IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 208

Suit No 699 of 2021

Between

Chua Qwong Meng

… *Plaintiff*

And

SBS Transit Ltd

… *Defendant*

JUDGMENT

[Employment Law — Contract of service — Breach]
[Employment Law — Computation of period]
[Employment Law — Hours of work]
[Employment Law — Pay — Computation]
[Employment Law — Rest days — Hours of work]
[Statutory Interpretation — Construction of statute]

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Chua Qwong Meng
v
SBS Transit Ltd

[2022] SGHC 208

General Division of the High Court — Suit No 699 of 2021
Audrey Lim J
22–25, 28 March, 23 May, 6 July 2022

26 August 2022 Judgment reserved.

Audrey Lim J:

1 By a contract of employment dated 23 March 2017 ("Contract"), the plaintiff ("Chua") was employed by the defendant ("SBS") as a bus captain commencing from 3 April 2017. The Contract was terminated with effect from 6 February 2020.[1] Chua claimed that SBS had, in the course of his employment, breached provisions of the Employment Act (Cap 91, 2009 Rev Ed) ("EA"), the collective agreement between SBS and the National Transport Workers' Union ("NTWU") dated 7 June 2017 ("Collective Agreement")[2] and the terms of the Contract.

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1 Statement of Claim (Amendment No. 2) ("SOC") at [1]–[2]; Defence (Amendment No. 3) ("Defence") at [3]; Chua's Affidavit of Evidence-in-Chief ("AEIC") at [2]–[3].

2 Defendant's Bundle of Documents ("DB") 319–368.

Background

Introduction of built-in overtime and weekly allowance

2 The Memorandum of Understanding 2011 ("MOU") between NTWU and SBS explained that prior to 2000, SBS's bus captains were daily rated and contracted to work eight hours per day, six days a week with a basic pay of $36 per day. From 1 January 2000, SBS paid its bus captains on a monthly basis for the same number of hours of work, *ie*, 48 hours per week. The monthly salary consisted of the basic pay and a "Weekly Allowance". Section 38(4) of the EA stipulates that an employee who at the employer's request works for more than eight hours a day or 44 hours a week must be paid overtime ("OT") for the extra hours at a rate of not less than 1.5 times his hourly basic rate of pay. As the monthly basic pay under a bus captain's employment contract was based on a 48-hour work week, the basic pay thus comprised the 44-hour work week with the additional four hours ("Additional 4 Hours") described in the MOU as "built-in overtime" or "BIOT". The remaining two hours due to the BIOT (Additional 4 Hours multiplied by 1.5) would be paid as the Weekly Allowance. I will refer to the Additional 4 Hours and the remaining two hours collectively as the "6 Paid Hours". At the material time, the Employment Act (Cap 91, 1996 Rev Ed) ("EA 1996") applied, but the relevant provisions are *in pari materia* to the EA. A bus captain would receive the Weekly Allowance so long as he worked one day and did not take any unpaid leave of absence in that work week. The Weekly Allowance was to ensure that employees were not short-changed.[3]

3 Additionally, although s 2(1) of the EA 1996 (and the EA) provided that "hours of work" excluded intervals allowed for rest and meals ("Break Times"),

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[3] Cheng Siak Kian's AEIC ("Cheng's AEIC") at [37]–[43]; DB 309–311; 24/3/22 NE 119–120.

Cheng Siak Kian ("Cheng"), SBS's Chief Executive Officer, attested that SBS paid its bus captains the OT rate for any hour after their eighth hour of work (which first eight hours included Break Times) each day.[4]

Revision of denominator for computation of hourly salary

4 As part of the annual salary increment negotiations for the 2011 financial year between SBS and NTWU, SBS acceded to NTWU's request to revise the denominator for computing a bus captain's hourly rate from 48 to 44 hours beginning 1 January 2011. This enhanced the hourly rate of the bus captains and boosted a bus captain's OT earnings (for working beyond the 48 hours). The contractual working hours remained at 48 hours per week, with the additional two hours due to BIOT to continue to be paid as the Weekly Allowance.[5]

Chua's Contract

5 Chua's Contract stipulated that Chua was to work six days in a week, of approximately eight to 11 hours a day, with one rostered off day. Chua would be paid a basic salary of $1,950 a month, a weekly allowance and OT pay for work performed beyond the eighth hour each day. Chua was also offered various incentives such as a Daily Performance Incentive ("DPI"). The Contract was, under the "Other Terms & Conditions", stated to be "[i]n accordance with statutory rules and regulations as well as [SBS's] rules/regulations and prevailing schemes/practices which may be varied from time to time at the sole discretion of [SBS]".[6]

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4 Cheng's AEIC at [25]–[26], [66].

5 MOU at [5]–[6]; Cheng's AEIC at [44]–[45].

6 DB 315.

Collective Agreement

6 The parties produced the Collective Agreement between SBS and NTWU which was effective from 1 January 2017 until 31 December 2019. They did not produce any other collective agreement, although Cheng explained that there was an existing collective agreement prior to Chua entering into the Contract, which would have applied to Chua when he signed the Contract.[7] Nothing turns on this omission, and I will refer to the relevant clauses of the Collective Agreement at the appropriate juncture.

Chua's case

7 Chua pleaded the following breaches by SBS:

(a) SBS required Chua to work for seven consecutive days before granting him a rest day. This contravened the Contract and s 36(1) of the EA. Further, SBS failed to compensate Chua the rate of pay stipulated by ss 37(3)(*b*) and 37(3)(*c*) of the EA as well as by the Ministry of Manpower ("MOM") for work performed on a rest day between January 2018 and April 2019.[8]

(b) SBS required Chua to work for more than eight hours a day or 44 hours a week by reason of its method of rostering OT work by incorporating BIOT into the Contract in breach of ss 38(1)(*a*) and 38(1)(*b*) of the EA.[9]

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7 24/3/22 NE 73.

8 SOC at [7(a)(i)], [7(a)(iii)] and [7(b)(v)]; 9/9/21 Further and Better Particulars ("FBP") at [3(a)], [4(a)], [4(b)], [7(a)]; 15/10/21 FBP at [4], [5(a)] and [12(a)].

9 SOC at [7(a)(ii)]; 15/10/21 FBP at [6(a)] and [6(c)]; 9/11/21 FBP at [3] and [4].

(c) SBS imposed mandatory BIOT. This caused Chua to work for more than eight hours a day and 44 hours a week in breach of s 38(1) of the EA and cl 10 of the Collective Agreement.[10]

(d) SBS underpaid Chua for OT work he performed in breach of the Contract and s 38(4) of the EA.[11]

(e) SBS failed to compensate Chua the rate of pay stipulated in s 88(4) of the EA for work he performed on a public holiday, *ie*, an extra day's salary at the basic rate of pay for one day's work in addition to the gross rate of pay for that day. In court, Chua clarified that this claim pertained only to 5 February 2019.[12]

(f) SBS did not pay Chua the Additional Route Incentive ("ARI") for operating two bus routes.

(g) SBS failed to add an additional ten minutes and 15 minutes to Chua's working time for Chua to perform the First Parade Tasks ("FPT") and Last Parade Tasks ("LPT") respectively, in breach of cl 24(8) of the Collective Agreement.[13]

(h) SBS did not compensate Chua for his "idle time". This was the time Chua spent at the bus depot waiting to commence his morning shift (as he arrived at the depot much earlier than the start of the shift *via*

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10 SOC at [7(b)(vi)].

11 SOC at [3(f)], [7(b)(i)]–[7(b)(iii)], [7(b)(vi)]; 15/10/21 FBP at [1(a)]; Chua's AEIC at [5]–[10], [20].

12 SOC at [7(b)(vii)], 9/9/21 FBP at [11(a)]; Chua's AEIC at [20]–[21]; 22/3/22 NE 81–82, 94–95.

13 SOC at [7(b)(ix)]; 9/9/21 FBP at [13(a)]; 15/10/21 FBP at [17(a)]; Chua's AEIC at [23].

transport provided by SBS), or his afternoon shift on the days he performed split shifts. As SBS maintained command and control over Chua during his idle time, a term should be implied into the Collective Agreement for SBS to compensate Chua for his idle time.[14]

(i) SBS provided Chua with fewer than 45 minutes of Break Times when he had worked for more than eight hours and did not give him an opportunity to have a meal. Moreover, Chua had to perform various tasks which ran into and shortened the allocated Break Times. Hence, SBS had contravened s 38(1)(i) of the EA. SBS was also not entitled to exclude the Break Times in computing Chua's working hours.[15]

(j) SBS rostered Chua for, and Chua worked, more than 72 hours of OT in a month, in breach of s 38(5) of the EA.[16]

(k) SBS did not compensate Chua for the DPI.

8 In court, Chua confirmed that he was no longer pursuing the claims for payment pertaining to the ARI and DPI.[17] I therefore say no more about them. Also, in this judgment, a reference to a section or subsection number is a reference to that provision in the EA, unless otherwise expressly stated.

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14 SOC at [7(b)(x)]; 4/10/21 FBP at [1(a)], [1(c)]; 15/10/21 FBP at [18(a)]; Chua's AEIC at [16]–[19], [47]–[55].

15 SOC at [7(b)(xi)]; 15/10/21 FBP at [19(a)], [19(b)]; Chua's AEIC at [11]–[15].

16 SOC at [7(b)(xii)]; Chua's AEIC at [24]–[25], [29]–[31].

17 23/3/22 NE 68–71.

Preliminary issues

9 Before I address the substance of Chua's claims, I deal with some preliminary issues.

10 First, counsel for Chua, Mr Lim Tean ("Mr Lim") submitted that Chua was unaware of the existence of the Collective Agreement until August 2019.[18] Even if Chua was unaware of the Collective Agreement, nothing material turns on this. The Collective Agreement was executed on 7 June 2017 (although stated to take effect from 1 January 2017), after Chua had executed the Contract. Cheng attested that the Collective Agreement was made available at the bus depots and interchanges.[19] In any event, Chua relied on the Collective Agreement for his claims (see [7] above) and SBS did not dispute that it would have to comply with the terms therein.[20] It should be noted that the material terms of the Collective Agreement are largely consistent with the terms of the Contract or provisions of the EA (save for cl 11(4) of the Collective Agreement, a point which I will deal with later).

11 Next, parties disputed the authenticity of several documents. Chua challenged the authenticity of: (a) the Work Calendar Reports ("WCRs") generated by SBS's rostering and scheduling system, Hastus; (b) a deployment report generated by SBS's internal programme for tracking bus driving records, namely its Service Control System ("SCS"); and (c) screenshots of notifications generated by Hastus and SCS that respectively informed any SBS employee who attempted to schedule a bus captain work without a rest day in a week or for more than 72 OT hours in a month that these purported work schedules

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18 22/3/22 NE 4, 40; 24/3/22 NE 72; 28/3/22 NE 15–16.

19 24/3/22 NE 72; 25/3/22 NE 33–34.

