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

[2026] SGHC 73

Employment Claims Tribunal Appeal No 2 of 2024

Between

Gena Hulash Ram

… *Appellant*

And

Lim Joo Huat Enterprise Pte. Ltd

… *Respondent*

GROUNDS OF DECISION

[Employment Law — Contract of service — Illegal terms]
[Employment Law — Pay — Whether overtime pay may be offset by fixed monthly allowance]

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v
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Philip Jeyaretnam J:

Introduction

1 Enacted in the Employment Act 1968 (2020 Rev Ed) ("Employment Act"), the Employment of Foreign Manpower Act 1990 (2020 Rev Ed) ("EFMA"), and the Employment of Foreign Manpower (Work Passes) Regulations 2012 ("Regulations") are certain regulatory conditions that an employer must comply with. These protect, among other categories of employee, foreign employees who are issued with work permits and are not domestic workers. An important regulatory condition is that the employer must declare the foreign employee's basic monthly salary, fixed monthly allowances, rate for overtime payment, and daily basic rate of pay, as well as fixed monthly deductions, to the Controller of Work Passes ("Controller") in the work pass application in respect of that employee. The Controller grants approval for the

foreign employee by a document known as the In-Principle Approval Letter ("IPA") which sets out the declared amounts. The Regulations prohibit the employer from reducing the salary, allowances and rates without the prior written agreement of the employee. The employee is notified of this prohibition in the IPA. The IPA serves to assure the prospective employee of what he will be paid before moving to Singapore to commence work for a particular employer, as well as establish a clear common framework that would facilitate the employee's comparison of the offer with any others he might be considering. The Regulations also make clear that fixed monthly allowances shall not include "any form of overtime payment", which is instead calculated by reference to the rate of pay for overtime work declared by the employer to the Controller.

2 The present appeal was against the decision of the learned Tribunal Magistrate ("Magistrate") in ECT 11052/2023. The appellant-employee had sought payment for overtime work done. The Magistrate had ordered that the overtime pay due to the employee should be deducted against a fixed monthly allowance of $300. This did not comport with the regulatory scheme. The Magistrate did not address the effect of the Regulations. In fairness, this was not an issue that was raised clearly by the parties at the hearing below. That they did not do so is unsurprising, given that they were, as required under the Employment Claims Act 2016 (2020 Rev Ed), self-represented.

3 Accordingly, when this appeal came before me, I allowed it, and ordered that the unpaid overtime pay, calculated based on the hours worked as found by the Magistrate, be paid without deduction of the already-paid fixed monthly allowance of $300. As the appeal raised a simple but important point of law, it is helpful that I publish my reasons.

Background

4 The appellant, Mr Gena Hulash Ram ("employee"), is an Indian national.[1] He was employed by the respondent, Lim Joo Huat Enterprise Pte. Ltd ("employer"), as a "Packer" from 17 December 2022 to 25 August 2023.[2]

5 As is typical, the only place where the terms of the employee's employment were to be found was in the employee's IPA. This contained the key terms of employment, that had been submitted by the employer to the Controller. There was no separate written employment contract between employee and employer.[3] The IPA stated that the employee's "Basic Monthly Salary" was $1,000 *per* month. There were also the following "Fixed Monthly Allowances":

(a) $200 for "Housing, Amenities and Services"; and

(b) $300 for "Others" (which I refer to as the "Others" allowance).[4]

6 This resulted in a "Fixed Monthly Salary" of $1,500. Also declared in the IPA was a specified rate of overtime pay, namely $7.87 *per* hour.[5]

7 The "Others" allowance is at the heart of this case. This is because the employer considered this "Others" allowance to be a fixed compensation for overtime work, regardless of hours worked in a month. In other words, if the

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1 Appellant's Bundle of Documents ("ABOD") at p 6.

2 Appellant's Case ("AC") at para 8.

3 AC at para 9.

4 ABOD at p 3.

5 ABOD at p 3.

employee worked 20 hours of overtime, the employee would not receive $157.40 (that being the rate of overtime pay multiplied by 20 hours), but would receive $300. On the other hand, if the employee worked 40 hours of overtime, the employee would not receive $314.80 (that being the rate of overtime pay multiplied by 40 hours), but would again receive $300.

