) shall be read and construed so as to contain a provision for the settlement of such

differences by the Court.

(3) Where—

- (a) an undertaking to which a collective agreement relates is likely to cease operations within three years of the date of the agreement; or
- (b) a collective agreement contains special provisions which have been agreed upon subject to the condition that such provisions are to have effect for a period less than the duration of the collective agreement,

the Court, on being satisfied that special circumstances for so doing exist, may, subject to this Part, approve of the agreement being made effective for a period of less than three years.

(4) Subject to subsection (5), nothing in this section shall affect or be deemed to affect the validity of a collective agreement which is valid and subsisting immediately before the date of the coming into operation of this Act and registered under the former Act.

(5) The following terms in any collective agreement are void:

- (a) any provision that any benefits under the agreement are to apply only to members of a particular union;
- (b) any clause excluding or limiting the application of the provision of this Act or the agreement;
- (c) any clause specifying that the employer must employ only members of a particular union or must show any preference or favour regarding

recruitment, offer of employment, retrenchment or termination of employment, only to members of a particular union.

47. (1) The terms and conditions of a collective agreement registered under section 46 (referred to in this Part as a “registered agreement”) shall be binding on the parties thereto and shall be directly enforceable, but only in the Court.

(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.

(3) Registration of a collective agreement shall be deemed to constitute actual notice of all the provisions thereof.

(4) The foregoing provisions of this section shall have effect notwithstanding section 6 of the Trade Unions Act, or of any other rule of law to the contrary.

48. (1) For the purposes of section 47, the following persons shall be deemed to be the parties to a registered agreement:

(a) the recognised majority union;

(b) the employer who has entered into the registered agreement or on whose behalf and with whose concurrence the agreement has been entered into;

(c) any successors to, or, in the case of an employer, assignees of, such employer or recognised majority union, as the case may be.

- (2) Notwithstanding section 43(1) the terms and conditions of a registered agreement shall, in so far as they relate to procedures for avoiding and settling disputes, be deemed to continue to have full force and effect until another collective agreement between the parties or their successors or, in the case of an employer, assignees, as the case may be, has been registered.
- (3) For the purposes of this section any question whether a person is a successor or assignee of another shall be determined by the Court from all the circumstances in accordance with good conscience and the principles of good industrial relations practice and shall be binding on the persons referred to in subsection (1) and is conclusive for all the purposes connected therewith.