

**The Employment Act 2000 (The Act) before the Employment and Labour Relations  
Tribunal (The Tribunal) between  
Jamal Symonds – The Applicant**

**And**

**– The Respondent**

Hearing Date – 17<sup>th</sup> August 2023

Written Summation Deadline – 24<sup>th</sup> August 2023

Tribunal Members:

- Mr. Derrick V. Burgess – Chairman
- McKeisha S. Smith – Deputy Chairman
- Paget Wharton – Tribunal Member

IN THE MATTER OF .

And Jamal Symonds

**Background and Terms of Reference**

The Tribunal is being asked to consider the claim by Mr. Jamal Symonds [“JS”], former employee of [ ] that the Employer has refused to compensate JS for performing supervisory duties whilst employed at

The dispute is filed under Section 37 (4) of the Act and reads as follows:

*“Inquiry by inspector  
(4) Where the inspector –  
a) has reasonable grounds to believe that an employer failed to comply with any provision of this Act; but  
b) is unable to effect a settlement under subsection (3),  
he shall refer the complaint to the Tribunal”.*

The Tribunal therefore places the burden upon the Employer to set out why, statutorily, or legally, he was not entitled to a Supervisors pay at an additional \$2.00 per hour.

**Remedy Sought**

The complainant – Applicant is seeking the following:

- Compensation while performing Supervisory duties; which is an extra \$2.00 per hour that would equate to \$1.50 per hour on top of the \$0.50 raised received in January 2023.

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**The Case of the Employee**

1. JS presented his case as follows:

- a. He was employed by \_\_\_\_\_ from August 6, 2020, and was stationed at the ["\_\_\_\_"] School as a Full-Time Cleaner.
- b. At the commencement of his employment at \_\_\_\_\_, he was trained by the then Supervisor for the first two months of employment and was told after one-year of employment, he would receive additional pay.
- c. \_\_\_\_\_ did not replace the Supervisor who left the organization and the location.
- d. JS contends, once the Supervisor left \_\_\_\_\_ that he was responsible for guiding and training the two other full-time cleaners at the \_\_\_\_\_ location. Often times he had to assist with English translation for his colleagues with English not being their first language. This was to ensure safety of the products being used onsite.
- e. JS indicated that the General Manager, \_\_\_\_\_, had continuous conversations with JS and that he was doing "his" job (former Supervisor) telling the other cleaners what to do.
- f. During the course of JS's employment at \_\_\_\_\_ no supervisor came onsite at \_\_\_\_\_ to check on the employees. JS was the point person at \_\_\_\_\_ and liaised with Mr. \_\_\_\_\_ Head of Facilities at \_\_\_\_\_.
- g. JS received a reference letter from the \_\_\_\_\_ at \_\_\_\_\_ confirming his quality of work and overall work ethic. The letter was presented as evidence by JS. The \_\_\_\_\_ also stated that JS was a phenomenal leader of our custodial team at \_\_\_\_\_ and goes above and beyond his duties, it's a pleasure to work with him. The contents of the letter from the \_\_\_\_\_ were not disputed by Management.
- h. JS reiterated his need to assist his colleagues and provide them supervision, especially as they didn't understand English. He was the point person for this location and liaised with \_\_\_\_\_.
- i. He also expressed his desire for a pay increase and presented evidence from a text message exchange where he raised the issue with Mr., \_\_\_\_\_ Supervisor at \_\_\_\_\_ Mr. \_\_\_\_\_ response to JS was "*...I will discuss this at our next management meeting and be in touch in regard to discussion as I do understand your concerns and to value your efforts*".
- j. JS closed his case.
- k. Ms. \_\_\_\_\_ ["EV"] representing \_\_\_\_\_ had no questions nor a rebuttal on JS' testimony.

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**The Case of the Employer**

2. EV attended the hearing representing . She presented the following case to the panel:
- a. JS applied for the position and did not have any cleaning qualifications or experience. They hired him to be stationed at , and that the prior person at , that JS was hired to replace, was a Senior Cleaner, not a supervisor.
  - b. She further indicated that , General Manager and Mr. , Cleaning Supervisor at , would go to the school after hours to assess the job by popping in from time to time.
  - c. EV indicated she did not understand JS' comment in reference to "English" (and the staff not speaking good English).
  - d. She also indicated JS signed an employment agreement with the position title as "Cleaner"; (not Supervisor).
  - e. She did confirm JS was the "Contact Point" for the school and also that he was a good worker.
  - f. He asked for a pay increase and got \$0.50 increase. He was also paid a rate of \$18/hour when he started, which was \$2 more than an experienced cleaner, as they had high hopes for JS.
  - g. She further indicated that JS never approached her or for a pay increase of \$1.00; never mentioned "*I need a raise*". EV indicated they did give JS a raise of \$0.50 and then this happened. (JS took the matter to the Labour Department and ultimately it was referred to the Tribunal).
  - h. EV confirmed that is the liaison between the workers and the school. There was never a Supervisor on location. They don't have Supervisors at locations and is the Supervisor at
  - i. EV indicated that it was odd for JS to receive a reference from the at because he doesn't deal with him. She did however agree with the comment in the letter that stated he is a "*phenomenal leader of the custodial team*".
  - j. JS was employed at for 2 years and did not receive an annual raise.

