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Case No: HQ05X02706

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/01/2007

Before :

HIS HONOUR JUDGE RICHARD HAVERY Q.C.

Between :

Post Office Limited

Claimant

- and -

Lee Castleton

Defendant

Mr. Richard Morgan (instructed by Bond Pearce) for the Claimant
The Defendant in person

Hearing dates: 6th, 8th, 11th, 12th, 13th December 2006; 11th January 2007.

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

HIS HONOUR JUDGE RICHARD HAVERY Q.C.

His Honour Judge Richard Havery Q.C.

1. This is a claim by Post Office Limited on an account stated by one of its former subpostmasters, the defendant Mr. Castleton. Mr. Castleton admits that he was an accounting party. The statement of the account, though not its validity, is admitted. Accordingly, the burden of proof lies on Mr. Castleton to show that the account is wrong. On that point the law is clear. In *Shaw v. Picton* (1825) 4 B. & C. 715, 729, Bayley J. said

It is quite clear, that if an agent (employed to receive money, and bound by his duty to his principal from time to time to communicate to him whether the money is received or not,) renders an account from time to time which contains a statement that the money is received, he is bound by that account unless he can shew that that statement was made unintentionally and by mistake. If he cannot shew that, he is not at liberty afterwards to say that the money had not been received, and never will be received, and to claim reimbursement in respect of those sums for which he had previously given credit.

And in *Camillo Tank Steamship Company Limited v. Alexandria Engineering Works* (1921) 38 T.L.R. 134, 143 Viscount Cave, in the course of a dissenting speech, made the following remarks, which I believe to be uncontroversial:

The expression "account stated"....has more than one meaning. It sometimes means a claim to payment made by one party and admitted by the other to be correct. An account stated in this sense is no more than an admission of a debt out of court; and whilst it is ~~no doubt cogent evidence against the admitting party, and throws upon him the burden~~ of proving that the debt is not due, it may, like any other admission, be shown to have been made in error.

2. The accounts in this case are weekly accounts entitled Cash Account (Final), signed by Mr. Castleton as correct, of a post office at 14, South Marine Drive, Bridlington, Yorkshire, of which he was appointed subpostmaster in June 2003. In accordance with the rules and practice of the Post Office, accounts of the transactions at the post office (which has been called "Marine Drive") were prepared weekly for the periods from Thursday to the following Wednesday. The accounts in question were accounts for weeks 42 to 51 of the year 2003/2004, which relate to the weeks ending Wednesday 14th January 2004 to Wednesday 17th March 2004. The accounts built up substantial apparent discrepancies. The Cash Account (Final) for week 51 shows a shortage of £22,963.34. In consequence Marine Drive was closed all day on 23rd March 2004 for the purpose of an audit. That audit showed a shortage of £25,758.75. Mr. Castleton was suspended from his duties on that day. An additional sum of £100.20 is claimed in relation to National Lottery moneys. The total claim is for the sum of those two amounts, viz. £25,858.95. The burden of proof on Mr. Castleton can relate only to the figure of £22,963.34. In the event, as will appear, the identity of the party on whom lies the burden of proof is not important in this case.
3. The first significant discrepancy appeared in the accounts relied on by the claimant in week 43. Thereafter significant further discrepancies appeared in weeks 44, 46, 48, 49, 50 and 51. Mr. Castleton gave evidence that the first discrepancy, of approximately £1100, appeared by week 42, but that he made it good out of his own pocket. I am satisfied on the evidence of Mrs. Catherine Oglesby, his then line manager, that he told her shortly before New Year 2004 that a shortfall of about £1100 had occurred on week 39 (the week ending 23rd December 2003). Nevertheless, for

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some reason that has not been intelligibly explained, the first and only explicit mention of the figure in the accounts is a reference in the print-out of the Final Balance (see below) for week 42 of a "Discrepancy over" of £1103.00 and a "Discrepancy short" of £1103.60. The Payments column of the Final Balance shows a nett discrepancy of £0.60. Mr. Morgan did not accept that Mr. Castleton had paid in £1100. I shall return to that point. It goes only to credit, since none of the Final Balances or the Cash Accounts (Final) from week 39 onwards show a nett discrepancy of that sum. Mr. Castleton promptly reported shortfalls in weeks 43, 44, 46 and 48. Mr. Morgan disclaimed any dishonesty on the part of Mr. Castleton.

