

ANTIGUA AND BARBUDA

IN THE INDUSTRIAL COURT

REFERENCE NO. C/UD/40 OF 2024

BETWEEN:

SUNDRY WORKERS

Employee

and

ANTIGUA MASONRY PRODUCTS

Employer

Before:

The Hon. Kari-Anne Reynolds
The Hon. Dalmer A. McCoy
The Hon. Charlene Selkridge

Chairman
Member
Member

Appearances:

Mr. Samuel James and Mr. Simon Leonard of the Antigua and Barbuda Free Trade Union,
Representative of the Employees

Ms. Gail Christian and Ms. Jessica Zeuter of Montgomery Chambers, Attorneys-at-Law
for Employer

2025: July 15
2026: April 10

Industrial Court — Jurisdiction — Trade Dispute — Collective Bargaining — Strike-Out Application — Section 7(1)(a), Section 15(2), Section 19(2) of the Industrial Court Act, Cap. 214 — Part K(4), K(6), K(13), K(15) of the Labour Code, Cap. 27 — ILO Convention No. 154 — Limits of Compulsion — Ministerial Jurisdiction — Part K(6)(2) Procedural Preconditions — Costs

RULING

Background

1. On September 5, 2024, the Employees filed Reference No. 40 of 2024 against the Employer to settle a trade dispute relating to the negotiation of a new collective bargaining agreement. On 13th May 2025, the Employer filed an application asking the Court to dismiss this Reference.



The Application

2. By its application, the Employer applied for an order under Section 36(1)(b) of the Industrial Court Rules to strike out the Employee's claim for intervention in a trade dispute on the basis that the Court does not have jurisdiction to hear this Reference.

Timeline

3. The Court felt it necessary to provide the following timeline.
 - (i) The Employer entered into a collective bargaining agreement dated December 11, 2018 with the Employees then represented by Antigua and Barbuda Workers' Union (the "**CBA**").
 - (ii) On September 16, 2020, the Employees certified the Antigua and Barbuda Free Trade Union as their sole bargaining agent ("**ABFTU**").
 - (iii) On November 17, 2020, negotiations began between the Employer and ABFTU for a new collective bargaining agreement.
 - (iv) On July 10, 2024, the Employees engaged in industrial action by way of strike as negotiations were not progressing to the satisfaction of the Employees.
 - (v) The matter was referred to the Labour Department and a hearing was held on August 21, 2024. The outstanding issues between the Employer and the Employees were not resolved at the Labour Department.
 - (vi) On September 2, 2024, the Employees again engaged in industrial action by way of strike.
 - (vii) On September 2, 2024, the Employer filed a reference to the Court to end the industrial action taken by the Employees. Reference No. 38 of 2024 ("**Employer Reference**").
 - (viii) On September 3, 2024, the Court scheduled urgent case management for September 6, 2024 at 10:00 a.m.
 - (ix) On September 3, 2024, the Employer withdrew the Employer Reference No. 38 of 2024.
 - (x) By letter dated September 4, 2024, the Minister of Labour invited the Employer and the Employees to a conciliation meeting at 12 noon on September 5, 2024 (the "**Invitation Letter**"). A copy of the Invitation Letter was served on the Court on September 5, 2024.
 - (xi) On September 5, 2024, the Employees filed this Reference at 11:40 a.m.
 - (xii) On September 6, 2024, a Memorandum of Intervention was filed on behalf of the Attorney General pursuant to Section 23 of the Industrial Court Proceedings Rules 2015 seeking consent from this Court to intervene in this Reference.
 - (xiii) On September 12, 2024, a hearing was held before the Court and the Court granted the Attorney General leave to file a formal application for consent to intervene and further case management was scheduled for December 16, 2024.
 - (xiv) On December 16, 2024, further case management was held on this Reference and the Attorney General sought an extension of time to file its application for consent. Leave was granted to extend the time for filing the application.
 - (xv) On December 20, 2024, the Attorney General filed a notice that he no longer wished to intervene in the Reference.

(xvi) On May 13, 2025, the Employer filed this application to dismiss this Reference.