20 23/5/22 NE 1–3; Chua's AEIC at [22]–[23] and [32].

contravened SBS's internal rules on rest days and OT.[21] SBS disputed the authenticity of two documents adduced by Chua, namely a document described by Chua as "Overtime Calculations based on Tan Ting Hock Robin's salary as at 20 October 2020" and a handwritten document purporting to show the total number of paid hours Chua had worked in March 2019.[22]

12 Except for the WCRs, it is unnecessary for me to determine the authenticity of the other disputed documents as I did not rely on the latter in coming to my decision. I am satisfied that SBS has proved the WCRs to be authentic. I accept the testimony of Vincent Foong ("Foong"), Head of SBS's Scheduling Department, as to how the WCRs were generated *via* Hastus, which I accept is a consistent and reliable system. Cheng attested that Hastus is a gold standard for bus operators worldwide, is one of the most used systems in the world, and has an in-built system to ensure that where the user inputs certain rules (which in SBS's case included a rule that there be one day of rest per week), the roster generated would apply the rules consistently.[23] Foong similarly attested that a WCR records the information that is entered into Hastus, and that the information in a WCR is generated, entered and maintained in the ordinary course of SBS's business. Further, if a staff attempted to roster a bus captain without a rest day in a week, Hastus would issue a notification to state that the roster week is invalid.[24] Foong and Cheng's testimony was not challenged in this regard, and Chua had also not adduced evidence to challenge the reliability of Hastus or authenticity of the WCRs.

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21 Cheng's AEIC at [9]; Vincent Foong's AEIC at [52] and [64]; 24/3/22 NE 33–37, 42–52; DB 13–159, 277–307, 406–411.

22 Plaintiff's Bundle of Documents at pp 11–12; Chua's AEIC (Exhibit CQM-1 at p 75); 24/3/22 NE 36–37.

23 24/3/22 NE 42–43.

24 Foong's AEIC at [13], [18] and [64].

13 I also find that SBS can rely on the presumption under s 116A(1) of the Evidence Act 1893 (2020 Rev Ed) (relating to the production or accurate communication of electronic records) and that the presumption has not been rebutted. It suffices for the presumption to be triggered that the person called by a party relying on it has a broad understanding of the process behind the production of the electronic record. He need not have detailed technical knowledge of the system used to produce it (*Telemedia Pacific Group Ltd v Credit Agricole (Suisse) SA (Yeh Mao-Yuan, third party)* [2015] 1 SLR 338 at [255]–[256]; *Super Group Ltd v Mysore Nagaraja Kartik* [2019] 4 SLR 692 at [96]).

Statutory interpretation

14 As the case turns largely on the provisions of the EA, I begin by setting out the principles of statutory interpretation.

15 Section 9A(1) of the Interpretation Act 1965 (2020 Rev Ed) ("IA") provides that in interpreting a provision of a written law, an interpretation that promotes the purpose or object underlying the written law is to be preferred. In *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 (*"Ting Choon Meng*"), the Court of Appeal (at [59]) explained that the court should begin by ascertaining the possible interpretations of the text, having regard to the provision in question and the context of the text within the written law as a whole. The court should then determine the legislative purpose of the provision in question and of the part of the statute in which it is situated. Finally, the court compares the possible interpretations of the text against the purposes of the statute and adopts the interpretation which promotes these purposes (see also *Tan Seng Kee v Attorney-General and other appeals* [2022] SGCA 16 ("*Tan Seng Kee*") at [171]). There are three main textual sources from which

the court can derive the purpose of a legislative provision – the long title of a statute, the words of that provision and other legislative provisions within the statute (*Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*") at [44]).

16 In interpreting a provision of a written law, the court may have regard to extraneous material to: (a) confirm the ordinary meaning deduced from the text of the provision and context of the written law; (b) ascertain the meaning of the provision when it is ambiguous or obscure; or (c) ascertain its meaning where the ordinary meaning is absurd or unreasonable (ss 9A(2) and 9A(3) of the IA). That said, in seeking to draw out the legislative purpose behind a provision, primacy should be accorded to its text and statutory context over any extraneous material. The law enacted by Parliament is the text which Parliament has chosen to give effect to its purposes and objects (*Tan Cheng Bock* at [43]). The court should also be mindful of the possibility that the specific provision being interpreted may have been enacted by reason of some specific mischief or object that may be distinct from, but not inconsistent with, the general legislative purpose underlying the written law as a whole and separately consider this distinct purpose in appropriate cases (*Ting Choon Meng* at [59] and [61]).

Rest days, work on rest days and pay for rest days

17 Turning to the substantive issues, I begin with Chua's claims pertaining to rest days. Chua claimed that he was required to work for seven consecutive days before getting a rest day; his rest day should have been on a Sunday by default; and he was not paid the prescribed rate under ss 37(3)(*b*) and 37(3)(*c*)

for working on a rest day.[25] I will first consider how s 36(1) is to be interpreted in relation to the granting of a rest day in each week.

Section 36(1) – whether "rest day" can be a different day every week

18 As a preliminary point, while Chua claimed that SBS breached s 36(1) "throughout the entire tenure of [his] employment", he did not adduce any evidence to support this claim in respect of April to December 2017 and around mid-May 2019 to February 2020.[26] In any event, Chua accepted, and I find, that he was rostered a rest day every week and particularly for the remaining months of around January 2018 to early May 2019.[27] This was substantiated by the WCRs, which I have found to be authentic and reliable and the Bus Crew Attendance Lists ("BCAL(s)") which Chua accepted as authentic.[28]

Parties' respective cases

19 Chua's case was that SBS had breached s 36(1) by failing to roster one rest day per week by reason of its *method* of rostering rest days. He claimed that he should have been rostered the same rest day every week, *ie*, after six working days he would rest on the seventh day, with the cycle repeated each week.[29]

20 His position was essentially as follows. Section 36(1) must be read with s 38(1)(*b*) which, subject to certain exceptions, prohibits employees from working more than eight hours a day or 44 hours a week. As Chua worked on

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25 SOC at [7(a)(i)], [7(b)(v)]; Chua's AEIC at [42].

26 SOC at [7], [7(a)(i)], [7(a)(v)]; Chua's AEIC at [46].

27 22/3/22 NE 24, 73–76, 81; 23/3/22 NE 85; Cheng's AEIC at [69].

28 Foong's AEIC at [2], [9], [18]–[27], [59] and Exhibit VFCY-3; 22/3/22 NE 21–26, 75–76; 24/3/22 NE 34, 47–50; DB at pp 13–159 and 277–307.

29 22/3/22 NE 40–42, 66–69; 24/3/22 NE 148; 9/9/21 FBP at [7(a)]; 15/10/21 FBP at [5(a)], [12(a)].

average ten hours a day, he would have worked more than 44 hours on the fifth day every week and should have been given a rest day after the 44th hour. Moreover, if SBS could roster Chua a different rest day every week, (a) the period between each rest day could extend beyond seven days and he would lose out on at least seven rest days a year; (b) he would lose out on compensation for OT work and have to work 56 hours before being entitled to OT pay; and (c) SBS would be entitled to schedule its bus captains 12 consecutive days of work between two rest days.[30] Mr Lim submitted that his interpretation of s 36(1) was consistent with the purpose of Part IV of the EA, *viz*, to offer protection to low wage workers by ensuring they are not overworked and have adequate rest so that public safety is not compromised. This legislative purpose can also be distilled from the fact that s 38(1)(*b*) sets out a general prohibition on the number of hours an employee can be required to work and s 38(5) does not permit employees to work more than 72 OT hours in a month.[31]

21 SBS did not dispute that Chua was rostered a different rest day every week and submitted that s 36(1) permits an employer to roster an employee for a rest day in any day of the week. This was augmented by the Parliamentary Debates on the Employment (Amendment) Bill (Bill No 22/1984) ("1984 Bill") through which Parliament promulgated s 41 of the Employment Act (Cap 91, 1985 Edition) ("EA 1985"), which is *in pari materia* to s 41 of the EA. Mr Davinder Singh SC ("Mr Singh SC") (counsel for SBS) submitted that the debates showed that Parliament implemented s 41 of the EA 1985 to specifically

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30 Plaintiff's Closing Submissions dated 4 May 2022 ("PCS") at [16]–[17], [23]; 22/3/22 NE 66–69; 24/3/22 NE 148; 25/3/22 NE 48; 28/3/22 NE 34; Chua's AEIC at [35], [45].

31 PCS at [11]–[13].

overcome "the inflexibility [to employers] that the weekly rest day of an employee ha[d] to be granted on the same day in every week".[32]

How s 36(1) of the EA should be interpreted

22 Sections 2, 36(1) and 41 of the EA respectively provide:

> **Interpretation**
>
> **2.**—(1) In this Act, unless the context otherwise requires —
>
> …
>
> "week" means a continuous period of 7 days;
>
> …
>
> **Rest day**
>
> **36.**—(1) Every employee shall be allowed in each week a rest day without pay of one whole day which shall be Sunday or such other day as may be determined from time to time by the employer.
>
> …
>
> **Interpretation of "week" for purposes of sections 36, 38 and 40**
>
> **41.** For the purposes of sections 36, 38 and 40, "week" shall mean a continuous period of 7 days commencing at midnight on Sunday.

23 Applying the principles of statutory interpretation (see [15]–[16] above), I hold that s 36(1) permits an employer to schedule in each "week" (as defined in s 41) a rest day: (a) on any day of the week; and (b) which can be a different day every week. Hence, the rest day need not fall on a Sunday. Subsection (1) of s 36 read in context of s 36, Part IV of the EA and the Parliamentary Debates consistently point to such an interpretation which is also consistent with and furthers its legislative purpose. I elaborate below.

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[32] Defendant's Closing Submissions dated 4 May 2022 ("DCS") at [129].

24 A plain reading of the text of s 36(1) makes it clear that a rest day shall be a Sunday "or such other day". I leave aside for the time being whether the phrase "as may be determined from time to time by the employer" limits the frequency on which an employee's rest day can be scheduled on "such other day". Section 36(1) thus permits a rest day to be scheduled on a day other than Sunday. This is supported by s 36(4) which provides that where the *rest day of an employee is determined by the employer*, the employer must prepare a roster before the commencement of the month in which the rest days fall informing the employee of his appointed rest days. This requirement would be unnecessary if the rest day can only be a Sunday (putting aside the exception in s 36(2)) as there would be no need to inform an employee in advance of other days that would be appointed as his rest days. For completeness, Chua agreed that the WCRs were given for a rolling period of four weeks, and Cheng and Foong attested that bus captains are notified of their roster four weeks in advance.[33]

25 It is significant to note that the definition of "week" in s 41 differs from that in s 2(1). A "week" under s 41 and for the purpose of s 36(1) commences at midnight on Sunday, whereas s 2(1) defines a "week" to mean "a continuous period of 7 days". This distinction is deliberate, as Parliament should not be taken to legislate in vain. As Prof S Jayakumar (then Minister for Labour) explained in the Second Reading of the 1984 Bill, s 41 of the EA which contained the new definition of "week" was to enable rest days to be scheduled up to 12 days apart as opposed to the then six days "so that workers can take turns to have a rest on a weekend which is a fairer arrangement". This was to overcome the fact that the definition of "week" in s 2 "makes it so inflexible that the weekly rest day of an employee has to be granted on the same day in every week".

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[33] 22/3/22 NE 19–22; 24/3/22 NE 49–50; Foong's AEIC at [14].

26 I disagree with Mr Lim that s 36(1) must be read with s 38(1)(*b*) such that the former provision is constrained by the latter in terms of the maximum number of hours an employee can be required to work in a week (*ie*, 44 hours) and after which he must be given a rest day (see [20] above). Whilst s 38(1) limits an employee's hours of work in a week, there are exceptions such as in s 38(2) which enables an employer to require an employee to work longer hours in certain situations. In any event, Chua's interpretation of ss 36(1) and 38(1)(*b*) does not make sense. Assuming Chua worked on average ten hours a day, he would have exceeded the "44-hour mark" by Friday. By Chua's argument, he should thus have been given a rest day on Saturday or even after every five continuous days of work, and not merely on a Sunday.