4. Mr. Castleton admits that on 23rd March 2004 there was an apparent shortfall in the account of Marine Drive in the sum of £25,758.75. He admits that he produced weekly Balance Lists (the documents in question are headed "Final Balance") and personally produced, signed off and submitted to the claimant Cash Accounts (Final) up to week 51. His case was that the losses apparently shown by the Balance Lists and Cash Accounts (Final) were illusory not real. It was entirely the product of problems with the Horizon computer and accounting system used by the claimant. The apparent shortfalls were nothing more than accounting errors arising from the operation of the Horizon system.
5. There were two computer terminals at Marine Drive. Each computer terminal included a processor, a touch-sensitive screen, a keyboard, a barcode scanner and a printer. The laid down practice, in outline, was and is as follows. The clerk records on the computer all transactions that he makes. Transactions other than on-line banking are recorded not only on the computer but also by a document, such as a television licence counterfoil, savings bank deposit or withdrawal slip or a cheque. Some transactions are known as APS (automated payment system) transactions. Those are transactions where a customer either uses a card containing a magnetic strip to pay a bill or pays a bill that is barcoded. ~~There are corresponding APS slips recording APS transactions.~~ The subpostmaster is responsible for checking daily the computer records of the transactions of the day against the documentation. He prints out the computer records of the transactions, and when satisfied that they tally with the documentation he sends the documentation in sealed bags or envelopes by the last collection of the day to the relevant centres. He receives cash, stamps and other cash-type items from time to time in sealed bags and has to record daily the amount of cash held by reference to the denominations of notes and coins. The subpostmaster is also responsible for producing a weekly balance. There are in the papers before me print-outs of weekly Final Balances for Marine Drive for the relevant weeks and of Cash Accounts (Final) signed by Mr. Castleton.
6. Every week, after close of business at 5.30 p.m. on Wednesday and before opening at 9 a.m. on Thursday, Mr. Castleton checked the stock at Marine Drive, as required by Post Office procedures.
7. It is obvious that the week's accounts of a post office balance if the difference represented by the receipts minus the payments equals the difference represented by the value of the stock at the end of the week minus the value of the stock at the end of the previous week. If those two differences are not equal, there is a discrepancy. If the former difference is greater than the latter, there is a loss, which is treated as a positive discrepancy. If the former is less than the latter, there is a gain. That is treated as a negative discrepancy. If

A_n = the stock at the end of week n;

R_n = the receipts during week n;

P_n = the payments during week n;

D_n = the discrepancy for week n (positive for a loss, negative for a gain);

S_n = the algebraic sum (i.e. the sum taking into account the sign, positive or negative) of the discrepancies for all relevant weeks up to and including week n ;

then

$$R_n - P_n - (A_n - A_{n-1}) = D_n = S_n - S_{n-1}.$$

i.e.

$$R_n + A_{n-1} + S_{n-1} = P_n + A_n + S_n.$$

8. The weekly final balances produced by the Horizon system show both volume and value. I am concerned here only with value. The balances are set out in the following way. First, there is a list of the stock, described as "Stock & MOP" (cash, stamps, phone-cards, postal-orders and so on), giving the value of each item and a total (A_n). There follows a list headed Receipts which begins with an item "Balance brought forward". The balance brought forward is the sum of the previous week's Stock and MOP and the accumulated discrepancies as of the previous week, i.e. $A_{n-1} + S_{n-1}$. The rest of the Receipts column is a list of the receipts (R_n) for the week in question. A total, which thus represents $R_n + A_{n-1} + S_{n-1}$, appears at the bottom of the column. That is designated "Total receipts". There follows a column headed Payments. That includes a list of payments out to customers at the Post Office and remittances to central offices of the Post Office. Those payments out and remittances are what I have designated P_n . In the same column are included also the "Total Stock and MOP" (A_n) and "Nett discrepancies" (S_n). Those figures are totalled to give a "Total payments" figure which is $P_n + A_n + S_n$. The nett discrepancies are calculated so as to give rise to the same total in the Payments column as appears under the Receipts column. There is then a figure of "Balance carried forward" which is the algebraic sum of the Stock and MOP figure and the Discrepancies figure (i.e. $A_n + S_n$). The logic of the system thus requires that

$$R_n + A_{n-1} + S_{n-1} = P_n + A_n + S_n,$$

as it should. The entries (but not the balances and discrepancies calculated by the system) were entered by Mr. Castleton or his assistant in all cases at Marine Drive while Mr. Castleton was subpostmaster. He accepts, and indeed asserts, that they are correct. The correctness of the arithmetic is not in issue.

