

# INDUSTRIAL DISPUTES TRIBUNAL

Dispute No.: IDT 41/2018

---

SETTLEMENT OF DISPUTE

BETWEEN

DEPARTMENT OF CORRECTIONAL SERVICES

AND

JAMAICA FEDERATION OF CORRECTIONS & THE SENIOR

UNIFORM OFFICERS ASSOCIATION

***AWARD***

**I.D.T. DIVISION**



<b>HON. MRS. JUSTICE MARJORIE COLE-SMITH (Ret'd.)-</b>	<b>CHAIRMAN</b>
<b>MR. LESLIE HALL</b>	<b>- MEMBER</b>
<b>MR. CLINTON LEWIS</b>	<b>- MEMBER</b>

APRIL 21, 2022

*(Signature)* *CL*

**INDUSTRIAL DISPUTES TRIBUNAL**

**AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**DEPARTMENT OF CORRECTIONAL SERVICES  
(THE COMPANY)**

**AND**

**JAMAICA FEDERATION OF CORRECTIONS & THE SENIOR UNIFORM OFFICERS  
ASSOCIATION**

**REFERENCE:**

By letter dated November 27, 2018, the Honourable Minister of Labour and Social Security, pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 (hereinafter called "the Act"), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

*"To determine and settle the dispute between Department of Correctional Services on the one hand and the Jamaica Federation of Corrections and the Senior Uniform Officers Association on the other hand over the correct payment to be made to Correctional Officers who work both on the day and early night shifts."*



*[Handwritten signatures]*

**DIVISION:**

The Division of the Tribunal which was selected in accordance with Section 8(2) (c) of the Act and which dealt with the matter comprised:

- Hon. Mrs. Justice Marjorie Cole-Smith (Ret'd.) - Chairman
- Mr. Leslie Hall, J.P. - Member, Section 8(2) (c) (ii)
- Mr. Clinton Lewis - Member, Section 8(2) (c) (iii)

**REPRESENTATIVES OF THE PARTIES:**

The **Company** was represented by:

- Ms. Tamara Dickens - Attorney –at-law
- Mr. Robert Clarke - Attorney-at-Law
- Ms. Fay Case - Chief Industrial Relations Officer (MOE)
- Ms. Nadria Brown - Director, Employee Relations (DCS)



The **Association and the Federation** was represented by:

- Ms. Stacey Knight - Attorney-at-Law
- Ms. Britney-Lee Johnson - Attorney-at-Law
- Mr. Arlington Turner - President (Jamaica Federation of Corrections)
- Mr. Leslie Campbell - President (Snr. Uniform Officers Association)
- Mrs. Lisa Collie-Evering - General Secretary (Jamaica Federation of Corrections)
- Ms. Paulette Fowler - Deputy Chairman (Jamaica Federation of Corrections)

The Panel that was initially selected to hear and settle the dispute consisted of Ms. Marsha Smith, Chairman, Mr. Leslie Hall, Member and Mr. Clinton Lewis, Member. In August 2020, Ms. Marsha Smith demitted office. She was replaced by Hon. Mrs. Justice Marjorie Cole-Smith, Chairman. The parties were written to in accordance with Section 8 (4) of the Labour Relations and Industrial Disputes Act (LRIDA) and they agreed for the Tribunal to continue as though the matter was never interrupted.

**SUBMISSIONS AND SITTINGS:**

Briefs were submitted by both parties who made oral submissions during twenty two (22) sittings held between February 22, 2019 and December 7, 2021.




**BACKGROUND TO THE DISPUTE:**

1. The Department of Correctional Services (hereinafter referred to as “the DCS”) is a department of the Government of Jamaica established by the Corrections Act of Jamaica. Its primary purpose as per its mission statement, *“is to contribute to the safety and protection of our society by keeping offenders secure and facilitating their rehabilitation and reintegration as law abiding citizens while developing a professional and committed staff.”*
  
2. The Senior Uniform Officers Association (hereinafter referred to as the Union) is a staff association which functions as a representational body for senior Correctional Officers, with ranks from Corrections Officer 4 (CO4) to Corrections Officer 7 (CO7). Its primary function is to lobby for and safeguard the welfare of senior correctional officers.
  
3. The Jamaica Federation of Corrections (hereinafter referred to as the Union) is a Trade Union representing Correctional Officers levels CO1 to CO3 and Civilian Staff within the Department of Corrections of the Government of Jamaica.
  
4. The dispute arose as a result of a claim by the Senior Uniform Officers Association and Jamaica Federation of Corrections, regarding allowances to be paid to Correctional Officers who work both the Day and Early Night Shifts.
  
5. The dispute was referred to the Ministry of Labour and Social Security for its intervention, however, no resolution was reached and hence the matter was referred to the Industrial Disputes Tribunal for determination and settlement.