The Dispute

4. In its Reference filed on September 5, 2024, the Employees identified the outstanding matters of negotiation to be resolved in relation to the new collective bargaining agreement between the Employer and the Employees.

The Employer's submissions

5. In summary, the Employer contends that the Court has no jurisdiction to determine this Reference on four main grounds:
 - a. The process of collective bargaining is a voluntary contractual process pursuant to the International Labour Organization Convention No. 154 ("ILO"). This Court cannot compel the parties to agree on the terms of a collective bargaining agreement.
 - b. The Court's jurisdiction in relation to collective bargaining agreements is limited to the interpretation or application of a collective bargaining agreement pursuant to section 15 of the Industrial Court Act, Cap 214 ("Act"). There is no existing collective agreement between the Employer and the Employees through its new bargaining agent. Therefore, there is no collective agreement to be interpreted between the Employer and the Employees. This Court in the absence of an existing collective agreement between the Employer and the relevant bargaining agent has no jurisdiction unless the Employer consents to this Court intervening in the negotiations. The Employer does not consent to this Court intervening in the negotiations. The Employer relies on **Sundry Workers v Antigua Commercial Bank Ltd Civil Appeal No. ANULTAP 2015/0005** and **Chester Humphrey and Bert Paterson v Grenada Breweries Ltd Claim No. GDAHCV2014/0267**.
 - c. The trade dispute between the Employer and the Employees was referred to the Minister of Labour according to the Memorandum of Intervention. The Minister of Labour invited the Employer and the Employees to a meeting on September 5, 2024 which the Employees failed to attend. Therefore, the matter is still within the jurisdiction of the Minister of Labour. Therefore, the Employees cannot rely on Section 19(2) of the Act to file this Reference. The Employer relies on **David Joseph v The Antigua Distillery Limited Reference No. 5 of 1992**.
 - d. The Reference by the Employees amounts to an allegation that the Employer has refused to collectively bargain which is an "Infringement" of their self-organisation rights pursuant to Part K(4) of the Labour Code of the Laws of Antigua and Barbuda Cap 27. The process for resolving "Infringements" is outlined in Part K(6) of the Labour Code of the Laws of Antigua and Barbuda Cap 27 and the Minister of Labour has the jurisdiction at this stage to resolve this alleged "Infringement".

The Employees' submissions

6. In summary, the Employees opposed the Application on the basis that:
7. The ILO is not applicable in light of the Labour Code and the Act which set out the applicable laws in relation to collective bargaining agreements.
8. The Court accepts this submission. Antigua and Barbuda has not fully ratified ILO Convention No. 154. Even if it had, it is well established in common law jurisdictions that international conventions do not form part of domestic law unless expressly incorporated by legislation as provided by **Attorney General of Antigua and Barbuda v Antigua Times Ltd [1975] UKPC**. No such incorporation has occurred in respect of Convention No. 154. The Convention therefore has no direct legal force in these proceedings. To the extent that it is relevant at all, it may inform the interpretation of ambiguous domestic provisions in a manner consistent with international obligations. It does not, however, restrict the Court's statutory jurisdiction under the Act.
9. The Employees' Reference falls within the definition of a trade dispute and as such falls within the jurisdiction of the Court pursuant to Section 7 (1)(a) of the Act. The Employees rely on **Universal Caribbean Establishment v James Harrison Reference 21 of 1993**.
10. The Employees were entitled to bring this Reference pursuant to Section 19(2) of the Act and no voluntary resolution mechanisms under the Labour Code are applicable once this Reference was filed.
11. Section 15 of the Act does not limit the scope of the jurisdiction of the Court in relation to collective bargaining agreement. The Employees note that the Court has resolved outstanding matters relating to the negotiations of collective bargaining agreements in other cases. The Employees relied on **Cable & Wireless (West Indies) Limited v Conrad Tongue [2010] UKPC 25**.
12. The Employer has committed an "Infringement" as defined in Division K(4) of the Labour Code but this is not a "major trade dispute" as the Minister of Labour must first declare it to be a "major trade dispute" pursuant to Part K15(5) of the Labour Code before the provisions of Part K13 of the Labour Code can take effect.