9. Mr. Castleton, being alarmed by the growing discrepancies, was allowed by the claimant to put two accumulated discrepancies (deficits) into a suspense account. That was done by entering the relevant accumulated discrepancy as a fictitious expense in the Payments column of the Final Balance document. On each occasion the accumulated discrepancy was reset at zero.

10. The figures in the weekly Final Balances were reflected in the weekly documents entitled "Cash Account (Final)" all of which were signed by Mr. Castleton as correct. The Cash Accounts (Final) showed the accumulated discrepancies appearing in the Final Balance print-outs. They also showed the suspense account figures in a table headed "Authorised Cash Shortages". The signed Cash Accounts (Final), unlike the Final Balance documents, included the authorized cash shortages in the Stock and MOP figures and in the figures carried forward (entitled "balance due to Post Office" in the Cash Accounts (Final)). The underlying logic of the two sets of documents was otherwise the same, and cannot be faulted.

11. Mr. Castleton cross-examined Mr. John Jones, who had heard Mr. Castleton's appeal against a decision of the claimant to dismiss him, on some figures that Mr. Jones had produced for the purposes of the appeal. Those figures had been extracted from the Cash Accounts (Final). The

point put by Mr. Castleton was that Mr. Jones's figures showed that the receipts for weeks 42 to 51 inclusive totalled an amount less by £9240 than the payments, yet during the same period Mr. Jones's figures showed that the cash on hand (part of the Stock and MOP figures) had fallen by only £4700. Thus Mr. Jones's figures, far from showing a positive discrepancy (loss), showed a negative discrepancy (gain). Mr. Jones said that the figures were only an extract to show trends relating to cash. He did not rely on those figures in order to show that the shortage was a shortage of cash. However, in view of that line of cross-examination I have myself extracted from the Final Balances the relevant figures of R_n , P_n , A_n , A_{n-1} and S_n . They appear in the table below.

Week	S_n (£)	A_n : Stock & MOP (£)	R_n (£)	P_n (£)
41	0.47	54,170.02		
42			122,120.66	83,915.81
43			89,237.88	109,950.20
44			76,450.26	79,158.56
45			86,575.89	82,704.43
46			66,959.03	90,580.12
47			125,739.13	87,064.04
48			64,477.79	101,368.22
49			113,583.93	79,312.39
50			64,186.39	79,984.08
51	11,210.56	47,084.67	63,689.54	74,857.91
Total			873,020.50	868,895.76
Difference	11,210.09	7,085.35		4,124.74

The last figure in the above table is the difference between the totals in the R_n and P_n columns, representing an excess of receipts over payments. It will be seen that that, plus the diminution in Stock & MOP, equals the increase in the accumulated discrepancy. Thus no flaw can be found on this account in the Horizon system. The payments figure in week 47 includes an authorized fictitious payment of £8,243.10. The payments figure in week 49 includes an authorized fictitious payment of £3,509.68. Those two payments, totalling £11,752.78, were debited to the suspense account, and they appear as authorized cash shortages in the relevant Cash Accounts (Final). The total of the discrepancies at the end of week 51, namely £11,210.56, plus the amount in the suspense account is £22,963.34. Thus the accounts show that sum to be due from Mr. Castleton to the claimants. Since Mr. Castleton accepts the accuracy of his entries in the accounts and the correctness of the arithmetic, and since the logic of the system is correct, the conclusion is inescapable that the Horizon system was working properly in all material respects, and that the shortfall of £22,963.34 is real, not illusory.

12. I shall nevertheless consider the points made by Mr. Castleton in relation to the reliability of the Horizon system.
13. Mr. Castleton submitted that there were anomalies in the operation of the Horizon system, thereby implying that the system was defective. The first anomaly was a discrepancy between a computer print-out of all inputs to the computer and a figure produced by the computer. The former showed that at 17:41:30 on 7th January 2004 Mr. Castleton (personally identified by his code) had declared (entered into the computer) a stamp total of zero. There were no subsequent relevant entries before 07:11 on 8th January. Yet the Final Balance printed out on 8th January at 07:11 showed a figure of £1183.22 for the stock of postage stamps (part of "Other postage

