



THE EMPLOYERS' CONSULTATIVE ASSOCIATION OF TRINIDAD AND TOBAGO

EYE ON IR

A product of the Research and Representation Department

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NOVEMBER, 2008

The Premier Employers' Organization

The ECA's primary concern is to help create and sustain the conditions in which YOU – THE EMPLOYER can effectively compete. We are the premier lobbying organization for employers on national and international issues. We work with the Government, international legislators and policymakers to help employers compete successfully.

Membership in the ECA gives you a chance to be part of a collective voice and to influence public policy. We provide you with excellent opportunities to network and to establish new contacts, insights relating to the future of government labour policy, key statistics and research and unmatched sources of expert advice and information.

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Contact: Bryan Rooplal
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Dealing with Industrial Action

Ancil Rampersad, ESC

Industrial Action may most commonly take the form of strike by employees, lockout by the employer, or any form of action that disrupts production and is taken in furtherance of an industrial dispute. It includes action commonly known as "sit-down strike", "sick-out" and "go-slow".

Industrial action is regulated by Part V of the Industrial Relations Act 1972.

This legislation limits how and by whom industrial action may be taken and makes it an offence for industrial action to be taken that is not in conformity with the Act. It also imposes strict time limits and requirements for giving notice in relation to taking Industrial Action. Employers, please take careful note of these limits so that you are aware of what constitutes action that is legal or illegal.

Strike or lockout action can only be taken where

the dispute is an 'interest dispute' as opposed to a 'rights dispute' and we must first appreciate the difference between these two types of disputes. An 'interest dispute' is a dispute between a trade union and an employer arising out of the negotiation of terms and conditions of employment that are to be included in a proposed collective agreement.

On the contrary, a 'rights dispute' concerns the application of existing terms and conditions of employment. It can include disputes relating to dismissal, suspension or refusal to employ.

If a 'rights dispute' remains unresolved, after being reported to the Ministry of Labour, it may then be referred to the Industrial Court for determination. Strike or lockout action cannot be taken in relation to a 'rights dispute'.

An interest dispute may also be referred to the Court but there is the option for either or both

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Work Stoppages and Refusals to Work under OSHA

Martin DeGannes, ECA

The ECA notes with interest and concern the regularity over the past year of reported cases of work stoppages which have been attributed to worker protests of alleged unsafe working conditions under OSHA.

Data from The Ministry of Labour reveals a situation in which, over the past four years, there have been one hundred and eight work stoppages, involving over twenty six thousand workers, resulting in the loss of over one and a half million man days. Whilst the data does not allow us to say what percentage of such stoppages is OSHA related, we suggest that such losses are unacceptable in a small country like

ours, and must be reduced if we are to maintain or improve our competitiveness.

In recent times, we have seen an increase in worker protests under OSHA. This relatively new type of work stoppage, facilitated by OSHA, has resulted in the loss of productive time, owing to refusals to work by workers and their representatives, for alleged poor safety and health management by employers, even in cases where there may be no legitimate justification for the action taken.

The ECA therefore calls on all workers and their

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Dealing with Industrial Action (continued from page 1)

parties to the dispute to take strike or lockout action, a principle that was stated in Complaint No. 8 of 1974 between Trinidad Footwear Ltd. and Transport and Industrial Workers Union.

Take careful note that only a recognized majority union can take action by way of strike - S. 59(4) of the Act, therefore such action in a non-unionized environment is not permitted. Also note that strike and lockout action is not permitted in the Essential Services e.g. Electricity, Hospital and Fire Services.

S. 63 of the Act deals with what may occur if action is taken that is not in conformity with the Act. If the employer is guilty of such action, he commits an Industrial Relations Offence and is liable to a fine of twenty thousand dollars.

In the case of a trade union, a fine of ten thousand dollars can be imposed as well as the cancellation of its certificate of recognition, if any maybe ordered by the Court.

Workers in non-unionized workplaces are not permitted under the Industrial Relations Act to take strike action. Where a worker takes part in

Work-Related Stress

Bryan Rooplal, ECA

There are no special control mechanisms applying to claims for psychiatric (or physical) illness or injury arising from the stress of doing the work the employee is required to do. The ordinary principles of employers' liability apply.