**THE UNIONS’ CASE:**

6. The Unions called three (3) witnesses in support of their case, Mr. Reneord Smalling, Overseer, Mrs. Lisa Collie-Evering, Corporal (C02) and Mr. Leslie Campbell, Superintendent.
  
7. On July 20, 2007 after a period of prolonged negotiations between the Ministry of Labour and Social Security, Ministry of Finance and Public Service, the Department of Correctional Services, the University and Allied Workers Union, Senior Uniform Officers Association and the Jamaica



Federation of Corrections, an agreement was reached which formalized that a Special Extraordinary Allowance should be paid as long as the agreed conditions were satisfied. The Special Extraordinary Allowance is specifically for Correctional Officers and is not extended to any other category of workers. The Special Extraordinary Allowance is paid to Correctional Officers who are required to "carry over" from the Day Shift into the hours of the Early Night Shift to complete their required tasks. The end of the shift is marked by the official handing over of the facility from the Officer in charge to another Officer in charge of the incoming shift. At the handing over, the muster of inmates must be checked and confirmed correct, as well as the required complement of Correctional Officers must be complete.

8. It is the Unions' case that the DCS operate three eight hour shifts at the Adult Institutions; Day Shift, 7:30 a.m. to 3:30 p.m., Early Night Shift, 3:30 p.m. to 11:30 p.m. and Late-Night Shift, 11:30 p.m. to 7:30 a.m. It is the evidence of Mr. Reneord Smalling that there are more persons on duty on the Day Shift than the Night Shifts. The work that takes place during the Day Shift differs from that of the Night Shifts. During the day, the inmates are released from their cells to perform diverse activities. These activities include attending court, receiving medical attention, recreational programmes and to admit their visitors. Correctional Officers who work on the Day Shift and into the Early Night Shift are paid certain allowances once they have satisfied the criteria for payment of each shift. One such allowance, the Special Extraordinary Allowance came into existence because whereas there is no overtime pay in the compensation scheme for Correctional Officers, persons working on the Day Shift are often required to work beyond the scheduled hours due to the fact that the inmates must be locked down and systematic searches carried out.

9. It is the Unions' position that Correctional Officers who work the Day Shift and Early Night Shift are entitled to both the Special Extraordinary Allowance and the Meal Allowance. The Correctional Officers maintained that once they have satisfied the criteria for payment of each allowance they should therefore receive same.

10. The DCS refuses to pay both the Special Extraordinary Allowance and the Meal Allowance to Correctional Officers in Adult Institutions who have been held over on the Day Shift up to 5:00 p.m. or beyond and to Correctional Officers in Juvenile Institutions who have been held over on the



*[Handwritten signatures]*

Day Shift up to 5:30 p.m. or beyond, and are detailed to work on the Early Night Shift. The DCS only facilitate the payment of one of these allowances to the Officers who work the Day Shift and the Early Night shift.

11. Mr. Reneord Smalling said that he has been exposed to different Institutions in his tenure at the DCS and from this has garnered a great deal of experience. These Institutions are Tamarind Farm Correctional Centre, South Camp Adult Correctional Centre, Horizon Adult Remand Centre and now at the Tower Street Correctional Centre where he previously worked. He said that staff on the Day Shift are never relieved at 3:30 p.m. when their shift should come to an end, because at that time, the inmates are not yet locked down. The Day Shift is required to continue their duties until they are dismissed and the Officer in charge hands over and is relieved by the Early Night Shift's Officers. Some Officers working on the Day Shift are required to "carry over" into the hours of the Early Night shift to facilitate locking down, systematic searches, participation in rehabilitative programmes, transfers of inmates etc. The Superintendent should not hand over until all inmates have been locked down and accounted for.
  
12. It is the evidence of Mrs. Lisa Collie-Evering that an Officer's name does not appear on the roster to work on both the Day Shift and the Early Night Shift on the same day. However, because of absence of some Correctional Officers, the complement for the Early Night Shift is not usually known until around 5:15 p.m. to 5:25 p.m. when the Chief Night Officer indicates to the Overseer the need for more Officers to work on the Shift. If there is a shortfall, an Officer who worked on the Day Shift will be required to work on the Early Night Shift. This often happens when an Officer scheduled for the Early Night Shift calls in sick or is absent. The Officer who is asked to work a part of the night shift is deemed to be holding over into the Early Night Shift when the carrying over process can be completed.
  
13. Officers on each shift will receive allowances once they are eligible. Officers who work on the Day Shift are entitled to Special Extraordinary Allowance if they are authorized to work 5:00 p.m. or beyond. This is the compensation for the Officers who worked extra hours on the Day Shift before handing over to the Officers on the Early Night Shift. Meal Allowance is paid only to Officers who worked on the Early Night Shift and Late Night Shift.