The proceedings below

8 The employee filed a claim with the Employment Claims Tribunal on 19 December 2023 for unpaid overtime pay. The employer's argument was that set out above, that the employee's payment for overtime work was paid through the fixed "Others" allowance of $300 *per* month.[6] The reason for this was said to be administrative convenience, to avoid the costs of tracking and verifying actual hours of overtime worked.[7] Leaving aside the Regulations, such an administrative arrangement could sensibly be agreed between an employer and employee.

9 The Magistrate allowed the claim in part. The Magistrate held that notwithstanding that the employee had signed a "Release Letter" when his employment was terminated, this did not waive any rights to or claim for unpaid salary or overtime payments.[8] The Magistrate further held that the employee's record of hours worked was determinative as to the hours of extra work done, and that the employee was entitled to compensation on that basis.[9]

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6 Grounds of Decision dated 26 February 2024 ("GD") at [8]

7 Notes of Evidence of ECT 11052/2023 at p 8.

8 GD at [10]–[16].

9 GD at [25].

10 However, the Magistrate did not grant the employee the full sum sought. The Magistrate held that the amount payable for overtime work was to be offset against the "Others" allowance.[10] In other words, the Magistrate held that in months where the overtime pay due to the employee (calculated on an hourly basis) was less than $300, the employee was entitled to the fixed sum of $300 under the "Others" allowance. In months where the overtime pay was more than $300, the employee was entitled to the excess of overtime worked over that paid as a fixed allowance. The basis for this determination was in contract, and that the payslips issued by the employer had referred to the payment of $300 as "Overtime".[11] The damages awarded were calibrated downwards, from $5,711.11 to $3,254.84.[12]

11 The employee appealed, seeking the full amount claimed. The issue of law was whether it was permissible to offset a worker's overtime pay against a fixed monthly allowance under the Employment Act and the Regulations.[13]

My decision

12 The employee's submission before me was that the Regulations meant that overtime payments could not be included as part of, or be offset by, a fixed allowance such as the "Others" allowance.[14]

13 The employer submitted that it was lawful that the "Others" allowance be a fixed payment for overtime work done, regardless of the number of hours

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10 GD at [27]–[33].

11 GD at [28]–[29].

12 GD at [33].

13 AC at para 4.

14 AC at paras 41–53.

actually worked. I rejected this submission. As the Magistrate noted, s 38(4) of the Employment Act entitles a worker to be paid for the number of hours of extra work they have actually done.[15] An employer cannot introduce a cap on or fixed sum for overtime payment.

14 The IPA evidenced the key terms of the agreement between the employee and employer. The IPA serves to inform foreign workers of their salary in clear terms: *Liu Huaixi v Haniffa Pte Ltd* [2017] SGHC 270 ("*Liu Huaixi*") at [24]–[25].

15 The IPA stated that the terms "Basic Monthly Salary", "Fixed Monthly Allowances", and "Fixed Monthly Salary" bore the meanings as defined in the Regulations.[16]

16 Regardless of what the employer might have considered to be administratively convenient, it was not open to the employer to include the employee's overtime pay, whether in whole or in part, in the "Others" allowance. This was because the "Others" allowance was a "fixed monthly allowance" within the meaning of Part IV of the Fourth Schedule of the Regulations, as an allowance that was not variable from month to month. Paragraph 6B of Part IV of the Fourth Schedule of the Regulations defines "fixed monthly allowances" as follows:

> "fixed monthly allowances" means all allowances payable monthly to a foreign employee that do not vary from month to month on any basis. However, fixed monthly allowances shall not include any payments listed in paragraphs (*b*) to (*g*) of the definition of "basic monthly salary".

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15 GD at [17].

16 ABOD at p 4.

17 Paragraph (*b*) of the definition of "basic monthly salary" identifies "any form of overtime payment, bonus, commission or annual wage supplements" as not to be included within "basic monthly salary". Similarly, fixed monthly allowances must not include any form of overtime payment. This meant that the "Others" allowance could not cover or subsume overtime payments that would be due to the employee for overtime hours worked.

