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DISTRICT JUDGE
SIA AIK KOR
9 MARCH 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 82

District Court Originating Claim No. 870 of 2023

Between

Zeus Matisse

... Claimant

And

ESA Security Pte. Ltd.

... Defendant

JUDGMENT

[Employment Law — Contract of service — Whether contract of service or contract for services]

[Employment Law — Pay — Shift workers]

[Employment Law — Holidays]
[Employment Law — Rest days — Hours of work]
[Employment Law — Benefits — Medical bills]
[Employment Law — Leave — Annual leave]
[Employment Law — Contract of service — Termination with notice —
Whether termination was wrongful]
[Mistake — Mistake of law — Whether CPF contributions were made under
mistake of law]

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Zeus Matisse
v
ESA Security Pte. Ltd.

[2026] SGDC 82

District Court Originating Claim No. 870 of 2023
District Judge Sia Aik Kor
2 - 3 June 2025, 25 - 26 August 2025, 9 February 2026

9 March 2026

Judgment reserved.

District Judge Sia Aik Kor:

Introduction

1 In this originating claim, Zeus Matisse (the “Claimant”) claimed against ESA Security Pte. Ltd. (the “Defendant”) for his unpaid wages and other statutory entitlements under the Employment Act 1968 (“Employment Act”), the employer’s CPF contributions on the same and general damages for wrongful dismissal. In particular, the Claimant claimed the following:

- (a) overtime pay from June 2017 to January 2023, including public holidays amounting to \$69,140.88 comprising \$64,091.39 for the overtime deficit and \$5,049.49 for the public holiday deficit;
- (b) rest day pay from April 2019 to January 2023 amounting to \$24,674.07;

- (c) pay increase deficit in payment for the period January to November 2022 amounting to \$3,150;
- (d) medical bills incurred for treatment received for the injuries sustained in the course of employment amounting to \$492.39;
- (e) annual leave payment amounting to \$4,097.85;
- (f) employer's CPF contribution on the sums claimed above amounting to \$8,657.90; and
- (g) damages for wrongful dismissal.

2 The Defendant's defence is that the Claimant was engaged as an *ad hoc* security officer pursuant to a contract for service (as opposed to a contract of service) and was therefore not entitled to the protections and statutory benefits afforded under the Employment Act. The Defendant further counterclaimed against the Claimant for

- (a) the sum of \$40,666 being the purported payments of employee's CPF contributions on the basis that it had "mistakenly paid for the Claimant's employee's CPF contributions for the period of July 2017 to February 2023"; and
- (b) the sum of \$5,353.64 being the payment made by the Defendant to the Claimant which the Defendant claims it paid "in accordance with MOM's suggestion" as a goodwill payment in the hope that the Claimant would stop making frivolous claims against the Defendant.

The Claimant's case

3 The Claimant claimed that he was appointed by the Defendant as a security officer under the designation of a night shift security supervisor pursuant to a written contract of employment. He claimed that the contract was signed on a date after he had commenced work on 25 June 2017 but despite his repeated requests for a copy of the contract, the Defendant has not provided him with a copy of the contract.

4 The Claimant claimed that during his employment from 25 June 2017 to 28 February 2023, he only worked at the Tagore 23 Warehouse located at Tagore Lane ("Tagore Site").

5 The Claimant claimed that he was not provided with his pay slips by the Defendant regularly. He claimed that when he asked for his pay slips, he was told that Nick Chan ("Nick") was busy or that the Defendant did not need to issue him with pay slips as he was paid on a daily basis. According to the pay slips in his possession, his basic monthly wage was \$1,585 which increased to \$1,633 in January 2022.

6 Employees of the Defendant worked on a shift basis. The day shift at the Tagore Site was from 7 a.m. to 7 p.m. while the night shift was from 7 p.m. to 7 a.m. The Claimant was paid after every shift he worked as follows:

- (a) From June to December 2017, he was paid \$70 after each shift if the Tagore Site was manned by 2 security officers, including the Claimant. He was paid an additional \$5 per shift if he manned the site alone.
- (b) From January 2018 to November 2022, the Claimant was paid \$75 per shift for manning the site with another security officer.

For certain dates in 2018, February, March, May, July, August and September 2019, he was paid an additional \$35 per shift if he manned the site alone.

- (c) From 16 April 2020 to November 2022, he was paid \$75 per shift. He did not receive additional payment even when he manned the site alone.
- (d) From December 2022, the Claimant was paid \$85 per shift.

Overtime Pay

7 In respect of overtime pay, the Claimant claimed that it was the practice of the Defendant during the period of employment that the Defendant would pay overtime at the rate of 1.5 times the hourly basic rate of pay. On 16 April 2020, the Claimant was informed that he would have to guard the Tagore Site by himself which state of affairs persisted to the end of January 2023. The Claimant therefore claimed wages for one hour per day as he had to forego his dinner breaks and patrol the premises as well as attend to his other related work during such breaks. The total overtime deficit amounts to \$64,091.39.

Holiday Pay

8 In addition, the Claimant claimed that for each public holiday that the Claimant worked from June 2017 to November 2022, the Claimant only received an extra \$30 per day over and beyond his normal pay. For the period of December 2022 to January 2023, the Claimant received an extra \$50 per day for each public holiday he worked. The total of the shortfall in his wages per day amounted to \$5,049.49.

Rest Day Pay

9 From April 2019 to January 2023, the Claimant consistently worked beyond the 22 days a month and also double shifts on a single day including on days which were supposed to be his rest days. Hence, the Claimant claimed the amount of \$24,674.07 as the deficit in payment.

Pay increase

10 In January 2022, the Claimant's basic pay increased from \$1,585 to \$1,633 in 2022. However, he was only paid his basic wage of \$75 per day instead of \$85 per day. The deficit of \$10 per day he would have been entitled to from January 2022 to the end of November 2022 (inclusive) amounted to \$3,150.

Medical Bills

11 On 26 April 2021, the Claimant slipped and fell inside the attached toilet in the fire command centre of the Tagore Site guardhouse. On 30 September 2022, the Claimant slipped and fell at the Tagore Site while on patrol duty. The medical bills incurred for the treatment of his injury sustained in the course of his employment amounted to \$492.39.

Annual Leave

12 The Claimant also claimed the sum of \$4,097.85 as payment for the paid leave that he was told he was not entitled to, which was a breach of section 88A(8) of the Employment Act by the Defendant.

Wrongful Dismissal

13 The Claimant claimed that he was wrongfully dismissed when he sought payment of his just dues as itemised in his Statement of Claim. The Defendant had wanted him to sign a new contract with increased pay, provided that he forego his backdated claims against the Defendant. On 9 December 2022, Lena of the Defendant telephoned the Claimant and threatened him that if he did not sign the new agreement, he would have to look for another job within the next three days. By way of an email dated 4 January 2023, the Claimant requested for time till March 2023 to make up his mind whether to sign the new contract. By an email dated 5 January 2023, Christopher Shaun (“Christopher”), a director of the Defendant stated that he required a guarantee that by giving the Claimant time to consider till March 2023, the Defendant would not be penalised for the back-dated payments. On 1 February 2023, the Defendant sent a notice of termination to the Claimant. In the Notice, it was stated that upon payment of the final month’s salary, the Claimant would not be entitled to any further compensation or claim whether against the Defendant or the Defendant’s clients for any reason whatsoever. The reason that the Claimant was being terminated because the Tagore Site was not renewed was a false pretext and the Claimant was not given an opportunity to continue with his work at another site.

14 On 5 March 2023, the Claimant received a sum of \$5,353.64 from the Defendant but no explanation for or breakdown of the sum was given to the Claimant.

The Defence

15 The Defence is that the Claimant was engaged for his services as an *ad hoc* security officer on an as required basis as he was not able to work regularly and only wanted to work when he was able to do so. This was because the

Claimant was already employed elsewhere and had another job at the material time.

16 The Defendant claimed that no written contract was ever entered into between the Claimant and the Defendant. The Claimant had steadfastly refused to enter into a written agreement and the parties proceeded on the basis of an oral agreement in which the Claimant would be engaged by the Defendant on an as-required basis at rates to be agreed for each engagement.

17 The Defendant averred that the Claimant was always deployed to work at the Tagore Site as he was only prepared to accept assignments to work at this worksite. When the Claimant asked for his pay slip in September 2021, he was informed by Nick that in accordance with the Defendant's usual company practices, the Defendant does not provide pay slips to *ad hoc* security officers. The Defendant took the position that the Claimant was engaged as an *ad hoc* security officer and did not have a basic monthly wage. The Claimant was paid daily and only for the shifts he had accepted and was thereafter deployed to.

18 The Defendant denied that the Claimant was paid an additional \$5 per shift if he manned the site alone. The rate agreed between the Claimant and the Defendant for the engagements was a flat fee of \$75 per shift and \$85 from December 2022. The Claimant did not raise any issues with the Defendant as regards the fee paid to him.

19 In the Opening Statement, the Defendant took the position that the Claimant was paid an additional fee of \$30 for working on a public holiday, which additional fee was increased to \$50 in December 2022. In the event that the Claimant covered the shift of a second guard at the Tagore Site, he was paid an additional \$35 for each shift. This was no longer paid after April 2020 after

the site requirements were adjusted to only one guard per shift. From sometime in or around June 2019, the Claimant negotiated an additional fee of \$100 for each month that he worked more than 26 shifts. This was increased to \$125 in November 2019, \$150 in April 2020 and finally to \$160 in January 2021¹.

Overtime Pay & Rest Day Pay

20 The Defendant denied that the Claimant was entitled to overtime pay, pay for working during dinner breaks and working on public holidays or rest day pay as he was engaged pursuant to a contract for service and was paid in accordance with the agreed terms for each engagement. The Defendant claimed that the Claimant was entitled to take dinner breaks and did not instruct or request that the Claimant forgo such breaks. The Claimant was able to decide when he would take his breaks.

Pay increase

21 The Defendant claimed that the Claimant was not entitled to a pay increase as he was paid according to the terms agreed for each engagement. He had attempted to negotiate a variation in his fee but was told by Nick that the rate that the Defendant was prepared to offer for his services at the Tagore Site was \$75 and that if he wanted a higher fee for his services, he could consider another site. The Claimant declined to work at any other site and agreed to the continued rate of \$75 for his services.

¹ Opening Statement at [9]

Medical Bills

22 In respect of medical bills, the Defendant averred that the Claimant did not report any injury allegedly sustained during the course of his engagement and did not make any claims or present any medical bills at any time.

Annual Leave

23 The Defendant disputed the Claimant’s calculations which should be based on the respective year’s progressive wage model (“PWM”). The Defendant claimed that the Claimant had acted for all intents and purposes as a person contracted by the Defendant to provide security services. The Claimant determined where and when he would work, and negotiated his fees with the Defendant. The Claimant was not entitled to annual leave or statutory benefits and did not ask the Defendant about any of these benefits until the commencement of the action.

Wrongful Dismissal

24 The Defendant claimed that the Claimant was never an employee and was not wrongfully dismissed. The Defendant claimed that it had ceased engagement of the Claimant as the client for the Tagore Site had terminated its contract for provision of security services. Since the Claimant had informed the Defendant that he would not accept any assignments to work at any other work site, his provision of services as an *ad hoc* security officer was no longer required by the Defendant and was accordingly terminated. The Defendant averred that it had undergone a change in beneficial ownership on 1 October 2022 and had discovered that there was no agreement entered into between the parties. With a view to engage and employ the Claimant, the Defendant had offered the Claimant an employment contract as a full-time employee.

25 The Defendant denied threatening the Claimant with termination if he did not sign the new contract. The Defendant's representatives had on many occasions asked the Claimant to become a full-time employee of the Defendant instead of an *ad hoc* officer or the Defendant would no longer engage his services. The Claimant had consistently declined as he intended to have control over the days he would work and the terms of his engagement.

26 In respect of the termination notice, the Defendant's position is that the statement that the Claimant would not be entitled to any further compensation or claim was in relation to the Defendant's engagement of the Claimant's provision of services as an *ad hoc* security officer.

27 After the Claimant received the termination notice, he failed to show up for the assignments he had accepted and was deployed to in the month of February 2023. The Claimant was nevertheless paid the fees due to him for the *ad hoc* services he was expected to render in the month of February 2023 in spite of this.

The Defendant's Counterclaim

28 The Defendant had paid the sum of \$5,353.64 to the Claimant in accordance with MOM's suggestion for the Defendant to pay the Claimant for outstanding claims. The Defendant claimed that it had made the payment by way of goodwill in the belief that it would satisfy the Claimant so that he would not continue with his unfounded claims against the Defendant.

29 As the Claimant was an *ad hoc* service provider providing services to the Defendant, the Defendant claimed that they had mistakenly paid for the Claimant's employee CPF contributions for the period of July 2017 to February

2023 amounting to \$40,666 and is entitled to be repaid the same. The Defendant also seeks the return of the \$5,353.64 which was paid out of goodwill.

The Claimant's Defence to the Counterclaim

30 In respect of the counterclaim, the Claimant's position was that if it is found that any amount had been paid in error to the Claimant's CPF, the limitation period for the Defendant's claim has passed pursuant to section 71(4) of the Central Provident Fund Act 1953 read with section 5(1) of the Central Provident Fund (Refunds) Regulations 2019. Any claim that the Defendant may have should be made by way of an application to the CPF and not against the Claimant.

Issues

31 This case turned on the pivotal issue of whether the Claimant was an employee of the Defendant and therefore entitled to the various statutory benefits under the Employment Act or whether he was merely a provider of services to the Defendant in which case his claims would fail in their entirety. If he was an employee, further issues would arise as to the quantum of the various statutory benefits that he is entitled to; whether he was wrongfully dismissed and if so, whether he would be entitled to damages; as well as whether the Defendant's counterclaim can still stand.

Was the Claimant an employee

Statutory Definitions and Legal Principles

32 Under the Employment Act, "employee" means a person who has entered into or works under a contract of service with an employer. A "contract of service" means any agreement, whether written or oral, express or implied,

whereby one person agrees to employ another as an employee and that other agrees to serve his or her employer as an employee.

33 Under the Private Security Industry Act 2007 (“PSIA”), “employ” does not include subcontract or arrange by contract, franchise or otherwise with another person for the purpose of that other person employing or providing persons. In other words, while the PSIA recognizes that subcontracting arrangements may be present in the industry, they are not included when the PSIA refers to the concept of employment; the subcontractor remains the one employing the person.

34 In determining whether a person is an employee of another, much depends on the circumstances of the case. No single factor is determinative and the Court considers multiple non-exhaustive factors in a holistic analysis of the specific industry and working conditions at hand.

35 In *National University Hospital (Singapore) Pte Ltd v Cicada Cube Pte Ltd* [2017] SGHC 53, the Court listed the following non-exhaustive factors to be considered in its analysis: (a) whether the work of the alleged employee was done was an integral part of the business of the alleged employer; (b) whether the alleged employee was paid a regular salary or commission; (c) whether there were stipulations as to working hours; (d) whether the alleged employer contributed to the Central Provident Fund account of the alleged employee; (e) whether the alleged employee was entitled to overtime pay, leave, holidays and medical leave; and (f) whether the alleged employer had the power to dismiss the alleged employee from his service.

36 In *Public Prosecutor v Jurong Country Club & anor appeal* [2019] 5 SLR 554, the Court held that as gym instructor, Yusoff was an independent

contractor, taking into account the following factors: (a) Yusoff's contracts were renegotiated on a nearly yearly basis; (b) Yusoff's remuneration package was weighted towards commission; (c) Yusoff was not on the list of employees used for budgeting purposes and was not invited to staff functions such as their dinner and dance; (d) Yusoff did not report to the HR department, was not issued the HR manual, was not subject to the employment performance appraisal framework and had no key performance indicators to meet; (e) Yusoff was not eligible for annual increments and any increment to Yusoff's pay resulted from the renegotiation of his contract; (f) unlike employees who could access all areas and had to sign personal data protection forms, Yusoff was given access only to the gym and was not required to sign personal data protection forms; (g) while he was entitled to CPF contributions, medical benefits, hospitalization leave and medical leave as an employee before 1998, these were removed from his contracts in 1998; (h) the contractual entitlement to insurance was removed in his 2003 contract; (i) his contract in 1998 allowed him to conduct public programmes in the gym after his stipulated working hours, in contrast to the general position that employees were not allowed to engage in personal work at the employer's premises without permission from the management and doing so would result in dismissal.

37 In the present case, various factors were looked at in determining whether the Claimant was an employee.

Whether there was a written agreement

38 While the Claimant claimed that there was a written agreement, neither he nor the Defendant were able to produce one.

39 The Claimant's evidence on when he signed the written agreement was equivocal. While his pleaded position is that he signed the contract on a date

after he commenced work at the Tagore Site on 25 June 2017², in his affidavit of evidence-in-chief (“AEIC”), he claimed that it was signed on the first day of work when Nick brought him a copy of the same³. While the Claimant claimed that there was a written contract, he was unable to state what the terms of the contract were⁴ and whether the written contract dealt with the issue of advances, termination, loans or location of work⁵. In particular, he was unable to state the wage stated in his employment contract⁶.

40 While the Defendant’s position is that there was no written agreement, when the Claimant asked Nick on 22 September 2021 for a copy of the employment contract which he had previously signed with the Defendant, Nick did not immediately dismiss the request by stating that there were none. While he said that he did not think there was one, he alluded to the fact that there may have been a very old copy before the Claimant quit halfway to become manager a very long time ago⁷. On the stand, the position taken by Lena was that they tried to look for the Defendant’s contract but were simply unable to locate it⁸.

41 It is also not disputed that the Claimant had rejected changes in the way he was paid on various occasions. On 24 June 2019, Nick had offered to pay the Claimant a monthly basic pay of \$1,360 with a weekly advance of \$300⁹.

² Statement of Claim (Amendment No. 1) at [1]

³ Claimant’s AEIC at [9] and [10]

⁴ Notes of Evidence (“NE”), 2 June 2025, 159/8-12, 168/27-30, NE, 3 June 2025, 79/9-16

⁵ NE, 2 June 2025, 167/16 - 168/14

⁶ NE, 2 June 2025, 162/23-29

⁷ 2ABD 126, messages from Nick at 22/09/2021, 12:54

⁸ NE, 26 August 2025, 9/1-7

⁹ Nick’s AEIC at [90(a)]

However, this was rejected by the Claimant. On 12 February 2020¹⁰, the Claimant told Nick that he had spoken to Edwin Seah (“Edwin”) regarding a full-time supervisor role for the night shift at the Tagore Site. Nick told him that they did not need a supervisor for the night shift at the Tagore Site and that his pay was already the take home rate of a senior security officer. Nick then offered the Claimant a change to a monthly arrangement. In response to the Claimant’s request for an increase to \$80 at the Tagore Site, Nick advised the Claimant that he would have to move out of Tagore as a roaming relief to either Tampines Grande or Palais. On 22 September 2021, Nick offered the Claimant a conversion to a permanent senior security officer at a basic monthly pay of \$1,585¹¹. Nick told the Claimant the benefits of signing a contract to be a permanently employed officer with the Defendant, including being able to claim for medical leave and having leave and that he would have zero benefits as a relief. However, the Claimant preferred to retain his usual \$75 daily pay and an additional \$160 when he did 26 shifts¹². A similar conversation took place on 21 December 2021 when the Claimant asked Nick for some bonus and Nick asked him to convert to a permanent officer instead of a daily paid officer¹³. The Claimant agreed that he rejected the permanent contract as he wanted the flexibility of the daily payments and advances which Nick provided to him¹⁴. It is clear from these conversations that the understanding between the parties was that the Claimant was a relief worker paid on a daily basis and that the Claimant was told that he would have no medical leave or other leave entitlements and no

¹⁰ Nick’s AEIC at [90(d)]

¹¹ Nick’s AEIC at [90(e)]

¹² 2ABD 127, NE, 2 June 2025, 151/24 – 153/13

¹³ Nick’s AEIC at [90(f)]

¹⁴ NE, 2 June 2025, 154/22-25

bonus. However, just because he is not a permanent officer does not mean that he is providing services to the Defendant on a contract for services.

42 Given that the written contract was not produced and the Claimant was unable to state the terms of the written contract, there is no evidence of a written contract that grounds his monetary entitlement. While I can accept that one may not always recall the terms and conditions of one's employment contract, one would definitely remember the wage that one is entitled to. Given that the Claimant was cash-strapped and wanted to be paid on a daily basis, he would definitely have remembered the amount that he was entitled to pursuant to the written contract, if there was one, so as to ensure that he was duly paid for his labour. The fact that he could not do suggested that the agreement between the parties was that he would be paid the initial \$70 or \$75 for every shift he performed, together with both employer and employee CPF contributions to be made by the Defendant. This was supported by the Claimant's bank statements where there were months in which the payments received fell far short of \$1,585 and the Claimant's CPF Statement of Account for 2017¹⁵ where the Defendant's contributions started in July 2017 and varied from month to month. This suggests that the Claimant was not working full-time when he commenced work with the Defendant and there was no monthly basic pay that the Claimant was entitled to.