14. Mrs. Collie-Evering testified that Officers who are detailed from the Day Shift to Early Night Shift should be eligible for both allowances because she finds it unfair for having worked in the Day Shift up to 5:30 p.m. and then worked the Early Night Shift and not receiving both allowances. She further argued, that she is dependent on the allowances to supplement her salary.

15. The Special Extraordinary Allowance is contained in the Heads of Agreement dated July 20, 2007 along with its amendment made pursuant to an addendum dated January 8, 2009. This provided inter alia that Correctional Officers of the Adult Correctional, Juvenile Correctional and Remand Centres and other assigned areas who have been authorized by the respective Superintendent to be held over and who work up to 5:00 p.m./5:30p.m. or beyond after completion of the Day Shift, and who did not receive payment are entitled to the payment.

16. It therefore follows that the entitlement to the Special Extraordinary Allowance is contingent on:

- 1) The receiving of authorization by the Superintendent
- 2) The Officer had held over his duties from the Day Shift to Early Night, i.e. any period up to 5:00 p.m. or beyond.
- 3) That the said Officer has submitted his/her payment claims using the prescribed form.



17. It is the evidence of Mr. Leslie Campbell that a Meal Allowance is paid to Officers who work during the Early and Late Night Shift and is paid in lieu of actual meals which would be served during break times on those shifts. One of his functions is to certify claim forms on which Correctional Officers submit their claims for allowance such as the Special Extraordinary Allowance and Meal Allowance. There are two forms, A and B, which are prepared by a Corporal or Acting Corporal, checked by an Assistant Superintendent and certified by a Superintendent who reviews all documents to verify that the information is confirmed correct from the records. The Form A, for Special Extraordinary Allowance and Form B for Meal Allowance are the forms he would certify as being true and correct if the claimants worked on the respective shifts. He is not aware nor advised by any Staff Order, Corrections Act or Public Service Regulations which would preclude an Officer from receiving more than one allowance if they have met the criteria for each.

18. It is the Unions' case, that the Special Extraordinary Allowance and the Meal Allowance and all other allowances as maybe circumscribed be made to all Correctional Officers who are deemed

eligible as per the conditions established under the Heads of Agreement and the Addendum thereto and the Circulars regarding the Revision of Allowances issued by the Ministry of Finance and Public Service.

**THE COMPANY'S CASE:**

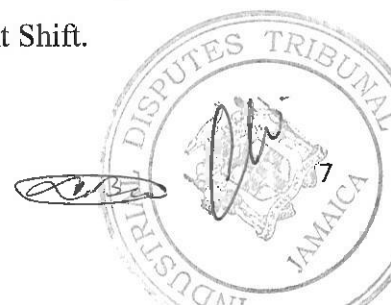
19. The DCS called three witnesses, namely, Ms. Fay Case, Chief Industrial Relations Officer in the Ministry of Finance; Mr. Norris Gilbert, Senior Director of Finance and Accounts at the DCS; and Miss Joyce Stone, Deputy Commission of the DCS.

20. It is the DCS' case that Correctional Officers who work from 7:30 a.m. to 11:30 p.m. would have worked two separate shifts in completion. That is, the Day Shift from 7:30 a.m. to 4:30 p.m. and the other is the Early Night Shift from 3:30 p.m. to 11:30 p.m. Anyone who worked both shifts consecutively would only be entitled to the benefit payable on the Early Night Shift. These benefits are meal and taxi allowances. No allowance is attached to the Day Shift. However, the 'Special Extraordinary Allowance' should be paid to an Officer who worked on the Day Shift and is required and approved by the Superintendent to work later than 4:30 p.m. in order to facilitate the locking down process, but are not required to work the entire Early Night Shift. The DCS made it clear that the Department is not in agreement for Officers on the Day Shift and who work the Early Night Shift to be paid both Meal Allowance and Special Extraordinary Allowance.

21. The Department's first witness was Ms. Fay Case, who stated that her function as Chief Industrial Relations Officer in the Ministry of Finance, covers the range of the Public Service. This dispute she mentioned, came to the Ministry of Finance and then escalated to the Ministry of Labour.

22. She stated that historically overtime was paid, to Public Officers, but the Gordon Wells Report of 1989, recommended that overtime be replaced by Duty Allowance and eventually Duty Allowance was rolled into salaries.

23. She outlined that Correctional Officers who work on the Early Night Shift are entitled to be paid a meal allowance, but only for the entire shift and not for a portion of the shift. Shift premiums are paid to persons who worked on the entire Early Night Shift and Late Night Shift.





- 24. She further stated that the “Special Extraordinary Allowance” was intended for Correctional Officers who began working at 7:30 a.m. to 4:30 p.m., but were for whatever reasons required to work beyond 5:00 p.m. She added that the concept of “beyond” is specific to Day Shift and does not refer to working an entire shift, just a portion of it.
  