27 My holding at [23] above is not inconsistent with the legislative intent of s 36(1) to ensure adequate protection for workmen and employees who fall within Part IV of the EA (as defined in s 35). That such employees continue to enjoy protection is found in the fact that s 36(1) mandates a rest day every week (with exceptions such as in ss 37(1), 38(2) or 40(2A), or where an employee requests to work on a rest day) and that s 38(1) sets upper limits on the number of hours that an employee can be required to work in a day or week (again, with exceptions). Where an employee works on a rest day or hours exceeding the prescribed limit, the EA mandates that he be paid for the additional days or hours. As can be seen, the provisions in Part IV of the EA seek to balance the right of an employer to deploy his employees as necessary (such as the ability to determine the employee's rest day) against the welfare of the employee.

28 I deal briefly with Chua's arguments that if s 36(1) permitted an employer to schedule its employee a different rest day every week, the period between two rest days could extend beyond seven days, a bus captain would "lose out on at least 7 rest days a year" and compensation for OT, and he could

be scheduled to work 12 consecutive days between two rest days. It is unclear how Chua would lose out on at least seven rest days a year, because in any "week" (defined under s 41) he would have to be rostered one rest day (and which Chua agreed he was so rostered). Further, the EA provides compensation to an employee who is required (or agrees) to work more than the maximum number of hours stipulated in the EA or on his rest days.

29 Finally, there is no evidence that SBS rostered Chua to work more than 12 days between two rest days. The WCRs showed that Chua's roster was planned such that his rest day would fall on every eighth day (after working for seven days) and in each cycle of seven weeks Chua would have two continuous rest days, in order to comply with s 36(1) read with s 41.[34] Hence, Chua's claim that he was, on every occasion, rostered to work for seven days before getting a rest day was incorrect.[35] In any event, SBS would have been entitled to schedule Chua up to 12 days of work between two rest days, so long as it complied with s 36(1). This point was specifically contemplated by Parliament when it introduced s 41 of the EA 1985 to "enable rest days to be scheduled up to 12 days apart" (see [25] above). Even the guidelines issued by MOM ("**MOM guidelines**") which Chua relied on, stated consistent with Parliament's intent that the "maximum interval allowed between 2 rest days is 12 days".[36]

Meaning of "from time to time" in s 36(1)

30 Next, I consider whether the phrase "from time to time" restricts an employer's ability to schedule a rest day on a day other than Sunday or on a

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34 22/3/22 NE 77–78; 25/3/22 NE 49; Foong's AEIC at [11] and [68] and Exhibit VFCY-3; DCS at [130]–[131].

35 25/3/22 NE 49.

36 Chua's AEIC (Exhibit CQM-1) at p 17.

different day every week. Chua claimed that this phrase permits an employer the flexibility to schedule a rest day that is not a Sunday, only "occasionally, but not regularly". SBS would be in breach of s 36(1) if its "very practice" is for its employees' rest days to fall on days other than Sunday.[37] I am unable to accept Chua's submission as such.

31 There is nothing in the plain wording of s 36(1) which suggests that an employer can only "occasionally but not regularly" schedule rest days on a day other than Sunday. In my view, the phrase "from time to time" gives the employer the flexibility to determine the day of the week on which a rest day should fall (*eg*, Tuesday) and to change that day of rest to another day in the week (*eg*, Wednesday) on a subsequent occasion. To mitigate uncertainty to the employee where the employer makes such determinations, s 36(4) thus requires the employer to prepare a monthly roster to inform the employee in advance of the following month's rest days. This is consistent with Parliament's intent to allow flexibility in the scheduling of a weekly rest day whilst giving due consideration to the employee's welfare by requiring reasonable notice (of such scheduling) to be given to him.

32 The first iteration of s 36(1) was found in the Employment Act 1968 ("EA 1968"), an Act to consolidate and amend the law relating to employment, and which repealed and re-enacted, with amendments, the Labour Ordinance 1955, the Clerks Employment Ordinance 1957, and the Shop Assistants Employment Ordinance 1957 (see *Singapore Parliamentary Debates, Official Report* (15 May and 15 July 1968) vol 27). In so doing, the EA 1968 removed the distinctions formerly drawn by the Ordinances between "workmen", "shop assistants", "clerks" and "industrial clerks" (see Tan Pheng Theng, "*A*

[37] Chua's AEIC at [40], [42].

Conspectus of the Labour Laws of Singapore" (1968) 10(2) Malaya Law Review 202 at 211).

33 Notably, the above three Ordinances were more restrictive in the manner of scheduling a rest day. Section 41 of the Labour Ordinance 1955 stipulated that "[i]n every week there shall be a rest day which shall be Sunday or such other day *as may be agreed* by the employer and workman" [emphasis added]. Section 33(1) of the Clerks Employment Ordinance 1957 similarly provided that the rest day may be a Sunday or "such other day *as may be agreed* by the employer and employee" [emphasis added]. Section 34(1) of the Shop Assistants Employment Ordinance 1957 stipulated that "[e]very shop assistant shall be allowed in each week a rest day of one whole day" but was silent as to whether an employer could from "time to time" determine that rest day. This is to be contrasted with s 36(1) of the EA 1968 which first provided that the rest day shall be a Sunday or such other day "as may be determined from time to time by the employer". The Ordinances also did not mandate the rest day to fall only on a Sunday, and there was nothing to suggest that this position changed when the EA 1968 was introduced.

34 The phrase "from time to time" is used in other provisions of the EA, *eg*, ss 2(1) (under the definition of "employee" and "employer"), 4, 27(1)(*k*), 49, 67, 73, 76(5), 89(9)(*a*) and 140, in the context of the discretionary exercise of the power of a person (such as the Minister) to "from time to time" determine certain matters. Chua's interpretation of the phrase "from time to time", if adopted, would produce absurd outcomes across the EA. It would mean, for instance, that the Minister could only "occasionally, but not regularly" make rules and orders for the conduct of the duties of officers under s 4 of the EA.

35 Next, I consider if the Contract conferred Chua the right to have his rostered rest day as every Sunday or even the same day in every week.

36 Mr Lim contended that Chua "would have understood from reading [the Contract] that after working 6 days a week, the 7th day would be rostered as a rest day". This is because the Contract stated Chua's "working week" as a "6-day work week" ("First Term") and further provided the number of working days as "6 days per week, 1 rostered off" ("Second Term"). Mr Singh SC submitted that as the Contract is stated to be "[i]n accordance with statutory rules and regulations", the Second Term had to be read in conjunction with ss 36(1) and 41 of the EA and hence did not enjoin SBS to provide Chua a rest day every Sunday or even on the same day in each week.[38]

37 The principles to be applied in the construction of contracts were aptly summarised in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 at [19]. The starting point is that one looks to the text the parties have used. At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties. The reason the court has regard to the relevant context is that it places the court in the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by them in their proper context. In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear.

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[38] DB 315, 317; PCS at [19]–[21]; DCS at [128]; Defendant's Reply Closing Submissions dated 13 May 2021 at [21].

38 To begin with, Chua agreed that the Contract did not state his rest day would be on a Sunday.[39] Hence, he could not have understood from reading the Contract that SBS would fix his rest day on Sunday. Additionally, the First and Second Terms did not, whether expressly or by implication, lend to Chua's interpretation that his rest day would be scheduled on the same day in every week (or that it would be on the seventh day after working for six days). On the contrary, the phrase "1 rostered off" in the Second Term implied that SBS could schedule Chua's rest day on any day in the week. As for the First Term, it was silent on when Chua's rest day would be. It should be noted that the Contract was a standard form contract that SBS provided to all potential bus captains. There were no real negotiations between SBS and Chua when Chua was offered the terms of the Contract; rather, SBS's Letter of Employment to Chua showed the Contract was offered to him on a take it or leave it basis. In court, Chua then stated that he did not care whether his rest day fell on a Sunday or on any particular day of the week, so long as he only had to work six days in a week.[40]

39 As for the context to the Contract, it is important to bear in mind the commercial purpose or object of the Contract and provision in issue (*Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131]). SBS is in the business of providing public transportation services with buses having to run daily for the benefit of the public. It is thus critical for SBS to have sufficient bus captains to assist its operations every day of the year and a bus captain's employment contract was tailored with this object in mind. Hence, it is clear that the objective intention of the parties, as expressed by the First and Second Terms and informed by the relevant context was for bus captains (including Chua) to work six days a week

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39 22/3/22 NE 42–43.

40 23/3/22 NE 84; 24/3/22 NE 83; DB 313.

and enjoy a rest day which SBS would roster amongst the days of the week and which could be a different day every week.

40 For these reasons, I find the First and Second Terms did not bear the interpretation Mr Lim advanced. On the contrary, the Contract granted SBS the flexibility to roster Chua's rest day on any day of the week and which could be a different day from week to week. Thus, SBS did not breach of s 36(1) of the EA or the Contract by reason of rostering Chua a different rest day every week.

Whether Chua was compelled to work on his rest day in breach of s 37(1)

41 At this juncture, I deal with whether SBS contravened s 37(1) by compelling Chua to work on his rest days. Section 37(1) states that, subject to ss 38(2) or 40(2A), an employee must not be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously by a succession of shifts.

42 Chua claimed that he never requested to work on his rest days and that SBS compelled him to do so ("Compulsion Claim"). Chua claimed that SBS asked him to work on his rest day "all the time" and sanctioned him *via* disciplinary notices if he refused. He pointed to: (a) two misconduct notices which showed SBS had taken disciplinary action against him for failing to show up for work on 25 December 2019 and 1 January 2020 ("Misconduct Notices"); and (b) a letter from SBS dated 31 January 2020 informing him that he was "charged with being absent from duty without leave or reasonable excuse" on

25 December 2019 as well as on 1, 25 and 26 January 2020 ("31/1/20 Letter").[41] I reject Chua's claims as such.

43 First, Chua failed to plead the above in his Statement of Claim ("SOC").[42] A party is required to plead his causes of action with sufficient particulars to enable the other party to know the case he has to meet. The starting point is that parties are bound by their pleadings and the court is precluded from deciding on a matter that the parties have decided not to put into issue (*V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 at [2], [37]–[38]). It is not proper for the court to give effect to an entirely new case which the party had not made out in its own pleadings unless no injustice or irreparable prejudice (that cannot be compensated by costs) will be caused to the other party (*OMG Holdings Pte Ltd v Pos Ad Sdn Bhd* [2012] 4 SLR 231 at [18]–[21]).

44 I find that SBS was denied a fair opportunity to meet the Compulsion Claim. Chua's pleaded case pertaining to rest days was that SBS breached the Contract and ss 36(1), 37(3)(*b*) and 37(3)(*c*) by requiring Chua to "work for 7 days consecutively prior to getting his day off", failing to provide him a rest day each week and failing to compensate him the statutorily prescribed rates for working on a rest day.[43] Chua did not plead the Compulsion Claim in any of the iterations of his SOC, or mention this claim in any of his responses to SBS's requests for further and better particulars ("FBP") or in his affidavit of evidence-

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41 22/3/22 NE 48, 54–55, 61, 72–73; 23/3/22 NE 99–100; 25/3/22 NE 22–23, 25; Chua's AEIC (Exhibit CQM-1 at pp 12–13); Carson Law Chambers's Letter dated 22 March 2022 at p 2.

42 22/3/22 NE 60–65; 23/3/22 NE 102.

43 SOC at [7(a)(i)] and [7(b)(v)].

in-chief ("AEIC"). Accordingly, SBS's witnesses had prepared their AEICs to respond only to Chua's pleaded case.