43 However, the lack of a written contract, the fact that he was not working full-time and the fact that there was no monthly basic pay were not determinative or indicative as to whether this was a contract of service or contract for services. Both contracts for services and employment contracts can be oral in nature. Full-time workers can be contractors and part-time workers

¹⁵ 2ABD 8

can be employees. Daily rated workers can also be employees. Based on a daily pay of \$70 or \$75, the monthly pay of the Claimant can go up to \$1,540 or \$1,650 respectively if he works for 22 days. This was higher than the PWM basic wage floor for security officers, senior security officers and security supervisors in 2017 which was pegged at \$1,100, \$1,300 and \$1,500 respectively¹⁶. There was therefore no indication that a \$70 or \$75 per shift pay did not accord with the wages stipulated under the PWM.

Nature of the Claimant's work

44 When the Claimant first worked for the Defendant, he was also working full-time for another company. This is clear from the CPF statements and bank statements. However, it is clear from Nick's AEIC¹⁷ that from around sometime in June 2019, the Claimant was working regularly for the Defendant. Based on the WhatsApp messages between the Claimant and Nick, Nick had offered the Claimant an additional \$100 if the Claimant was able to work for 26 days in a month on 24 June 2019¹⁸. It is clear from the WhatsApp messages exchanged between the two that for the months of July, August and September 2019, Nick had paid the Claimant the additional \$100¹⁹. The hours put in by the Claimant were therefore similar to full-time employees of the Defendant who were contractually required to work 6 days per week or 26 to 27 days per month²⁰.

¹⁶ DBD 12

¹⁷ [31]

¹⁸ 2ABD 92 – [24/06/2019, 17:29]

¹⁹ 2ABD 94 – [05/08/2019, 17:08], [05/08/2019, 22:28], 2ABD 96 - [31/08/2019,11:43], [01/09/2019, 14:49], 2ABD 98 - [01/10/2019, 09:08], [02/10/2019, 08:58]

²⁰ Nick's AEIC at [30]

45 The Defendant has chosen to describe the Claimant's work arrangement as *ad hoc* and argued that \$75 daily with an additional sum upon completion of 26 days of work in a month was an arrangement for an *ad hoc* or relief officer. In this regard, I note that Nick did not describe the Claimant as an *ad hoc* worker in the WhatsApp messages with the Claimant but a relief officer and who was nevertheless entitled to overtime pay²¹. While the Claimant may have worked for the Defendant on an *ad hoc* basis when he commenced work for the Defendant in July 2017, it was clear that from around sometime in June 2019, the Claimant's work became as regular as a permanent full-time employee of the Defendant. It would therefore be odd to describe his work arrangements as *ad hoc* when, in reality, he was putting in regular hours with the Defendant. Hence, the Claimant may have been a daily rated worker who worked sporadically when he started work but from around June 2019, his work arrangements acquired a degree of permanency which may be better described as a regular relief worker who is only deployed to the Tagore Site. That said, nothing turns on the label that a worker is a relief worker. A relief worker can still be an employee.

Industry-specific factors

46 The Defendant made the point that it was common for a security officer to undertake full time employment with one security agency, while also undertaking *ad hoc* work with a second security agency²², subject to the requirement that a licensed security agency must inform the Police Licensing and Regulatory Department of the proposed employment or termination of employment of the security officer. Under section 16 of the PSIA, a person

²¹ 2ABD 127

²² Nick's AEIC at [8]

(whether or not a licensed security agency) who employs or is about to employ as a security officer any person who is a licensed security officer must (a) before employing the licensed security officer; and (b) not later than 14 days after terminating the employment of the licensed security officer, inform the licensing officer in the prescribed form and manner of the proposed employment or termination of employment, as the case may be.

47 Bearing in mind that the definition of the word “employ” in the PSIA merely excluded subcontracting arrangements, I do not think that reference to a person undertaking *ad hoc* work for a second security agency would necessarily render such work to be work performed under a contract for services. A security officer who works for two security agencies simultaneously is also not prevented from being regarded as the employee of both security agencies. Much would depend on the facts.

48 The Defendant argued that it was not uncommon that security officers who are engaged on an *ad hoc* basis will not have written contracts as they are engaged individually for each job depending on whether or not they are willing to accept the offered terms²³. As set out earlier, the fact that there appears to be no written contract is not indicative as to whether the nature of the agreement is one for services or one of services.

49 The Defendant also made the point that the security industry has been subject to a PWM from September 2016 where full-time officers’ wages are gradually increased incrementally on an annual basis from 1 January 2018²⁴. At \$75 a day, if the Claimant were to work 26 days in a month, which according to

²³ Nick’s AEIC at [9]

²⁴ DBD 4 - 29

Nick would be the minimum requirement for an employee of the Defendant²⁵, he would be entitled to \$1,950. With an additional \$100, he would be entitled to \$2,050.

50 The PWM basic wage floor of security officers (“SO”), senior security officers (“SSO”) and security supervisors (“SS”) are as follows:

	2018	2019	2020	2021	2022
SO	\$1,100	\$1,175	\$1,250	\$1,400	\$1,442
SSO	\$1,300	\$1,360	\$1,420	\$1,585	\$1,633
SS	\$1,500	\$1,560	\$1,620	\$1,785	\$1,839

51 Compared to what the Claimant was receiving, it is not clear how the Claimant’s pay would be contrary to the PWM framework or inconsistent with a contract of service. In addition, it would appear that the payment of an incentive of \$100 was not unique to the Claimant given Nick’s WhatsApp message²⁶ that \$100 was the rate applicable to “almost all of esa”, the Defendant. Even if the Claimant’s pay does not conform to the PWM framework, this is not determinative of the question of whether the Claimant is an employee. A security agency which fails to pay an employee in accordance with the PWM framework may face penalties or other regulatory actions for non-compliance but the breach does not change the status of the employee.

²⁵ Nick’s AEIC at [30]

²⁶ 2ABD 105 – [01/04/2020, 10:06]

How the Claimant was paid

52 It was clear from the Claimant's bank statements that he was not paid on a monthly basis, unlike the representation in the payslips. However, the fact that he is paid on a daily basis does not mean that he is an independent contractor.

53 Based on the WhatsApp messages, the Claimant would be entitled to \$100 more a month, if he worked for 26 or more night shifts in a month²⁷. The Claimant agreed that he was paid \$75 for a full 12-hour shift and he was paid for each shift²⁸. He would be paid an additional \$30 if he worked on a public holiday²⁹. For instance, the Claimant was paid holiday pay of \$30 on 9 August 2019³⁰. Although he denied that he would receive an additional \$35 per shift if he covered the shift of a second guard³¹, this appeared to be the case from the WhatsApp messages³².

54 It was not disputed that the Claimant was not issued payslips regularly before 2021³³. However, the Claimant was issued payslips from July 2021 to February 2023, except that payslips for September 2021 and December 2021 were not before the Court³⁴.

²⁷ 2ABD 92, messages dated 24/06/2019, 17:29 – 17:37; 2ABD 98, messages dated 2/10/2019; 08:52 -08:59

²⁸ NE, 2 June 2025, 61/9-21

²⁹ NE, 2 June 2025, 63/10-13

³⁰ 2ABD 94, messages dated 10/08/2019, 08:42 -10:29

³¹ NE, 2 June 2025, 63/17-19

³² 2ABD 100, message dated 06/11/2019, 09:05

³³ Claimant's AEIC at [18(b)] and Lena's AEIC at [22]

³⁴ Lena's AEIC at Tab 8

55 Based on the WhatsApp messages exchanged on 21 March 2020³⁵, the Claimant asked for payslips for November 2019 to January 2020 which Nick appeared to say have been given to the Claimant monthly and which Nick asked the Claimant to keep in the future. Sometime on 20 and 21 September 2021³⁶, the Claimant had also asked Nick for his July and August 2021 payslips in order to process his claim for his absence from work from 2 to 23 August 2021 due to being infected with Covid. On 25 October 2021, the Claimant had also requested Vijay to give him his pay slip for September 2021, which he had been receiving for years and that these were dropped off at the Tagore Site at the beginning of every month³⁷. The Claimant conceded that he asked for payslips when he needed it³⁸. It is not disputed that the pay slip does not reflect his daily pay of \$75 per shift but a basic monthly pay of \$1,585 for the months of July, August, November and December 2021³⁹. The extra pay for public holiday is reflected in the pay slip of July 2021, as well as the overtime hours, rate per hour and overtime paid. The attendance allowance of \$160 was also reflected in the pay slips commencing October 2021. In fact, when he received his pay slips for July and August 2021, the Claimant questioned Nick as to why his August payslip reflected him as still earning pay and receiving CPF when he did not work for the whole month of August 2021⁴⁰.

56 Hence, I accept that the pay slips which reflect a monthly salary do not reflect the reality that the Claimant was in fact paid on a daily basis at the rate

³⁵ 2ABD 104 - [21/03/2020, 09:18], [21/03/20, 10:15]

³⁶ 2ABD 125

³⁷ 2ABD 128 – [25/10/2021, 11:05]

³⁸ NE, 2 June 2025, 86/20-22

³⁹ 1BA 82-85

⁴⁰ 2ABD 125

of \$75 for each shift that he completed. The Claimant was not able to correlate his daily pay to the amount reflected in the pay slips⁴¹. According to Nick, the numbers on the payslip were calculated by Edwin, the previous owner of the Defendant, using \$75 a day and the days the Claimant worked by applying a complex formula. Even after the Defendant underwent a change of ownership on 1 October 2022, Lena continued to issue payslips to the Claimant.

57 The Defendant submits that the irregular provision of pay slips was inconsistent with employment and the fact that the payslips do not reflect reality and were inaccurate indicate that they were issued for occasional administrative convenience rather than employment recognition supporting the Defendant's case that the Claimant was an *ad hoc* worker under a contract for services. In my view, the fact that the Defendant was willing to issue monthly pay slips for the Claimant, occasionally at first but regularly from July 2021, indicates that it treated the Claimant as an employee. Although the pay slips did not reflect the reality that the Claimant was paid daily on a per shift basis, the net pay varied from month to month depending on the overtime, reflected the attendance allowance and CPF contributions from both the employer and employee that the Defendant made on the Claimant's behalf and did not differ substantially from what the Claimant was in fact paid. Hence, the pay slips were nevertheless a representation that the Claimant was an employee of the Defendant.

58 The Claimant was able to ask for and receive advances⁴² but this was a neutral factor, given that advance payments would be applicable in both contracts of service and contracts for services.

⁴¹ NE, 2 June 2025, 84/28, 86/12-14

⁴² 2ABD 89, message dated 15/04/2019, 18:33; 2ABD 91, message dated 10/06/2019, 19:57, 2ABD 113, message dated 10/12/2020, 10:53

Payment of CPF contributions

59 It is not disputed that the Defendant paid into the Claimant’s CPF account both the employer and employee contributions from July 2017 to February 2023⁴³. Given that the Claimant was paid on a daily basis, the Defendant paid both the employer and employee CPF contributions based on the amount that the Claimant was paid in any given month. The Defendant claimed that this was done erroneously on the mistaken belief that they were required to make CPF contributions to all security officers, including part-time and relief officers⁴⁴.

60 Based on the evidence, the Defendant’s contributions to the Claimant’s CPF accounts started in July 2017, along with contributions from Ocean IFM Pte Ltd (“Ocean IFM”) and STS Security Services P/L⁴⁵. While the contributions made by STS Security Services P/L were minimal, the monthly contributions made by the Defendant in 2017 varied and were significantly smaller in quantum than the constant monthly contributions made by Ocean IFM. In 2018, the monthly contributions made by the Defendant to the Claimant’s CPF account stabilized and amounted to approximately half of that contributed by Ocean IFM⁴⁶. From 2019 to February 2022, the Defendant was the sole contributor to the Claimant’s CPF accounts⁴⁷.

61 Given that the contributions made by Ocean IFM in December 2017 and November 2018 were almost double the CPF contributions deposited in

⁴³ Nick’s AEIC at pages 83 – 89, 234 - 280

⁴⁴ Lena’s AEIC at [13]

⁴⁵ 2ABD 7-8

⁴⁶ 2ABD 13-14

⁴⁷ 2ABD 19-50

other months of the respective year, it was argued by the Defendant that such contributions indicated that a 13th month bonus was paid by Ocean IFM and that the Claimant was employed full-time by Ocean IFM. The Claimant agreed that that was the case and that the job at Ocean IFM was his day job⁴⁸.

62 While the Claimant could not have been a full-time employee of the Defendant between June 2017 and November 2018, this does not mean that he could not have been a part-time employee of the Defendant in the same period or a full-time employee of the Defendant after that. The fact that the Claimant was not working full-time for the Defendant between June 2017 and November 2018 does not negate a finding of an employment relationship, given that the Employment Act acknowledges that employees can work part-time for less than 35 hours a week. While the payment of CPF contributions is not determinative, it does indicate the Defendant's treatment of the Claimant as an employee, right from the beginning. There is no rule that a worker who is paid on a daily basis cannot be an employee for the purposes of the Employment Act. There is also no rule that a worker cannot be concurrently employed by two or more employers.

How the Claimant was deployed

63 It was not disputed that the Claimant was only deployed to the Tagore Site. This was unlike full-time employees of the Defendant who would be deployed to any site as operationally required.

64 From the WhatsApp messages between the Claimant and Nick on 24 June 2019⁴⁹, the Claimant had spoken to Nick for a raise. Nick had offered him

⁴⁸ NE, 2 June 2025, 18/28- 20/10

⁴⁹ 2ABD 92-93

to pay him on a monthly basis instead of a daily basis. This was however rejected by the Claimant who preferred to be paid on a daily basis, as it did not clash with his day job. He had asked Nick if there was a site in Ang Mo Kio where there was a job in the day shift for three to four days where he could work and go straight to the Tagore Site. Nick had offered him 3 sites: Tampines, Grande and Le Grove. However, the Claimant did not take up any of these sites⁵⁰. The Claimant agreed that he was not required by Nick to go to any of these sites and it was up to him if he could help⁵¹. The Claimant claimed that his contract required him to work as a full-time night shift supervisor at Tagore⁵². The offer to work at other sites was over and above his contract so he was able to decide not to take up these other sites when offered to him⁵³. The Claimant claimed that these relate to additional day shifts over and above his night shift at Tagore⁵⁴.

65 On 4 September 2019, the Claimant asked Nick if he could do day shifts at a day site on Tuesday, Wednesday and Thursday while continuing to do night shifts 6 days a week⁵⁵. On the stand, the Claimant agreed that he had asked Nick to work more days so that he could earn more money⁵⁶. The Claimant had also previously explored possible sites and assignments which he could take up in the day for which no CPF was paid⁵⁷.

⁵⁰ NE, 2 June 2025, 34/6-7

⁵¹ NE, 2 June 2025, 35/21-32

⁵² NE, 2 June 2025, 36/5-7

⁵³ NE, 2 June 2025, 36/26-28, 37/5-28

⁵⁴ NE, 3 June 2025, 89/11-21

⁵⁵ 2ABD 96, message dated 04/09/2019, 11:43

⁵⁶ NE, 2 June 2025, 40/21-26

⁵⁷ 2ABD 102, messages dated 3 January 2020, 15:06 – 15:15

66 I accepted that the Claimant was only deployed to the Tagore Site and was paid on a daily basis, only when he worked. Outside of his night shift duties at the Tagore Site, he remained free to decide whether to take up additional jobs in the day to earn more income. While this was unlike that of full-time employees who would be deployed to any site as operationally required, I did not think that such a work arrangement was necessarily inconsistent with an employment relationship.

67 The Claimant disputed that he could decide which days he would work⁵⁸. He claimed that Vijay who was in charge of deployment would tell them when they are supposed to work, taking into account their off day and they may be asked to cover on the days when the Defendant did not have enough manpower. He would only go to Nick for finance matters⁵⁹. When he informed Nick that he would not be working, the message was for the purpose of payment and he would already have informed Vijay of the same for the purposes of deployment.

68 Given that the Claimant was working consistently at the Tagore Site for 26 days in a month, I accepted the Claimant's evidence that when he informed Nick that he would not be working, it was for the purpose of payment and he would have already informed Vijay for the purpose of deployment. This is supported by the WhatsApp messages between the Claimant and Nick which indicated that Vijay was the one in charge of operations on site⁶⁰. The fact the Claimant was able to state in advance when he was going to work⁶¹ for which any advance could be offset was consistent with his evidence that his work was

⁵⁸ NE, 2 June 2025, 45/31- 46/18

⁵⁹ NE, 2 June 2025, 42/26 – 43/9

⁶⁰ 2ABD 127, [09/10/2021, 11:07 -11:11]

⁶¹ 2ABD 115, [28/03/2021, 14:26]

scheduled by the Defendant. The Claimant's message on 10 December 2019, 14:42 that he had already informed Vijay of his unavailability to work that evening⁶², the fact that he had to take urgent off when he had an accident on 27 January 2021⁶³ and his message on 30 August 2021 at 12:02 p.m. that he has already informed Vijay that he would be starting work on 3 September 2021 following his recovery from Covid⁶⁴ indicate that he could not just determine when he was going to perform his work and that he had to inform Vijay if he did not turn up for work. In addition, the Claimant did not have to find a replacement for the site if he was unable to work⁶⁵. The Defendant remained responsible for ensuring that the Tagore Site was adequately manned. The WhatsApp messages also indicate that when the Claimant was infected with Covid, the Defendant was the one who had to bear the expenditure for the cleaning and testing of all staff and it was the Defendant who had to submit the approval for the Claimant to return to the Tagore Site⁶⁶. In my view, these were factors which indicates a contract of service.

Nature of work arrangements

69 The work of the Claimant was done as an integral part of the business of the Defendant. There was mutuality of obligations in that the Defendant rostered the Claimant to work and the Claimant had to turn up for work and hand over his duty to the next officer⁶⁷. While the Claimant had control over how he

⁶² 2ABD 101

⁶³ 2ABD 114

⁶⁴ 2ABD 124

⁶⁵ NE, 2 June 2025, 112/3-12

⁶⁶ 2ABD 124, [30/08/2021, 12:07]

⁶⁷ 2ABD 127, [09/10/2021, 11:06]

performed his tasks such as patrolling and when he would take breaks⁶⁸, this was, in my view, a neutral factor, given that the Claimant was the only one on site and there was in essence no one to supervise his work.

70 Nevertheless, there was a chain of reporting where he would have to put up reports in the occurrence book⁶⁹ and he would generally wear the company uniform⁷⁰. There was also evidence that the Claimant had to complete clocking for his scope of work⁷¹, hand over his duties to the next officer on duty⁷² as well as account for his absence from the facility control centre during his shift⁷³.

How the Claimant saw his work

71 While the Claimant disagreed that he saw himself as an *ad hoc* and relief worker⁷⁴ on the stand, he previously took the position that he was a relief worker. On 28 August 2019⁷⁵, the Claimant referred to doing “relief” work. In the Claimant’s WhatsApp message on 10 October 2019⁷⁶, he referred to his night pay as “relief night pay”. Based on the WhatsApp messages exchanged on 12 February 2020⁷⁷, the Claimant had messaged Nick to inform him that he had spoken to Edwin regarding a full-time supervisor night shift at Tagore and asked Nick for advice as to how much he would get as supervisor. The Claimant

⁶⁸ NE, 2 June 2025, 114/25-32, 115/26-29

⁶⁹ NE, 2 June 2025, 114/15-18

⁷⁰ NE, 2 June 2025, 119/4-6, 2ABD 257

⁷¹ 2ABD 120, [07/07/2021, 14:27]

⁷² 2ABD 127, [09/10/2021, 11:06]

⁷³ 2ABD 117, [21/04/2021, 14:08 – 14:43]

⁷⁴ NE, 2 June 2025, 55/1-3

⁷⁵ 2ABD 96, message dated 28/08/2019, 11:31

⁷⁶ 2ABD 98

⁷⁷ 2ABD 103

then asked if the pay for “Tagore relief” can be increased to \$80, which Nick informed him that any increase would be attendance based and his pay would only be increased if he were to move out of Tagore as a “roaming relief”. On 22 September 2021⁷⁸, when Nick mentioned that the Claimant was a relief officer who was paid on a daily basis, the Claimant did not object.

Treatment of Claimant by Defendant

72 The Claimant was paid for attending training under the Defendant’s name. The Claimant attended training in the Defendant’s name on 22 and 23 July 2019 as well as attended training on 19 October 2022, for which he was paid⁷⁹.