The threshold question is whether the harm to the particular employee was reasonably foreseeable. Foreseeability depends upon what the employer knows (or ought reasonably to know) about the individual employee. Because of the nature of mental disorder, it is harder to foresee than physical injury, but may be easier to foresee in a known individual than in the population at large. An employer is usually entitled to assume that the employee can withstand the normal pressures of the job unless he is aware of some particular problem or vulnerability.

The test is the same whatever the employment - there are no occupations which should be regarded as intrinsically dangerous to mental health.

Factors likely to be relevant in answering the

industrial action that is not in conformity with the Act, the employer may treat it as a fundamental breach of contract. Such a breach may entitle the employer to terminate the employment of such workers.

In addition, the principle of "no work, no pay" applies where workers absent themselves deliberately from the job, and an employer is not obligated to pay workers for such time away. An employer also has the right to discipline employees for any unauthorized absences from the job.

In closing we would like to urge employers to seek full and proper advice on handling such issues before taking action. As was stated before, Industrial action can lead to huge disruptions and losses in production and if issues can be ironed out amicably without resorting to such action, then all efforts should be made to pursue that avenue.

threshold question include:

1. The nature and extent of the work done by the employee. Is the workload much more than is normal for the particular job? Is the work particularly intellectually or emotionally demanding for this employee? Are demands being made of this employee unreasonable when compared with the demands made of others in the same or comparable jobs? Or are there signs that others doing this job are suffering harmful levels of stress? Is there an abnormal level of sickness or absenteeism in the same job or the same department?
2. Signs from the employee of impending harm to health. Has he a particular problem or vulnerability? Has he already suffered from illness attributable to stress at work? Have there recently been frequent or prolonged absences which are uncharacteristic of him? Is there reason to think that these are attributable to stress at work, for example because of complaints or

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Trends in Industrial Relations

Bryan Rooplal, ECA

Index of Retail Prices

January 2003=100

Month	All items	Food and Non-Alcoholic Beverages
March	140.4	245.8
April	141.3	246.0
May	143.1	255.8
June	145.5	262.3
July	148.9	274.6
August	151.8	290.0
September	154.0	302.9

Wage Settlements

Details	Outcomes
Number of Agreements	54
Average Settlement	15.4% over 3 years
Highest Settlement	31% over 3 years
Lowest Settlement	9% over 3 years

Awards of the Court

Fifty-five (55) judgments were delivered during the first six months of 2008. Employers won twenty-nine (29) judgments while trade unions won twenty-three (23).

Party	Number	Percentage (%)
Employer	29	53%
Union	23	42%
Cannot be ascertained	3	5%

Research Services

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We Thank You!

The ECA wishes to publicly thank its members for their continued support over the past 48 years and reiterate that our dedicated staff is always happy to assist with advice, detailed information, consultancy and other services of direct relevance to your business.

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Work Stoppages - OSHA

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representatives to desist from using OSHA as a means for furthering other industrial relations agendas, and to ensure that they adhere to sections 16-20 of the ACT and explore all reasonable remedies for addressing safety and health concerns before refusing to work. These sections outline procedures which must be followed where any worker feels that his immediate work environment is unsafe.

Equally, we remind all employers to become OSHA compliant now and to take appropriate corrective action that will be enduring rather than adopt short term solutions to issues. In particular, we urge employers and workers' representatives to consider the establishment of joint Occupational Safety and Health Committees that will facilitate a structured mutual approach towards ensuring the highest standards of workplace safety and health for the benefit of all.

Higher standards of Occupational Health and Safety in workplaces and Industrial Relations stability can be achieved, once all social partners execute their roles responsibly.

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Work-Related Stress

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warnings from him or others?

The employer is only in breach of duty if he has failed to take the steps which are reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which may occur, the costs and practicability of preventing it, and the justifications for running the risk.

The size and scope of the employer's operation, its resources and the demands it faces are relevant in deciding what is reasonable; these include the interests of other employees and the need to treat them fairly, for example, in any redistribution of duties.

An employer who offers a confidential advice service, with referral to appropriate counseling or treatment services, is unlikely to be found in breach of duty.

If the only reasonable and effective step would have been to dismiss or demote the employee, the employer will not normally be in breach of duty in allowing a willing employee to continue in the job. In all cases, therefore, it is necessary to identify the steps which the employer both could and should have taken before finding him in breach of his duty of care.

Contributions

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