45 In any event, I find the Compulsion Claim to be unmeritorious as it was a bare assertion which was unsupported by any independent evidence. The Misconduct Notices and the 31/1/20 Letter did not show that SBS had sanctioned Chua for failing to turn up for work on his scheduled rest days. Rather, SBS had taken action against Chua for absenting himself on days he was rostered to work.[44] Chua admitted he was rostered to work on 25 December 2019 but he was unwilling to work on that day, and he was rostered to work on 25 January 2020 because his application for leave was not approved. Mr Lim agreed that if Chua had agreed to work on a rest day, SBS cannot be said to have breached s 37(1) as Chua would not have been "compelled" to work.[45] It should also be noted that 25 December 2019 and 1, 25 and 26 January 2020 were public holidays, and an employer may require his employee to work on such days (with proper compensation) under s 88.

46 In court, Mr Lim suggested that SBS's lack of a practice requiring bus captains to sign a physical document evincing their willingness to work on their rest days was probative of compulsion on SBS's part. This was, at best, neutral. Foong attested that SBS did not require its bus captains to do so as this would require them to travel to SBS's office and unduly inconvenience them, but in any event SBS subsequently developed a feature in its mobile application "iLink" to allow bus captains to remotely volunteer to work on their rest days.[46]

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44 22/3/22 NE 71–72; 23/3/22 NE 102.

45 22/3/22 NE 55; 23/3/22 NE 100–103.

46 25/3/22 NE 71–74.

47 I am likewise unable to accept Mr Lim's suggestion that compulsion could be inferred from Chua occasionally working up to three consecutive rest days in a month despite Cheng stating that SBS would not typically request its bus captains to work for more than two consecutive rest days. This was but a bare assertion. Further, Cheng and Foong had attested (and which I accept) that bus captains work on rest days based on mutual agreement with SBS and that a bus captain can decline to work on his rest day without facing any penalty.[47]

48 In view of my findings above, it is unnecessary to consider whether SBS could have compelled Chua to work on a rest day under s 38(2)(*f*) of the EA.

Whether SBS failed to pay Chua the prescribed rate for working on rest days

49 Chua claimed that he worked for seven or more consecutive days on many occasions. He further claimed that he was not paid the statutorily prescribed rate for working on rest days, but he provided particulars for this claim only in respect of January 2018 to April 2019.[48] That being the case, I will deal with only this period.

50 SBS did not dispute that Chua occasionally worked for seven or more consecutive days by reason of working on his rest days.[49] As I have found no evidence that SBS compelled Chua to work on his rest days, nothing turned on the precise number of days Chua worked consecutively. Rather, the issue is whether SBS had breached s 37 and/or the MOM guidelines by failing to

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47 24/3/22 NE 57–65; 25/3/22 NE 22–23, 36–41, 66–68, 73, 78; 28/3/22 NE 36–38; Foong's AEIC at [65]–[67].

48 SOC at [7(b)(v)]; 22/3/22 NE 79–80; 23/3/22 NE 98–99; 24/3/22 NE 55–56.

49 22/3/22 NE 79–80; 24/3/22 NE 56–57.

properly compensate Chua for working on his rest days.[50] It should be noted that Chua's case, as clarified in his FBPs, is that SBS had breached ss 37(3)(*b*) and 37(3)(*c*) by reason of its calculation of Chua's pay based on its "method of rostering rest days". His case was not that, if SBS's calculation of his pay based on its method of rostering was correct, SBS had failed to pay him the correct amount due to him.[51] As I have found SBS's method of rostering Chua's rest days did not breach the EA, the Contract or even the MOM guidelines, that should be the end of the matter as Chua was not disputing that he was not paid the prescribed rate of pay for work done on rest days. Nevertheless, I consider this matter for completeness. There are two components to this. First, whether SBS properly compensated Chua for working his contractual hours (eight hours per day) on his rest days, and second, whether Chua was properly compensated for working OT on his rest days (a matter which I will return to later).

51 In relation to compensation for Chua's normal working hours on a rest day, he must be paid a sum at the basic rate of pay for one day's work if he requested to work (s 37(2)), or a sum at the basic rate of pay for two days' work if the employer (SBS) requested him to work (s 37(3)). For completeness, cl 11(2) of the Collective Agreement also states that if an employee is required to work on a rest day, he must be paid "2 days' salary at the basic rate of pay" during his normal contractual working hours. "Basic rate of pay" is defined under s 2(1), and calculated in accordance with the third column of the Third Schedule to the EA, pursuant to s 107A(2), as Chua was employed on a monthly rate and required to work the same number of days (six days) every week. Thus, pursuant to the Third Schedule to the EA, Chua's "basic rate of pay" for one day was to be computed as follows:

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50 SOC at [7(b)(v)]; 23/3/22 NE 50–51.

51 15/10/21 FBP at [7] and [12]; 9/11/21 FBP at [5(a)] and [8(a)].

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times \text{number of days on which the employee is required to work in a week.}}$$

52 It suffices to say that where Chua also relied on the MOM guidelines in relation to the rate of pay on a rest day, the guidelines are consistent with ss 37(2) and 37(3) of the EA.

53 By the definition of "basic rate of pay" in s 2(1), Chua's monthly basic rate of pay excluded, among others, OT payments, productivity incentive payments and any form of allowance. His basic rate of pay was thus $2,040 per month in 2018 and $2,110 per month for January to April 2019, as pleaded by Chua and reflected in his payslips (and which authenticity he did not dispute).[52] Hence, Chua's daily basic rate of pay amounted to $78.4615 for 2018 and $81.1538 for January to April 2019. Chua had inaccurately stated this rate to be $78.40 for 2018 and $88.56 for 2019.[53]

54 There is no evidence – beyond Chua's assertions that SBS compelled him to work on his rest days (which I have rejected) – to delineate the occasions Chua worked on his rest days pursuant to SBS's request or on his own request, which would then determine whether he should be compensated at the basic rate of pay for one day's or two days' work. But this is immaterial because SBS had, as a matter of policy, compensated all bus captains (including Chua) at the basic rate of pay for two days' work, regardless of whether SBS requested Chua to work or Chua requested to work.[54] Additionally, Chua did not show how SBS had failed to pay him the proper amount he was entitled to for working on his

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52 SOC at [7(b)(v)]; DB 213–275; 24/3/22 NE 34; 25/3/22 NE 3, 12.

53 SOC at [7(b)(v)]; Lee's AEIC at [34]–[37], [72]; DCS at [169].

54 Cheng's AEIC at [71], [82]–[84]; 25/3/22 NE 22.

normal hours on rest days, or how SBS had wrongly computed the rest day pay. This is also bearing in mind Chua's pleaded case (see [50] above). On the contrary, SBS had set out the number of rest days on which Chua had worked for each month from January 2018 to April 2019, which was based on a review of the BCALs, and further explained by way of Chua's payslips as to how the payment for rest days was computed.[55] I am satisfied, on a review of the documents, that SBS had properly computed Chua's pay for working on rest days, and which sums were accurately recorded in Chua's payslips.

55 On the other hand, the sums Chua averred that SBS owed him for working his contractual hours on his rest days between January 2018 and April 2019 were erroneous.[56] His figures were divorced from the EA formula for determining his "basic rate of pay", failed to accurately reflect the correct number of rest days he worked (which correct number was set out by Lee Swee Hwa ("**Lee**"), who was in charge of Human Resources (Bus Operations) in SBS, based on a review of the BCALs) and were premised on the erroneous assumption that he was entitled to be paid at the basic rate of pay for two days' work for working on a Sunday (for which Chua was not rostered a rest day).[57]

56 In summary, Chua's claim that SBS had breached s 37 for not paying him the statutorily prescribed rate for working on his rest days is not made out.

Hours of work – Section 38(1) and method of rostering hours of work

57 I turn to Chua's claim that SBS breached ss 38(1)(*a*) and (*b*) of the EA and cl 10 of the Collective Agreement in relation to working hours. In his FBP,

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55 Lee's AEIC at [32]–[37], [106]; DB 277–307.

56 23/3/22 NE 87.

57 Cheng's AEIC at [78]–[79], [86].

Chua clarified that the provisions and clause were breached only by reason of the *method of rostering* OT work by incorporating BIOT into the Contract.[58]

58 Clause 10 of the Collective Agreement provides that working hours and OT are to be regulated in accordance with the EA.[59] In this regard, s 38 of the EA states as follows:

> **Hours of work**
>
> 38.—(1) Except as hereinafter provided, an employee shall not be required under his contract of service to work —
>
> (*a*) more than 6 consecutive hours without a period of leisure;
>
> (*b*) more than 8 hours in one day or more than 44 hours in one week:
>
> Provided that —
>
> (i) an employee who is engaged in work which must be carried on continuously may be required to work for 8 consecutive hours inclusive of a period or periods of not less than 45 minutes in the aggregate during which he shall have the opportunity to have a meal;
>
> …
>
> …
>
> (4) If an employee at the request of the employer works —
>
> (*a*) more than 8 hours in one day except as provided in paragraphs (ii) or (iii) of the proviso to subsection (1), or more than 9 hours in one day in any case specified in those paragraphs; or
>
> (*b*) more than 44 hours in one week except as provided in paragraph (iv) of the proviso to subsection (1), or more than 48 hours in any one week or more than 88 hours in any continuous period of 2 weeks in any case specified in that paragraph,

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58 SOC at [7(a)(ii)], [7(b)(vi)]; 9/9/21 FBP at [9], [10]; 15/10/21 FBP at [6]; 9/11/21 FBP at [3] and [4]; Chua's AEIC at [26]–[28], [32]–[33]

59 DB 328.

> he shall be paid for such extra work at the rate of not less than one and a half times his hourly basic rate of pay irrespective of the basis on which his rate of pay is fixed.
>
> (5) An employee shall not be permitted to work overtime for more than 72 hours a month.

Whether SBS breached s 38(1) of the EA and cl 10 of the Collective Agreement by reason of BIOT

59 It should be recalled that: (a) the Contract provided for Chua to work six days per week, approximately eight to 11 hours a day and to receive OT after his eighth hour of work each day; and (b) SBS compensated Chua for the Additional 4 Hours (above the 44-hour limit in s 38(1)(*b*)) at a rate of 1.5 times his hourly rate of pay (the 6 Paid Hours) by incorporating four of the 6 Paid Hours into Chua's basic salary *via* BIOT and compensating Chua the remaining two of the 6 Paid Hours *via* the Weekly Allowance (see [2] and [5] above).

60 Chua asserted that BIOT contravened s 38(1)(*b*) and cl 10 of the Collective Agreement as the Contract obliged him to work 48 hours a week, which exceeded the 44-hour limit in s 38(1)(*b*) by four hours (even if any hours of work performed after his eighth hour of work each day were disregarded) in order to obtain his basic salary.[60] He further asserted that it was illegal for SBS to account for the Additional 4 Hours *via* BIOT for the following reasons. First, "basic rate of pay" defined in s 2 excludes OT payments. Second, he should be paid the four hours representing BIOT at 1.5 times his hourly rate of pay and SBS had failed to do so. Third, BIOT allowed SBS to capitalise on four additional OT hours a week in breach of the monthly limit set out in s 38(5). Fourth, BIOT denied Chua the right to refuse to work OT.[61]

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60 PCS at [39]–[40].