73 In particular, Nick had highlighted the availability of a government grant of \$1,000 for low-income workers affected by Covid. In order for the Claimant to process his claim for the grant in respect of his absence from work due to Covid, Nick issued him a letter⁸⁰ on 28 August 2021 which states that he joined the Defendant as a Senior Security Officer (“SSO”) on 25 June 2017 and worked as a night shift SSO at 23 Tagore Lane with a basic pay of \$1,585 per month excluding overtime and allowance. Even though the letter does not use the word “employee” or “employment”, the letter was a clear representation to public agencies that the Claimant was an employee with the Defendant with a basic pay of \$1,585 and who was entitled to overtime and allowances. While the Defendant argued that the letter was issued for compassionate reasons to support the Claimant’s grant application, the fact that Nick had highlighted the grant to

⁷⁸ 2ABD 126, message dated 22/09/2021, 12:47 & 12:49

⁷⁹ 2ABD 93-94, messages dated 23/07/2019, 12:24 – 23/07/2019, 14:05, 2ABD 138, [20/10/2022, 08:32]

⁸⁰ 2ABD 372

the Claimant and had no issues with issuing the letter was nevertheless indicative that the Defendant treated the Claimant as an employee who was eligible for such grant.

74 In addition, the Defendant afforded the Claimant benefits such as the government-paid paternity leave (“GPPL”) pursuant to the Child Development Co-Savings Act 2001 (“CDCA”) which provides for paternity leave benefits for “a male employee who is the natural father of a child” and which defines “employee” similarly as the Employment Act as “any person who has entered into or works under a contract of service with an employer in Singapore”. The Defendant argued that the payment of GPPL was made on MOM’s administrative direction and out of a desire to avoid further entanglements with MOM and did not amount to an admission of the Claimant’s employment status. I did not accept this, given that the Defendant was entitled during MOM’s investigations to take the position that it is taking now that the Claimant was not an employee and should not be paid GPPL.

75 The Defendant had also referred to the Claimant as an employee in various correspondence.

76 On 5 January 2023, Christopher wrote an email to the Claimant stating the following⁸¹:

Please allow me to reiterate that the new management acknowledges your years of service with ESA and appreciates you as an employee of the company, and with that in mind we have no intention to terminate your services. That being said, we do have to be compliant with MOM rules and regulations.....

⁸¹ 2ABD 267

77 Even though Christopher only joined the Defendant in October 2022, there was nothing to indicate that the change in ownership or management of the Defendant had changed the status of the Claimant. While the correspondence happened in the course of negotiations between the Claimant and Defendant, the correspondence clearly indicated that the Defendant treated the Claimant as an employee in respect of whom the Defendant had to comply with MOM rules and regulations.

78 In the Claimant’s termination letter dated 1 February 2023, the Defendant referred to a clause which refers to obligations of confidentiality, non-solicitation and intellectual property which are “obligations under your employment contract and other agreements that you may have signed during your employment with the Company” and which are still in effect notwithstanding the termination of his employment⁸². This suggests that there was an employment contract and reflects the Defendant’s position that the Claimant was an employee.

79 While Lena testified that the clause relied on in the termination letter was adopted from that of a day shift employee⁸³, the fact that the Defendant had considered it appropriate to do so and the fact that they provided notice of the termination meant that they treated the Claimant as an employee. The fact that Lena did not know that they could just let the Claimant go without notice of termination meant that the Defendant did not really treat the Claimant as an *ad hoc* worker who would come and go but an employee who was entitled to a termination notice.

⁸² 2ABD 333

⁸³ NE, 26 August 2025, 48/20 – 50/14

Whether the Claimant was entitled to employee benefits

80 The Defendant claimed that the Claimant did not inform Nick in the WhatsApp messages that he suffered a fall at the workplace. However, it is clear in the WhatsApp message that the Claimant sent to Nick on 26 April 2021 at 13:28 that he had just come back from Alexandra Hospital and his knee was injured. While he was given 3 days MC, he would only take that night off. He would be back at work the next day and had already informed Vijay⁸⁴. The Claimant also did not inform the Defendant about the incident on 30 September 2022 where he suffered a fall at the site. However, it was clear that he had filed an incident report⁸⁵. On the stand, the Claimant testified that he had informed his operations department as well as filled up the incident report and occurrence book, as per the standard operating procedure⁸⁶. He had also informed Vijay, the operations executive of the incident⁸⁷.

81 In my view, whether the Claimant was entitled to employee benefits was not determinative. If it were so, it would be easy for employers to deny workers such benefits and point towards the lack of such benefits in arguing that they are not employees, making claims for such benefits impossible. Hence, I did not place much weight on the failure of the Claimant to apply for annual or medical leave or to seek overtime pay as he may simply be ignorant of such entitlement or rights.

⁸⁴ 2ABD 117

⁸⁵ 2ABD 232

⁸⁶ NE, 2 June 2025, 130/12-27,

⁸⁷ NE, 3 June 2025, 96/17-97/18

Conclusion

82 In the present case, while the Claimant was unable to produce evidence of a written contract, it is important to note that section 2 of the Employment Act recognises oral and implied agreements. Taking into account all the circumstances above, I am of the view that the Claimant was in a contract of service with the Defendant. In arriving at such a conclusion, I had taken into account the fact that the Defendant had consistently paid both the employer and employee contributions into the Claimant's CPF account. The fact that the Defendant did not deduct the employee portion from the Claimant's salary stemmed from the fact that the Claimant was paid on a daily basis and did not detract from the nature of these payments. The Defendant also issued pay slips to the Claimant indicating that the payments made to him were in the nature of salary payments and reflecting employee benefits such as overtime and public holiday allowances as well as CPF contributions. The Defendant scheduled the Claimant for work and the Claimant had to inform the Defendant if he was unable to turn up as well as follow certain procedures at work. The Defendant paid the Claimant for attending training and issued him a letter stating his salary in support of his application for a government grant. Even when matters came under scrutiny, the Defendant treated the Claimant as an employee in the notice of termination, afforded him the GPPL as well as paid him an amount in respect of the encashment of leave for 2022 and 2023 (as indicated in the Claimant's pay slip of February 2023)⁸⁸ and accepted MOM's findings on the premise that the Claimant was an employee. Given that CPF contributions and GPPL were statutory obligations involving employees, I do not think that the payment by the Defendant can be dismissed as purely administrative convenience. The Defendant did not take the position that the Claimant was serving under a

⁸⁸ 2ABD 85

contract for services until the commencement of this suit which made it a clear afterthought. In the circumstances, I find that the Claimant was employed by the Defendant pursuant to a contract of services and was therefore entitled to the minimum conditions of service provided for in the Employment Act.

Quantification of the Claimant's Claims

83 From June to December 2017, the Claimant was paid \$70 for each shift and an additional \$5 per shift if he manned the site alone. He was paid \$75 for each 12-hour shift that he worked from January 2018. This was increased to \$85 per shift in December 2022. If he worked on a public holiday, he was paid an additional \$30, which was increased to \$50 in December 2022. In the event that he covered the shift of a second guard (prior to the reduction in site requirements in April 2020), he was paid an additional \$35 per shift. If he worked more than 26 shifts in a month, he would be paid an additional \$100, which was increased to \$125 in November 2019, to \$150 in April 2020 and finally to \$160 in January 2021⁸⁹.

84 The Claimant's principal claim concerns unpaid overtime and public holiday wages over his period of employment from June 2017 to January 2023 amounting to \$69,140.88. However, the Claimant was unable to explain how he arrived at the overtime claim, other than the fact that he obtained the numbers from his bank statements and calculated the figures based on MOM's advice⁹⁰ and had used a MOM online calculator for which he had used the basic monthly pay of \$1,633 instead of \$85 a day⁹¹.

⁸⁹ Nick's AEIC at [23]

⁹⁰ NE, 3 June 2025, 46/19-47/30

⁹¹ NE, 3 June 2025, 48/8 – 49/15

Overtime Pay

85 Pursuant to section 40(4) of the Employment Act which relates to shift workers, any employee who at the request of his employer works more than an average of 44 hours per week over any continuous period of 3 weeks must be paid for the extra work in accordance with section 38(4). Under section 38(4), the employee must be paid for the extra work at the rate of not less than one and a half times the employee's hourly basic rate of pay irrespective of the basis on which the employee's rate of pay is fixed. As defined in section 41 of the Employment Act, "week" in sections 36, 38 and 40 means a continuous period of 7 days commencing at midnight on Sunday.

86 In quantifying the Claimant's claim under this head to be \$64,091.39, the Claimant claimed to have computed the figures in accordance with MOM's official formulas⁹² using the official tools provided by the MOM in respect of the calculators for employees for "Overtime Pay"⁹³. However, no evidence was adduced as to where such calculators can be found, the inputs for such calculations and the assumptions or methodology for the calculations. In the Claimant's further written submissions setting out how the claim under this head had been calculated, the Claimant had used the monthly basic pay of \$1,585 in its calculations to derive the basic hourly rate of \$8.31. I did not agree that this was the right premise given my earlier finding that the Claimant was paid on a per shift basis and not on a monthly basis. In particular, while I acknowledge that the letter dated 28 August 2021 from the Defendant indicated that the Claimant's basic pay was \$1,585 per month, given the clear evidence that the Claimant was paid on a daily basis, I agree with the Defendant that the amount

⁹² Claimant's Closing Submissions at [199]

⁹³ Claimant's Closing Submissions at [174(2)]

of \$1,585 cannot have been the basic monthly wage for the entire period of the Claimant's employment from June 2017 to December 2021. Given the evidence that the payslips were worked out based on what the Claimant was actually paid, it would not be accurate to rely on the monthly wage stated in the Claimant's payslips in calculating the Claimant's overtime pay.

87 As the Claimant was paid daily whenever he completed a shift, the hourly basic rate of pay would be \$5.83 (being \$70 divided by 12) from June 2017 to December 2017 or \$6.25 (being \$75 divided by 12) from January 2018 to November 2022 and \$7.08 (being \$85 divided by 12) from December 2022. At one and a half times, the hourly basic rate of pay amounts to \$8.75 from June 2017 to December 2017 or \$9.38 from January 2018 to November 2022 and \$10.62 from December 2022. As the Claimant had already been paid for the shifts he performed, the differential hourly basic rate of pay which should be applied to his overtime hours would be \$2.92 from June 2017 to December 2017 or \$3.13 from January to November 2022 and \$3.54 from December 2022.

88 As for the overtime hours worked, this was worked out using the evidence available before the Court, including the Claimant's bank statements and the WhatsApp messages between the Claimant and Nick, indicating the nature of the payments. On the basis that the Claimant was paid a fixed sum after each shift he had completed, I was prepared to accept from the fact of payment that this constituted the Defendant's acknowledgement that he had completed a shift. Hence, on days where the Claimant received \$70, \$75, \$85, \$105 or \$110 as the sum may be, in duplicate or a mix of these sums, I was prepared to accept that he had completed two shifts.

89 In doing so, I did not accept the Claimant's submission that he was unable to take his one-hour meal break when he was alone at the site and this

constitutes an additional hour of overtime per day. There was no evidence that the Defendant required the Claimant to do so.

2017

90 Based on the Claimant's bank statements⁹⁴, the Claimant received \$70 on 28 June, 5, 12, 19, 26 and 31 July 2017, \$75 on 3, 6, 8, 9, 10, 13, 16, 17, 21, 22, 23, 24, 27, 29 and 30 July 2017 as well as \$105 on 26 June 2017. Over the continuous period of 3 weeks from 3 July to 23 July 2017, the Claimant worked for a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated an overtime of 36 hours. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$2.92 per hour amounting to \$105.12.

91 Based on the Claimant's bank statements⁹⁵, the Claimant received \$70 on 4, 10 and 30 August 2017, \$75 on 1, 3, 5, 6, 7, 8, 11, 13, 14 and 15 August and \$105 on 9 and 10 August 2017 and \$75 twice on 31 August 2017. Over the continuous period of 3 weeks from 24 July to 13 August 2017, the Claimant worked a total of 18 shifts comprising 216 hours, exceeding an average of 44 hours per week and accumulated 84 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$2.92 per hour amounting to \$245.28.

92 Based on the Claimant's bank statements⁹⁶, the Claimant received \$70 on 6, 13, 20 and 27 September, \$75 on 5, 13, 14, 19, 22, 25, 26 and 29 September, \$105 on 1 September, and \$75 twice on 3 September 2017. The

⁹⁴ IABD 109 - 114

⁹⁵ IABD 114 - 117

⁹⁶ IABD 118 - 121

Claimant did not exceed an average of 44 hours per week over any continuous period of 3 weeks from 14 August to 24 September 2017.

93 The Claimant received \$70 on 4, 11, 18 and 25 October, \$75 on 1, 2, 4, 5, 9, 15, 16, 23 and 28 October, \$150 on 8, 12 and 18 October, \$105 on 18 October, \$110 on 29 October, \$75 twice on 30 October 2017. Given that there is no evidence on why the amount of \$150 was received on 18 October 2017, despite the Claimant having already received \$70 and \$105 on the same day and whether these were advances or wages for days worked and for which days in the week, I am unable to ascertain which days the Claimant had worked in respect of the sum of \$150 received on 18 October 2017. On the available evidence, over the continuous period of 3 weeks from 25 September to 15 October 2017, the Claimant worked a total of 16 shifts comprising 192 hours, exceeding an average of 44 hours per week and accumulated 60 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$2.92 per hour amounting to \$175.20.

94 The Claimant received \$70 on 1, 8, 15, 22, \$75 on 1, 4, 5, 9, 10, 11, 12, 14, 25, 26, 28 and 30 November, \$110 on 7 and 26 November, \$150 on 15 November 2017. There is no evidence on why the amount of \$150 was received on 15 November 2017, despite the Claimant having already received \$70 on the same day. Even if I take \$75 to be wages paid in respect of an additional shift that day, it is unclear whether the additional \$75 is an advance or wages for days worked and for which days in the week. As such, I am unable to ascertain which day the Claimant had worked in respect of the additional \$75 received on 15 November 2017. Read with the records in October 2017, over the continuous period of 3 weeks from 16 October 2017 to 5 November 2017 the Claimant has worked a total of 13 shifts comprising 156 hours exceeding an average of 44

hours per week and accumulated an overtime of 24 hours. This is payable at \$2.92 per hour amounting to \$70.08. Over the continuous period of 3 weeks from 6 November to 26 November 2017, the Claimant has worked a total of 13 shifts comprising 156 hours exceeding an average of 44 hours per week and accumulated an overtime of 24 hours. This is payable at \$2.92 per hour amounting to \$70.08.

95 The Claimant received \$70 on 6 December 2017, \$75 on 1, 2, 5, 7, 16, 17, 22, 23, 24 and 28 December and \$75 twice on 12, 15, 19 and 26 December. Over the continuous period of 3 weeks from 27 November to 17 December 2017, the Claimant worked a total of 13 shifts comprising 156 hours, exceeding an average of 44 hours per week and accumulated 24 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$2.92 per hour amounting to \$70.08.

2018

96 The Claimant received \$75 on 3, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 21, 23, 24, 26 and 27 January 2018. Over the continuous period of 3 weeks from 18 December 2017 to 7 January 2018, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56. Over the continuous period of 3 weeks from 8 January to 28 January 2018, the Claimant worked a total of 13 shifts comprising 156 hours, exceeding an average of 44 hours per week and accumulated 24 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$75.12.

97 The Claimant received \$75 on 3, 9, 13, 14, 15, 16, 22 and 24 February 2018, \$75 twice on 1, 6, 20 and 27 February 2018 and \$105 on 17 February 2018. The Claimant did not exceed an average of 44 hours per week over any continuous period of 3 weeks from 29 January to 18 February 2018. However, over the continuous period of 3 weeks from 5 to 25 February 2018, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56.

98 The Claimant received \$75 on 2, 3, 5, 6, 10, 13, 14, 15, 20, 21, 22, 24, 27, 29 and 30 March 2018, \$75 twice on 8 March 2018, \$150 on 15 March 2018, and \$105 on 28 and 31 March 2018. There is no evidence on why the amount of \$150 was received on 15 March 2018, even though the Claimant had already received \$75 on the same day. Even if I take \$75 to be wages paid in respect of an additional shift that day, it is unclear whether the additional \$75 is an advance or wages for days worked and for which days in the week. As such, I am unable to ascertain which day the Claimant had worked in respect of the additional \$75 received on 15 March 2018. However, based on the available evidence, over the continuous period of 3 weeks from 26 February to 18 March 2018, the Claimant worked a total of 13 shifts comprising 156 hours, exceeding an average of 44 hours per week and accumulated 24 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$75.12.

99 The Claimant received \$75 on 5, 10, 11, 12, 13, 14, 17, 18, 19, 24, 26, 27, 28 April 2018, \$75 twice on 3 April 2018, and \$105 on 5, 7, 21, 25 April 2018. Over the continuous period of 3 weeks from 19 March to 8 April 2018, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an

average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68. Over the continuous period of 3 weeks from 9 April to 29 April 2018, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68.

100 The Claimant was paid \$75 on 1, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 22, 23, 24, 25, 26, 29, 31 May 2018, \$75 twice on 18 May and \$105 on 1 and 30 May 2018. Over the continuous period of 3 weeks from 30 April to 20 May 2018, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24.

101 The Claimant was paid \$75 on 1, 2, 4, 5, 7, 8, 9, 11, 13, 14, 19, 20, 21, 22, 23, 26, 27, 28, 29 and 30 June 2018, \$105 and \$5 on 15 June 2018 and \$110 on 16 June 2018. Over the continuous period of 3 weeks from 21 May to 10 June 2018, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24. Over the continuous period of 3 weeks from 11 June to 1 July 2018, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential

overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24.

102 The Claimant received \$75 on 3, 4, 5, 6, 7, 12, 13, 14, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28 and 31 July and \$75 twice on 11 July 2018. Over the continuous period of 3 weeks from 2 July to 22 July 2018, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24.

103 The Claimant received \$75 on 1, 2, 8, 9, 11, 14, 15, 16, 21, 22, 24 and 31 August, \$105 on 10, 18 and 23 August and \$110 on 25 August, \$50 on 16 August and \$25 on 17 August 2018. There is no evidence as to why the sums of \$50 and \$25 was transferred into the Claimant's account on 16 and 17 August 2018 respectively. Hence, I am not able to find that they relate to payment for shift work completed by the Claimant. However, based on the available evidence, over the continuous period of 3 weeks from 23 July to 12 August 2018, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56. The Claimant did not exceed an average of 44 hours per week over the continuous period of 3 weeks from 13 August to 2 September 2018.

104 The Claimant received \$75 on 1, 4, 5, 6, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29 September 2018. Over the continuous period of 3 weeks from 3 September to 23 September 2018, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and

accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68.

105 The Claimant received \$75 on 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 25, 26, 27, 30 and 31 October and \$150 on 3 October 2018. Over the continuous period of 3 weeks from 24 September to 14 October 2018, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24.

106 The Claimant received \$75 on 1, 2, 3, 6, 8, 9, 10, 13, 14, 16, 17, 21, 22, 23 November, \$75 twice on 30 November, \$125 on 7 November 2018 and \$50 on 29 November 2018. There is no evidence on why he received \$50 on 29 November 2018 and whether this constitutes advances or wages and for which day in the week. However, based on the available evidence, over the continuous period of 3 weeks from 15 October to 4 November 2018, the Claimant worked a total of 13 shifts comprising 156 hours, exceeding an average of 44 hours per week and accumulated 24 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$75.12. Over the continuous period of 3 weeks from 5 November to 25 November 2018, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56.

107 The Claimant received \$75 on 4, 7, 8, 11, 13, 17, 19 and 20 December and \$75 twice on 5 and 14 December and \$110 on 12 December 2018. Over the continuous period of 3 weeks from 26 November to 16 December 2018, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56. The Claimant did not exceed an average of 44 hours per week over the continuous period of 3 weeks from 17 December 2018 to 6 January 2019.

2019

108 The Claimant was paid \$75 on 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 29 and 30 January and \$75 twice on 25 and 31 January 2019. Over the continuous period of 3 weeks from 7 January to 27 January 2019, the Claimant worked a total of 15 shifts comprising 180 hours, exceeding an average of 44 hours per week and accumulated 48 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$150.24.

109 The Claimant received \$75 on 2, 5, 8, 9, 12, 13, 14, 15, 16, 20, 21 and 28 February, \$110 on 6 February and \$105 on 7 February 2019. While the Claimant also received an additional sum of \$100 on 16 February and \$50 on 19, 23, 26 and 27 February 2019, there is no evidence as to whether these sums relate to payment for shift work completed by the Claimant and for which days in the week. However, based on the available evidence, over the continuous period of 3 weeks from 28 January to 17 February 2019, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been

paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68.