Findings and Reasons

13. The Court finds as follows:
14. Collective bargaining agreements are subject to the Act and the Labour Code. Employees have rights of self-organisation under the Labour Code. Collective bargaining agreements are not pure contractual arrangements between the parties.

15. **“Trade Dispute”** is defined as **“any disagreement between employer and workers or between worker and worker over conditions of employment, the engagement or non-engagement or termination or suspension of employment of one or more workers, the allocation of work as between workers or groups of workers, the terms or interpretation of a collective agreement, or any other matter relating to the employer-employee relationship, which disagreement has led, or may lead, to an interruption of employment by lockout or by strike”**[Part A(5) of the Labour Code].
16. Section 7 of the Act states that the Court shall have jurisdiction: **“(a) to hear and determine trade disputes referred to it under this Act; (b) to enjoin a trade union or other organisation of employees or other persons or an employer from taking or continuing industrial action; (c) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act”**.
17. In **Universal Caribbean Establishment v James Harrison Reference 21 of 1993**, the Court of Appeal stated as follows: **“This definition of trade dispute is quite clear and unambiguous. Unless disagreement has led or may lead to a lock out or strike it cannot be a trade dispute.....”**. This Reference falls within the definition of a “trade dispute”.
18. Section 15(2) gives the Court a specific power to interpret collective bargaining agreements that is not necessarily connected to the determination of a trade dispute. The Court of Appeal opined in relation to section 15(2) that: **“This subsection obviously may be required in circumstances where the disagreement as to interpretation could lead to strike a lock out, but it is clearly not limited to those circumstances”**. (see para 36 and 37 of **Universal Caribbean Establishment v James Harrison Reference 21 of 1993**). Therefore, the Court rejects the argument that Section 15(2) is strictly limited to interpreting existing or active agreements in the context of a trade dispute. Having regard to the James Harrison case, the Court’s position is that Section 15(2) confers a supplemental jurisdiction that is not confined to the interpretation of existing collective agreements. The Court of Appeal has determined that the Industrial Court Act intended for a scope of jurisdiction broader than collective bargaining standoffs alone. Accordingly, the Court does not accept that Section 15(2) of the Act restricts the Court to interpreting existing collective bargaining agreements.
19. The Court also draws support from **Cable & Wireless (West Indies) Limited v Conrad Tonge [2010] UKPC 25**, a decision of the Judicial Committee of the Privy Council on appeal from this Court. In that case the Privy Council upheld the Industrial Court’s jurisdiction under Section 10(3) of the Act to make an award of severance pay where the governing collective bargaining agreement was silent on the method of calculation. Their Lordships confirmed that the Court’s mandate to act with equity and good conscience and to have regard to the substantial merits of the case empowers it to intervene where a collective bargaining framework has broken down or is

incomplete. That equitable jurisdiction extends to the present circumstances, where protracted failed negotiations have twice resulted in industrial action. The Court has jurisdiction not merely to record the impasse but to take steps to resolve it.

20. The Court acknowledges, however, that the jurisdiction to hear and determine a trade dispute arising from a collective bargaining impasse does not carry with it a power to dictate or impose the substantive terms of a collective agreement. Collective bargaining retains its essentially voluntary character. The Court's role is to provide a framework within which the parties' dispute may be resolved fairly and in accordance with the principles of good industrial relations. The Court's powers under Section 10(3) of the Act to act with equity and good conscience and in the public interest permit it to make awards and directions that promote the resolution of the outstanding issues; they do not authorise the Court to substitute its own judgment for freely negotiated agreement where genuine bargaining remains possible. This Ruling is confined to the question of jurisdiction. The scope of any award or determination at the substantive hearing will be determined in accordance with the Act and applicable principles of industrial relations.
21. It was conceded and agreed by both the Employer and the Employees that the fundamental nature of the Reference involves an alleged "Infringement" as defined under Part K (4) of the Labour Code. The Labour Commissioner convened a hearing between the parties on August 21, 2024, but the dispute was not voluntarily resolved by the Labour Commissioner. Part K (6)(2) of the Labour Code states that within 10 days after the filing of the complaint, if the Labour Commissioner fails to achieve a voluntary adjustment or settlement, the Labour Commissioner shall transmit the matter to the Minister of Labour with a full report.
22. The Employer directs the Court to paragraph 5 of the Memorandum of Intervention which states that the matter was referred to the Minister of Labour. The Employer argues that pursuant to Part K(6)(2), the matter must now be heard by the Minister of Labour prior to any reference being filed at the Court by the Employees.
23. The Employer also submits that a meeting was scheduled for September 5, 2024 before the Minister of Labour which the Employees failed to attend with no excuse and instead filed this Reference which contravenes Part K(6)(2).
24. The Court notes that the Letter of Invitation for the meeting with the Minister of Labour was dated September 4, 2024; which is the day before the proposed meeting. This Court was served with a copy of the Letter of Invitation on September 5, 2024 and no evidence was submitted by the Employer of exactly when the Letter of Invitation was served on the Employees' representative. Additionally, the Memorandum of Intervention does not provide any details as to the date when the matter was referred to the Minister of Labour and if the referral was done within the prescribed period by the Labour Commissioner along with a report.