- 25. In the case of Mrs. Lisa Collie-Evering, Ms. Case contends that she would only have been entitled to Meal Allowance and not the Special Extraordinary Allowance. However, she said that she was aware of the practices of the Correctional Services of paying the Special Extraordinary Allowance instead of the Meal Allowance, because the Special Extraordinary Allowance is a larger sum.
  
- 26. She also stated that if the DCS were paying the Special Extraordinary Allowance, and the Meal Allowance to someone working both shifts, this would be in contravention of the Ministry of Finance policy. She added that persons who work the Early Night Shift would be entitled to the Meal Allowance, the Shift Premium and Taxi Allowance.
  
- 27. If a person works the Early and Late Night Shift, that person would be entitled to two Meal Allowances, two Shift Premiums and a single Taxi Allowance. She also stated that when a person works two consecutive shifts, they get an extra paid day off. This she stated is the practice by the Department of Correctional Services.
  
- 28. The DCS’ second witness was Mr. Norris Gilbert, who said that he processed payments for Correctional Officers and that he is familiar with the Heads of Agreements, as he is usually present, when negotiations take place.
  
- 29. He stated that the forms from which payments should be made, would come to the Head Office, through the Deputy Commissioner’s Office and are checked, verified and then moved to the Accounts Department. Any changes would have been made and approved, before coming to Accounts Department.
  
- 30. He agreed that Mrs. Lisa Collie-Evering should only have been paid a Meal Allowance and not the Special Extraordinary Allowance, as she worked the entire Early Night Shift.



- 31. He said that during his three years of employment in the Department, he became aware that if a person works the first two shifts, the person would be paid the higher of the two allowances (Special Extraordinary or Meal). He made it clear that the Meal Allowance was eight hundred and fifty dollars (\$850), while the Special Extraordinary Allowance was one thousand and five hundred dollars (\$1,500) before tax.
  
- 32. Under cross examination he agreed that if an Officer worked the Day and Early Night Shift, that Officer would not be paid both the Special Extraordinary and Meal Allowances, only the Meal Allowance.
  
- 33. The Department's third and final witness was Miss Joyce Stone who stated that she had over thirty (30) years of service with the Department of Correctional Services, seven of which were spent between 2005 and 2012 in the two largest Correctional Institutions, namely Tower Street and St. Catherine Adult Correctional Centres.
  
- 34. She indicated that the Department operates three shifts of workers in both the Adult and Juvenile Institutions. The Adult Institutions are peculiar in that the Day Shift and the Early Night Shift have an overlap of one hour between 3:30 p.m. and 4:30 p.m. This overlap was designed to facilitate the checking of Muster. Additionally, she said that the staff compliment on the Day Shift is usually larger than the other shifts, because most of the activities take place during the day.
  
- 35. She further stated that all Officers who are requested to be held over, are required to be on the staff parade and to begin duty with the Early Night Shift at 3:30 p.m. in the Adult Institutions and 4:00 p.m. in the Juvenile Institutions.
  
- 36. Miss Stone stated that the main reason persons on the Day Shift are required to work on the Early Night Shift, is not because of the locking down process, but is either as a result of lateness or absence of others. She mentioned that the Department has a chronic late and absentee problem.
  
- 37. In her knowledge, the Special Extraordinary Allowance came into being as payment for Officers who were detailed to carry over duties from the Day Shift into the Early Night Shift, such duties as

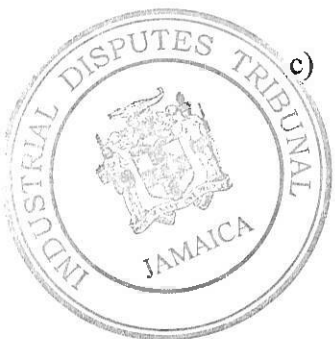


locking down, systematic searches and other special assignments. Claims for Special Extraordinary Allowance are prepared, checked and certified at the institution where the Officer works, then submitted for approval for payment by the Deputy Commissioner at Headquarters.

- 38. It is her view that the Special Extraordinary Allowance is being abused. This is because this Allowance is being claimed for by most if not all the Officers who report for work on the Day Shift, every day at every institution and outstations regardless of the duties being undertaken.
- 39. She further stated that a former Commissioner of Corrections had attempted to correct the abuse of the Special Extraordinary Allowance, but this was vigorously resisted by the Trade Unions within the Department. Currently, the Central Administration of the Department, has no control over the number of Officers being held over and who claim the Special Extraordinary Allowance.
- 40. She made it clear that payment for the Special Extraordinary Allowance is not attached to the Day Shift, but the process of "held over." This Allowance is therefore paid to Officers who work on the Day Shift and are "held over" to work up to 5:00 p.m. or beyond in Adult Institutions and 5:30 p.m. or beyond in Juvenile Institutions. This allowance is not paid to Officers who work the entire Early Night Shift or the Late-Night Shift.