110 The Claimant received \$75 on 1, 2, 5, 6, 7, 8, 9, 12, 13, 14, 15, 19, 20, 21, 22, 28 and 29 March, \$110 on 23 March, \$75 twice on 26 March 2019. The Claimant did not exceed an average of 44 hours per week over the continuous period of 3 weeks from 18 February to 10 March 2019. However, over the continuous period of 3 weeks from 25 February to 17 March 2019, the Claimant worked a total of 12 shifts comprising 144 hours, exceeding an average of 44 hours per week and accumulated 12 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$37.56.

111 The Claimant received \$75 on 5, 10, 11, 12, 13, 28 and 30 April, \$75 twice on 2 April, \$150 on 4 April, and \$110 on 9 April 2019 and \$275 on 16 April. Based on the WhatsApp chat records between Nick and the Claimant⁹⁷, the \$275 comprised \$75 for the work done on the night of 15 April to the morning of 16 April and an advance loan of \$200 to be deducted \$25 per day from his future payments. The Claimant subsequently received \$50 on 17, 18, 25, 26 and 27 April and \$50 twice on 23 April as well as an additional \$25 on 27 April 2019. Given this, I am prepared to find that the Claimant worked on the night shifts ending on 17, 18, 23, 25, 26 and 27 April 2019 and worked an additional shift on 23 April 2019, from which \$25 was deducted from \$75. However, there is no evidence on why the Claimant was paid the additional \$25 on 27 April 2019 or \$85 on 19 April 2019 or \$80 on 20 April 2019. Hence, I am unable to find that these sums relate to payment for shift work completed by the Claimant. Based on the available evidence, the Claimant appeared to have

⁹⁷ 2ABD 89

worked on the night shifts ending on 2, 4, 5, 9, 10, 11, 12, 13, 16, 17, 18, 23, 25, 26, 27, 28 and 30 April and appeared to have done an additional shift on 2, 4 and 23 April 2019. Over the continuous period of 3 weeks from 18 March to 7 April 2019, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68. Over the continuous period of 3 weeks from 8 April to 28 April 2019, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68.

112 The Claimant received \$75 on 1, 2, 6, 7, 8, 9, 18, 22, 23, 24, 25, 27, 28, 30 and 31 May, \$75 twice on 10, 14 and 16 May, \$105 on 2 and 21 May, \$110 on 4 and 31 May 2019. Over the continuous period of 3 weeks from 29 April to 19 May 2019, the Claimant worked a total of 16 shifts comprising 192 hours, exceeding an average of 44 hours per week and accumulated 60 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$187.80.

113 The Claimant received \$75 on 4, 5, 7, 8, 10, 11, 13, 16, 17, 19, 21, 22, 25, 26 June, \$140 on 6 June, \$150 on 9 June, and \$75 twice on 14, 24 and 28 June. The Claimant also received \$175 on 10 June 2019 as well as \$25 twice on 18 June 2019 and \$250 on 27 June 2019. Based on the WhatsApp chat messages

between Nick and the Claimant⁹⁸, the \$175 comprised the pay for working the night shift starting 10 June 2019 as well as an advance of \$100 which is to be deducted from the night shift starting on 17 and 18 June 2019. The Claimant received \$140 on 6 June 2019 for working alone on a public holiday and received \$150 on 9 June 2019 for working both the night shift starting from 8 June and the morning shift of 9 June. The Claimant also worked on the night shift starting on 10 June as well as the night shifts starting on 15, 16, 17 and 18 June 2019. In the circumstances, the Claimant worked on the night shift ending on 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 18, 19, 21, 22, 24, 25, 26 and 28 June as well as the morning shift of 9, 14, 18, 24 and 28 June 2019. Hence, over the continuous period of 3 weeks from 20 May to 9 June 2019, the Claimant worked a total of 17 shifts comprising 204 hours, exceeding an average of 44 hours per week and accumulated 72 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$225.36. Over the continuous period of 3 weeks from 10 June to 30 June 2019, the Claimant worked a total of 18 shifts comprising 216 hours, exceeding an average of 44 hours per week and accumulated 84 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$262.92.

114 The Claimant received \$75 on 3, 4, 5, 6, 7, 8, 10, 11, 12, 16, 19, 23, 24, 27, 30 and 31 July, \$75 twice on 1, 18 and 25 July, \$110 on 9 and 12 July, and \$225 on 14 July 2019. Based on the WhatsApp chat records between Nick and the Claimant⁹⁹, the \$225 paid on 14 July 2019 comprised the pay for 14, 15 and

⁹⁸ 2ABD 91

⁹⁹ 2ABD 93

16 July. Based on the WhatsApp records¹⁰⁰, Nick accepted that the Claimant worked for 26 days in the month of July and proceeded to transfer the incentive of \$100 to him. Hence, the Claimant worked on the night shifts ending on 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 23, 24, 25, 27, 30 and 31 July as well as an additional shift on 1, 12, 18 and 25 July 2019. Based on the evidence, over the continuous period of 3 weeks from 1 July to 21 July 2019, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

115 The Claimant received \$75 on 1, 2, 3, 4, 5, 6, 8, 13, 17, 19, 30 and 31 August, \$75 twice on 11, 15, 20, 22, 28 August 2019, \$210 on 5 August 2019, \$105 on 9 and 13 August, \$260 on 24 August 2019 and \$35 on 26 August 2019. Based on the WhatsApp chat records between Nick and the Claimant¹⁰¹, the \$210 paid on 5 August 2019 probably comprised the \$100 incentive for July and \$110 for a completed shift. Based on the WhatsApp records¹⁰², there was evidence that the Claimant worked on the night shifts ending on 8, 9, 10 and 11 August as well as on 28 August. There was also evidence that the \$260 transferred on 24 August 2019 comprised \$110 which appeared to be for the night shift ending on 24 August and \$150 for the night shifts ending on 26 and 27 August. Nick also accepted that the Claimant worked for 26 days in the month of August and proceeded to transfer the incentive of \$100 to him on 1 September 2019. As such, the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 13, 15, 17, 19, 20, 22, 24, 26, 27, 28, 30 and 31 August

¹⁰⁰ 2ABD 94

¹⁰¹ 2ABD 94

¹⁰² 2ABD 94

and an additional shift on 5, 11, 13, 15, 20, 22 and 28 August 2019. Over the continuous period of 3 weeks from 22 July to 11 August 2019, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48. Over the continuous period of 3 weeks from 12 August to 1 September 2019, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

116 The Claimant received \$75 on 3, 5, 6, 7, 12, 19, 20, 21, 22, 24, 25 and 30 September, \$75 twice on 10, 13, 15, 17, 26 and 29 September, \$110 on 2 September, \$150 on 8 September and \$35 on 9 September 2019. Based on the WhatsApp chat records between Nick and the Claimant¹⁰³, the \$150 banked in on 8 September 2019 was for the night shifts ending on 8 and 9 September 2019. The Claimant also worked on the night shifts ending on 15, 20, 21, 25, 26 and 27 September. The duplicate payment on 29 September was for him working both the day and night shifts¹⁰⁴. Based on the WhatsApp records¹⁰⁵, the Claimant stated that not counting the day shifts, he only took off on 2, 21 and 27 September 2019 and completed 27-night shifts, which Nick accepted subsequently given that he transferred the \$100 incentive to the Claimant on 2 October 2019. As such, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 15, 17, 19, 20, 21, 22,

¹⁰³ 2ABD 97

¹⁰⁴ 2ABD 98

¹⁰⁵ 2ABD 98

24, 25, 26, 27, 29 and 30 September 2019 and an additional shift on 10, 13, 15, 17 and 29 September 2019. Hence, over the continuous period of 2 September to 22 September 2019, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

117 The Claimant received \$75 on 1, 2, 3, 4, 7, 8, 10, 14, 17, 18, 20, 23, 24, 25, 30 and 31 October 2019, \$75 twice on 5, 6, 11, 12, 15, 19, 21, 26 October 2019 and \$105 on 28 and 29 October 2019. Based on the WhatsApp chat records between Nick and the Claimant¹⁰⁶, the Claimant worked on the night shifts ending on 6, 10, 18, 25, 27 and 31 October 2019 and that the duplicate sum on 26 October 2019 was for the night shift ending on 27 October 2019. Based on the WhatsApp records¹⁰⁷, the Claimant stated that he had worked more than 26 days in October 2019, which Nick accepted subsequently given that he transferred the \$100 incentive to the Claimant on 2 November 2019. As such, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30 and 31 October 2019 and completed an additional shift on 5, 6, 11, 12, 15, 19 and 21 October 2019. Over the continuous period of 23 September to 13 October 2019, the Claimant worked a total of 22 shifts comprising 264 hours, exceeding an average of 44 hours per week and accumulated 132 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$413.16.

¹⁰⁶ 2ABD 98 - 100

¹⁰⁷ 2ABD 100

118 The Claimant received \$75 on 1, 4, 5, 7, 9, 11, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28 November 2019, \$75 twice on 12, 22 and 29 November 2019, \$105 on 6 November 2019 and \$175 on 2 November 2019. Based on the WhatsApp chat records between Nick and the Claimant¹⁰⁸, the Claimant worked on the night shifts ending on 2, 5, 6, 27 and 28 November 2019. Based on the WhatsApp records¹⁰⁹, the Claimant stated that he had worked more than 26 days in November 2019, which Nick accepted subsequently given that he transferred the \$125 incentive to the Claimant on 1 December 2019. As such, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 4, 5, 6, 7, 9, 11, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28 and 29 November 2019 and worked an additional shift on 12, 22 and 29 November 2019. Over the continuous period of 14 October to 3 November 2019, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60. Over the continuous period of 4 November to 24 November 2019, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

119 The Claimant received \$75 on 3, 4, 5, 6, 9, 12, 15, 16, 17, 20, 22, 23 December 2019, \$75 twice on 1, 7, 8, 10, 14, 18, 21, 28, 31 December, \$330 on 24 December, \$105 on 25 December, \$150 on 29 December, \$200 on 30 December 2019. Based on the WhatsApp chat records between Nick and the

¹⁰⁸ 2ABD 100

¹⁰⁹ 2ABD 100

Claimant¹¹⁰, the Claimant worked on the night shifts ending on 5, 6, 7, 8, 9 December as well as the day shifts of 7 and 8 December 2019. The Claimant also worked on the night shifts ending on 12, 14, 15, 18 December as well as the day shift of 14 December. The \$330 paid on 24 December comprised \$75 for the night shift ending on 24 December as well as an advance of \$255 for the night shift ending on 25 December (\$75), 26 December (\$105) and 27 December (\$75). The Claimant also worked the day shift on 25 December. The \$200 on 30 December comprised \$75 for the night shift ending on 30 December as well as the \$125 incentive payment. Based on the WhatsApp records¹¹¹, the Claimant stated that he had worked more than 26 days in December 2019, which Nick accepted subsequently given that he transferred the \$125 incentive to the Claimant on 30 December 2019. As such, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 December 2019 as well as an additional shift on 1, 7, 8, 10, 14, 18, 21, 25, 28, 29 and 31 December 2019. Over the continuous period of 25 November to 15 December 2019, the Claimant worked a total of 22 shifts comprising 264 hours, exceeding an average of 44 hours per week and accumulated 132 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$413.16.

2020

120 The Claimant received \$75 on 2, 3, 4, 9, 10, 13, 14, 15, 16, 17, 20, 24, 29, 30 January 2020, \$75 twice on 5, 7, 11, 18, 19, 21 January, \$30 on 1 January 2020, \$110 on 23 January 2020, \$360 on 24 January 2020, \$105 on 31 January

¹¹⁰ 2ABD 101

¹¹¹ 2ABD 102

2020 and \$5 on 1 February 2020. Based on the WhatsApp chat records between Nick and the Claimant¹¹², the Claimant worked on the night shifts ending on 2, 11, 29 and 31 January (where he was a one-man show) as well as the day shift of 31 January 2020. The \$360 paid on 24 January 2020 comprised \$75 for the night shift ending on 25 January as well as an advance of \$285 for the night shift ending on 31 January (\$75) and 1 February (\$105) as well as the day shift on 31 January day shift (\$105). Based on the WhatsApp records¹¹³, the Claimant stated that he had worked more than 26 days in January 2020, which Nick accepted subsequently given that he transferred the \$125 incentive to the Claimant on 3 February 2020. Hence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 4, 5, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 29, 30 and 31 January 2020 and an additional shift on 5, 7, 11, 18, 19, 21 and 31 January 2020. Over the continuous period of 16 December 2019 to 5 January 2020, the Claimant worked a total of 26 shifts comprising 312 hours, exceeding an average of 44 hours per week and accumulated 180 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$563.40. Over the continuous period of 6 January to 26 January 2020, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

121 The Claimant received \$75 on 8, 10, 13, 14, 17, 18, 22, 23, 24, 26, 28 February 2020, \$75 twice on 1, 2, 3, 5, 7, 9, 11, 15, 19, 20, 25, 29 February, \$35

¹¹² 2ABD 101

¹¹³ 2ABD 103

on 21 February 2020, and \$110 on 23 February. Based on the WhatsApp chat records between Nick and the Claimant¹¹⁴, the Claimant worked on the night shifts ending on 21, 22 and 28 February 2020. The duplicate sum of \$75 banked in on 20 February was for the night shifts ending on 21 and 22 February 2020. Based on the WhatsApp records¹¹⁵, the Claimant stated that he had worked more than 26 days in February 2020, which Nick accepted subsequently given that he transferred the \$125 incentive to the Claimant on 3 March 2020. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 3, 5, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29 February 2020 i.e. 24 night shifts and an additional shift on 1, 2, 3, 5, 7, 9, 11, 15, 19, 22, 23, 25, 29 February. Over the continuous period of 27 January to 16 February 2020, the Claimant worked a total of 24 shifts comprising 288 hours, exceeding an average of 44 hours per week and accumulated 156 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$488.28.

122 The Claimant received \$75 on 1, 5, 7, 9, 13, 14, 24, 27, 28, 29, 30 and 31 March and \$75 twice on 2, 4, 8, 10, 12, 25 March 2020. Records of the Claimant's bank statements between 15 and 23 March 2020 were missing. Based on the WhatsApp chat records between Nick and the Claimant¹¹⁶, the Claimant worked on the night shifts ending on 2, 3, 7, 9, 10, 12, 19, 25, 26, 27 and 28 March 2020. In particular, the duplicate sum of \$75 banked in on 25 March 2020 is for the night shifts ending on 25 and 26 March 2020. Based on the WhatsApp records¹¹⁷, the Claimant stated that he had worked more than 26

¹¹⁴ 2ABD 103

¹¹⁵ 2ABD 104

¹¹⁶ 2ABD 104 - 105

¹¹⁷ 2ABD 105

days in March 2020, which Nick accepted subsequently given that he transferred the \$125 incentive to the Claimant on 1 April 2020. However, given the absence of bank statements between 15 and 23 March 2020, there is no evidence on the payments to the Claimant between those dates and in which day of the week he worked in that period. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, 19, 24, 25, 26, 27, 28, 29, 30 and 31 March 2020 i.e. 21 night shifts as well as an additional shift on 2, 4, 8, 10 and 12 March 2020. Over the continuous period of 17 February to 8 March 2020, the Claimant worked a total of 27 shifts comprising 324 hours, exceeding an average of 44 hours per week and accumulated 192 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$600.96. Over the continuous period of 9 March to 29 March 2020, the Claimant worked a total of 14 shifts comprising 168 hours, exceeding an average of 44 hours per week and accumulated 36 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$112.68.

123 The Claimant received \$75 on 1, 2, 5, 6, 8, 12, 13, 14, 15, 16, 18, 19, 20, 26, 27, 28, 29 and 30 April and \$75 twice on 3, 9, 17, 21, 23 April, \$150 on 4 and 12 April, \$300 on 10 April, \$105 on 11 April and \$225 on 24 April 2020. Based on the WhatsApp chat records between Nick and the Claimant¹¹⁸, the Claimant worked on the night shifts ending on 9, 12, 19, 21, 25, 26 and 30 April as well as the day shift on 11 and 25 April. The \$225 on 24 April 2020 comprises the pay for the shift ending on 25 April 2020 as well as an advance of \$150 for the day shift of 25 April as well as the night shift ending on 26 April 2020.

¹¹⁸ 2ABD 106 - 107

Based on the WhatsApp records¹¹⁹, the Claimant stated that he had worked more than 26 days in April, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 1 May 2020. However, there is no evidence on why the Claimant was paid \$300 on 10 April and whether any sum in excess of \$75 relate to payment in respect of a completed shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29 and 30 April 2020 i.e. 28 night shifts as well as an additional shift on 3, 4, 9, 11, 12, 17, 21, 23 and 25 April 2020. Over the continuous period of 30 March to 19 April 2020, the Claimant worked a total of 26 shifts comprising 312 hours, exceeding an average of 44 hours per week and accumulated 180 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$563.40.

124 The Claimant received \$75 on 2, 3, 4, 6, 7, 10, 12, 13, 15, 16, 17, 18, 21, 22, 24, 25, 29 May 2020, \$75 twice on 9, 14, 19, 23 and 30 May 2020, \$105 on 1, 2, 7, 8, 25, 26 May 2020 and \$75 three times on 31 May 2020. Based on the WhatsApp chat records between Nick and the Claimant¹²⁰, the Claimant worked on the night shifts ending on 2, 3, 14, 19, 21, 26 and 29 May. Based on the WhatsApp records¹²¹, the Claimant stated that he had worked more than 26 days in May 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 1 June 2020. However, there is no evidence on why the Claimant was paid \$75 three times on 31 May 2020 when there are only 2 shifts in a day and whether the excess sum of \$75 relate to a completed

¹¹⁹ 2ABD 107

¹²⁰ 2ABD 107

¹²¹ 2ABD 107

shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 29, 30 and 31 May 2020 i.e. 26 night shifts as well as an additional shift on 2, 7, 9, 14, 19, 23, 25 30 and 31 May 2020. Over the continuous period of 20 April to 10 May 2020, the Claimant worked a total of 25 shifts comprising 300 hours, exceeding an average of 44 hours per week and accumulated 168 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$525.84. Over the continuous period of 11 May to 31 May 2020, the Claimant worked a total of 23 shifts comprising 276 hours, exceeding an average of 44 hours per week and accumulated 144 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$450.72.

125 The Claimant received \$75 on 1, 2, 4, 5, 7, 9, 14, 15, 21, 23, 24, 25, 26, 28 June 2020, \$75 twice on 6, 8, 11, 16, 18, 20, 27, 29 June 2020 and \$75 thrice on 13 June 2020. Based on the WhatsApp chat records between Nick and the Claimant¹²², the Claimant worked on the night shifts ending on 7, 8, 11, 12, 21, 26 and 28 June. The duplicate sum of \$75 banked in on 11 June is for the night shift ending on 12 June 2020. Based on the WhatsApp records¹²³, the Claimant stated that he had worked more than 26 days in June 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 2 July 2020. However, there is no evidence on why the Claimant was paid \$75 thrice on 13 June 2020 and whether the third sum of \$75 relates to payment in respect of a completed shift and for which day in the week. Based on the

¹²² 2ABD 107 - 108

¹²³ 2ABD 108

evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 25, 26, 27, 28 and 29 June 2020 i.e. 24 night shifts as well as an additional shift on 6, 8, 13, 16, 18, 20, 27 and 29 June 2020. Over the continuous period of 1 June to 21 June 2020, the Claimant worked a total of 23 shifts comprising 276 hours, exceeding an average of 44 hours per week and accumulated 144 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$450.72.