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**The Re-address by JS**

3. JS dismissed EV's claims that he did not have any cleaning experience because when he was employed at Southampton Princess, he was a washman and a cleaner which was on his resume. He also has expertise in polishing floors.
4. He also confirmed he carried a hand held radio at the location and was the contact person for
5. JS closed his re-address.

**Decision**

1. It is the Determination of this Tribunal that:
  - a. Based on the evidence and testimony presented, the Panel agreed that JS was operating in the capacity of a Supervisor at the location, and he should be compensated accordingly for it.
  - b. He was also ensuring the health and safety of the workers giving instructions on cleaning products.
  - c. It was agreed by all at and that he was a good worker.
  - d. The Tribunal Awards JS a pay increase at a rate of \$2.00 (\$0.50 having already been given from January 2023) from the end of this probation period to his termination date; at the end of his probation period, it states he knew to have a review of his salary and duties.
  - e. **JS terminated his services in which we do not judged as constructive dismissal.**
  - f. Hence according to Section 40 (1)(a) the tribunal calculates the award as follows:
    - i. Commencement date of employment – 6<sup>th</sup> August 2020
    - ii. Probation period end date – 6<sup>th</sup> November 2020
      1. 6<sup>th</sup> November 2020 – 6<sup>th</sup> January 2023 – rate of \$2.00 for 26 months - **\$7,280.00**
      2. 6<sup>th</sup> January 2023 – 6<sup>th</sup> June 2023– rate of \$1.50 for 5 months - **\$1,050.00**
      3. 6<sup>th</sup> June – 19<sup>th</sup> June 2023 (termination date) – rate of \$1.50 for 2 weeks (70 hours) - **\$105.00**
      4. Total Remedy to the Applicant - **\$8,435.00**
  - g. The Tribunal also imposes a civil penalty as the Employer has contravened Section 6 “Statement of Employment” of the Act. Section 6 (1) states an Employer who contravenes this section shall be liable to a civil penalty as may be imposed by the Manager of the Tribunal.

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- h. Contravened – Section 6 (1) – Statement of Employment (“SOE”) was not signed within a week one week after the employee begins employment with an employer. In addition, there were missing components of the SOE such as 6 (k) no evidence of any disciplinary and grievance procedure; (q) no evidence of Employer’s written policy against bullying and sexual harassment in the workplace and how the policy can be assessed.
- i. Section 9 “Overtime” (2) of the Act, there is no payment of overtime or time in lieu stated in the SOE.
- j. The Tribunal has imposed a penalty of \$1,250.00 for the contravention of the Act as stated above. The maximum fine per Section 44 “Offences” of the Act is \$10,000.00.

As per the Act, Section 44M (3c), the Employer has the right to make representation to the Tribunal within 7 days of the date of such notice.

Section 44M (4d) a person has the right to appeal in accordance with Section 44O of this Act.

Section 44M (5 a, b) A person upon whom a penalty is imposed under subsection (3) who does not appeal shall within 21 days either:

- a) Pay the penalty, or
- b) Pay a portion of the penalty and apply to the manager for a payment schedule for the remainder.

**2. *The parties have been advised that the Determination and Order of this Tribunal are final and binding and that a party aggrieved may appeal to the Supreme Court on a point of law only in accordance with Sections 44 of the Act.***

**The Respondent has 30 days from the date of receiving this Order to pay the Complainant.**

**Chairman**  
Dereck Burgess

**Deputy Chairman**  
McKeisha Smith

**Tribunal Member**  
Paget Wharton

**DATE:** 20<sup>th</sup> day of September 2023



**FACTS - J. SYMONDS vs**

35 hours per week @ a rate of \$18.00/hour

January 2023 - rate increase \$0.50 to \$18.50/hour

EE asked for \$2.00 additional pay from year 2020

Start date - August 6 2020

Probation period - 3 months

Probation ended - November 6 2020

\$720/week (per payslip) times 52 weeks	\$ 37,440.00
35 hours/week * weeks/month	140

Nov 6, 2020 to Jan 6, 2023 - rate increase request of \$2.00 (calculate weeks @ rat	\$ 7,280.00
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Feb 6 2023 (50cent rate increase in Jan) - June 6, 2023 - rate should be \$1.50	\$ 1,050.00
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Jun 6, 2023 to termination date of Jun 19, 2023 (2 weeks) - rate \$1.50	\$ 105.00
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<b>TOTAL REMEDY</b>	<b>\$ 8,435.00</b>
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**\*\*Need to determine calculation less any statutory deductions\*\***

**USE THIS BREAKDOWN**

Nov 6, 2020 to Jan 6, 2023 - rate increase request of \$2.00 (26 months)	\$ 7,280.00
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Feb 6 2023 (50 cent rate increase in Jan 2023) - Jun 6, 2023 - rate should be \$1.50 (5 months)	\$ 1,050.00
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Jun 6, 2023 to termination date of Jun 19, 2023 (2 weeks) - rate \$1.50	\$ 105.00
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<b>TOTAL REMEDY</b>	<b>\$ 8,435.00</b>
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Date:

Mr. Derrick Burgess - Chairman

McKeisha S. Smith - Deputy Chairman

Paget Wharton -Tribunal Member