61 Chua's AEIC at [26], [27], [29], [31], [33]; 24/3/22 NE 125; 25/3/22 NE 24–25; 28/3/22 NE 44–45; PCS at [43]–[47].

61 SBS claimed that the hours of work specified in the Contract (and for which Chua was paid) *included* Break Times, in contrast to "hours of work" in the EA which, as defined in s 2(1), *excluded* "any intervals allowed for rest and meals" or Break Times.[62] Mr Lim did not dispute the definition of "hours of work" under s 2(1).[63] I will call Chua's hours of work which included Break Times as "Gross Hours", and "hours of work" defined under s 2(1) (which excludes Break Times) as "EA Hours". According to Cheng, Chua did not have to *work* more than 43.5 EA Hours in any week to obtain his basic pay.[64]

62 The only documents produced to ascertain the number of EA Hours Chua worked in a month were the time cards ("Time Card(s)") for February 2019 which showed Chua's work hours and allocated Break Times on each work day. However, this must be seen against the fact that Chua had pleaded his claim as asserting SBS's *method of rostering OT* being unlawful rather than asserting that he should not have worked more than the stipulated hours in ss 38(1)(*a*) or (*b*).

63 I pause to explain how the Time Cards relate to the BCAL. Each day's Time Card would reflect Chua's "sign on" and "sign off" time, which according to SBS, was the time a bus captain would start his shift/work and complete his shift (including the LPT) respectively. The "workhour" on a Time Card was calculated from "sign on" to "sign off", and included all Chua's hours of work and OT, the Break Times and the time allocated to perform the FPT and LPT.[65] Hence, the "workhour" referred to Gross Hours. The BCAL for the month also

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62 DCS at [5]–[7]; 22/3/22 NE 96–97; Defence at [6(c)(ii)–6(c)(vii)], [6(c)(xxi)].

63 22/3/22 NE 97.

64 Cheng's AEIC at [27]–[29]; 25/3/22 NE 19.

65 24/3/22 NE 77, 79, 81; Cheng's AEIC at [104]; Foong's AEIC at [32], [44].

reflected Chua's Gross Hours and was generated from SBS's system. A perusal of the February 2019 BCAL showed the Gross Hours for each day corresponded with the February 2019 Time Cards, save for the 17 February 2019 Time Card which stated Chua's workhour as 8 hours and 56 minutes whereas the BCAL stated a higher figure of 9.76 hours. However, nothing material turned on the discrepancy as the higher figure in the BCAL was used to compute Chua's February 2019 pay, as Lee had given a detailed explanation on.[66]

64 That said, I find the Time Cards and other evidence that SBS adduced supports that SBS had complied with s 38(1). Chua is unable to show how SBS had breached that provision, in the manner as he had pleaded.

65 It should be noted that "built-in overtime" or BIOT is not a term found in the Contract but only in the MOU (see [2] above).[67] In any event, the BIOT does not correspond to hours that Chua *actually worked* above the statutory weekly limit of 44 EA Hours and which SBS failed to compensate him by subsuming these hours into his basic pay.[68]

66 I accept that Chua did not have to work more than 44 EA Hours in a week to obtain his basic pay (which included the BIOT).[69] As Cheng explained, the minimum 48 contractual hours per week (*ie*, six days of eight hours, excluding OT to be paid after the eighth hour as stated in the Contract) were Gross Hours which included at least 45 minutes of Break Times per day within the first eight hours. This amounted to at least 4.5 hours of Break Times per

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66 DB 161–211, 303; Lee's AEIC at [15]–[23].

67 28/3/22 NE 22.

68 Cheng's AEIC at [36]–[42]; DCS at [21]–[22], [25]; 23/3/22 NE 34–36, 48; 24/3/22 NE 101–108, 122–123, 136.

69 Cheng's AEIC at [27]–[29], [31]; DCS at [17]–[18], [43]; 25/3/22 NE 19–20, 29.

week. Chua agreed that the first eight hours of work each day included Break Times. Hence, Chua would have qualified to receive his basic pay which included the BIOT, after working 43.5 (or fewer) EA hours per week.[70] The Time Cards for three weeks in February 2019 (with "week" as defined under s 41), namely 4–10, 11–17 and 18–24 February, showed Chua only worked 41 EA Hours and 9 minutes, 40 EA Hours and 37 minutes and 40 EA Hours and 33 minutes respectively (based on six rostered working days per week) to obtain his basic pay.[71]

67 As Chua's minimum contractual hours of 48 hours a week were Gross Hours, SBS did not breach s 38(1) by including BIOT into the basic pay, as Chua would have worked no more than the 44 EA Hours a week to obtain his basic pay. In other words, BIOT did not pertain to any work Chua performed beyond 44 EA Hours. SBS thus did not incorporate any OT payment into Chua's basic rate of pay in breach of the EA. I accept Mr Singh SC's submission that BIOT is not to be equated with payment for OT as the latter term is used in the EA and, where Chua worked OT he was paid for it on a daily basis after 8 *Gross Hours* per day – which Chua agreed.[72] Hence, Chua was not entitled to be paid for the four of the 6 Paid Hours (representing BIOT) at 1.5 times his hourly rate of pay and there was also no such term in the Contract. As Chua did not have to perform any actual work above 44 EA Hours to enjoy BIOT, his assertions that BIOT allowed SBS to capitalise on additional OT hours in breach of s 38(5) and prevented Chua the right to refuse to work OT are not made out.

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70 Cheng's AEIC at [28]–[29]; 22/3/22 NE 103; 24/3/22 NE 99, 104–105, 107–110.

71 Davinder Singh Chambers letter dated 8 April 2022 at Annex D.

72 DCS at [13], [22]; 22/3/22 NE 103; Cheng's AEIC at [21].

68 Thus, that SBS incorporated BIOT into Chua's contractual work hours did not contravene s 38(1) or cl 10 of the Collective Agreement and was in fact based on the MOU between NTWU and SBS. Additionally, SBS's computation of the hourly rate for the purposes of computing the Weekly Allowance, using the formula of [(Monthly basic salary x 12) divided by (52 x 48)], did not contravene the EA as the Weekly Allowance was derived from the BIOT which was not OT as Chua's 48 hours of work per week comprised Gross Hours.[73]

Overtime – Rate of pay

69 I turn to Chua's claim that SBS had breached the EA, Contract and MOM guidelines by failing to pay OT at the rate of 1.5 times his hourly basic rate of pay for each hour of OT. In this regard, it is important to distinguish the rate at which SBS was obliged to compensate Chua for working OT on a regular day, a rest day and a public holiday.

Rate of pay for working OT on a regular day

70 It is undisputed that the Contract provided that Chua was to be paid for OT (which "commences after the 8th hour") at the same rate as that provided in s 38(4) read with s 38(6),[74] *ie*, not less than 1.5 times Chua's hourly basic rate of pay. The MOM guidelines and Collective Agreement add nothing more.

71 Section 38(6) read with the second column of the Fourth Schedule to the EA provides that the hourly basic rate of pay of a workman employed on a monthly rate of pay (like Chua) is to be calculated as follows:

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times 44}$$

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73 Lee's AEIC at [55]–[56]; 28/3/22 NE 27–28, 32.

74 SOC at [7(b)(iii)]; PCS at [35]; Cheng's AEIC at [58]–[59]; DCS at [71].

72 Chua's monthly basic rate of pay for 2018 ("2018 Period") was $2,040 and for January to April 2019 ("2019 Period") was $2,110 (see [53] above). His hourly basic rate of pay for the 2018 and 2019 Periods was thus $10.6993 and $11.0664 respectively. SBS thus had to compensate Chua $16.04895 and $16.5996 for each hour of OT work he performed on a regular working day during the 2018 Period and 2019 Period respectively.

Rate of pay for working OT on a rest day

73 Under the EA, an employer must compensate its employee a sum "at the rate of not less than [1.5 times] his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day" regardless of whether the employee worked on his rest day at his own or at the employer's request (ss 37(2)(*c*) and 37(3)(*c*)). However, cl 11(4) of the Collective Agreement provides an employee with a more generous rate of compensation of "2 times the basic rate of pay" when he is "required to work" on a rest day – this would amount to $21.3986 and $22.1328 per hour for the 2018 Period and 2019 Period respectively.[75]

74 SBS argued that it was only obliged to compensate an employee the rate specified in the Collective Agreement when it requested the employee to work on a rest day and not when the request stemmed from the employee. It is unnecessary for me to decide if cl 11(4) of the Collective Agreement bore this meaning, as in both scenarios, SBS compensated a bus captain at two times his basic rate of pay for OT on a rest day.[76]

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75 Lee's AEIC at [42]–[51]; DB 328.

76 DCS at [82], [165], [189].

Rate of pay for working OT on a public holiday

75 As for the rate of pay for working OT on a public holiday, cl 11(4) of the Collective Agreement states that an employee who is required to work on a public holiday should be paid "2 times the basic rate of pay".

76 SBS accepted that, regardless of the correct interpretation of cll 11(3) and 11(4) of the Collective Agreement and whether an employee volunteered to work on a public holiday, it compensated the employee two times his basic rate of pay for OT work on a public holiday.[77] This amounted to $21.3986 and $22.1328 per hour for the 2018 Period and 2019 Period respectively.

Whether SBS paid Chua the proper rate for OT

77 It should be noted that Chua's claim pertaining to OT pay was that SBS had failed to properly pay him or underpaid him by reason only of its *method of calculation* of Chua's pay, and not that if its method were correct that Chua was not paid the full amount due to him.[78] In this regard, I find Chua's claim is not made out. In so far as Chua claimed that the method of rostering rest days was incorrect (and which thus would have affected the method of calculating OT pay on rest days), I have rejected this claim.

78 In relation to the rate of pay for working OT on a regular day (*ie*, not a rest day or public holiday), Lee had explained how the computation was done, using the formula which followed the EA (see [70]–[71] above), and which Chua stated in court that he agreed with. Chua agreed that, based on SBS's records, he did receive OT pay after eight Gross Hours of work each day, even

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77 DCS at [82], [188]–[189].

78 DCS at [70], [155], [176]–[177]; 22/3/22 NE 81.

if he claimed that his total Break Times for a day was shorter than what was stated in the Time Cards – a point I will return to later.[79]

79 As for the rate of pay for working OT on a rest day or public holiday, Lee attested that SBS paid Chua the rate of two times (rather than 1.5 times) his basic rate of pay, and computed this using the formula in the EA, in compliance with the EA and Collective Agreement. He explained how Chua's OT was calculated which I find followed the Collective Agreement and which provided a higher rate than the minimum rate in the EA.[80] Chua has thus failed to show how SBS's computation or method of computation was wrong.

80 Finally, where Chua had classified *all* the hours that he worked on a rest day or public holiday as OT hours and which he claimed he should be paid at a rate of two times his hourly basic rate of pay,[81] this was misconceived. Sections 37(2)(*b*) and (*c*) and 37(3)(*b*) and (*c*) clearly delineates the rate of pay for the "normal hours of work" and the "period of work [which] exceeds his normal hours of work" for one day, where an employee works on a rest day. Section 88(4) likewise prescribes the rate at which Chua was to be compensated for working his normal hours on a public holiday.

Whether SBS properly computed the number of OT hours that Chua worked

81 Next, Chua claimed that he worked more OT hours than SBS's records showed.[82] In this regard, I also find Chua's claim to be without merit.

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79 Lee's AEIC at [27]–[29]; 22/3/22 NE 103; 23/3/22 NE 72.

80 Lee's AEIC at [46]–[50].

81 PCS at [35] and pp 66–81.

82 SOC at [7(b)(i)].

82 Chua relied on his own calculations of the number of hours he purportedly worked in a day. In this regard, Chua had filled in calculation sheets ("Calculation Sheets"), which he handed to Anna Koh ("Koh"), an industrial relations officer then employed by the National Trades Union Congress, to show his work hours each day.[83] In the Calculation Sheets, Chua had recorded the "start time" and "end time" of his work hours each day and, based on these, Koh then calculated the "total working hours" per day. She did not independently verify the information that Chua gave her.[84] But the Calculation Sheets were inaccurate and unreliable. Chua admitted that he did not exclude the Break Times from the number of hours he worked. Koh similarly attested that her figures on the number of hours that Chua worked did not exclude the Break Times although she had asked Chua for the Break Times to calculate the amount of OT hours he worked. Koh also informed Chua that her calculations were "very raw and preliminary".[85] Hence, Chua's calculations of the actual hours that he worked were inflated.