126 The Claimant received \$75 on 1, 2, 3, 5, 8, 9, 10, 11, 12, 13, 17, 22, 23, 25, 26, 27, 28, 30 and 31 July 2020, \$75 twice on 4, 15, 18, 19, 20 and 24 July 2020, and \$105 on 11 and 31 July 2020. Based on the WhatsApp chat records between Nick and the Claimant¹²⁴, the Claimant worked on the night shifts ending on 2 and 26 July 2020. Based on the WhatsApp records¹²⁵, the Claimant stated that he had worked 26 days in July 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 3 August 2020. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 30 and 31 July 2020 i.e. 25 night shifts and an additional shift on 4, 11, 15, 18, 19, 20, 24 and 31 July 2020. Over the continuous period of 22 June to 12 July 2020, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

¹²⁴ 2ABD 108

¹²⁵ 2ABD 108

127 The Claimant received \$75 on 1, 5, 6, 7, 9, 10, 12, 16, 17, 20, 24, 25, 26, 29 and 31 August 2020, \$75 twice on 2, 3, 13, 15, 18, 22, 23, 27 August 2020, \$75 thrice on 8 August 2020, \$105 on 1 August 2020 and \$105 twice on 10 August 2020. Based on the WhatsApp chat records between Nick and the Claimant¹²⁶, the Claimant worked on the night shifts ending on 3, 19, 20 and 24 August 2020. The duplicate sum of \$75 transferred on 18 August 2020 was for the night shift ending on 19 August 2020. Based on the WhatsApp records¹²⁷, the Claimant stated that he had worked 26 days in August 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 2 September 2020. However, there is no evidence on why the Claimant was paid \$75 in triplicate on 8 August 2020 or \$75 and \$105 twice on 10 August 2020 and whether the excess sums relate to payment in respect of a completed shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 29 and 31 August 2020 i.e. 25 night shifts as well as an additional shift on 1, 2, 3, 8, 10, 13, 15, 22, 23 and 27 August 2020. Over the continuous period of 13 July to 2 August 2020, the Claimant worked a total of 25 shifts comprising 300 hours, exceeding an average of 44 hours per week and accumulated 168 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$525.84. Over the continuous period of 3 August to 23 August 2020, the Claimant worked a total of 24 shifts comprising 288 hours, exceeding an average of 44 hours per week and accumulated 156 hours of overtime. As the Claimant had already been paid for these shifts, the differential

¹²⁶ 2ABD 108 - 109

¹²⁷ 2ABD 109

overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$488.28.

128 The Claimant received \$75 on 4, 7, 8, 9, 10, 11, 14, 15, 17, 19, 25, 27, 29 September 2020 and \$75 twice on 2, 5, 6, 12, 13, 16, 22, 24, 26 and 28 September 2020. Based on the WhatsApp chat records between Nick and the Claimant¹²⁸, the Claimant worked on the night shift ending on 11 September 2020. Based on the WhatsApp records¹²⁹, the Claimant stated that he had worked 26 days in September 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 3 October 2020. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, 24, 25, 26, 27, 28 and 29 September 2020 i.e. 23 shifts as well as an additional shift on 2, 5, 6, 12, 13, 16, 22, 24, 26 and 28 September 2020. Over the continuous period of 24 August to 13 September 2020, the Claimant worked a total of 23 shifts comprising 276 hours, exceeding an average of 44 hours per week and accumulated 144 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$450.72.

129 The Claimant received \$75 on 1, 5, 6, 10, 13, 16, 17, 18, 20, 21, 22, 24 and 31 October 2020 and \$75 twice on 2, 7, 9, 11, 12, 15, 23, 27 and 29 October and \$225 on 25 October 2020. Based on the WhatsApp chat records between Nick and the Claimant¹³⁰, the Claimant worked on the night shifts ending on 2, 5, 7, 11, 15, 25, 26 and 27 October as well as the day shift on 25 October 2020.

¹²⁸ 2ABD 109 - 110

¹²⁹ 2ABD 110

¹³⁰ 2ABD 110 - 111

The sum of \$225 banked in on 25 October 2020 comprised the pay for the night shift ending on 25 October 2020, the day shift of 25 October 2020 as well as the night shift ending on 26 October 2020. Based on the WhatsApp records¹³¹, the Claimant stated that he had worked 26 days in October 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 3 November 2020. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 29 and 31 October 2020 i.e. 24 night shifts as well as an additional shift on 2, 7, 9, 11, 12, 15, 23, 25, 27 and 29 October. Over the continuous period of 14 September to 4 October 2020, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04. Over the continuous period of 5 October to 25 October 2020, the Claimant worked a total of 25 shifts comprising 300 hours, exceeding an average of 44 hours per week and accumulated 168 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$525.84.

130 The Claimant received \$75 on 4, 9, 13, 14, 24, 25, 26, 27 November 2020, \$75 twice on 5, 7, 11, 18, 20, 21, 22, 28, 29 and 30 November 2020, \$75 thrice on 8 November 2020, \$105 and \$255 on 15 November and \$225 on 3 November 2020. Based on the WhatsApp chat records between Nick and the Claimant¹³², the Claimant worked on the night shifts ending on 3, 4, 15, 16, 29 and 30 November 2020 as well as the day shifts on 14, 15 and 29 November

¹³¹ 2ABD 111

¹³² 2ABD 111

2020. The sum of \$225 banked in on 3 November comprised the pay for the night shift ending on 3 November as well as the \$150 incentive for working 26 days in October 2020. The sum of \$360 banked in on 15 November 2020 comprised the pay for the working the day shift of 14 November (\$105), the night shift ending on 15 November (\$105), the day shift of 15 November (\$75) as well as the night shift of 16 November 2020 (\$75). Based on the WhatsApp records¹³³, the Claimant stated that he had worked 26 days in November 2020, which Nick accepted subsequently given that he transferred the \$150 incentive to the Claimant on 1 December 2020. However, there is no evidence on why the Claimant was paid \$75 thrice on 8 November 2020 and whether the excess \$75 relates to payment in respect of a completed shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts of 3, 4, 5, 7, 8, 9, 11, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29 and 30 November 2020 i.e. 22 night shifts as well as an additional shift on 5, 7, 11, 14, 15, 18, 20, 21, 22, 28, 29 and 30 November 2020. Over the continuous period of 26 October to 15 November 2020, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

131 The Claimant received \$75 on 1, 3, 6, 8, 11, 12, 15, 17, 18, 21, 22, 23, 24, 25, 26, 28 December 2020, \$75 twice on 5, 9, 19, 20, 27, 29 December 2020, \$150 on 3 December 2020, \$275 on 7 December 2020, \$25 thrice on 13 December 2020, \$25 on 14 December 2020, \$105 on 25 and 26 December 2020 and \$450 on 30 December 2020. Based on the WhatsApp chat records between

¹³³ 2ABD 112

Nick and the Claimant¹³⁴, the Claimant worked on the night shifts ending on 4, 5, 6, 7, 8, 13, 14, 22, 29 and 31 December 2020 as well as the day shifts on 5, 12, 13 December 2020. The sum of \$150 banked in on 3 December 2020 comprised the pay for the night shift ending on 4 December 2020 as well as an advance for the night shift ending on 5 December 2020. The sum of \$275 banked in on 7 December 2020 comprised the pay for the night shift ending on 7 December 2020 as well as an advance of \$200 which would be repaid by deducting \$50 from the night shifts ending on 13 and 14 December 2020 as well as the day shifts on 12 and 13 December 2020. The sum of \$450 banked in on 30 December 2020 comprised the \$150 incentive payment for working 26 days in December 2020, the pay of \$75 for the night shift ending on 31 December 2020 as well as an advance of \$225 which is to be offset against the pay for the night shifts ending on 5, 6, and 7 January 2021. Based on the WhatsApp records¹³⁵, the Claimant stated that he had worked 26 days in December 2020, which Nick accepted given that he transferred the \$150 incentive to the Claimant on 30 December 2020. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 31 December 2020 i.e. 27 night shifts as well as an additional shift on 5, 9, 12, 13, 19, 20, 25, 26, 27 and 29 December 2020. Over the continuous period of 16 November to 6 December 2020, the Claimant worked a total of 25 shifts comprising 300 hours, exceeding an average of 44 hours per week and accumulated 168 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$525.84. Over the continuous period of 7 December to 27 December 2020, the Claimant worked a total of 27 shifts comprising 324 hours,

¹³⁴ 2ABD 112 - 113

¹³⁵ 2ABD 137

exceeding an average of 44 hours per week and accumulated 192 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$600.96.

2021

132 The Claimant received \$75 on 10, 13, 18, 19, 20, 21, 23, 25 January 2021, \$75 twice on 8, 11, 14, 16, 17, 22, 24, 30 and 31 January 2021, \$75 thrice on 3 January 2021, \$150 on 10 January 2021, \$100 on 27 January 2021, \$50 on 30 January 2021. Based on the WhatsApp chat records between Nick and the Claimant¹³⁶, the Claimant worked on the night shifts ending on 4, 5, 6, 7, 8, 10, 11, 13, 19, 30 January 2021 as well as the day shifts on 9, 10 January 2021. The sum of \$100 banked in on 27 January 2021 was an advance which is to be deducted from the pay of \$75 for the night shift ending on 29 January 2021 and \$25 from the pay for the night shift ending on 30 January 2021. Based on the WhatsApp records¹³⁷, the Claimant stated that he had worked 26 days in January 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 February 2021. However, there is no evidence on why the Claimant was paid \$75 thrice on 3 January 2021, or a duplicate \$75 on 30 January 2021 in addition to \$50 and whether the excess \$75 constitute advances or wages for another day worked and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30 and 31 January 2021 i.e. 23 night shifts as well as an additional shift on 3, 8, 9, 10, 11, 14, 16, 17, 22, 24, 30 and 31 January 2021. Over the

¹³⁶ 2ABD 113 - 115

¹³⁷ 2ABD 115

continuous period of 28 December to 17 January 2021, the Claimant worked a total of 24 shifts comprising 288 hours, exceeding an average of 44 hours per week and accumulated 156 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$488.28.

133 The Claimant received \$75 on 3, 5, 12, 14, 15, 17, 18, 19, 22, 23, 26 and 27 February 2021, \$75 twice on 2, 6, 7, 8, 10, 11, 20, 21, 24 and 28 February 2021, \$105 on 12 and 14 February 2021, \$105 twice on 13 February 2021 and \$150 on 22 February 2021. Based on the WhatsApp chat records between Nick and the Claimant¹³⁸, the Claimant worked on the night shifts ending on 24 February 2021 and worked on the day shifts of 27 and 28 February 2021. The sum of \$150 banked in on 22 February 2021 was an advance to be deducted from the pay for working the day shifts of 27 and 28 February 2021. Based on the WhatsApp records¹³⁹, the Claimant stated that he had worked 26 days in February 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 March 2021. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27 and 28 February 2021 i.e. 23 night shifts and an additional shift on 2, 6, 7, 8, 10, 11, 12, 13, 14, 20, 21, 24, 27 and 28 February 2021. Over the continuous period of 18 January to 7 February 2021, the Claimant worked a total of 23 shifts comprising 276 hours, exceeding an average of 44 hours per week and accumulated 144 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$450.72. Over the continuous period of 8

¹³⁸ 2ABD 115

¹³⁹ 2ABD 115

February to 28 February 2021, the Claimant worked a total of 29 shifts comprising 348 hours, exceeding an average of 44 hours per week and accumulated 216 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$676.08.

134 The Claimant received \$75 on 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 18, 21 and 24 March 2021, \$75 twice on 5, 14, 15, 17, 22, 25, 27, 28, 30 March 2021, and \$75 thrice on 7, 20 March 2021 and \$235 on 28 March 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁴⁰, the Claimant worked on the night shifts ending on 4, 15, 24, 25, 29 and 30 March 2021. The sum of \$235 banked in on 28 March 2021 comprised the pay for the night shift ending on 29 March 2021 and the incentive payment of \$160 for working for 26 days in March 2021. Based on the WhatsApp records¹⁴¹, the Claimant stated that he had already worked 26 days in March 2021 by 28 March 2021. However, there is no evidence on why the Claimant was paid \$75 thrice on 7 and 20 March 2021 and whether the excess \$75 constitute advances or wages for another day worked and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 24, 25, 27, 28, 29 and 30 March 2021 i.e. 25 night shifts and an additional shift on 5, 7, 14, 15, 17, 20, 22, 25, 27, 28 and 30 March 2021. Over the continuous period of 1 March to 21 March 2021, the Claimant worked a total of 24 shifts comprising 288 hours, exceeding an average of 44 hours per week and accumulated 156 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$488.28.

¹⁴⁰ 2ABD 115 - 116

¹⁴¹ 2ABD 115

135 The Claimant received \$75 on 4, 5, 6, 8, 9, 13, 14, 15, 19, 21, 23, 25, 26, 27 and 28 April 2021, \$75 twice on 1, 3, 10, 11, 12, 17, 18, 20 and 24 April 2021, \$105 on 2 and 3 April 2021, \$200 on 25 April 2021 and \$25 twice on 30 April 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁴², the Claimant worked on the night shifts ending on 1, 8, 10, 12, 19, 25, 26 and 28 April 2021 as well as the day shifts on 17 and 24 April 2021. The sum of \$200 banked in on 25 April 2021 is an advance with \$50 to be deducted from the pay for the night shifts ending on 30 April, 1 and 2 May 2021 as well as the day shift on 1 May 2021. Based on the WhatsApp records¹⁴³, the Claimant stated that he had worked 26 days in April 2021, which Nick accepted subsequently given that he transferred the \$60 incentive to the Claimant on 1 May 2021, after offsetting the outstanding advance of \$100. However, there is no evidence on why the Claimant was paid \$75 twice and an additional \$105 on 3 April 2021 and whether the excess \$75 constitute advances or wages for a completed shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27 and 28 and 30 April 2021 i.e. 26 night shifts as well as an additional shift on 1, 3, 10, 11, 12, 17, 18, 20, 24 and 30 April 2021. Over the continuous period of 22 March to 11 April 2021, the Claimant worked a total of 26 shifts comprising 312 hours, exceeding an average of 44 hours per week and accumulated 180 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$563.40.

¹⁴² 2ABD 116 - 118

¹⁴³ 2ABD 137

136 The Claimant received \$75 on 2, 7, 9, 10, 12, 13, 15, 16, 17, 20, 21, 22, 24, 25 and 30 May 2021, \$75 twice on 3, 5, 8, 19, 28 and 31 May 2021, \$105 on 1, 2, 13 and 14 May 2021, and \$180 on 25 May 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁴⁴, the Claimant worked on the night shifts ending on 3, 15, 16, 17, 19, 25, 27 and 30 May 2021. The sum of \$180 banked in on 25 May comprised the pay for the night shift ending on 25 May 2021 as well as an advance of \$105 for the night shift ending on 27 May 2021. Based on the WhatsApp records¹⁴⁵, the Claimant stated that he had worked 26 days in May 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 June 2021. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 5, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 24, 25, 27, 28, 30 and 31 May 2021 i.e. 24 night shifts as well as an additional shift on 2, 3, 5, 8, 13, 19, 25, 28 and 31 May 2021. Over the continuous period of 12 April to 2 May 2021, the Claimant worked a total of 25 shifts comprising 300 hours, exceeding an average of 44 hours per week and accumulated 168 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$525.84. Over the continuous period of 3 May to 23 May 2021, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

137 The Claimant received \$75 on 2, 4, 7, 8, 9, 11, 14, 15, 17, 18, 19, 20, 24, 25 and 26 June 2021, \$75 twice on 3, 6, 13 and 29 June 2021, \$75 thrice on 27

¹⁴⁴ 2ABD 118

¹⁴⁵ 2ABD 118

June 2021 and \$150 on 10 and 20 June 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁴⁶, the Claimant worked on the night shifts ending on 8, 9, 10, 12, 13, 18, 19, 20, 21, 26 and 29 June 2021 as well as the day shift on 20 June 2021. The sum of \$150 banked in on 10 June 2021 comprised the pay for the night shift ending on 10 June 2021 as well as an advance for the night shift ending on 12 June 2021. The \$150 banked in on 20 June 2021 comprised the pay for the day shift on 20 June 2021 as well as the night shift ending on 21 June 2021. Based on the WhatsApp records¹⁴⁷, the Claimant stated that he had worked 26 days in June 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 July 2021. However, there is no evidence on why the Claimant was paid \$75 thrice on 27 June 2021 and whether the excess sum of \$75 constitute advances or wages for another completed shift and for which day in the week. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 24, 25, 26, 27 and 29 June 2021 i.e. 23 night shifts as well as an additional shift on 3, 6, 13, 20, 27 and 29 June 2021. Over the continuous period of 24 May to 13 June 2021, the Claimant worked a total of 22 shifts comprising 264 hours, exceeding an average of 44 hours per week and accumulated 132 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$413.16.

138 The Claimant received \$75 on 3, 6, 7, 9, 10, 13, 15, 18, 20, 22, 28, 29 and 31 July, \$75 twice on 1, 4, 5, 12, 17, 23 July 2021, \$105 on 20 July 2021 and \$225 on 25 July 2021. Based on the WhatsApp chat records between Nick

¹⁴⁶ 2ABD 118 - 119

¹⁴⁷ 2ABD 119

and the Claimant¹⁴⁸, the Claimant worked on the night shifts ending on 4, 10, 23, 25, 26, 27, 28 and 29 July 2021. The sum of \$225 banked in on 25 July 2021 comprises the payment for the night shift ending on 25 July, 26 and 27 July 2021. Based on the WhatsApp records¹⁴⁹, the Claimant stated that he had worked for 26 days in July 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 August 2021. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 3, 4, 5, 6, 7, 9, 10, 12, 13, 15, 17, 18, 20, 22, 23, 25, 26, 27, 28, 29 and 31 July 2021 i.e. 22 night shifts and an additional shift on 1, 4, 5, 12, 17, 20 and 23 July 2021. Over the continuous period of 14 June to 4 July 2021, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04. Over the continuous period of 5 July to 25 July 2021, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

139 The Claimant only received \$75 on 2 August 2021 and a loan of \$1,000 from Nick with \$500 received on 2 August 2021 and another \$500 received on 11 August 2021. Based on his August 2021 salary voucher¹⁵⁰, he was indicated as having received a nett pay of \$1,379. The Claimant therefore did not exceed

¹⁴⁸ 2ABD 120

¹⁴⁹ 2ABD 104

¹⁵⁰ 2ABD 52

an average of 44 hours per week over any continuous period of 3 weeks from 26 July to 15 August 2021 or from 16 August to 5 September 2021.

140 The Claimant received \$75 on 3, 5, 6, 7, 8, 9, 10, 13, 16, 17, 23, 24, 25, 26, 27, 28 and 30 September 2021, \$75 twice on 11, 14 September 2021, \$35 on 19, 20 September 2021, \$35 twice on 21 September 2021 and \$539 on 22 September 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁵¹, the Claimant worked on the night shifts ending on 6, 10, 14, 19, 21, and 28 September 2021. The sums of \$35 received were because the Claimant was seeking to return the loan by asking Nick to cut \$40 from his salary from 18 September to 30 September 2021. The sum of \$539 banked in on 22 September 2021 comprised \$379 which was indicated as owing to the Claimant on the August 2021 payslip and \$160 which did not appear to relate to payment for any completed shift. Based on the WhatsApp records¹⁵², the Claimant stated that he had worked 26 days in September 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 2 October 2021. Based on the evidence, I am prepared to accept that the Claimant worked on 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 16, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28 and 30 September 2021 i.e. 22 night shifts as well as an additional shift on 11, 14 and 21 September 2021. Over the continuous period of 6 September to 26 September 2021, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

¹⁵¹ 2ABD 124 - 127

¹⁵² 2ABD 127

141 The Claimant received \$75 on 1, 2, 4, 5, 8, 9, 10, 11, 13, 15, 16, 19, 20, 21, 23, 25, 28, 29, 31 October 2021, \$75 twice on 3, 6, 12 October 2021 and \$225 on 24 October 2021. This amounts to a total of \$2,100 (being \$1,425 + \$450 + \$225). Based on the WhatsApp chat records between Nick and the Claimant¹⁵³, the Claimant worked on the night shifts ending on 2, 5, 9, 10, 12, 16, 23, 24, 25, 26, 27, 28 and 31 October 2021. The sum of \$225 banked in on 24 October 2021 comprised payment for the night shifts ending on 24, 25 and 26 October 2021 while the payment on 25 October is for the night shift ending on 27 October 2021. Based on the WhatsApp records¹⁵⁴, the Claimant stated that he had worked 26 days in October 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 November 2021. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29 and 31 October 2021 i.e. 25 night shifts and an additional shift on 3, 6, and 12 October 2021. Over the continuous period of 27 September to 17 October 2021, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

142 The Claimant received \$75 on 3, 4, 7, 8, 11, 12, 13, 14, 15, 17, 18, 20, 21, 23, 24 and 29 November 2021, \$75 twice on 1, 9, 16, 25 and 30 November 2021, \$285 on 4 November 2021, and \$150 on 17 November 2021. Based on the WhatsApp chat records between Nick and the Claimant¹⁵⁵, the Claimant worked on the night shifts ending on 4, 7, 12, 13, 14, 15, 18, 23, 27, 28, 29

¹⁵³ 2ABD 127 - 128

¹⁵⁴ 2ABD 128

¹⁵⁵ 2ABD 128 - 129

November, as well as the day shift of 4 November 2021. The sum of \$285 banked in on 4 November 2021 comprised the pay of \$105 for the day shift of 4 November 2021, \$105 for the night shift ending on 5 November 2021, as well as \$75 for the night shift ending on 6 November 2021. The \$150 banked in on 17 November 2021 was for the night shifts ending on 27 and 28 November 2021. Based on the WhatsApp records¹⁵⁶, the Claimant stated that he had worked 26 days in November 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 December 2021. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 23, 24, 25, 27, 28, 29 and 30 November 2021 i.e. 25 night shifts and an additional shift on 1, 4, 9, 16, 25 and 30 November 2021. Over the continuous period of 18 October to 7 November 2021, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48. Over the continuous period of 8 November to 28 November 2021, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