41. The contentions of the Department of Correctional Services are:

- a) that the Special Extraordinary Allowance was introduced with effect from December 1, 2006, under the Heads of Agreement dated July 20, 2007 between the Department of Correctional Services and the Unions for the specific purpose of compensating Correctional Officers, for the time they spent for carrying over duties from the Day Shift into the Early Night Shift. This is to facilitate the security process.
- b) the fact that there is a one hour overlap between the Day Shift and the Early Night Shift, clearly indicates that the personnel on the two shifts are expected to work together during the handing over process.
- c) that the Special Extraordinary Allowance is essentially an overtime payment, which is to compensate Correctional Officers who work on the Day Shift and are approved by the Superintendent to work beyond 5:00/5:30 p.m., to facilitate the locking down process,



systematic searches and special assignments. These Officers are not detailed to work the entire night shift.

d) the Heads of Agreement had no intention for the Special Extraordinary Allowance to be applicable to any Correctional Officer who worked on both the Day Shift and the Early Night Shift on the same day. If it had that intention then it would have stated so. The Heads of Agreement made it clear that the Special Extraordinary Allowance covers the period worked into the Early Night Shift and not the entire Early Night Shift.

42. The Department through one of its witnesses, reiterated that there has been a history of abuse of the Special Extraordinary Allowance and that the Unions want the Tribunal to give the authority for this abuse to continue and be paid in circumstances for which it was not intended.

43. The Department of Correctional Services submits that Meal Allowance should not be paid to the Correctional Officers who work on the Day Shift. The Special Extraordinary Allowance is to be paid only to the Officers of the Day Shift who work on approval of the Superintendents, beyond 5:00/5:30 p.m., but not for the entire Early Night Shift.

**THE TRIBUNAL'S FINDINGS:**

44. The issue before the Tribunal is to determine and settle the dispute over the correct payment to be made to Correctional Officers who work both on the Day Shift and Early Night Shift.

45. The evidence before the Tribunal according to established Department of Correctional Service procedures is that at the beginning of each shift 7:30 a.m., 3:30 p.m. and 11:30 p.m. a Muster Parade is formed of all available Officers who have reported for duty. An assessment of the staff strength is made by the Superintendent's designated Chief Night Officer. Where there is a shortage of manpower to adequately man the shift, Officer(s) on duty from the Day Shift is/are detailed to work "through" to provide full coverage for the security of the Institution. The Senior Officer in charge of the shift further inspects, briefs and details the staff to be on duty. All of this is done at the beginning of each shift.



*[Handwritten signatures]*

- 46. At the commencement of each shift, there is a parade of Officers and the end of a shift is marked by the handing over of the Officer in charge to another Officer in charge of the incoming shift. At this point, inmates must be checked and accounted for as well as the complement of Officers must be complete.
- 47. The evidence before the Tribunal is that there is a general shortage of Correctional Officers. There is also the absence of Correctional Officers, hence Officers are held over from the Day Shift into the Early Night Shift. There is evidence that sometimes a Correctional Officer is on day off and will be asked to work.
- 48. Given the procedure stated above, a Correctional Officer on the Day Shift who is detailed by the Superintendent to "work through" on the Early Night Shift, will begin to do so at 3:30 p.m. (Adult Institutions) or 4:00 p.m. (Juvenile Institutions) when the Early Night Shift begins and NOT at 5:00 p.m. as being contended by the Unions.
- 49. The Tribunal therefore refutes the evidence from the Unions as given by the Overseer, that the Officers for the Early Night Shift do nothing until the Day Shift is ended. The Tribunal finds this would be a waste of time and manpower. The Tribunal does not believe that the Early Night Shift starts only when the work carried forward from the Day Shift is complete. If that was the case, then persons working on the Early Night Shift would not be working a full shift. The Early Night Shift begins at 3:30 p.m. or 4:00 p.m. depending on the Institution. However, the Tribunal accepts that there is a one hour overlapping of the shifts to facilitate a smooth transition from one shift to the next.
- 50. The Special Extraordinary Allowance is the product of a Heads of Agreement dated July 20, 2007 which was negotiated between the Department of Correctional Services and the Ministry of Finance and the Public Service on the one hand and the University and Allied Workers Union, the Jamaica Federation of Corrections and the Senior Uniform Officers Association on the other hand.
- 51. By virtue of paragraph (b) of the Heads of Agreement "payment of Special Extraordinary Allowance is to be made only to those Correctional Officers who have been authorized by the Superintendent to be held over and in keeping with paragraphs (ai) and (a ii) of the Heads of Agreement".



