

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
CHRISTCHURCH**

CA 118/10  
5289533

BETWEEN

CHRISTAN HILTON  
Applicant

A N D

FORTH SUNDERLAND LTD  
Respondent

Member of Authority: James Crichton  
Representatives: Applicant in person  
No appearance for respondent  
Investigation Meeting: 10 May 2010 at Christchurch  
Determination: 12 May 2010

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] The applicant, Mr Hilton, alleges that he is owed a months wages amounting to \$2,685.76 net together with holiday pay and costs associated with the application. Mr Hilton also seeks to recover a contribution to wages lost by him in the period between the end of his employment with the respondent (Forth Sunderland) and his finding new employment.

[2] Forth Sunderland have not been involved in the Authority's process at all. Two individuals appear to have been involved in the direction of the employer but only one of those Paul Graeme Martin is a director within the meaning of the law. The Authority's support staff has taken all proper steps to serve Forth Sunderland and I am satisfied that the employer was aware of this proceeding and simply chose not to be involved. On that basis then, I elected to proceed to deal with the matter notwithstanding the failure of Forth Sunderland to engage in the Authority's process.

[3] Mr Hilton was employed by Forth Sunderland in December 2008 as an administrator/project manager. A very brief written employment agreement dated 1 December 2008 was signed by both parties with Forth Sunderland also using a trading name of UrbanWorks.

[4] During the employment, Mr Hilton was paid from a variety of sources including but not limited to Forth Sunderland itself. His salary was paid monthly in arrears on the 20th of the month and all payments were met in full until the payment due on 20 April 2009 which would have been for the work period from 20 March down to 19 April 2009.

[5] That payment, I am satisfied, was missed, coinciding as it did with Forth Sunderland's intimation to Mr Hilton that he was to cease working on 17 April 2009. The reason given for that advice was apparently that he could no longer be afforded. Subsequent to those events, Mr Hilton did everything in his power to obtain payment of the monies owed. He has provided to the Authority a schedule of examples of his efforts in that regard and I am satisfied he took all proper steps. Despite those efforts, and apparently friendly relations between Mr Hilton and Forth Sunderland, no further monies were paid.

### **Determination**

[6] I am satisfied that Mr Hilton is owed his final month's salary for work performed and there will be an order in that regard. I am also satisfied that Mr Hilton was not paid his holiday pay for the period of the employment and there will be an order in that regard. Finally, Mr Hilton is entitled to the reimbursement of the Authority's filing fee.

[7] However, I cannot award Mr Hilton monies compensating him for the wages that he lost as a consequence of losing his position with Forth Sunderland. Mr Hilton raised no grievance with the employer at any time in relation to their shortcomings and it follows that he cannot benefit from a claim he has never made.

[8] Forth Sunderland are to pay to Mr Hilton the following sums to remedy their various defaults:

- (a) One months salary in the amount of \$3,333.00 gross;

(b) Holiday pay in the sum of \$1,076.57 gross;

(c) The Authority's filing fee of \$70.00

[9] A certificate of determination will issue with this determination.

**Costs**

[10] Costs are to lie where they fall.

James Crichton  
Member of the Employment Relations Authority