143 The Claimant received \$75 on 1, 2, 4, 9, 10, 11, 12, 13, 14, 17, 21, 22, 23, 24, 27 December 2021, \$75 twice on 5, 7, 16, 19 and 28 December 2021, \$180 on 25 December 2021 and \$235 on 30 December 2021. Based on the

¹⁵⁶ 2ABD 129

WhatsApp chat records between Nick and the Claimant¹⁵⁷, the Claimant worked on the night shifts ending on 4, 5, 9, 13, 19, 22, 25, 26 and 30 December. The sum of \$180 banked in on 25 December 2021 comprised the pay of \$75 for the night shift ending on 25 December 2021 as well as \$105 for the night shift ending on 26 December 2021. Based on the WhatsApp records¹⁵⁸, the Claimant stated that he had worked 26 days in December 2021, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 30 December 2021, which he transferred together with \$75 for the night shift ending 30 December 2021. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 4, 5, 7, 9, 10, 11, 12, 13, 14, 16, 17, 19, 21, 22, 23, 24, 25, 26, 27, 28 and 30 December 2021 i.e. 23 night shifts and an additional shift on 5, 7, 16, 19 and 28 December 2021. Over the continuous period of 29 November to 19 December 2021, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

2022

144 The Claimant received \$75 on 3, 6, 7, 8, 9, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 26, 27, 28, 29, 30 and 31 January 2022, \$75 twice on 4 January 2022, \$105 on 2 January 2022, \$150 on 10 January 2022 and \$275 on 25 January 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁵⁹, the Claimant worked on the night shifts ending on 10, 11, 15, 18, 25 January 2022 and 1 February 2022. The sum of \$150 banked in on 10 January 2022

¹⁵⁷ 2ABD 129 - 130

¹⁵⁸ 2ABD 130

¹⁵⁹ 2ABD 130 - 131

comprise the pay for the night shifts ending on 10 and 11 January 2022. The sum of \$275 banked in on 25 January 2022 comprised the sum of \$75 for the night shift ending on 25 January 2022 as well as an advance of \$200, for which \$160 will be offset against the \$160 incentive for working 26 days in January 2022 and \$40 can be cut from working the night shift ending on 1 February 2022. Based on the evidence, I am prepared to accept that the Claimant worked on 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30 and 31 January 2022 i.e. 27 night shifts and an additional shift on 4 January 2022. Over the continuous period of 20 December 2021 to 9 January 2022, the Claimant worked a total of 18 shifts comprising 216 hours, exceeding an average of 44 hours per week and accumulated 84 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$262.92. Over the continuous period of 10 January to 30 January 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

145 The Claimant received \$75 on 4, 5, 6, 7, 9, 12, 14, 15, 18, 19, 20, 21, 22, 23, 25 and 27 February 2022, \$75 twice on 16 February 2022, \$35 on 1 February 2022, \$105 on 2 and 3 February 2022, \$225 on 10 and 24 February 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁶⁰, the Claimant worked on the night shifts ending on 3, 8, 10, 14, 19 February 2022. The sum of \$225 banked in on 10 February 2022 comprises the pay of \$75 for the night shift ending on 10 February as well as an advance of \$150 for the night shifts ending on 11 and 12 February 2022. The \$75 paid on 12 February was offset

¹⁶⁰ 2ABD 131 - 132

against the night shift ending on 13 February 2022. The \$225 banked in on 24 February 2022 comprised the pay of \$75 for the night shift ending on 24 February 2022 as well as an advance of \$150 for the night shifts ending on 26 and 27 February 2022. Based on the WhatsApp records¹⁶¹, the Claimant stated that he had worked 26 days in February 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 March 2022. The Claimant was paid \$35 on 1 February 2022 as \$40 was cut to repay the advance on 25 January 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26 and 27 February 2022 i.e. 26 shifts and an additional shift on 16 and 27 February 2022. Over the continuous period of 31 January to 20 February 2022, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60.

146 The Claimant received \$75 on 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 31 March 2022, \$225 on 13 March 2022, \$100 on 24 March 2022, \$25 on 29 and 30 March 2022 and \$235 on 31 March 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁶², the Claimant worked on the night shifts ending on 3, 4, 13, 14, 15, 19, 24, 25, 29, 30 and 31 March 2022. The sum of \$225 banked in on 13 March 2022 comprised the pay for the night shift ending on 13 March 2022 as well as an advance of \$150 for the night shifts ending on 14 and 15 March 2022. The \$100 banked in on 24 March 2022 was an advance of which \$50 each was taken off

¹⁶¹ 2ABD 132

¹⁶² 2ABD 132 - 135

the shift ending on 29 and 30 March 2022. The \$235 banked in on 31 March 2022 comprised the pay for the shift ending on 1 April 2022 and \$160 for having worked 26 days in March 2022. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 March 2022 i.e. 29 night shifts. Over the continuous period of 21 February to 13 March 2022, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

147 The Claimant received \$75 on 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 29 and 30 April 2022 and \$105 on 16 April 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁶³, the Claimant worked on the night shifts ending on 3, 5, 6, 9, 11, 18, 22, 26 and 29 April 2022. Based on the WhatsApp records¹⁶⁴, the Claimant stated that he had worked 26 days in April 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 May 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 29 and 30 April 2022 i.e. 26 night shifts. Over the continuous period of 14 March to 3 April 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48. Over the continuous period of 4 April

¹⁶³ 2ABD 135

¹⁶⁴ 2ABD 135

to 24 April 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

148 The Claimant received \$75 on 1, 2, 5, 6, 7, 8, 14, 15, 16, 17, 19, 20, 21, 22, 23, 27, 28, 29 May 2022, \$75 twice on 10, 12 and 30 May 2022, \$105 on 3 and 4 May 2022, \$30 on 17 May 2022 and \$150 on 24 May 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁶⁵, the Claimant worked on the night shifts ending on 1, 2, 14, 16, 25, 26 and 27 May 2022. The sum of \$105 banked in on 3 and 4 May were public holiday pay for the night shifts ending on 2 and 3 May 2022. The \$30 banked in on 17 May 2022 for the night shift ending on 17 May 2022 was due to 16 May 2022 being Vesak Day, a public holiday. The \$150 banked in on 24 May 2022 were advances for the night shifts ending on 25 and 26 May 2022. Based on the WhatsApp records¹⁶⁶, the Claimant stated that he had worked 26 days in May 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 June 2022. Based on the evidence, I am prepared to accept that the Claimant worked on 1, 2, 3, 4, 5, 6, 7, 8, 10, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29 and 30 May 2022 i.e. 25 night shifts and an additional shift on 10, 12 and 30 May 2022. Over the continuous period of 25 April to 15 May 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

¹⁶⁵ 2ABD 135 - 136

¹⁶⁶ 2ABD 136

149 The Claimant received \$75 on 2, 3, 5, 6, 12, 13, 16, 17, 18, 19, 22, 23, 24, 28, 29 and 30 June 2022, \$75 twice on 1, 7, 9, 11, 15, 21, 27 June 2022, and \$150 on 26 June 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁶⁷, the Claimant worked on the night shifts ending on 26 and 27 June as well as the day shift on 26 June 2022. The sum of \$150 banked in on 26 June 2022 was for the night shift ending on 26 June 2022 and the day shift on 26 June 2022. Based on the WhatsApp records¹⁶⁸, the Claimant stated that he had worked 26 days in June 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 30 June 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 5, 6, 7, 9, 11, 12, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29 and 30 June 2022 i.e. 24 night shifts as well as an additional shift on 1, 7, 9, 11, 15, 21, 26 and 27 June 2022. Over the continuous period of 16 May to 5 June 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48. Over the continuous period of 6 June to 26 June 2022, the Claimant worked a total of 22 shifts comprising 264 hours, exceeding an average of 44 hours per week and accumulated 132 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$413.16.

150 The Claimant received \$75 on 4, 5, 6, 8, 9, 17, 19, 20, 22, 23, 29, 31 July 2022, \$75 twice on 2, 10, 13, 15, 18, 25, 27 July 2022, \$105 on 11 July 2022, \$275 on 24 July 2022 and \$35 on 31 July 2022. Based on the WhatsApp chat

¹⁶⁷ 2ABD 137

¹⁶⁸ 2ABD 137

records between Nick and the Claimant¹⁶⁹, the Claimant worked on the night shifts ending on 4, 15, 24, 27, 29 and 31 July and 1 August 2022. The sum of \$275 banked in on 24 July 2022 was the pay of \$75 for the night shift ending on 24 July 2022 as well as an advance of \$200 to be offset against the \$160 incentive for hitting 26 days in July 2022 with the remaining \$40 to be deducted from the pay for the shift ending on 1 August 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 4, 5, 6, 8, 9, 10, 11, 13, 15, 17, 18, 19, 20, 22, 23, 24, 25, 27, 29 and 31 July 2022 i.e. 21 night shifts as well as an additional shift on 2, 10, 13, 15, 18, 25, 27 and 31 July 2022. Over the continuous period of 27 June to 17 July 2022, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

151 The Claimant received \$75 on 1, 2, 3, 4, 5, 8, 12, 14, 15, 16, 18, 23, 24, 25, 28 and 31 August 2022, \$75 twice on 7, 11, 19, 21, 26, 29 August 2022 and \$105 on 9 August 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁷⁰, the Claimant worked on the night shifts ending on 1, 7, 14, 15, 19, 21, 24 and 25 August 2022. Based on the WhatsApp records¹⁷¹, the Claimant stated that he had worked 26 days in August 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 September 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 18, 19, 21, 23, 24, 25, 26, 28, 29 and 31 August 2022 i.e. 23 shifts and

¹⁶⁹ 2ABD 137

¹⁷⁰ 2ABD 137

¹⁷¹ 2ABD 137

an additional shift on 7, 11, 19, 21, 26 and 29 August 2022. Over the continuous period of 18 July to 7 August 2022, the Claimant worked a total of 21 shifts comprising 252 hours, exceeding an average of 44 hours per week and accumulated 120 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$375.60. Over the continuous period of 8 August to 28 August 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

152 The Claimant received \$75 on 1, 2, 3, 5, 7, 9, 17, 18, 19, 20, 21, 24, 25, 26, 28 and 30 September 2022, \$75 twice on 4, 10, 22, 27 September 2022, and \$300 on 12 September 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁷², the Claimant worked on the night shifts ending on 12, 13, 15, 16, 17, 18, 21, 25, 27 and 30 September 2022. The sum of \$300 banked in on 12 September comprised the pay of \$75 for the night shift ending on 12 September 2022 as well as an advance of \$225 to be deducted from the pay for the night shifts ending on 13, 15 and 16 September 2022. Based on the WhatsApp records¹⁷³, the Claimant stated that he had worked 26 days in September 2022, which Nick accepted subsequently given that he transferred the \$160 incentive to the Claimant on 1 October 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28 and 30 September 2022 i.e. 24 shifts and an additional shift on 4, 10, 22 and 27

¹⁷² 2ABD 138 - 139

¹⁷³ 2ABD 139

September 2022. Over the continuous period of 29 August to 18 September 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48.

153 The Claimant received \$75 on 1, 2, 5, 6, 7, 8, 9, 10, 12, 14, 15, 17, 19, 21, 23, 24, 26, 27, 31 October 2022, \$75 twice on 11, 16, 20, 28 and 30 October 2022, \$50 on 20 October 2022, and \$105 on 25 October 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁷⁴, the Claimant worked on the night shifts ending on 7, 10, 20, 28 and 30 October 2022. The sum of \$50 banked in on 20 October 2022 was for the Claimant attending a course on 19 October 2022. Based on the WhatsApp records¹⁷⁵, the Claimant stated that he had worked 26 days in October 2022, which Nick accepted given that he transferred the \$160 incentive to the Claimant on 27 October 2022. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30 and 31 October 2022 i.e. 25 shifts and an additional shift on 11, 16, 20, 28 and 30 October 2022. Over the continuous period of 19 September to 9 October 2022, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$300.48. Over the continuous period of 10 October to 30 October 2022, the Claimant worked a total of 22 shifts comprising 264 hours, exceeding an average of 44 hours per week and accumulated 132 hours of overtime. As

¹⁷⁴ 2ABD 139 - 140

¹⁷⁵ 2ABD 140

the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$413.16.

154 The Claimant received \$75 on 3, 5, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 26, 28 November 2022, \$75 twice on 2, 6, 8, 15, 22, 29 November 2022, and \$235 on 27 November 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁷⁶, the Claimant worked on the night shifts ending on 2, 6, 12, 17, 20, 27 and 29 November 2022. The Claimant did not work on the night shifts ending on 24 and 25 November so the \$75 banked in on 24 November 2022 was an advance to be deducted from the pay for the night shift ending on 1 December 2022. Based on the WhatsApp records¹⁷⁷, the Claimant stated that he had worked 26 days in November 2022, which Nick accepted given that he transferred the \$160 incentive to the Claimant in advance on 27 November together with the \$75 for the night shift ending on 27 November, totalling \$235. Based on the evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 5, 6, 8, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 26, 27, 28 and 29 November 2022 i.e. 21 shifts as well as an additional shift on 2, 6, 8, 15, 22 and 29 November 2022. Over the continuous period of 31 October to 20 November 2022, the Claimant worked a total of 20 shifts comprising 240 hours, exceeding an average of 44 hours per week and accumulated 108 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.13 per hour amounting to \$338.04.

155 The Claimant's daily pay was increased to \$85 in December 2022. I was unable to find the Claimant's bank statements between 10 December 2022 and

¹⁷⁶ 2ABD 140 - 141

¹⁷⁷ 2ABD 142

10 January 2023. However, based on the partial bank statements¹⁷⁸ and calculations exhibited in both Nick's¹⁷⁹ and Lena's affidavits¹⁸⁰, the Claimant appeared to have received \$75 on 1 December 2022, \$10 on 2 December 2022, \$85 on 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 20, 21, 22, 24, 25, 26, 27, 29, 30 and 31 December 2022, \$85 twice on 17, 19 December 2022, and \$135 on 27 December 2022. Based on the WhatsApp chat records between Nick and the Claimant¹⁸¹, the Claimant worked on the night shifts ending on 1, 8 and 17 December 2022. Based on the WhatsApp records¹⁸², the Claimant stated that he had worked 26 days in December 2022, which the Defendant does not appear to dispute, given that the calculations stated the incentive to have been paid on 1 December 2022. Taking into account the CCTV evidence, I am prepared to accept that the Claimant worked on the night shifts ending on 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 December 2022 i.e. 28 shifts and an additional shift on 17 December 2022 and where the duplicate payment on 19 December 2022 was payment for the night shift ending on 23 December 2022. Over the continuous period of 21 November to 11 December 2022, the Claimant worked a total of 18 shifts comprising 216 hours, exceeding an average of 44 hours per week and accumulated 84 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.54 per hour amounting to \$297.36. Over the continuous period of 12 December 2022 to 1 January 2023, the Claimant worked a total of 19 shifts comprising 228 hours, exceeding an average of 44 hours per week and accumulated 96 hours of

¹⁷⁸ 1ABD 355 - 357

¹⁷⁹ 2BA 230

¹⁸⁰ 3BA 67

¹⁸¹ 2ABD 142 - 143

¹⁸² 2ABD 143

overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.54 per hour amounting to \$339.84.

2023

156 Based on the calculations¹⁸³ and the partial bank statements¹⁸⁴, the Claimant appeared to have received \$85 on 2, 3, 7, 8, 9, 12, 13, 14, 15, 17, 21, 26, 27, 29 January 2023, \$85 twice on 5, 10, 22 and 30 January 2023, \$135 on 2 January 2023, \$135 twice on 24 January 2023. The incentive of \$160 was banked in on 1 February 2023 which suggests that the Defendant accepts that the Claimant worked 26 days in January 2023. Taking into account the CCTV footage, I am prepared to accept that the Claimant worked on the night shifts ending on 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 21, 22, 23, 24, 25, 26, 27, 29, 30 and 31 January 2023 i.e. 25 shifts where the duplicate payments on 2, 5, 10, 22, 24 and 30 January 2023 relate to the night shifts ending on 4, 6, 11, 23, 25 and 31 January 2023. Over the continuous period of 2 January to 22 January 2023, the Claimant worked a total of 17 shifts comprising 204 hours, exceeding an average of 44 hours per week and accumulated 72 hours of overtime. As the Claimant had already been paid for these shifts, the differential overtime rate which should be applied to these hours is \$3.54 per hour amounting to \$254.88. The Claimant did not exceed an average of 44 hours per week over the continuous period of 3 weeks from 23 January to 12 February 2023.

157 In summary, the sum total of overtime pay that the Claimant is entitled to from his employment with the Defendant from 25 June 2019 to 28 February

¹⁸³ 2BA 230

¹⁸⁴ 1BA 445 - 448

2023 is \$27,018.48, as calculated at Annex A. Attributing the amounts to the respective years, the overtime pay that the Claimant is entitled to is as follows:

Year	Overtime Pay
2017	\$760.88
2018	\$1,477.36
2019	\$4,410.62
2020	\$8,002.07
2021	\$6,367.31
2022	\$5,733.22
2023	\$267.02
Total	\$27,018.48

Holiday Pay

158 Pursuant to section 88(4) of the Employment Act, any employee who may be required by his or her employer to work on any public holiday to which the employee would otherwise be entitled must be paid 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.

159 I have set out in Annex B my calculations in respect of the Claimant's entitlement to holiday pay. For 2017, the Claimant claimed to have worked on 26 June, 9 August, 10 August, 1 September and 18 October. While 10 August 2017 is not a gazetted public holiday (given that 9 August 2017 fell on a Wednesday), based on the Claimant's night shift which starts at 7 p.m. and ends at 7 a.m. the next day, his night shift ending on 10 August 2017 for which he was paid \$105 involved working from 7 p.m. to 12 midnight on 9 August 2017.

Based on the Claimant's bank statements¹⁸⁵, the Claimant received \$105 on 26 June 2017 when the pay appeared to be \$70 per shift. The Claimant was also paid \$105 per shift for working on 9 and 10 August 2017, \$105 for working on 1 September 2017 and \$105 for working on 18 October 2017. Based on the evidence, the Claimant also worked on the night shift commencing on 25 December 2017. For working on 26 June, 9 August, 1 September, 2 shifts on 18 October 2017 and the night shift starting at 7 p.m. on 25 December, the Claimant is entitled to 6 extra days' salary at the basic rate of pay for one day's work pursuant to section 88(4) of the Employment Act which is \$420. However, the Claimant had already received an extra \$150 for working on these days (\$30 for working on 26 June, \$30 for working from 12 a.m. to 7 a.m. and \$30 for working from 7 p.m. to 12 midnight on 9 August, \$30 for working on 1 September and \$30 for working on 18 October 2017). Hence the shortfall is \$270.

160 For 2018, the Claimant claimed to have worked on 17 February, 31 March, 1 and 30 May, 15 and 16 June, and 10 and 23 August. For 2018, the gazetted public holidays were 16 and 17 February (Friday and Saturday) for Chinese New Year, 30 March (Friday) for Good Friday, 1 May (Tuesday) for Labour Day, 29 May (Tuesday) for Vesak Day, 15 June (Friday) for Hari Raya Puasa, 9 August (Thursday) for National Day, 22 August (Wednesday) for Hari Raya Haji and 6 November (Tuesday) for Deepavali. Hence, the gazetted public holidays in 2018 that the Claimant worked on and was entitled to public holiday pay were 16 February, the night shift which ended on 17 February, 30 March, the night shift which ended at 7 a.m. on 1 May and the day shift on 1 May, 29 May, 15 June, 9 August, 22 August and 6 November. For the 10 shifts on the 9 gazetted public holidays that the Claimant worked on in 2018, he was entitled to 10 extra days' salary which amounts to \$750. However, the Claimant had

¹⁸⁵ 1ABD 109

already received an extra \$290 for working on those days (\$30 for working on 17 February, \$30 for working on 30 March, \$30 each for working on 1 and 29 May, \$60 for working on 15 June, \$30 each for working on 9 and 22 August and \$50 for working on 6 November). Hence, the shortfall for 2018 in respect of holiday pay is \$460.

