

ROYAL MAIL GROUP (POST OFFICE LTD) – CASE REVIEW

R. v Robert Clay

Nottingham Magistrates Court and Nottingham Crown Court

Offence and Case history

1. On the 16th March 2010 Robert Clay was sentenced, at Nottingham Crown Court to a 12 months Community Order with a supervision requirement for an offence of Fraud by False Representation, contrary to section 1 of the Fraud Act 2006, to the value of £10,555.99. £200 costs were awarded.
2. The defendant first appeared at Nottingham Magistrates Court on the 28th September 2009. The defendant did not appear. The case was adjourned to 12th October 2009 from which date it was adjourned to 7th December 2009 for committal. The PCMH was listed on the 22nd February 2010. A Guilty plea was entered to Fraud on that occasion. No Defence statement had been submitted. On 16th March 2010 the defendant was sentenced as above.

Prosecution case

3. The defendant, Robert Clay, was during the relevant period, an Assistant at Farndon Green Sub Post Office.

4. On 19th May 2009 auditors attended the Farndon Green Sub Post Office to verify financial assets due to the Post Office Ltd and confirm compliance with a range of business protocols.
5. On the date of the audit, 19th May 2009, the auditor found a total shortage of £10,555.99 made up as follows:
 - £8,866.60 (-) identified as a difference in cash figures
 - £31.45 (-) identified as a difference in stock figures
 - £1657.94 (-) identified as a difference in postage figures
 - £10,555.99 (-) Total shortage.
6. Whilst the auditor became aware that there was going to be a cash shortage he asked Mr Clay about the shortage of cash. Mr Clay said that the Shortage had been there for a couple of months and that the Sub Postmaster, Mr Wetson, was not aware of it as he had very little to do with the running of the branch which he left to Mr Clay. Mr Clay said that he hid the discrepancy from Mr Wetson by increasing the cash figures on hand, especially when balancing. Mr Clay signed the auditor's note of this conversation.
7. Mr Clay in his interviews, conducted under the provisions of the Police and Criminal Evidence Act 1984 and the relevant Codes of Practice, on the 29th May 2009, said that:
 - That he was an assistant at the Farndon Green Sub Post Office. He served at the counters and did the balancing.
 - He did not count the cash but declared the figure that came out of the snapshot.
 - The postage shortage goes back to when a girl came in who was not Post Office trained and did the balancing.
 - He thought that it would come back and could be corrected.
 - There were several mistakes on currency that were not accounted for properly. Currency was ordered for four customers when they hadn't paid for it.

- Money would come in and not be accounted for on Horizon.
- They had a £300 bounced cheque.
- There were error notices from Chesterfield.
- The mistakes were his fault not the other part time assistant's.
- The losses had occurred in the last 2 years but he has not been able to trace the mistakes.
- He had cashed two forged giros to the tune of £900
- He has never had a transaction correction in his favour.
- The loss was made up of bits and pieces that he had got wrong.

Defence case

8. In interview the defendant accepted false accounting to cover losses. He denied stealing the money...
9. This is not a straight forward attack on the Horizon System but the defendant is unable to account for where the losses came from.

Discussion

10. This case was prosecuted on the basis that the defendant hid the losses rather than stole the money. We have an advice on file from prosecution counsel querying as to how the case should be prosecuted. The sentence indicates that this was not prosecuted on the basis that this was theft in breach of trust
11. It is my view that had we been in possession of the Second Sight Interim Report at the relevant stage of these proceedings we would have not disclosed it. The position might have been different had the plea not been entered at the early stage that it was or the Crown case presented on the basis that the defendant had taken the money.

Conclusion

12. This is a case in which, had we been possessed of the material at the relevant time, we would not have disclosed to the defence the matters identified in the Second Sight Interim report. No disclosure is required in this case.

Harry Bowyer
Barrister
Cartwright King Solicitors

20th March 2014