83 On the other hand, Lee had explained how Chua's OT hours were computed. Chua's overall hours (including OT hours) could be gleaned from the BCALs and when reviewed against Chua's payslips, showed how Chua was compensated for OT work.[86] Having perused the BCALs (which were not disputed by Chua), payslips and Time Cards for February 2019 (which showed Chua's "workhour" which are Gross Hours and the "payhour" which takes into account OT hours for purposes of computing the number of hours *of pay*), I am satisfied as to the accuracy of the figures of the actual hours that Chua worked

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83 24/3/22 NE 15–16.

84 Chua's AEIC (Exhibit CQM-1 at pp 35–82); 23/3/22 NE 5, 7; 24/3/22 NE 7, 16–18.

85 23/3/22 NE 32, 80; 24/3/22 NE 19, 22, 24.

86 Lee's AEIC at [9], [15]–[20], [102]–[103].

(including OT) and that he was properly compensated for them. It should be borne in mind that the computation of Chua's work hours, as well as the rest days and public holidays which Chua worked, were managed, tracked and/or generated *via* various systems employed by SBS such as Hastus, SCS (see [11] and [12] above) and Systems Applications and Products in Data Processing.[87]

Work on public holidays

84 I turn to Chua's claim that SBS breached s 88(4) by failing to compensate him "the statutorily prescribed rate of an extra day's salary at the basic rate of pay for one day's work in addition to the gross rate of pay" for work he performed on one public holiday, *viz*, 5 February 2019. SBS's position was that it fully remunerated Chua for this work. In this section, I deal only with the rate Chua should have been paid for working on normal hours (*ie*, eight hours) on 5 February 2019, as OT pay was dealt with earlier.

85 There is nothing to suggest that Chua was not paid his "gross rate of pay" (putting aside temporarily whether he was paid the "extra day's salary at the basic rate of pay for one day's work") for working on 5 February 2019. "Gross rate of pay" is defined in s 2(1) as "the total amount of money including allowances to which an employee is entitled to under his contract of service". Unlike Chua's monthly basic rate of pay, his monthly gross rate of pay thus included his Weekly Allowances which was, based on Chua's February 2019 payslip, paid to him as part of his February 2019 pay.

86 Next, it should be noted that 5 February 2019 was both a public holiday and a scheduled rest day for Chua.[88] In closing submissions, Mr Lim claimed

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87 Cheng's AEIC at [9].

88 DB 127, 303; Lee's AEIC at [33].

that whilst Chua was compensated for an extra day's work for working on a public holiday, he was not compensated pursuant to s 37(3) for also working on his rest day.[89] I find Chua's claim is not made out. Chua agreed that SBS did pay him an extra day's salary at the basic rate of pay for one day's work in addition to the gross rate of pay for that day for working on a public holiday and particularly for 5 February 2019. He also accepted Lee's explanation on how his pay for 5 February 2019 was computed. Second, Lee had explained that Chua was also paid the rest day rate for work performed on 5 February 2019 at the rate of two days' salary. That Chua was paid both the rest day and public holiday rates was supported by his February 2019 payslip which delineated the two payments, and which computations were explained by Lee.[90]

87 For completeness, Mr Lim accepted that the computation for paying an extra day's salary is based on the basic rate of pay for "one day's work" and not based on Chua's hourly rate (unlike for OT).[91] Section 107A(2) states that the basic rate of pay per day of an employee employed on a monthly rate (such as Chua) was to be calculated in accordance with the third column of the Third Schedule to the EA, which in Chua's case the formula would be as follows:

$$\frac{12 \times \text{monthly basic rate of pay}}{52 \times \text{number of days on which the employee is required to work in a week.}}$$

As stated earlier, Lee had explained the computation for the payments (*ie*, the rest day and public holiday rates) and which I find were in accordance with the relevant formulae stipulated in the EA.

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89 PCS at [59]–[61].

90 22/3/22 NE 84–87. 91; Lee's AEIC at [33]–[45]; DB 271.

91 24/3/22 NE 97–98.

88 Finally, I deal briefly with Chua's claim raised at the trial that he was compelled to work on public holidays such as 25 December 2019 and 1 January 2020.[92] But this claim was not pleaded by Chua nor attested by him in his AEIC, and I reiterate [43] to [47] above. In any event, Chua has not shown evidence to support this assertion that he was compelled to work on public holidays.

89 In the round, I am satisfied that SBS properly compensated Chua for working his contractual hours (eight hours) on 5 February 2019.

FPT and LPT

90 I turn to Chua's pleaded claim and assertion that SBS breached cl 24(8) of the Collective Agreement by failing to add another ten and 15 minutes to Chua's working time for Chua to perform the FPT and LPT respectively.[93] SBS stated that the working hours (for which Chua was paid) included the time allocated for performing the FPT and LPT.

91 Clause 24(8) of the Collective Agreement states as follows:[94]

> (8) First and Last Parade Tasks
>
> Bus Captains who are required to perform the First Parade and Last Parade Tasks will have an additional 10 minutes and 15 minutes respectively added to the roster time. The tasks to be performed will be indicated in the waybills. In addition, the Last Parade tasks shall also include garaging duties that include but are not limited to refuelling, demounting, bus washing and parking.

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92 23/3/22 NE 99, 101–102; 24/3/22 NE 62–64; 25/3/22 NE 25.

93 SOC at [7(b)(ix)]; 9/9/21 FBP at [13(a)]; 15/10/21 FBP at [17(a)]; 9/11/21 FBP at [12]; Chua's AEIC at [23].

94 DB 336.

92 At trial, Chua agreed that an additional ten and 15 minutes respectively were added to his working hours for him to perform the FPT and LPT. This is also supported by the February 2019 Time Cards which showed that Chua was allocated ten and 15 minutes respectively to perform the FPT and LPT each day, and that Chua's Gross Hours per day were computed from the "sign on" to the "sign off" time (which included the time allocated for the FPT and LPT) (see [63] above).[95] Hence, Chua's claim in this regard fails.

93 Chua then sought to advance a different claim in court that the time SBS allocated him to perform the FPT and LPT was manifestly inadequate and did not reflect the actual time he spent completing these tasks ("New Claim").[96] He claimed that the ten and 15 minutes SBS granted him failed to accommodate the numerous, time-consuming tasks that he had to perform as set out in the First and Last Parade Duty Card ("Duty Card"). The ten minutes allocated for the FPT also failed to account for the occasions Chua required the assistance of a mechanic (who had to attend to numerous buses at the bus park) to rectify a defect to the bus. Further, after he completed the LPT, he had to perform other tasks such as refuelling, washing and parking the bus.[97] Mr Lim further suggested that SBS did not require its bus captains to tap their work passes after they completed the LPT (but only after arriving at the final bus terminal denoted in their time cards as "OFF") because SBS was aware that its bus captains often took longer than 15 minutes to complete the LPT and would have to compensate them more if it recorded the actual time they spent on the LPT.[98] Hence, the

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95 22/3/22 NE 38; 23/5/22 NE 22; DB 161–211.

96 PCS at [75]; 22/3/22 NE 29–38; 23/5/22 NE 22–23, 84–85; 25/3/22 NE 84–90; DB 404.

97 22/3/22 NE 29–31; 25/3/22 NE 26, 69, 84–92; PCS at [63].

98 24/3/22 NE 85–87; 25/3/22 NE 69–70.

Time Cards did not fully reflect Chua's actual work hours and SBS underpaid Chua for the actual time he spent performing the FPT and LPT.

94 I am unable to accept Chua's New Claim because he again failed to plead it (in any of the three iterations of his SOC) or assert it in his AEIC, which denied SBS a fair opportunity to meet the claim.[99] He also did not mention the New Claim in his responses to SBS's requests for FBP in respect of his claim that SBS breached cl 24(8) of the Collective Agreement. On the contrary, Chua maintained that SBS breached cl 24(8) *only* by failing to add ten and 15 minutes to the number of hours that he worked.[100] SBS's witnesses thus prepared their AEICs to respond to Chua's claim based on his pleaded case.

95 In any event, I find the New Claim is not substantiated or made out. Chua did not particularise how much more time he spent to complete the FPT and LPT or when these incidents allegedly occurred. On the other hand, SBS had explained that the time allocated for the FPT and LPT was sufficient to perform the tasks stated in the Duty Card. For instance, Foong explained that various tasks could be done concurrently, such as checking the CCTV cameras and screens which were visual checks that were to be done by merely glancing at them and would not take more than ten seconds. The tasks in the Duty Card could also be performed concurrently with the refuelling of the bus, which refuelling was, in any event, not personally performed by the bus captain who merely had to drive the bus to the petrol pump for a bus attendant to refuel. As for washing the bus, Chua simply had to drive through an automated bus washing system with the washing taking place within one to two minutes, and again Chua could perform other tasks concurrently. Foong further attested that

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99 22/3/22 NE 33–38; 23/3/22 NE 106–108; 24/3/22 NE 87; DCS at [205].

100 9/11/21 FBP at [12(a)]; 15/10/21 FBP at [17(a)].

SBS had already factored in the time taken to queue for the refuelling and washing of the bus. Further, Chua's claim that there would be 200 buses at the bus park was not an accurate depiction of how many buses were there at the same time. Foong explained that the buses that entered the bus park were spread out over some six hours as they were scheduled to operate at different timings and hence there would be only about 40 buses at the bus park at any one time. Finally, Foong and Cheng attested that ten and 15 minutes were sufficient to perform the FPT and LPT respectively.[101] I am satisfied with SBS's witnesses' explanations in court, and in light of the fact that SBS had not prepared its case on the basis of the New Claim which Chua did not plead.

96 Pertinently, the time allocated for the FPT and LPT was established in agreement with the union represented workers such as SBS's bus captains. As Cheng explained, SBS had worked closely with NTWU to agree on a reasonable amount of time for the tasks that had to be performed in the FPT and LPT.[102]

97 Finally, I find that Chua had accepted the working hours reflected in his Time Cards – which did not capture the additional time he allegedly spent on FPT and LPT – as accurately representing his actual working time. Chua relied on the start and end times depicted in the Time Cards to fill in the Calculation Sheets to support his claim on the number of hours that he worked a day (see [82] above).[103] At no time did Chua inform Koh, who he approached because he suspected that SBS had underpaid him for, *inter alia*, OT work, that the Calculation Sheets he filled in did not capture the full duration of his work.

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101 24/3/22 NE 88–89; 25/3/22 NE 82–89.

102 24/3/22 NE 88.

103 23/3/22 NE 10–13, 32–33; 24/3/22 NE 4–5; Chua's AEIC at pp 35–45.