161 For 2019, the Claimant claimed to have worked on 6 and 7 February, 2 and 21 May, 6 June, 9 and 13 August, 28 and 29 October, and 24 and 25 December. For 2019, the gazetted public holidays were 5 and 6 February (Tuesday and Wednesday) for Chinese New Year, 19 April (Friday) for Good Friday, 1 May (Wednesday) for Labour Day, 19 May (Sunday) and correspondingly 20 May (Monday) for Vesak Day, 5 June (Wednesday) for Hari Raya Puasa, 9 August (Friday) for National Day, 11 August (Sunday) and correspondingly 12 August (Monday) for Hari Raya Haji, 27 October (Sunday) and correspondingly 28 October (Monday) for Deepavali and 25 December (Wednesday) for Christmas Day. Hence, the gazetted public holidays in 2019 that the Claimant worked on and was entitled to public holiday pay were 5 February, 6 February, 19 April, 1 May, the night shift starting at 7 p.m. on 20 May, 5 June, 9 August, the night shift ending at 7 a.m. on 11 August and the day shift on 11 August, the night shift which started at 7 p.m. on 12 August, the night shift which ended at 7 a.m. on 27 October and the night shift which ended at 7 a.m. on 28 October, the night shift which started at 7 p.m. on 28 October and 2 shifts on 25 December 2019. For the 14 shifts on the 12 gazetted public holidays that the Claimant worked on, he was entitled to \$1,050. However, he had already received an extra \$315 for working on those days (\$30 for working from 12 a.m. to 7 a.m. on 6 February and \$30 for working from 7 p.m. to 12 midnight on 6 February, \$10 for working from 12 a.m. to 7 a.m. on 19 April and \$5 for working from 7 p.m. to 12 a.m. on 19 April, \$30 each for working on the night shifts ending on 2 and 21 May, \$30 for working on 5 June, \$30 each for

working on the night shifts ending on 9 and 13 August, \$30 for working from 12 a.m. to 7 a.m. on 28 October and \$30 for working from 7 p.m. to 12 midnight on 28 October and \$30 for working on 25 December 2019). Hence, the shortfall for 2019 in respect of holiday pay is \$735.

162 For 2020, the Claimant claimed to have worked on 24 January, 11 April, 1, 2, 7, 8, 25 and 26 May, 31 July, 10 August, 15 November, 25 and 26 December. The gazetted public holidays in 2020 were 1 January (Wednesday) for New Year's Day, 25 and 26 January 2020 (Saturday and Sunday) and correspondingly 27 January 2020 (Monday) for Chinese New Year, 10 April (Friday) for Good Friday, 1 May (Friday) for Labour Day, 7 May (Thursday) for Vesak Day, 24 May (Sunday) and correspondingly 25 May (Monday) for Hari Raya Puasa, 31 July (Friday) for Hari Raya Haji, 9 August (Sunday) and correspondingly 10 August (Monday) for National Day, 14 November (Saturday) for Deepavali and 25 December (Friday) for Christmas Day. Hence the gazetted public holidays that the Claimant worked on and was entitled to public holiday pay were (i) the night shift starting at 7 p.m. on 1 January 2020, (ii) the night shift ending on 25 January, (iii) the night shift which ended at 7 a.m. on 10 April and the night shift which commenced at 7 p.m. on 10 April, (iv) the night shift ending at 7 a.m. on 1 May as well as the night shift which commenced at 7 p.m. on 1 May, (v) 2 shifts on 7 May, (vi) the night shift ending at 7 a.m. on 24 May, (vii) 2 shifts on 25 May, (viii) 2 shifts on 31 July, (ix) the night shift which ended at 7 a.m. on 9 August and the night shift which commenced at 7 p.m. on 9 August, (x) the day shift on 10 August, (xi) 2 shifts on 14 November, and (xii) 2 shifts on 25 December 2020. For the 17 shifts on the 12 gazetted public holidays that the Claimant worked on, he was entitled to an extra \$1,275. However, the Claimant had already received \$300 on 10 April 2020 for which there was no evidence on the reason for such payment. As such, I take it that he has been appropriately remunerated for working on 10 April

2020 and is entitled to an extra \$1,200. In respect of the other shifts, he had already received an extra \$420 (being (i) \$30 for the night shift ending at 7 a.m. on 1 May and \$30 for the night shift which commenced at 7 p.m. on 1 May, (ii) \$30 for the day shift on 7 May and \$30 for the night shift which commenced at 7 p.m. on 7 May, (iii) \$30 for the day shift on 25 May and \$30 for the night shift which commenced at 7 p.m. on 25 May, (iv) \$30 for the day shift on 31 July and \$30 for the night shift which commenced at 7 p.m. on 31 July, (v) \$30 for the night shift which commenced at 7 p.m. on 9 August, (vi) \$30 for the day shift on 10 August, (vii) \$30 for the day shift of 14 November and \$30 for the night shift which commenced at 7 p.m. on 14 November; (viii) \$30 for the day shift on 25 December and \$30 for the night shift which started at 7 p.m. on 25 December 2020). Hence, the shortfall for holiday pay in 2020 is \$780.

163 For 2021, the Claimant claimed to have worked on 12, 13 and 14 February, 2 and 3 April, 1, 2, 13, 14 and 25 May, 20 July, 4 November and 25 December. The gazetted public holidays in 2021 were 12 and 13 February (Friday and Saturday) for Chinese New Year, 2 April (Friday) for Good Friday, 1 May 2021 (Saturday) for Labour Day, 13 May (Thursday) for Hari Raya Puasa, 26 May (Wednesday) for Vesak Day, 20 July (Tuesday) for Hari Raya Haji, 4 November (Thursday) for Deepavali and 25 December (Saturday) for Christmas Day. Hence the gazetted public holidays that the Claimant worked on and was entitled to public holiday pay were (i) the day shift of 12 February and the night shift which commenced at 7 p.m. on 12 February, (ii) the day shift of 13 February and the night shift which commenced at 7 p.m. on 13 February, (iii) 2 April, (iv) 1 May, (v) 13 May, (vi) the night shift which commenced at 7 p.m. on 26 May, (vii) the night shift which ended at 7 a.m. on 20 July and the day shift of 20 July, (viii) 2 shifts on 4 November and (ix) 25 December 2021. For the 13 shifts on the 9 gazetted public holidays that the Claimant worked on, he was entitled to an extra \$975. However, he had already received an extra

\$420 (being (i) an extra \$30 for the day shift on 12 February, (ii) an extra \$60 on 13 February, (iii) an extra \$30 for the night shift ending on 2 April and an extra \$30 for the night shift which commenced at 7 p.m. on 2 April, (iv) an extra \$30 for the night shift ending at 7 a.m. on 1 May and an extra \$30 for the night shift starting at 7 p.m. on 1 May, (v) an extra \$30 for the night shift ending at 7 a.m. on 13 May and an extra \$30 for the night shift starting at 7 p.m. on 13 May (vi) an extra \$30 for the night shift starting at 7 p.m. on 26 May, (vii) an extra \$30 on 20 July, (viii) an extra \$60 for the 2 shifts on 4 November and (ix) an extra \$30 for the night shift which started at 7 p.m. on 25 December 2021). Hence, the shortfall for 2021 is \$555.

164 In 2022, the Claimant claimed to have worked on 2 January, 2 and 3 February, 16 April, 3 and 4 May, 11 July, 9 August, 25 October and 27 December. The gazetted public holidays were 1 January (Saturday) for New Year's Day, 1 and 2 February (Tuesday and Wednesday), 15 April (Friday) for Good Friday, 1 May (Sunday) and 3 May (Tuesday) for Labour Day, 2 May (Monday) for Hari Raya Puasa, 15 May (Sunday) and correspondingly 16 May (Monday) for Vesak Day, 10 July (Sunday) and correspondingly 11 July (Monday) for Hari Raya Puasa, 9 August (Tuesday) for National Day, 24 October (Monday) for Deepavali and 25 December (Sunday) and correspondingly 26 December (Monday) for Christmas Day. Hence the gazetted public holidays that the Claimant worked on and was entitled to public holiday pay in 2022 were (i) the night shift which started at 7 p.m. on 1 January, (ii) the night shift which ended at 7 a.m. on 1 February and the night shift which started at 7 p.m. on 1 February; (iii) the night shift which started at 7 p.m. on 2 February, (iv) the night shift which ended at 7 a.m. on 15 April and the night shift which started at 7 p.m. on 15 April, (v) the night shift which ended at 7 a.m. on 1 May and the night shift which started at 7 p.m. on 1 May, (vi) the night shift which started at 7 p.m. on 2 May, (vii) the night shift which started at 7 p.m. on 3 May,

(viii) the night shift which ended at 7 a.m. on 15 May and the night shift which started at 7 p.m. on 15 May, (ix) the night shift which started at 7 p.m. on 16 May (x) 2 shifts on 10 July, (xi) the night shift which ended at 7 a.m. on 11 July (xii) the night shift which ended at 7 a.m. on 9 August, (xiii) the night shift which ended at 7 a.m. on 24 October and the night shift which started at 7 p.m. on 24 October, (xiv) the night shift which started at 7 p.m. on 25 December, and (xv) the night shift which started at 7 p.m. on 26 December. For the 16 shifts on the 15 days of gazetted public holidays that the Claimant worked on, he was entitled to an extra \$1,220 (being $14 \times \$75 + 2 \times \85). However, he had already received an extra \$350 (being an extra \$30 for the night shift on 1 Jan 2022, an extra \$30 each for the night shifts which started on 1 and 2 February, an extra \$30 for the night shift which started on 15 April, an extra \$30 each for the night shifts which started on 2 and 3 May, an extra \$30 for the night shift which started on 16 May, an extra \$30 for the night shift which started on 10 July, an extra \$30 for the night shift which ended on 9 August, an extra \$30 for the night shift which started on 24 October and an extra \$50 for the night shift which started on 26 December 2022). Hence the shortfall in 2022 amounts to \$870.

165 In 2023, the Claimant claimed to have worked on 2 and 24 January 2023. In particular, he worked 2 shifts on 24 January 2023. Both 2 and 24 January 2023 are gazetted public holidays. For the 2 gazetted public holidays that the Claimant worked on, he was entitled to an extra \$255. However, he had already received an extra \$50 on 2 January 2023 and an extra \$100 on 24 January 2023. Hence, the shortfall in 2023 in respect of holiday pay is \$105.

166 As such, the total shortfall in respect of holiday pay over the Claimant's employment with the Defendant is \$3,775 (being \$270 in 2017 + \$460 in 2018 + \$735 in 2019 + \$780 in 2020 + \$555 in 2021 + \$870 in 2022 + \$105 in 2023).

Rest Day Pay

167 Under section 37 of the Employment Act, an employee must be paid for working on a rest day and the rate differs depending on whether he is doing so at his own request or at the request of his employer. Based on the evidence, I find that the Claimant was working on rest days at his own request, given his desire to bring in more income. In particular, it was the Claimant who had asked to work for 3 to 4 shifts in the day, first on 24 June 2019¹⁸⁶ and again on 4 September 2019¹⁸⁷. Under section 37(2), an employee who at his request works for an employer on a rest day must be paid for that day, if the period of work is more than half but does not exceed the employee's normal hours of work, a sum at the basic rate of pay for one day's work. If the period of work exceeds the employee's normal hours of work for one day, he must be paid a sum at the basic rate of pay for one day's work and a sum at the rate of not less than one and a half times the employee's hourly basic rate of pay for each hour or part thereof that the period of work exceeds the employee's normal hours of work for one day.

168 Under section 37, normal hours of work means the number of hours of work (not exceeding the limits applicable to an employee under section 38 or 40, as the case may be) that is agreed between an employer and an employee to be the usual hours of work per day. Based on the evidence, the number of hours of work that is agreed between the Claimant and the Defendant is 12 hours, which does not exceed the limit in section 40(3) of the Employment Act. Hence the fact that the Claimant worked on his rest days at his own request for 12 hours, which did not exceed his normal hours of work, and was paid for the

¹⁸⁶ 2ABD 92 – [24/06/2019, 17:44]

¹⁸⁷ 2ABD 96 – [04/09/2019, 11:43], [04/09/2019, 12:22]

same at the basic rate of pay for one day, meant that there was no shortfall in this respect.

Shortfall in wage increase

169 The Claimant claimed that his daily rate was increased from \$75 to \$85 only in December 2022, when it should have been effected in January 2022. While the PWM for senior security officers was raised from \$1,585 to \$1,633 in 2022, the Claimant did not produce any evidence that he was in fact contractually entitled to any increment from January 2022. While the Defendant may suffer consequences if it failed to comply with the PWM, the fact that the PWM was raised did not in and by itself provide any legal basis for the Claimant to assert that he was entitled to the increment from January 2022. In any event, the monthly sum he received in 2022 exceeded the sum of \$1,633.

Medical Bills

170 The Claimant did not point to any contractual basis for his claim. However, under section 89(7A) of the Employment Act, where an employee has served an employer for a period of at least 3 months, the employer is liable to bear, or to reimburse the employee, the fees of an examination of the employee by a medical practitioner if (a) the medical practitioner is appointed by the employer or is a medical officer; and (b) after the examination, the employee is certified by the medical practitioner to be entitled to sick leave.

171 The Claimant claims the sum of \$492.39 for medical bills, comprising

- (a) an invoice of \$19.95 from SingHealth Polyclinics dated 20 September 2017;

- (b) an invoice of \$110 from Alexandra Hospital dated 29 April 2021;
- (c) an invoice of \$330.65 from NUH dated 16 July 2021;
- (d) an invoice of \$14.80 from NHG Polyclinics dated 28 November 2022; and
- (e) an invoice of \$17.35 from NHG Polyclinics dated 18 February 2023

172 At the time of the first invoice dated 20 September 2017¹⁸⁸, the Claimant had yet to work for the Defendant for more than 3 months. Based on the letter issued by Nick, the Claimant joined the Defendant on 25 June 2017¹⁸⁹. This was also consistent with the Claimant's CPF statements which showed that the Defendant only started making contributions to the Claimant's CPF account for the month of July 2017¹⁹⁰. Hence, the Claimant has failed to show that he was entitled to reimbursement of the invoice dated 20 September 2017.

173 In respect of the invoice of \$110 from Alexandra Hospital dated 29 April 2021¹⁹¹, this was in respect of the Claimant's visit on 26 April 2021, in respect of which Dr Joshua Ong Tze Wei had given him 3 days of sick leave from 26 to 28 April 2021¹⁹². Hence, he is entitled to reimbursement of \$110.

¹⁸⁸ 2ABD 86 - 87

¹⁸⁹ 2ABD 372

¹⁹⁰ 1BA 38

¹⁹¹ 2ABD 226 - 227

¹⁹² 2ABD 225

174 In respect of the invoice of \$330.65 from NUH dated 16 July 2021¹⁹³, this was in respect of a visit on 15 July 2021, in respect of which Dr Chua Chen Xi Kasia had given him 1 day of sick leave on 15 July 2021¹⁹⁴. Hence, he is entitled to reimbursement of \$330.65.

175 As for the invoice of \$14.80 from NHG Polyclinics dated 28 November 2022¹⁹⁵ and the invoice of \$17.35 from NHG Polyclinics dated 18 February 2023¹⁹⁶, there was no evidence that the Claimant was certified to be entitled to paid sick leave after the examination. As such, the Claimant is not entitled to be reimbursed the same.

176 The total medical expenses which the Claimant is entitled to reimbursement amounts to \$440.65, being the sum of \$110 and \$330.65.

Annual Leave

177 Under section 88A(1) of the Employment Act, an employee who has served an employer for a period of not less than 3 months is entitled to 7 days of paid annual leave for the first 12 months of continuous service with the same employer, and subject to a maximum of 14 days of paid annual leave, an additional one day of paid annual leave, for every subsequent 12 months of continuous service with the same employer. Under section 88A(7) of the Employment Act, an employer must pay an employee the employee's gross rate of pay for every day of paid annual leave.

¹⁹³ 2ABD 230 - 231

¹⁹⁴ 2ABD 229

¹⁹⁵ 2ABD 243 - 244

¹⁹⁶ 1BA 476 - 477

178 Under section 88A(6) of the Employment Act, in the case of an employee to whom Part 4 applies by virtue of section 35(b) or who is a workman mentioned in section 35(a), the employer must grant, and the employee must take, the employee's paid annual leave not later than 12 months after the end of every 12 months of continuous service. If the employee fails to take that leave by the end of that period, the employee ceases to be entitled to that leave.

179 In the present case, Nick from the Defendant gave the Claimant the impression that he was not entitled to any leave. Hence, the Defendant failed to grant the Claimant paid annual leave which he was entitled to from 25 June 2017 to the end of his employment. One cannot forfeit what one does not know one has. As such, I do not think the Claimant should be prejudiced by his failure to take leave which he did not know he had. Correspondingly, the Claimant is entitled to the following days of paid leave accrued during his period of employment for which he ought to be paid the corresponding sums:

Time Period	Number of days of paid annual leave	Rate	Total Annual Leave Pay
July 2017 – June 2018	7	\$75	\$525
July 2018 – June 2019	8	\$75	\$600
July 2019 – June 2020	9	\$75	\$675
July 2020 – June 2021	10	\$75	\$750
July 2021 – June 2022	11	\$75	\$825

July 2022 – February 2023	8	5 x \$75 from July to November 2022 3 x \$85 from December 2022 to February 2023	\$375 <u>+ \$255</u> \$630
			\$4,005

180 Attributing this to the respective years, the annual leave pay that the Claimant is entitled to, as indicated at Annex C is:

Year	Annual Leave Pay
2017	\$262.50
2018	\$562.50
2019	\$637.50
2020	\$712.50
2021	\$787.50
2022	\$872.50
2023	\$170
Total	\$4005

Summary

181 In summary, the sum that the Claimant is entitled to receive in respect of underpaid wages is as follows:

	Total overtime Pay	Holiday Pay	Annual Leave	Subtotal
2017	\$760.88	\$270	\$262.50	\$1,293.38
2018	\$1,477.36	\$460	\$562.50	\$2,499.86
2019	\$4,410.62	\$735	\$637.50	\$5,783.12
2020	\$8,002.07	\$780	\$712.50	\$9,494.57
2021	\$6,367.31	\$555	\$787.50	\$7,709.81
2022	\$5,733.22	\$870	\$872.50	\$7,475.72
2023	\$267.02	\$105	\$170	\$542.02
Subtotal	\$27,018.48	\$3,775	\$4,005	\$34,798.48

182 In total, the Claimant is entitled to the sum of \$35,239.13, being \$27,018.48 for overtime pay, \$3,775 for holiday pay, \$440.65 for medical expenses and \$4,005 for annual leave entitlements.

183 However, the Claimant received the sums of \$85, \$160 and \$1,213.38 on 1 February¹⁹⁷ and the sums of \$5,353.64 on 5 March 2023¹⁹⁸ from the Defendant. In the Claimant's pay slip of February 2023¹⁹⁹, the Claimant's paternity claim of 12 days was indicated in the sum of \$1,213.38 and his leave of 14 days in 2022 and 2 days in 2023 was indicated as encashed at \$1,020.08. His net pay was indicated at \$3,454.46. However, besides the sum of \$1,213.38 which was banked into the Claimant's bank account on 1 February 2023, it is unclear whether the sums stated in the February 2023 pay slip were banked into

¹⁹⁷ 1BA 448

¹⁹⁸ 1BA 453

¹⁹⁹ 2ABD 85

the Claimant's bank account. Hence, the Claimant is entitled to be paid the sum of \$29,885.49 (being \$35,239.13 less \$5,353.64).

184 In accordance with the agreement between the parties, the Defendant makes payment of both the employer and employee CPF contributions in respect of the Claimant's wages. Hence, the Defendant is to make both the employer and employee CPF contributions in respect of the total sum of unpaid wages as determined above i.e. the overtime pay, the holiday pay as well as the annual leave entitlement pay at the rate of 37% before 18 November 2018, 26% from 19 November 2018 up to 31 December 2021, 28% in 2022 and 29.5% in 2023. As calculated at Annex C, this amounts to the following:

Year	Total unpaid wages	Total CPF rate	Total CPF contributions
2017	\$1,293.38	37%	\$478.55
2018	\$2,205.36 (up to 18 November)	37%	\$815.98
	\$294.50	26%	\$76.57
2019	\$5,783.12	26%	\$1,503.61
2020	\$9,494.57	26%	\$2,468.59
2021	\$7,709.81	26%	\$2,004.55
2022	\$7,475.72	28%	\$2,093.20
2023	\$542.02	29.5%	\$159.90
Sub-total	\$34,798.48		\$9,600.95

185 The Defendant had paid a sum of \$2,924.62 in CPF contributions on payments due and owing in the year 2022 and \$40.48 in adjustments/interest

being a total of \$2,965.10. Hence, the paid sum should be set off against the \$9,600.95 owing, leaving a balance of \$6,635.85.