18 The employer's conduct also did not comport with Paragraph 6A(1) of Part IV of the Fourth Schedule of the Regulations. That provision prohibits an employer from reducing an employee's "basic monthly salary, fixed monthly allowances, rate for overtime payment or daily basic rate of pay" below the amount declared, save with the employee's written consent. By only paying the "Others" allowance and not paying overtime pay calculated in terms of the declared rate of overtime pay, the employer had in effect reduced the rate of overtime pay to below that submitted in the work pass application (and reflected in the IPA).

19 I considered that the Magistrate's determination (that the overtime pay due to the employee should be offset against the "Others" allowance) ran counter to the Regulations. It is true, as the Magistrate held,[17] that under s 8 of the Employment Act, employment terms that are less favourable than those in the Employment Act (in this case s 38(4) of the Employment Act) are illegal and void only to the extent less favourable. However, to hold that the overtime pay could be offset against the "Others" allowance did not bring the parties' agreement into compliance with the Employment Act, the EFMA, or the Regulations. Allowing such an offset would reduce the rate of overtime pay due to the employee, since (under the terms of the Regulations) the "Others"

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[17] GD at [32].

allowance *could not include any form of overtime payment*. I therefore allowed the appeal against the Magistrate's decision, and ordered that the amount payable to the employee be increased to $5,711.11 (that being the amount of overtime pay at the declared rate of overtime for the number of hours of overtime worked).

Costs

20 The employee's counsel sought costs of $10,000 all-in. The employee's counsel informed the court that they were acting *pro bono* in this case. I was referred to the case of *SATS Construction Pte Ltd v Islam Md Ohidul* [2016] 3 SLR 1164 ("*SATS Construction*") for the proposition that a successful party is entitled to costs even where counsel act *pro bono*.

21 Similar to the present case, *SATS Construction* involved counsel acting *pro bono* for a foreign worker. Debbie Ong JC (as she then was) examined the relevant costs principles, namely the indemnity principle, and the policy favouring access to justice. She held that awarding party-and-party costs where counsel were acting *pro bono* would not amount to giving effect to a champertous arrangement. *SATS Construction* was applied by Lee Seiu Kin J (as he then was) in *Liu Huaixi*.

22 I agreed. As the Court of Three Judges stated in *Law Society of Singapore v Kurubalan s/o Manickam Rengaraju* [2013] 4 SLR 91 at [82], it would be "permissible and even honourable" for counsel to act for impecunious clients in cases where their only real hope of being paid would be through an award of costs following success in the claim. Such cases involve counsel putting aside their own interests in receiving payment, in favour of ensuring

representation and access to justice for clients who would not otherwise be able to engage counsel.

23 I note specifically that the employee's lead counsel, Mr Chan, had represented the employee since the first half of 2024, including before the District Court when seeking leave to appeal. Acting *pro bono* for clients who would otherwise be unable to afford legal representation exemplifies the best traditions of the Bar. In such cases, there would be nothing objectionable with ordering party-and-party costs.

24 I thus ordered costs to be paid by the employer, fixed at $9,000 all-in. There was no unjust benefit, given that the employee's counsel had put in substantial work representing their client. Neither did it cause prejudice to the employer, who would have had to pay costs to the winning party in a non-*pro bono* case.

Conclusion

25 In summary, under the Regulations, the fixed monthly allowances payable to a worker shall not include any form of overtime payment. An employer cannot reduce or cap such amounts by including them in fixed allowances paid to the worker. I therefore allowed the appeal. I ordered that the

amount to be paid by the employer to the employee as overtime payment be increased from $3,254.84 to $5,711.11.

Philip Jeyaretnam
Judge of the High Court

Melvin Chan Kah Keen (Melvin Chen Jiajian) and Tan Han Ru Amelia (TSMP Law Corporation) for the appellant;
Roche Eng Keng Loon (Roche Wu Jinglun) (R. E. Law LLC) for the respondent.