Idle time

98 Moving on, Chua pleaded that SBS should have compensated him for idle time, and that a term obliging SBS to compensate him as such at his hourly rate of pay ("the Term") should be implied into the Collective Agreement (see [7(h)] above). SBS claimed that it was not obliged to pay bus captains outside their hours of work.[104]

99 Chua claimed the following reasons for implying the Term. Chua could not afford the luxury of private transportation. Thus, when he was scheduled to work the morning shift (which commenced at 5.00am), he took a bus SBS provided and would arrive at the bus depot at around 4.30am. Chua claimed that SBS arranged for its bus captains who took the chartered bus to arrive at its premises early for SBS's benefit, as the early transport would ensure that they would not be late for work (due to traffic conditions) and to enable these bus captains to cover other captains who might be late for work. After arriving at the bus depot, but before the official start time of his shift, Chua had to inspect the bus he was scheduled to drive. Chua claimed that once he arrived at the bus depot, he could not leave the premises as he would have signed in and was thus under the command and control of SBS. Moreover, on the days he performed a split shift (*ie*, morning and afternoon shifts), he was "engaged to be waiting" and required to remain at SBS's premises in the time between the shifts.[105]

100 Mr Lim relied on *Xuyi Building Engineering Co v Li Aidong and another and another appeal* [2010] 4 SLR 1041 at [25] ("*Xuyi Building*"), wherein the High Court held that Xuyi's employees were entitled to be compensated for

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104 Cheng's AEIC at [109].

105 Chua's AEIC at [16]–[19], [47]–[55]; 23/3/22 NE 61–65, 87–88, 109..

attending half-hour safety meetings before the start of work each day, to support that Chua should be compensated for idle time.[106]

101 In closing submissions, Mr Lim then claimed that the Term should be implied into Chua's Contract (unlike Chua's pleaded claim that it should be implied into the Collective Agreement).[107] Regardless of whether such a term should be implied in the Collective Agreement or Contract, the grounds Chua relied on were the same. In this regard, I find that Chua's claim is not made out. I will deal first with whether the Term should be implied into the Contract.

102 In determining whether to imply a term into a contract, the court will apply the three-step test set out by the Court of Appeal in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [101], as such:

> (a) The court will first ascertain whether there is a gap in the contract and, if so, how the gap arises. The court will only consider implying a term in the contract if the court discerns that the gap arose because the parties did not contemplate the gap.
>
> (b) The court will then consider whether it is necessary in the business or commercial sense to imply a term to give the contract efficacy ("Business Efficacy Test").
>
> (c) Finally, the court considers the specific term to be implied. This must be a term which the parties, having regard to the need for business efficacy, would have responded, "Oh, of course!" had the proposed term

106 PCS at [67]–[70].

107 PCS at [65].

been put to them at the time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue ("Officious Bystander Test").

103 In essence, while the Business Efficacy Test helps the court to identify the existence of a lacuna in a contract, the Officious Bystander Test enables it to define the term which can be said to reflect the parties' presumed intentions vis-à-vis the gap in the contract. In all circumstances, the threshold for implying a term is a high one and a term will only be implied if *necessary*. The court will not rewrite the contract for the parties based on its own sense of what is fair and just (*Sembcorp Marine* at [88], [91] and [100]).

104 To begin with, it was unclear from Chua's own case what precisely was the Term to be implied. In the SOC, Chua claimed that he should be compensated at his basic hourly rate of pay for: (a) the period between 4.00am to 5.00am when he worked the morning shift as he would arrive at the bus depot at about 4.15am; and (b) "the idle time during the afternoon shift which starts at about 2.30pm … to completion of duty at about 1.00am the next day, *after which he was engaged to be waiting*" ("Version 1"). In Chua's FBP dated 4 October 2021, he stated that he should be compensated for the period between 4.00am to 5.00am on the morning and split shifts when he was engaged to be waiting, and *between 9.00am and 1.00pm* on the split shift ("Version 2"). But in the FBP dated 15 October 2021, he asserted that he should be compensated "for the period during the [m]orning and [a]fternoon shifts in which he is engaged to be waiting" and this was "4am to 5am during the [m]orning [s]hift, and *1am to 2am* during the [a]fternoon [s]hift" ("Version 3") [all emphasis added].[108]

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108 SOC at [7(b)(x)]; 4/10/21 FBP at [1]; 15/10/21 FBP at [18].

105 Chua was unable to maintain a consistent case of what idle time he was claiming or of how many hours. Even his pleaded case based on Version 1 or 3 of the Term contradicted his AEIC where he stated that he arrived for his morning shift at about 4.30am.[109] If so, any idle time would have commenced only from 4.30am and not 4.00am.

106 In any event, I find no basis to imply the Term (in any version claimed by Chua) into the Contract and that it was unnecessary to imply such a term to give the Contract efficacy. I also find that the Officious Bystander Test was not met.

107 As a preliminary point, Chua clarified that in claiming he had to inspect the bus before the commencement of his shift (see [99] above), he was referring to performing the FPT before his shift officially started.[110] This was not a claim that Chua should be compensated for idle time, but that SBS should have compensated him for working in excess of the hours of work reflected in his Time Cards. In this regard, I have already made my findings earlier.

108 The remaining reasons Chua proffered to support that the Term should be implied were unconvincing. First, SBS did not impose a time by which a bus captain had to arrive at the bus terminal, depot or interchange ("Workplace") to wait before starting his shift. Cheng and Foong attested as such and further stated that Chua merely had to arrive in time to start his shift which is the "sign on" time stated on the Time Card. Chua admitted in court that the Contract did not state that he had to report for work earlier than the start of the stipulated time

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109 Chua's AEIC at [47].

110 23/3/22 NE 64–65.

for his shift.[111] Hence, Chua was not obliged to arrive early at the Workplace. As such, his assertion that SBS arranged for bus captains who took the chartered bus to arrive early at the Workplace to mitigate the risks of traffic delays and other bus captains arriving late, even if they were true, were irrelevant, and further Chua was not obliged to use SBS's transport (see [109] below). Similarly, Chua's assertion in court that his supervisor expected him to arrive half an hour earlier than the start of his shift[112] was unsubstantiated.

109 Second, SBS was not obliged to provide transport to bus captains to the Workplace, nor did SBS mandate its employees to take the transport it provided. Chua agreed that some bus captains made their own way to the Workplace and SBS even permitted those who drove to park within its premises, and that they just had to arrive at the Workplace before the commencement of their shift. As Chua stated, he took SBS's transport because he could not afford his own transportation.[113]

110 Third, Chua's claim that he could not leave the premises during his idle time was undermined by his admission that he was "technically not required to remain on the premises of [SBS]".[114] As such, Chua failed to show that SBS exercised "command and control" over him when he was waiting to start his shift. This distinguished the case of *Xuyi Building*, where Xuyi's employees were required to attend the half-hour safety meetings before the start of each work day. On that basis the court found the half-hours involved were working time which the employees should be compensated for.

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111 Cheng's AEIC at [112]; 23/3/22 NE 59–60; 24/3/22 NE 77–78; 25/3/22 NE 91.

112 23/3/22 NE 61–62.

113 23/3/22 NE 59–60; Cheng's AEIC at [111]–[114]; Chua's AEIC at [51].

114 4/10/21 FBP at [1(b)]; 15/10/21 FBP at [18(b)]; DCS at [220].

111 Hence, an implied term (in the manner claimed by Chua) was unnecessary in the business sense to give the Contract efficacy, nor would the parties (and especially SBS) have responded "Oh, of course!" had the proposed Term been put to them at the time of the contract. This was not a case in which there were negotiations between Chua and SBS on the terms of his employment contract, as SBS had offered Chua a standard contract (see [38] above). It would not have made commercial sense for SBS to pay Chua for idle time. As Mr Singh SC submitted, the Term, if implied, would have been commercially absurd and patently unfair to bus captains who incurred their own costs in taking private transport to work (and who would not be compensated for idle time) whilst those who used the free transport SBS provided would be additionally compensated for idle time between their arrival at the Workplace and commencement of their shift.[115]

112 I turn then to the Collective Agreement which both parties pleaded and relied on. Cheng stated that the Collective Agreement applied to Chua, the essential and key terms therein were found in Chua's Contract, and copies of the Agreement were widely available at the Workplace. Lee attested that a copy of it was handed to Chua after he completed his training as a bus captain.[116] Thus, in so far as the terms of the Collective Agreement (where they were intended in their nature and character suitable to take effect as contractual terms) were incorporated into the Contract *via* the "Other Terms & Conditions" clause, the test in *Sembcorp Marine* would apply to determine whether a term should be implied into the Agreement. If so, for the same reasons at [104] to [111], I find no scope to imply the Term (or any version of it).

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115 DCS at [233] and [235].

116 24/3/22 NE 73–75; 28/3/22 NE 15.

113 Alternatively, the nature of a collective agreement is such that it would have legal force only upon satisfying additional legislative requirements under the Industrial Relations Act 1960 (2020 Rev Ed) ("IRA"). Under s 26 of the IRA, a collective agreement has legal force (*ie*, it is deemed to be an award and binds parties to the agreement) only to the extent that a court (being an Industrial Arbitration Court) certifies a memorandum of its terms in accordance with s 25 of the IRA. Section 25 of the IRA in turn requires the court to, *inter alia*, consider whether it is in the public interest that the agreement be certified and whether the memorandum of its terms satisfactorily or adequately sets out the terms of that agreement. The legislative requirements, in particular the requirement for a court to certify a memorandum of its terms, which terms have been negotiated between the parties to the agreement, would suggest that such an agreement cannot be lightly amended or revised. If so, the court would be less likely to imply a term into such an agreement. Hence, and for the reasons at [104] to [111], I find no scope to imply the Term (or any version of it) into the Collective Agreement.

114 It must be remembered that a collective agreement is generally negotiated across a broad front for a substantial labour force. In the present case, the Collective Agreement did not apply only to SBS's bus captains but essentially to "all locally engaged Management Support Officers and Service Personnel" and covered a breadth of issues pertaining to salary and compensation. As was observed in *Ali and others v Christian Salvesen Food Services Ltd* [1997] 1 All ER 721 at 726, a collective agreement represents "a carefully negotiated compromise between two potentially conflicting objectives" between employers and employees, and thus it is in the nature of such an agreement that it is concise and clear so as to be readily understood by all who are concerned to operate it.

115 In conclusion, I dismiss Chua's claims that SBS should have compensated him for idle time and that such a term should be implied into the Contract or Collective Agreement.

Break Times

116 I deal next with Break Times. Section 38(1)(i) provides that an employee engaged in work which must be carried on continuously may be required to work for eight consecutive hours "inclusive of a period or periods of not less than 45 minutes in the aggregate during which he shall have the opportunity to have a meal". Chua pleaded that SBS provided him fewer than 45 minutes of actual Break Times during his eight consecutive hours of work, and that he was "only given break periods of 25 minutes and toilet break period of about 10 minutes, which were mere idealism as they follow from an estimated time of arrival of the bus to the depot and does not factor in traffic and/or parking delays at the bus terminals". In Chua's FBP, he clarified that SBS had breached s 38(1)(i): (a) only by reason of its method of scheduling "break periods of 25 minutes and toilet break period of about 10 minutes", and not that SBS had failed to provide him the scheduled amount of break time based on SBS's method of scheduling; and (b) by failing to add the break periods into the number of hours which Chua worked for the purpose of computing his pay.[117]

117 It was not disputed that s 38(1)(i) was engaged.[118] The issues pertaining to Chua's Break Times were as follows. First, did SBS give Chua at least 45 minutes of Break Times during his first eight hours of work. Second, must the 45 minutes be given in one continuous period. Third, was Chua nevertheless

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117 SOC at [7(b)(xi)]; 15/10/21 FBP at [19]; 9/11/21 FBP at [13]–[14].

118 PCS at [76]–[77]; DCS at [118].

given an "opportunity to have a meal". Fourth, did SBS exclude Chua's Break Times from the working hours for the purposes of computing his pay and was SBS entitled to do so.