Whether the Claimant was wrongfully terminated

186 Pursuant to section 10(1) of the Employment Act, either party to a contract of service may at any time give to the other party notice of the firstmentioned's party's intention to terminate the contract of service. Pursuant to section 10(3) of the Employment Act, the notice to terminate the service of a person who is employed under a contract of service must be at least 4 weeks' notice if the person has been so employed for 5 years or more.

187 On 1 February 2023, the Claimant received a notice of termination from the Defendant informing him that the Defendant had been notified by their client that their last day of security service would be 28 February 2023 and that the letter served as a formal notice that the Defendant was serving him one month's notice of termination. It was therefore well within the Defendant's right to terminate the Claimant's employment in accordance with the Employment Act.

188 However, the Claimant claimed that he was wrongfully dismissed because he had sought payment of amounts which were due to him and declined to sign a new employment contract which would waive his prior claims. The Claimant also alleged that the reason given for his termination, that the Defendant no longer has the contract to the Tagore Site, to which the Claimant was permanently deployed, was false, thus rendering the dismissal wrongful.

189 The Claimant claimed in his email of 9 December 2022 that Lena had given him 3 days to decide if he wanted to sign a contract with the Defendant,

failing which he would have to find another job²⁰⁰. On the stand, Lena conceded that she did threaten to dismiss the Claimant²⁰¹ and that she had imposed a deadline as she needed to follow up in 3 days²⁰². However, the threat was not carried out²⁰³ and the Claimant was only terminated when they lost the Tagore Site²⁰⁴.

190 The Claimant claimed that Christopher had called him on 3 January 2023 to threaten him with 2 weeks' notice and termination²⁰⁵. The Claimant claimed that Nick had also called him on 3 January 2023 to threaten him with one week's notice if he did not sign the new employment contract²⁰⁶.

191 While I note that Lena did state that the Claimant should find another job if he is not willing to sign the new employment contract within three days, these threats were not carried out. There was also no indication in the unsigned employment contract that the Claimant would have to forgo his past claims. In fact, Christopher appeared to be labouring under the erroneous impression that claims prior to the change of ownership should be pursued against the previous owner²⁰⁷. Ultimately, the Claimant was terminated on 1 February 2023 with notice, which was in accordance with the Employment Act.

²⁰⁰ 3BA 277

²⁰¹ NE, 26 August 2025, 23/1-14, 28 -31

²⁰² NE, 26 August 2025, 20/19 – 21/2

²⁰³ NE, 26 August 2025, 24/31-32

²⁰⁴ NE, 26 August 2025, 42/1-10

²⁰⁵ Claimant's AEIC at [32]

²⁰⁶ Claimant's AEIC at [33]

²⁰⁷ NE, 26 August 2025, 121/31 – 122/23

192 I also note that it was undisputed that the Defendant did not continue with the provision of security services at the Tagore Site after 28 February 2023. On 30 January 2023, the Defendant was informed by TKA Construction Pte Ltd (which had taken over the management of the Tagore Site) that the security services of the Defendant would not be continued and that they were to hand over to the new security agency by 28 February 2023²⁰⁸. As the Claimant was only willing to be deployed to the Tagore Site, the Defendant notified the Claimant on 1 February 2023 that his services would no longer be required²⁰⁹.

193 While the Defendant appeared to have told the MOM officer, Sarah Leng, that the Defendant's services were terminated by the client because the Claimant was found sleeping on the job during his night shift²¹⁰ for which it had tendered evidence in respect of the same in the months of December 2022 and January 2023, Nick took the position on the stand that the Defendant's services at the Tagore Site were discontinued because they were offered too low a price for the site²¹¹.

194 Based on the objective evidence, the contract for the Defendant to provide services to the Tagore Site²¹² would have expired on 30 November 2022. There was evidence that the Tagore Site was not a particularly profitable site for the Defendant²¹³. As early as March 2022²¹⁴, the Defendant had ceased to be interested in renewing the site and the impression was that the intention

²⁰⁸ 2BA 80

²⁰⁹ Nick's AEIC at [66]

²¹⁰ 3BA 395

²¹¹ NE, 25 August 2025, 86/28 – 87/4

²¹² 2ABD 193 - 221

²¹³ Nick's AEIC at [13]

²¹⁴ 2ABD 134, [21/03/2022, 15:07]

was mutual. As such, even if it was not the client which had discontinued engaging the Defendant for the Tagore Site, I accepted that there were genuine reasons for the Defendant declining to continue with the provision of services at the Tagore Site. Given that it was the Claimant's evidence that he was contracted to serve only at the Tagore Site²¹⁵, and the evidence showed that he was unwilling to be deployed to other sites, his services were terminated with notice. I therefore did not find the reason for the Claimant's dismissal to be untrue and dismiss the Claimant's claim for wrongful dismissal.

Counterclaim

195 The Defendant argued that they had made CPF contributions to the Claimant on the mistaken understanding that all security officers, save for work permit holders, were entitled to receive CPF contributions. Accordingly, they counterclaim for the recovery of \$40,666, being the sum of CPF payments it had paid to the Claimant under a mistake of the law.

196 Payments made under mistake of law are recoverable where (a) the mistake was made; and (b) but for the mistake, payment would not have been made: *Management Corporation Strata Title No. 473 v De Beers Jewellery Pte Ltd* [2002] 1 SLR(R) 418 at [25] – [28]. In *Mok Kwong Yue v Ding Leng Kong* [2008] SGHC 65 at [23], the High Court highlighted that a person who pays when he is in doubt about what the law is will be denied recovery and his claim will also fail if he made the payment in the knowledge that there was a ground to contest liability. This is because in both situations it can be said that he assumed the risk that he was mistaken. In relation to causation, the plaintiff must

²¹⁵ NE, 2 June 2025, 31/17-28

prove that he would not have made the payment had he known of the mistake at the time it was made.

197 The Defendant claimed that they had been misled by the statement in the Union of Security Employees Security Officers Handbook (the “Handbook”) that even “part time and relief officers get CPF. Only work-permit officers are not paid CPF.”²¹⁶ As such, they took the position of paying CPF to the Claimant who is an *ad hoc* worker²¹⁷ and only discovered the mistake when they were advised by their solicitors that the Claimant was engaged pursuant to a contract for service and was not entitled to CPF contributions²¹⁸. In view of my finding above that the Claimant was an employee of the Defendant, there was no mistake of law made by the Defendant in making the CPF contributions.

198 In this regard, I found the evidence of Nick and Lena in respect of their characterisation of the Claimant as an *ad hoc* worker engaged pursuant to a contract for services to be a clear afterthought. In the WhatsApp messages between Nick and the Claimant, the Claimant had referred to himself as a relief officer on various occasions²¹⁹ without objection from Nick. Nick had also referred to the Claimant as a relief officer²²⁰. Nick had therefore held the view that the Claimant was a relief officer who was, as set out in the Handbook, entitled to CPF contributions. There was no mistake to speak of. In any event, Nick’s evidence was that it was Edwin, the previous owner, who had calculated

²¹⁶ 1ABD 97

²¹⁷ NE, 25 August 2025, 123/14-15

²¹⁸ Lena’s AEIC at [14]

²¹⁹ 2ABD 96 [28/08/2019, 11:31], 2ABD 98 [10/10/2019, 11:26], 2ABD 103 [12/02/2020, 13:47]

²²⁰ 2ABD 126 [22/09/2021, 12:49], 2ABD 127 [22/09/2021, 13:33]

the Claimant's CPF contributions based on his daily pay²²¹ and made the contributions before October 2022. There is no evidence that Edwin had made a mistake as to the nature of the Claimant's engagement or as to the Defendant's obligation to pay CPF contributions in respect of the Claimant.

199 As for the fact that Lena continued with the contributions after the change of ownership in October 2022²²², her evidence was that she was unsure how *ad hoc* workers work, except for the fact that they come and go and that she had used that phrase because it was used by Nick²²³. Even on her definition, the Claimant would not be considered an *ad hoc* worker, given that he had been performing the night shift regularly at the Tagore Site for more than 4 years.

200 The Defendant argued that s 71(4) of the CPF Act only applied to the process of seeking a refund from the CPF Board and did not preclude the Defendant from pursuing its claim against the Claimant via civil proceedings. In view of my findings above, this issue is moot. As for the sum of \$5,353.64, this has been taken into account earlier in calculating the sums due to the Claimant.

201 In the circumstances, I found the counterclaim to be unmeritorious and dismiss it.

202 In conclusion, judgment is entered for the Claimant in the sum of \$29,885.49 and CPF contribution amounting to \$6,635.85, together with interest at 5.33% p.a. on these sums from the date of the originating claim to the date of judgment.

²²¹ NE, 3 June 2025, 126/8-12

²²² NE, 3 June 2025, 128/16-17, NE, 26 August 2025, 10/10-11

²²³ NE, 26 August 2025, 51/12-52/12

203 The parties are to file and exchange written submissions on the issue of costs (limited to 10 pages) within 14 days of this judgment.

Sia Aik Kor
District Judge

Imran Hamid Khwaja, Clara Ng Cheng Mun, Jayesh Melvani (Tan
Rajah & Cheah) for the Claimant;
Raj Joshua Thomas, Vigneesh s/o Nainar (Tang Thomas LLC) for
the Defendant.

Annex A

2017	Amount	2018	Amount	2019	Amount	2020	Amount	2021	Amount	2022	Amount	2023	Amount	T
		18 Dec - 7 Jan	\$37.56	17 Dec - 6 Jan	\$0.00	16 Dec - 5 Jan	\$563.40	28 Dec - 17 Jan	\$488.28	20 Dec - 9 Jan	\$262.92	2 Jan - 22 Jan	\$254.88	
		8 Jan - 28 Jan	\$75.12	7 - 27 Jan	\$150.24	6 Jan - 26 Jan	\$375.60	18 Jan - 7 Feb	\$450.72	10 Jan - 30 Jan	\$300.48	23 Jan - 12 Feb	\$0.00	
		29 Jan - 18 Feb	\$0.00	28 Jan - 17 Feb	\$112.68	27 Jan - 16 Feb	\$488.28	8 Feb - 28 Feb	\$676.08	31 Jan - 20 Feb	\$375.60			
		5 Feb - 25 Feb	\$37.56	18 Feb - 10 Mar	\$0.00	17 Feb - 8 Mar	\$600.96	1 Mar - 21 Mar	\$488.28	21 Feb - 13 Mar	\$338.04			
		26 Feb - 18 Mar	\$75.12	25 Feb - 17 Mar	\$37.56	9 Mar - 29 Mar	\$112.68	22 Mar - 11 Apr	\$563.40	14 Mar - 3 Apr	\$300.48			
		19 Mar - 8 Apr	\$112.68	18 Mar - 7 Apr	\$112.68	30 Mar - 19 Apr	\$563.40	12 Apr - 2 May	\$525.84	4 Apr - 24 Apr	\$300.48			
		9 Apr - 29 Apr	\$112.68	8 Apr - 28 Apr	\$112.68	20 Apr - 10 May	\$525.84	3 May - 23 May	\$375.60	25 Apr - 15 May	\$300.48			
		30 Apr - 20 May	\$150.24	29 Apr - 19 May	\$187.80	11 May - 31 May	\$450.72	24 May - 13 Jun	\$413.16	16 May - 5 Jun	\$300.48			
		21 May - 10 Jun	\$150.24	20 May - 9 Jun	\$225.36	1 Jun - 21 Jun	\$450.72	14 Jun - 4 Jul	\$338.04	6 Jun - 26 Jun	\$413.16			
		11 Jun - 1 Jul	\$150.24	10 Jun - 30 Jun	\$262.92	22 Jun - 12 Jul	\$375.60	5 Jul - 25 Jul	\$300.48	27 Jun - 17 Jul	\$338.04			
3 July - 23 July	\$105.12	2 Jul - 22 Jul	\$150.24	1 Jul - 21 Jul	\$338.04	13 Jul - 2 Aug	\$525.84	26 Jul - 15 Aug	\$0.00	18 Jul - 7 Aug	\$375.60			
24 July - 13 Aug	\$245.28	23 Jul - 12 Aug	\$37.56	22 Jul - 11 Aug	\$300.48	3 Aug - 23 Aug	\$488.28	16 Aug - 5 Sep	\$0.00	8 Aug to 28 Aug	\$300.48			
14 Aug - 3 Sep	\$0.00	13 Aug - 2 Sep	\$0.00	12 Aug - 1 Sep	\$300.48	24 Aug - 13 Sep	\$450.72	6 Sep - 26 Sep	\$338.04	29 Aug - 18 Sep	\$300.48			
4 Sep - 24 Sep	\$0.00	2 Sep - 23 Sep	\$112.68	2 Sep - 22 Sep	\$338.04	14 Sep - 4 Oct	\$338.04	27 Sep - 17 Oct	\$338.04	19 Sep - 9 Oct	\$300.48			
25 Sep - 15 Oct	\$175.20	24 Sep - 14 Oct	\$150.24	23 Sep - 13 Oct	\$413.16	5 Oct - 25 Oct	\$525.84	18 Oct - 7 Nov	\$300.48	10 Oct - 30 Oct	\$413.16			

16 Oct - 5 Nov	\$70.08	15 Oct - 4 Nov	\$75.12	14 Oct - 3 Nov	\$375.60	26 Oct - 15 Nov	\$375.60	8 Nov - 28 Nov	\$338.04	31 Oct - 20 Nov	\$338.04			
6 Nov - 26 Nov	\$70.08	5 Nov - 25 Nov	\$37.56	4 Nov - 24 Nov	\$300.48	16 Nov - 6 Dec	\$525.84	29 Nov - 19 Dec	\$375.60	21 Nov - 11 Dec	\$297.36			
27 Nov - 17 Dec	\$70.08	26 Nov - 16 Dec	\$37.56	25 Nov - 15 Dec	\$413.16	7 Dec - 27 Dec	\$600.96			12 Dec - 1 Jan	\$339.84			
Sub-total	\$735.84		\$1,502.40		\$3,981.36		\$8,338.32		\$6,310.08		\$5,895.60		\$254.88	
		less 18 Dec - 31 Dec 2017	-\$25.04	less 17 Dec - 31 Dec 2018	\$0.00	less 16 Dec - 31 Dec 2019	-\$429.26	less 28 Dec - 31 Dec 2020	-\$93.01	less 20 Dec - 31 Dec 2021	-\$150.24	plus 1 Jan 2023	\$12.14	
plus 18 Dec - 31 Dec 2017	\$25.04	plus 17 Dec - 31 Dec 2018	\$0.00	plus 16 Dec - 31 Dec 2019	\$429.26	plus 28 Dec - 31 Dec 2020	\$93.01	plus 20 Dec - 31 Dec 2021	\$150.24	less 1 Jan 2023	-\$12.14			
Total overtime pay	\$760.88		\$1,477.36		\$4,410.62		\$8,002.07		\$6,367.31		\$5,733.22		\$267.02	

Annex B

Gazetted Public Holiday in 2017	Worked on	Entitled	Allowance already received	Total Difference
25-Jun				
26-Jun	12 a.m. - 7 a.m.	\$70.00	\$30.00	
9-Aug	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$70.00	\$60.00	
1-Sep	12 a.m. - 7 a.m.	\$70.00	\$30.00	
18-Oct	12 a.m. - 7 a.m. Day shift	\$140.00	\$30.00	
25-Dec	7 p.m. - 12 a.m.	\$70.00		
	Total	\$420.00	\$150.00	\$270.00

Gazetted Public Holiday in 2018	Worked on	Entitled	Allowance already received	Total Difference
16-Feb	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	
17-Feb	12 a.m. - 7 a.m.	\$75.00	\$30.00	
30-Mar	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
1-May	12 a.m. - 7 a.m. Day shift	\$150.00	\$30.00	
29-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	

15-Jun	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
9-Aug	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
22-Aug	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
6-Nov	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$50.00	
	Total	\$750.00	\$290.00	\$460.00

Gazetted Public Holiday in 2019	Worked on	Entitled	Allowance already received	Total Difference
5-Feb	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	
6-Feb	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
19-Apr	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$15.00	
1-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
19-May				
20-May	7 p.m. - 12 a.m.	\$75.00	\$30.00	
5-Jun	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
9-Aug	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
11-Aug	12 a.m. - 7 a.m. Day shift	\$150.00	\$0.00	
12-Aug	7 p.m. - 12 a.m.	\$75.00	\$30.00	
27-Oct	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	

28-Oct	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
25-Dec	12 a.m. - 7 a.m. Day shift	\$150.00	\$30.00	
		\$1,050.00	\$315.00	\$735.00

Gazetted Public Holiday in 2020	Worked on	Entitled	Allowance already received	Total Difference
1-Jan	7 p.m. - 12 a.m.	\$75.00	\$0.00	
25-Jan	12am - 7 a.m.	\$75.00	\$0.00	
26-Jan				
27-Jan				
10-Apr	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$75.00	
1-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	

7-May	Double shift	\$150.00	\$60.00	
24-May	12 a.m. - 7 a.m.	\$75.00	\$0.00	
25-May	Double shift	\$150.00	\$60.00	
31-Jul	Double shift	\$150.00	\$60.00	
9-Aug	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
10-Aug	Day shift	\$75.00	\$30.00	
14-Nov	Double shift	\$150.00	\$60.00	
25-Dec	Double shift	\$150.00	\$60.00	
	Total	\$1,275.00	\$495.00	\$780.00

Gazetted Public Holiday in 2021	Worked on	Entitled	Allowance already received	Total Difference
12-Feb	Day Shift 7 p.m. - 12 a.m.	\$150.00	\$30.00	
13-Feb	Day Shift 7 p.m. - 12 a.m.	\$150.00	\$60.00	
2-Apr	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
1-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
13-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	
26-May	7 p.m. - 12 a.m.	\$75.00	\$30.00	
20-Jul	12 a.m. - 7 a.m. Day Shift	\$150.00	\$30.00	
4-Nov	12 a.m. - 7 a.m. Day Shift 7 p.m. - 12 a.m.	\$150.00	\$60.00	
25-Dec	12 a.m. - 7 p.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	

	Total	\$975.00	\$420.00	\$555.00
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Gazetted Public Holiday in 2022	Worked on	Entitled	Allowance already received	Total Difference
1-Jan	7 p.m. - 12 a.m.	\$75.00	\$30.00	
1-Feb	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	
2-Feb	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$60.00	

15-Apr	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
1-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	
2-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
3-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
15-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$0.00	
16-May	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
10-Jul	12 a.m. - 7 a.m. Day shift 7 p.m. - 12 a.m.	\$150.00	\$0.00	
11-Jul	12 a.m. - 7 a.m.	\$75.00	\$30.00	
9-Aug	12 a.m. - 7 a.m.	\$75.00	\$30.00	
24-Oct	12 a.m. - 7 a.m. 7 p.m. - 12 a.m.	\$75.00	\$30.00	
25-Dec	7 p.m. - 12 a.m.	\$85.00	\$0.00	
26-Dec	7 p.m. - 12 a.m.	\$85.00	\$50.00	
	Total	\$1,220.00	\$350.00	\$870.00

Annex C

		2017			2018		2019		2020		2021		2022		2023	Total
Total Overtime Pay		\$760.88			\$1,477.36		\$4,410.62		\$8,002.07		\$6,367.31		\$5,733.22		\$267.02	\$27,018.48
Holiday Pay		\$270.00			\$460.00		\$735.00		\$780.00		\$555.00		\$870.00		\$105.00	\$3,775.00
Annual Leave																
			Jan - Jun 2018		\$262.50	Jan - Jun 2019	\$300.00	Jan - Jun 2020	\$337.50	Jan - Jun 2021	\$375.00	Jan - Jun 2022	\$412.50	Jan - Feb 2023	\$170.00	
	Jun 2017 - Dec 2017	\$262.50	Jul -Dec 2018		\$300.00	Jul - Dec 2019	\$337.50	Jul - Dec 2020	\$375.00	Jul - Dec 2021	\$412.50	Jul - Dec 2022	\$460.00			\$4,005.00
Total unpaid wages		\$1,293.38			\$2,499.86		\$5,783.12		\$9,494.57		\$7,709.81		\$7,475.72		\$542.02	\$34,798.48
			Jan - 18 Nov 2018	\$2,205.36												
Total CPF rate	37%		Employer CPF rate before 18 Nov 2018	37%		26%		26%		26%		28%		29.5%		
			Subtotal	\$815.98												
			19 Nov - 31 Dec 2018	\$294.50												

			Employer CPF rate after 18 Nov	26%												
			Subtotal	\$76.5 7												
Total CPF Contributi on		\$478. 55			\$892. 55		\$1,50 3.61		\$2,46 8.59		\$2,00 4.55		\$2,09 3.20		\$159 .90	\$9,600. 95