52. Therefore, the Special Extraordinary Allowance is to facilitate payment to Correctional Officers who work on the Day Shift and have to be held over to perform duties into a part of the Early Night Shift, at the Adult and Juvenile Correctional and Remand Centers. This is in order to enhance security (locking down, systematic search and other special assignments).
53. The evidence presented to the Tribunal discloses that Correctional Officers are entitled to and paid the Special Extraordinary Allowance at the completion of the Day Shift if they have been 'held over' to work up to 5:00 p.m. or beyond. However, if the Officer works the entire Early Night Shift, that Officer is not paid the Special Extraordinary Allowance.
54. The evidence of Mrs. Collie-Evering was that she worked the Day Shift and was held over and eventually worked the entire Early Night Shift, however, she did not receive the Meal Allowance, only the Special Extraordinary Allowance. However, the fact is, she was only entitled to the Meal Allowance.
55. By letter dated November 23, 2016, the then Commissioner of Corrections sought clarification from the Ministry of Finance and Planning concerning the Payment of Allowance for double shifts.
56. By letter dated November 29, 2016, the response from the Ministry of Finance and Planning stated in part.

*"Please note, the following as this Ministry's position on the matter:*

1. *The Correctional Officer having continued from 7:00 a.m. until 11:30 p.m. would have completed two separate shifts 7:00 a.m. to 3:00 p.m. then 3:30 p.m. to 11:30 p.m. However, such an Officer would only be entitled to allowances payable for the early night shift, that is, the meal and taxi allowances, and none for the day shift on the basis that no allowances are attached to the day shift.*
2. *In instances where the officer is held over on the Day Shift but does not work the entire second shift (Early Night) he/she is entitled to the Special Extraordinary Allowance.*

*As was agreed in negotiations at the Ministry of Labour and outlined in Heads of Agreements dated July 20, 2007 and January 8, 2009, the Special Extraordinary Allowance*



*is paid to Correctional Officers at the Adult and Juvenile Correctional and Remand Centres and other assigned areas, who work up to 5:00 p.m./5:30 p.m. or beyond after completion of his/her shift on the authorization of the Superintendent for the time they have to carry over duties from the day shift into the early night shift at the Adult and Juvenile Correctional and Remand Centers. The emphasis here is to carry over duties which do not suggest working the entire second shift.*

*In addition, the Ministry of Finance and Planning Circular No. 22 Ref. 11300<sup>IV</sup> dated September 15, 2015 outlines the conditions under which the Meal and Taxi Allowances should be paid”.*

57. It is quite evident that the Special Extraordinary Allowance applies to a Correctional Officer who works up to a particular time into the Early Night Shift, after completion of the Day Shift.

58. The evidence on Meal Allowance presented to the Tribunal is by virtue of Circular #5 dated February 13, 2018 at paragraph (v) the criteria for Meal Allowance are stipulated as follows:

*“Meal Allowance is payable to employees working on the 2:00 p.m. to 10:00 p.m., the 10:00 p.m. to 6:00 a.m., the 3:00 p.m. to 11:00 p.m. or the 11:00 p.m. to 7:00 a.m. shifts.*

The Meal Allowance is therefore payable to Correctional Officers on the Early Night Shift and the Late Night Shift.

59. In answer to a question posed by a Member of the panel to Mr. Leslie Campbell, he responded:

*“Q: In your own words what are you asking for?”*

*A: What we are asking for is for payments to be made to those officers who have worked or have completed their Day Shift and are held over or detailed to carry on the Early Night Shift and on completion those few officers who were detailed to carry on or held over should be paid their meal allowances....*

*Q: Okay, so the persons who worked they are held over, they don't get the same allowances as the persons who scheduled to work, which is the Meal Allowance?*

*A: That is correct.”*

60. In answer to another question posed by a Member of the panel, to Mr. Leslie Campbell, he responded:



*Handwritten signature and initials.*

*“Q: Okay, so why is it that when somebody works who wasn’t detailed to work the second shift who actually worked then for the shift but wasn’t detailed to work also on the second shift why is it that that person gets just the Special Allowance and not the Meal Allowance, what makes that choice?”*

*A: Well the Deputy Commissioner of Custodial Services she is the person who will have to answer this question, it is submitted to her for payment, but she is the person who does all of that fanfare.”*

61. The evidence before the Tribunal is that there should not be double compensation of allowances for the same block of time. The time that qualifies for the Special Extraordinary Allowance is subsumed in the Early Night Shift having begun at 3:30 p.m. in the case of Adult Institutions and 4:00 p.m. in the case of Juvenile Institutions. The evidence discloses that the correct payment for Correctional Officers who work both the Day and Early Night Shift would be the payment of the allowances that apply to the Early Night Shifts because no allowance is attached to the Day Shift.

62. A key piece of evidence presented is that presently when a Correctional Officer who having worked the Day Shift and is held over so that there is the full complement of Officers for the Early Night Shift and who eventually works the entire Early Night Shift, is entitled to Meal Allowance, Shift Premium, Taxi Allowance and a day off in lieu.