25. The Employer has failed to provide substantive evidence that the mandatory dispute resolution process under Part K(6)(2) was active at the time this Reference was filed. Procedural fairness requires adequate notice, and the absence of any proof of service makes it impossible to verify whether the Employees were given a fair opportunity to participate. The Memorandum of Intervention does not confirm that the Labour Commissioner transmitted the matter to the Minister within the prescribed period together with a full report as required by Part K(6)(2). The Court finds, on the evidence before it, that the Employer has not established that the mandatory dispute resolution process under Part K(6)(2) was properly constituted or actively ongoing at the time this Reference was filed. The Employer's argument on this ground therefore fails.
26. Section 19(2) of the Act states that ***"If within ten days after the existence of a trade dispute has come to the attention of the Labour Commissioner and he has failed to achieve a voluntary adjustment or settlement of the trade dispute, a party to the trade dispute may refer the dispute to the Court, and upon such referral the power conferred on the Minister by section K15 and section B6 of the Antigua and Barbuda Labour Code of seeking to achieve a voluntary adjustment or settlement of a trade dispute shall cease to be exercisable by him for the purposes of that trade dispute"***.
27. The hearing before the Labour Commissioner was held on August 21, 2024 and this Reference was filed on September 5, 2024 which is more than 10 days from the date of the hearing. The Employees submitted that they are entitled to file this Reference in accordance with Section 19(2) of the Act which extinguishes the voluntary adjustment process under the Labour Code.
28. The Employer argues that the Employees cannot rely on Section 19(2) to file this Reference whilst the matter is before the Minister of Labour.
29. The Court must address the statutory construction question that lies at the heart of the Employer's Part K(6) argument: does the mandatory dispute-resolution sequence in Part K(6) of the Labour Code displace or restrict the right to file under Section 19(2) of the Act? The Court holds that it does not, for the following reasons.
30. First, Section 19(2) of the Act is clear and unambiguous on its face. It provides that once the Labour Commissioner has failed to achieve voluntary settlement within ten days, "a party to the trade dispute may refer the dispute to the Court." The word "may" in this context is permissive and immediate. It imposes no further precondition beyond the expiry of ten days without voluntary resolution.
31. Second, in the event of any conflict between the Act and the Labour Code, the Act prevails. The Industrial Court Act, Cap. 214 is the specific legislation constituting and governing the jurisdiction of this Court. To the extent that Part K(6) might be read as imposing additional preconditions before a Reference may be filed, that reading is inconsistent with the express terms of Section 19(2) of the Act and must yield to it.

