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SPOTLIGHT SERIES: IROS

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The Industrial Relations Act, Chap. 88:01 ("the IR Act") is the main piece of legislation regulating industrial relations in Trinidad and Tobago. It establishes a unique Court called the Industrial Court (see sec. 4 of the IR Act). The Industrial Court is charged with the responsibility to hear and determine proceedings for industrial relations offences ("IROs") under the IR Act (see sec. 7(1)(c) of the IR Act). An IRO is a criminal offence (see ***Public Services Credit Union Cooperative Society Ltd. v. Banking Insurance and General Workers Union*** IRO No. 29 of 2000 to which the Trinidad and Tobago Court of Appeal referred at para. 33 of its decision *in* ***Trinidad & Tobago National Petroleum Marketing Co. Ltd. v. Oilfield Workers' Trade Union*** Civ. App. P-306 of 2014).

The IR Act creates several IROs. An IRO is committed where:

1. An employer fails to recognize a trade union certified as the recognized majority union ("RMU") for workers of the employer falling within a determined bargaining unit (see sec. 40(1) of the IR Act);

2. Either an RMU or an employer fails in good faith to treat and enter into negotiations with the other for the purposes of concluding, revising or renewing a collective agreement, or resolving disputes between them (see sec. 40(1) of the IR Act and the definition of "collective bargaining" in sec. 2(1) of the IR Act); or

3. A trade union or an employer takes part in industrial action otherwise than in conformity with Part V of the IR Act (see sec. 63(1) of the IR Act).

An employer, an RMU or, where there is no RMU, any union which represents workers employed by an employer, may apply to the Industrial Court for an order against any person in relation to an IRO (see sec. 84(1) of the IR Act). Such an application must be made within 3 months of the commission of the IRO (see sec. 84(2) of the IR Act).

The party applying to the Industrial Court for an order against any person in relation to an IRO bears the burden of proving all of the required ingredients of that IRO (see para. 33(i) of the decision in ***NP v. OWTU***). In ***Caribbean Tyre Company Ltd. v. Oilfield Workers Trade Union*** Civ. App. No. 106 of 1986, the Hon. Justice of Appeal Warner considered that, notwithstanding the criminal nature of an IRO, the standard of proof in such an application is nevertheless the civil standard, that is, on a balance of probabilities.

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Where an IRO is committed, the penalties can range from $4,000.00 in the case of a breach of sec. 40 of the IR Act (see sec. 40(2) of the IR Act) to a maximum of $20,000.00 where an employer takes industrial action not in conformity with Part V of the IR Act (see sec. 63(2) of the IR Act). Such penalties are put into the Consolidated Fund but, where an employer takes such unlawful industrial action, they remain liable for any unpaid salary, wages or other remuneration during the period of a lockout of any workers (see section 63(1)(a) of the IR Act). The Industrial Court also has wide powers to order compensation or damages to a party, even in an IRO (see sec. 10 of the IR Act).

Where a party is desirous of instituting proceedings in relation to an IRO, it ought to carefully consider whether it is prepared to discharge burden of proof which rests upon it, and the manner in which it proposes to do so. Careful attention must be paid to the preparation of the application as its very nature requires that the alleged offender must be provided with sufficient particulars in support of the allegation against him. An application drafted with insufficient care may be faced with preliminary objections which render it liable to summary dismissal or striking out.

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