Whether Chua was given at least 45 minutes of Break Times in the first eight hours of work

118 Chua claimed that he was not given at least 45 minutes of Break Times in the first eight hours of work. He relied on a Time Card (that showed his "signon FPT" time as 12.47pm and "signoff" time as 11.22pm) to claim that SBS had allocated him with only a meal break of 25 minutes and a toilet break of about ten minutes.[119]

119 I find Chua's claim to be unsupported by the objective evidence. The Time Card that he exhibited showed that in addition to a "meal" break of 25 minutes, he was allocated 33 minutes of "break", totalling 58 minutes of Break Times. Chua did not adduce any other evidence to support his claim that he was allocated fewer than 45 minutes of Break Times in the first eight hours of work. On the contrary, the February 2019 Time Cards showed Chua was allocated between 60 to 84 minutes of Break Times per day in the first eight Gross Hours. Indeed, in his FBP, Chua clarified that SBS had breached s 38(1)(i) only by reason of its method of scheduling "break periods of 25 minutes and toilet break period of about 10 minutes" and not that SBS had failed to provide him the scheduled amount of Break Times based on SBS's method of scheduling.

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[119] Chua's AEIC at [11]–[15] and Exhibit CQM-1 at p 115; PCS at [82]–[83]; 15/10/21 FBP at [19(a)] and [19(b)].

Whether the minimum 45 minutes of break must be continuous

120 Next, Mr Lim submitted that the minimum 45 minutes of break (prescribed in s 38(1)(i)) must "ordinarily" be given in a continuous period as this "accords with the normal practice in workplaces where employees are given an hour for their lunch", and if the 45 minutes were divided into many short breaks, each break would be "insignificant and inadequate" for an employee to properly eat his meal.[120]

121 In interpreting s 38(1)(i), the court should first have regard to the ordinary meaning of the words of the provision and with regard to the context of that provision within the written law as a whole. The text of s 38(1)(i) is clear. An employer who requires an employee to work for eight consecutive hours must provide the employee with either a single break of not less than 45 minutes or multiple breaks that add up to no less than 45 minutes. The phrase "inclusive of a period *or periods* of not less than 45 minutes *in the aggregate*" [emphasis added] allows an employer to split up the 45 minutes into multiple Break Times. To construe s 38(1)(i) as stipulating that an employee's break time of 45 minutes (minimum) can only be given in one continuous stretch would violate the plain language of, and be contrary to, the express text.

122 The above interpretation accords with the legislative purpose of s 38(1), which provision was not merely intended to protect an employee (by ensuring that he is given sufficient break(s) where he is working for a number of continuous hours) but also to accord a measure of flexibility to an employer in scheduling the rest or leisure period during those work hours. Hence where an employee is required to work for eight consecutive hours, he must be given no

120 PCS at [78], [80]–[81].

less than 45 minutes of Break Times. At the same time, whilst the employer can split the minimum 45 minutes into a few shorter breaks, this cannot impinge on the employee's basic entitlement of "the opportunity to have a meal" – a point which I will return to.

123 Further, Mr Lim has not adduced evidence to support his submission that the minimum 45 minutes of break must be given in a continuous period as this would accord with the normal practice in workplaces where employees are given an hour for lunch. Even accepting that it may be the norm in some industries for employees to be given an hour for lunch, this did not therefore mean that it was the norm in all industries. In any event, such extrinsic evidence, even if adduced, would be non-legislative in nature and under s 9A(2) of the IA incapable of assisting the court in ascertaining the meaning s 38(1)(i), particularly when it would alter the ordinary meaning of s 38(1)(i) (*Tan Cheng Bock* at [46] and [106]; *Tan Seng Kee* at [178]).

124 As such, I hold that where s 38(1)(i) is engaged, an employer can provide an employee with a single break time of not less than 45 minutes or multiple break times that add up to no less than 45 minutes.

Whether Chua had an "opportunity to have a meal"

125 If an employer chooses to allocate multiple Break Times in the first eight hours of an employee's work, this is subject to the requirement in s 38(1)(i) that the employee must "have the opportunity to have a meal". On the evidence before me, namely the February 2019 Time Cards, SBS allocated Chua a meal time each day of between 25 to 36 minutes.[121]

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121 DB 161–211.

126 In this regard, Chua claimed essentially that the actual Break Times that he enjoyed were far shorter than the Break Times reflected in the Time Cards, and that the Break Times SBS allocated were "mere aspirations" and failed to achieve the purpose of allowing employees to consume a meal.[122] First, Chua would often arrive late at the terminal at which he was supposed to enjoy his meal break because of traffic conditions. Second, after arriving at the relevant terminal, he had to allow passengers to disembark the bus, find a parking lot and inspect the bus for cleanliness as well as for items that passengers may have inadvertently left behind. Third, Chua required time to procure and consume his food. Mr Lim suggested that if the bus terminal at which Chua parked his vehicle had a staff canteen, Chua had to spend time queuing for his food. Where it did not, Chua required about ten minutes just to walk to and from the place he purchased his food. Fourth, Chua had to depart the bus terminal (at which he enjoyed his break time) precisely at the time stated in his Time Card. Before doing so, he had to perform various tasks for the next stage of the journey such as switching on the payment system in the bus and checking the tyres to make sure they were in good order.[123]

127 I find that Chua failed to prove that he did not have an opportunity to have a meal during the aggregate of his Break Times. Chua's assertion that his actual Break Times were shorter than what was allocated or reflected in the Time Cards was not supported by any objective or independent evidence. He did not particularise any of the occasions on which this occurred, although he claimed to have raised this alleged inadequacy to SBS on many occasions.[124]

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122 Chua's AEIC at [12]–[14]; 23/3/22 NE 29–30, 47–48, 90–93; 25/3/22 NE 21.

123 23/3/22 NE 28, 90, 93–95; 24/3/22 NE 132–138, 144; 25/3/22 NE 59–65.

124 23/3/22 NE 81–82.

128 I prefer SBS's witnesses' testimony that the Break Times stated in the Time Cards were reflective of the actual Break Times Chua enjoyed and that Chua had the opportunity to have a meal during his allocated "meal" times. Cheng and Foong attested that the timings reflected in a Time Card pertaining to when a bus is to leave or arrive at a bus terminal factored in the time required for the various activities such as embarkation and disembarkation of passengers and the ancillary duties that a bus captain had to perform at the terminal. Cheng also attested that the timings for the bus routes took into account known traffic conditions which SBS monitors. Foong further explained that the timings in a Time Cards for a bus to be driven from one location to another (as stated in the Time Card) were computed based on historical driving records of bus captains on the service or route, and which could vary on different days because of the traffic conditions. He also stated that the Break Times stated in a Time Card were the actual rest times which a bus captain enjoyed.[125]

129 Foong further attested that the bus captains could obtain their food in priority at staff canteens at a bus interchange which were located within less than a minute's walk from where bus captains parked their respective buses or, where there was no staff canteen, from a food outlet in close proximity to the bus interchange. In the latter case, the time taken for bus captains to procure their food is factored into their allocated meal time. Foong testified that if the time needed to procure food from an external source increased for some other reasons (*eg*, the food centre nearest to a particular bus terminal was undergoing renovation), SBS would increase the meal time allocated to the bus captains who were to consume their meals at that bus terminal.[126]

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125 24/3/22 NE 132–134, 137, 141; 25/3/22 NE 55–56, 59–60, 65–66.

126 25/3/22 NE 60–63.

130 Undoubtedly, Cheng and Foong agreed that a bus might sometimes arrive at a destination later than the allocated time in the Time Card because of traffic conditions or some unforeseen circumstance.[127] In any event, on Chua's own case, he had "[ten] to 15 minutes" to consume his meal even after "factor[ing] everything in".[128] Thus, Chua has failed to show what damage he suffered even if there were occasions on which he had a shorter break or meal time (let alone which occasions these were). It suffices to add that SBS did in any event include Chua's Break Times into the number of Chua's work hours and for which he was paid (see [3], [66]–[67] above), although s 2(1) states that "hours of work" excludes "any intervals allowed for rest and meals".

131 In the round, Chua's claim in relation to being given insufficient Break Times or an opportunity to have a meal is not made out.

Overtime of more than 72 hours per month

132 Finally, I turn to Chua's claim that SBS breached s 38(5) by requiring him to work more than 72 OT hours in a month, which SBS denied.

133 It should be noted that Chua had pleaded and attested the breach of s 38(5) for only January 2018 to April 2019, and he did not give particulars of his claim for the period in 2017 or from May 2019 to February 2020 (when he ceased to work for SBS).[129] Even in his pleaded claim (and AEIC), Chua accepted that he did not work more than 72 OT hours in July, August, October and November 2018 and April 2019. As for September 2018, Chua pleaded that he worked 67 OT hours, whilst the table in his AEIC showed this to be 77 OT

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127 24/3/22 NE 132–133; 25/3/22 NE 60.

128 24/3/22 NE 144; 25/3/22 NE 21.

129 SOC at [7(b)(xii)]; Chua's AEIC at [24].

hours. The inconsistency in the two figures appears to have been taken from Koh's calculations in the Calculation Sheet for September 2018 in which the figure is reflected 67 OT hours (as computed by Koh) but which she then tabulated into a separate table (reflecting Chua's OT hours from January 2018 to April 2019) as 77 hours for that month ("Koh's Table").[130] Be that as it may, I will thus deal with whether SBS had caused Chua to work more than 72 OT hours for the months of January to June, September and December 2018, and January to March 2019 ("11 Months").

134 For the 11 Months, Chua relied on information that Koh had prepared, namely the Calculation Sheets, Koh's Table and a typewritten table generated by Koh ("Record of OT Hours").[131] I find Chua's alleged OT hours, which he pleaded and attested to based on Koh's computation, to be unreliable. The number of OT hours reflected in the Calculation Sheets, Koh's Table and the Record of OT Hours were misleading *and inflated*. It was not disputed that Koh did not exclude Chua's Break Times in her calculations, and Chua did not provide the Break Times in the Calculation Sheets for Koh to compute the total hours that he actually worked. Indeed, the February 2019 Time Cards showed that Chua was allocated between about 67 to 109 minutes per day of Break Times and totalling nearly 37 hours of Break Times for that month. This averaged about 85 minutes of Break Times per day that he worked.

135 Having perused the BCALs for January 2018 to April 2019 (and which Lee had also set out Chua's OT hours based on the BCALs[132]) and considering the Break Times allocated per work day, the evidence shows that Chua did not

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130 Chua's AEIC (Exhibit CQM-1 at pp 27 and 59–60).

131 24/3/22 NE 5, 21–22; Chua's AEIC (Exhibit CQM-1 at pp 27–82); PCS at [86].

132 DB 277–307; Lee's AEIC at [102].

work for more than 72 OT hours in any of the 11 Months. In this regard, Foong had also attested that SBS ensured that no bus captain was scheduled to work more than 72 hours of OT a month through a system of internal checks. For instance, any attempt by a staff to change a bus captain's schedule which has the effect of bringing the rostered total OT hours above 72 hours would cause the SCS to issue a notification to inform the staff as such. Additionally, SBS would generate a monthly "Overtime Report" and review the report to ensure that no bus captain was rostered to work more than 72 OT hours in a month. I accept Foong's and Lee's testimony that, based on a review of Chua's roster, SBS did not in any month roster him to work more than 72 OT hours.[133]

136 As such, Chua's claim that SBS had breached s 38(5) is not made out.

Conclusion

137 In conclusion, I dismiss all of Chua's claims.

138 I will hear parties on costs.

Audrey Lim
Judge of the High Court

Lim Tean (Carson Law Chambers) for the plaintiff;
Davinder Singh SC, Jaikanth Shankar, Hanspreet Singh Sachdev, Stella Ng Yu Xin and Huang Wanting (Davinder Singh Chambers LLC) for the defendant.

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133 Foong's AEIC at [50]–[53]; Lee's AEIC at [100].