63. After careful deliberation of the evidence presented, the Tribunal cannot support the claim of the Senior Uniform Officers Association and the Jamaica Federation of Corrections, that an Officer who works on the Day Shift and is detailed to carry over work into the Early Night Shift and who eventually works the entire Early Night Shift, should be paid both the Special Extraordinary Allowance and the Meal Allowance. Since that Officer will be paid for work done on the entire Early Night Shift, if that Officer is also paid the Special Extraordinary Allowance, then that Officer will be paid twice for work done during a part of that shift.



*Ch*  
*[Signature]*  
15



**THE AWARD:**

- (a) The Special Extraordinary Allowance should continue to be paid for work done by Correctional Officers who work the Day Shift and are held over for period from 5:00 p.m./5:30 p.m. or beyond. However, it is not to be paid to any Correctional Officer who is held over and eventually works the entire Early Night Shift.
  
- (b) The Correctional Officers who having completed the Day Shift and continues and works the entire Early Night Shift is to be paid Meal Allowance, Taxi Allowance, Shift Premium and a day off in lieu.

The Chairman appointed under section 8 (2) (c) (i) is not in agreement with the Award and her opinion is appended hereto.

DATED THIS 21<sup>st</sup> DAY OF APRIL 2022.



*Leslie Hall*

.....  
Leslie Hall  
Member

*Clinton Lewis*

.....  
Clinton Lewis  
Member

Witness:

*R. Creary*

.....  
Royette Creary (Miss)  
Secretary to the Division

**INDUSTRIAL DISPUTES TRIBUNAL**

**MINORITY AWARD**

**IN RESPECT OF**

**AN INDUSTRIAL DISPUTE**

**BETWEEN**

**DEPARTMENT OF CORRECTIONAL SERVICES  
(THE COMPANY)**

**AND**

**JAMAICA FEDERATION OF CORRECTIONS & THE SENIOR UNIFORM OFFICERS  
ASSOCIATION**

**REFERENCE:**

By letter dated November 27, 2018, the Honourable Minister of Labour and Social Security, pursuant to Section 11A(1)(a)(i) of the Labour Relations and Industrial Disputes Act, 1975 (hereinafter called “the Act”), referred to the Industrial Disputes Tribunal for settlement in accordance with the following Terms of Reference, the industrial dispute described therein:-

The Terms of Reference were as follows:

*“To determine and settle the dispute between Department of Correctional Services on the one hand and the Jamaica Federation of Corrections and the Senior Uniform Officers Association on the other hand over the correct payment to be made to Correctional Officers who work both on the day and early night shifts.”*



**MINORITY AWARD:**

1. The preambles along with the Unions' Case and the Departmental of Correctional Services are stated in the Award document which I have read carefully and I am in full agreement with. I have taken note of the Findings of the Members and feel obliged to express my dissent from the views expressed therein.

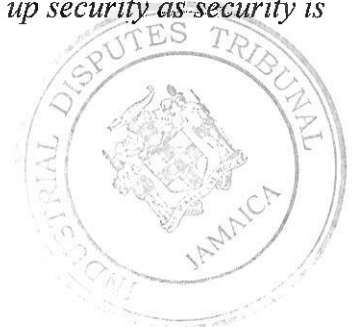
**FINDINGS:**

2. The issue before the Tribunal is to decide whether Correctional Officers should be paid both the Special Extraordinary Allowance and the Meal Allowance when they work the Day Shift and are detailed to work the Early Night Shift up to 11:30 p.m.
3. The Department of Correctional Services in an effort to address the challenge of the inadequate staffing between the Day and Early Night Shifts agreed to 'hold over' a specific number of Correctional Officers to facilitate the completion of assigned tasks/activities.
4. Major Richard B. Reece (Retd.) the then Commissioner of Corrections by letter dated December 1, 2016 wrote to the Deputy Financial Secretary which states in part:

*"There is presently a shortage of staff in all the institutions. This is due primarily to the increase in our inmate and Juvenile Population. Over the past year, the Juvenile Centres experienced an increase of 74% in their ward population and the Adult Correctional Centres especially the male reception institutions have seen their numbers increased by fifty percent (50%).*

*As a result of this, some members of staff are asked to carry over duties from the day shift into the early night shift so as to enhance security and also for other activities as stated in the matrix...*

*Some officers also have to be held over as at times a number of officers report sick as well as absent without official leave. This is often done in order to beef up security as security is paramount..."*



5. This resulted in an Agreement reached at the Ministry of Labour and Social Security on Friday, July 20, 2007 between the Department of Correctional Services and the Ministry of Finance and Planning on the one hand and the University and Allied Workers Union, the Jamaica Federation of Corrections and the Senior Uniformed Officers Association on the other hand. The Agreement states as follows:

*“The University and Allied Workers Union (UAWU), Jamaica Federation of Corrections (JAFEDCO) and the Senior Uniformed Officers Association, Unions/Association representing Correctional Officers have made a claim that payment be made to Correctional Officers for the time they have to carry over duties from the day shift into the early night shift at the Adult and Juvenile Correctional and Remand Centres, so as to enhance security (locking down, systematic search and other special assignments).*

*The Ministry of Finance and Planning, the Department of Correctional Services and the three Unions/Association thoroughly examined this claim and have agreed to the payment of a Special Extraordinary Allowance...”*



This Agreement was amended on Thursday, January 8, 2009.