32. Third, the Part K(13) machinery which grants the Minister broader powers, including in certain circumstances the power to impose terms is triggered only after the Minister declares the matter to be a “major trade dispute” pursuant to Part K15(5) of the Labour Code. No such declaration was made in this case. The Part K(13) route was not activated, and it cannot be said that the Part K(6) sequence displaced the Employees’ right to file under Section 19(2) of the Act.
33. Fourth, and in any event, even if Part K(6)(2) imposed a precondition, the Employer has failed to prove that the precondition was properly engaged. As the Court has already found, there is no evidence that the Labour Commissioner transmitted the matter to the Minister within the prescribed period with a full report. A mandatory precondition cannot bar a party’s right of access to the Court unless it is proved to have been lawfully and properly invoked.
34. In **David Joseph v The Antigua Distillery Limited Reference No. 5 of 1992**, the Employer submitted minutes from the meeting actually convened by the Minister and the minutes stated that the Minister “*promised to consider where next to send the dispute*” which clearly indicated that the matter was still before the Minister pending his further action pursuant to Section 19(1) of the Act. In this Reference, the parties never met with the Minister. The mere dispatch of an Invitation Letter does not constitute the matter being “before” the Minister within the meaning of Section 19(1) of the Act. The Minister’s jurisdiction under Section 19(1) is engaged only when an active process of conciliation or mediation has in fact been convened and is ongoing. No such process was ever commenced in this case.
35. Section 19(1) of the Act grants the Minister of Labour a discretionary power to refer a matter to the Court if he is not able to settle a dispute before him. The discretionary power of the Minister in Section 19(1) does not supersede the right of employees to refer complaints to the Court for hearing or determination (**See Jennifer Johnson v Antigua and Barbuda Workers’ Union Reference No. 34 of 2013**).
36. The Court notes that Memorandum of Intervention was filed on behalf of the Attorney General (who is also the Minister of Labour) to assume jurisdiction over this Reference. The Attorney General has a specific right to intervene in proceedings where a question of public importance or interest arises. If he withdraws, the Court remains obligated to fulfil its mandate.
37. The Court gave the Attorney General various extensions of time to file his formal application for consent to intervene, but the Attorney General ultimately chose not to do so. The Court notes that the Minister’s statutory power to seek a voluntary adjustment of this trade dispute ceased upon the filing of this Reference by operation of Section 19(2) of the Act. That cessation is independent of, and was not affected by, the Attorney General’s subsequent decision to withdraw from these proceedings. Consequently, the Court declines to dismiss this Reference or remit it to the Minister for further voluntary settlement attempts. It would not in all the circumstances be in the interests of justice to do so, and the Court remains seized of the matter and obligated to fulfil its mandate.

38. The approximately five-year delay in resolving these negotiations represents a fundamental breakdown in good industrial relations practices and a contravention of the spirit of Section K3 of the Antigua and Barbuda Labour Code which guarantees the effective right to collective bargaining. Such an inordinate delay violates the core principles of fairness and equity, as it denies employees the timely benefit of negotiated terms and undermines the stability of the industrial environment. In accordance with the Court's mandate under Section 10(3) of the Act to act with equity and good conscience and to have regard to the substantial merits of the case, this matter must be urgently adjudicated to promote good industrial relations.

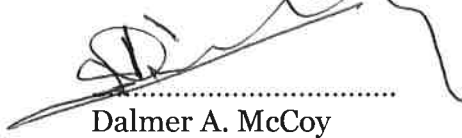
Conclusion

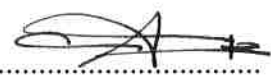
39. As to costs, the Court is satisfied, that exceptional circumstances exist in this case. The Employer's jurisdictional application was brought after a five-year failure to conclude a replacement collective bargaining agreement, two episodes of industrial action, and the Employees' proper invocation of their statutory right under Section 19(2) of the Act. The application lacked merit on each of its four grounds and has caused unnecessary delay. In these circumstances it is just and appropriate to award costs to the Employees. The Court assesses costs in the sum of \$1,000.00 to be paid within fourteen (14) days of this Decision, pursuant to Section 14 of the Act.

40. For the foregoing reasons: (i) this Reference constitutes a trade dispute within the jurisdiction of this Court pursuant to Section 7(1)(a) of the Act; (ii) the Employer's application dated May 13, 2025 to strike out this Reference is hereby dismissed; and (iii) costs are awarded to the Employees as set out above, to be paid within fourteen (14) days of the date of this Decision.

Dated the 21st day of April, 2026


Kari-Anne Reynolds


Dalmer A. McCoy


Charlene Selkridge

Delivered by Kari-Anne Reynolds