- 6. The Agreement was deliberate and strategically designed to bring a resolution to a compensation package that would address the challenge of inadequate staffing which is a vital requirement in carrying out its operations.
- 7. The Special Extraordinary Allowance forms a term of the employment contract of Correctional Officers, and it is my view that the above mentioned Heads of Agreement is concerned with matters of procedural regulations and hence Correctional Officers who work up to 5:00p.m./5:30p.m. or beyond after the completion of his/her shift to assist with security/locking down, systematic searches and special assignments are entitled to be paid the Special Extraordinary Allowance. It is to be noted that the Tribunal cannot sanction the rescission of the payment of, the Special Extraordinary Allowance as it would amount to a breach of the contractual relationship that exists between the Department of Correctional Services and the Unions. It is in this regard that I

feel compelled to refer to Section 12 (7) of the Labour Relations and Industrial Disputes Act, 1975, which states:

*“Where any industrial dispute referred to the Tribunal involves questions as to wages, or as to hours of work, as to any other terms and conditions of employment the Tribunal –*

- a) shall not if those wages, or hours of work or conditions of employment are regulated or controlled by or under any enactment, make any award which is inconsistent with that enactment.*

The Tribunal therefore, cannot make any award inconsistent with the Heads of Agreement stated above.

8. I am mindful of letter dated November 29, 2016, which is a response to the Ministry of Finance and Planning letter dated November 23, 2016, where, the then Commissioner of Corrections sought clarification from the Ministry of Finance and Planning concerning the Payment of Allowances for double shifts.

9. The evidence before the Tribunal is that, Correctional Officers would not have known from the beginning of the Day Shift that they would be working from 7:30 a.m. until 11:30p.m. Ms. Joyce Stone testified that the main reason persons on the Day Shift are required to work on the Early Night Shift, is not because of the locking down process, but is either as a result of lateness or absence. An Officer who works the Day Shift and works up to 5:00 p.m./5:30 p.m. or beyond is entitled to the Special Extraordinary Allowance and an Officer who works the Early Night Shift is also qualified for Meal Allowance.

10. I find the following Section of Ms. Stone witness statement quite interesting:

*‘According to established DCS’ procedures, at the beginning of each shift, 7:30a.m., 3:30p.m. and 11:30p.m. a Muster Parade is formed of all available officers who have reported for duty. An assessment of the staff strength is made by the Superintendent’s designate/Chief Night Officer. Where there is a shortage of manpower to adequately man the shift, officers(s) on duty from the earlier shift is /are detailed to “work through” to provide full coverage for the security of the*



*institution. The Senior Officer in charge of the shift further inspect, brief and detail the staff to duty. All of this is done at the beginning of each shift. '*

- 11. It is at the muster parade that an assessment is made and where there is a shortage of staff, it is only then that the Superintendent's Designate/Chief Night Officer would become aware that he/she will need someone to fill the shortage. The Officer to fit in for the person who is late/absent would not at this time be cognisant that he/she would be required to fit in for that Officer. There would have to be a discussion with the Officer in charge of the Day Shift and the Officer in charge of the Early Night Shift as it relates to the replacement. This would therefore means that the Officers would have completed the locking down of inmates, systematic search and special assignments etc. Hence, the Officers would have worked up to 5:00p.m./5:30p.m. or beyond thereby qualifying them for the Special Extraordinary Allowance.
- 12. The Department of Correctional Services must honour the terms in the Heads of Agreement dated July 20, 2007 and which was amended on January 8, 2009.
- 13. Officers who work up to 5:00 p.m./5:30 p.m. or beyond and continues to work the entire Early Night Shift are qualified for the Special Extraordinary Allowance and, therefore, ought not to be paid Meal Allowance as they cannot be double compensated for the same period.
- 14. It is to be noted that the evidence before this Tribunal is that, what exist at the DCS is that Correctional Officers are paid the Special Extraordinary Allowance and not the Meal Allowance.




**MY DECISION:**

15. The Department of Correctional Services should pay to Correctional Officers who work the Day Shift and continues into the Early Night Shift up to 11:30 p.m., the Special Extraordinary Allowance, Shift Premium and Taxi Allowance at the applicable rate.

DATED THIS 21<sup>st</sup> DAY OF APRIL 2022.

  
.....  
Hon. Justice Marjorie Cole-Smith (Retd.)  
Chairman

Witness:

  
.....  
Royette Creary (Miss)  
Secretary to the Division