items") and £1249.07 (total of "Other postage items") for week 41. There was no suggestion that the latter figures were incorrect. Mr. Castleton said that it was the former print-out stating "Declare stamp total £0.00" that was incorrect. (There was, however, an entry on the former print-out showing "Declare stamp total £1183.22" at 17:06:59 on 7th January). Mr. Castleton said that the figure of £1249.07 would show up as a loss on the next week's cash account. He said that the figure of £1249.07 was correct, but the zero entry would cause the computer to show a loss. As I understand his argument, the computer would do that because it would calculate the balance on the basis that the value of the stock of stamps had been diminished by £1247.09. Mr. Castleton submitted that the above matter led to the entry of "Discrepancy short" in the box at the top of the Final Balance for week 42. I reject that argument for the following reasons. First, it is abundantly clear that the computer did not calculate the balance on the basis that the value of the stock had been diminished by £1247.09. The figures printed out for week 42 were respectively £1041.96 (postage stamps) and £1094.82 (total of "Other postage items") which are consistent with the figures mentioned above for the previous week, allowing for the sale of some of the items. Second, the figure of discrepancy shown for the week was only 60p. In a box at the top of the Final Balance for week 42 that figure is shown as the difference between £1103 which Mr. Castleton said he paid in and £1103.60 which is described as "Discrepancy short". The production of the box, which does not enter into the calculation of the final balance, is unexplained. Third, the figure of about £1100 was the shortfall that Mr. Castleton had told Mrs. Oglesby had occurred before the previous Christmas. Thus, whilst the entry "Declare stamp total £0.00" is not explained, I am satisfied that Mr. Castleton's argument is misconceived.

14. The second anomaly on which Mr. Castleton relied was a difference between two figures of amounts of cheques. At 17:35 on 3rd March 2004 a sales report printed out by Mr. Castleton showed receipts of cheques to the value of £3533.30. At 07:37 on 4th March 2004 in the Final Balance ~~there was an entry in the Payments column "Rem out Data Cen £3519.43"~~. It was not in dispute that "Rem out Data Cen" means remitted out to Data Central, a department of the claimant which dealt with cheques, and that the entry could only refer to cheques. Between those two times twelve entries were, according to the record, made in to the computer, but it is not suggested that any of them are relevant to the present point. This apparent anomaly was put to Mr. Jones, who simply replied that the sales report had no input into the final balance, which is obviously correct. But Mr. Castleton's submission was that the discrepancy showed an anomaly in the operation of the computer. I do not accept that that is so. The computer totals the receipts of cheques as they have been entered into it. There is evidence that clerks sometimes erroneously enter cash as cheques. But in any case, the figure does not appear in the Final Balance or Cash Account (Final). The error in the figure of £3533.30, if error it be, is not significant evidence that the Horizon system was not working properly.
15. Mr. Castleton put forward a third anomaly. The print-out of inputs into the computer shows that on 14th January 2004 at 17:41:58 and again at 18:10:42 cash total £0.00 was declared. Mr. Castleton submitted that that could not have happened. The same print-out has the following further entries, among others: 14th January 2004, 18:27:54 "Declare cash total £81899.32"; on the same day at 18:43:14 "Report trial balance - Office copy"; on 15th January at 07:30:20 "Declare cash total £82997.32"; and on the same day at 07:33:17 "Declare cash total £83328.32". The last-mentioned figure appears in the Final Balance and in the signed Cash Account (Final). Mr. Castleton said that the figure of £81899.32 was correct and would have been entered into the computer by himself or by one of his assistants. He said that no-one would have entered a figure of £0.00: "It would be impossible for the computer to produce a report on it and not have it inputted on the other side", he said. By "the other side", I take it that he was referring to the Payments column in the Final Balance, which includes an amount for "Stock & MOP", which itself includes a sum for cash. The Final Balance and the Cash Account (Final) for the week in

question (week 42) are based on the declared cash total of £83328.32. The point Mr. Castleton was making, I think, was that the record of inputs must be wrong in showing "Declare cash total £0.00". I have heard no expert evidence about the print-out of inputs into the computer. The fact that there appear entries "Declare cash £0.00" which have no apparent effect on the accounts is exiguous evidence that the Horizon system was flawed.

16. Another point arises here. A print-out of declared cash made at 07:33 on 15th January 2004 shows a total of £83328.32. The individual amounts represented by coins and notes of specified face values are set out in the print-out in a list, and the total comes to £83328.32. A manuscript page of the stocktaking of cash also shows the amounts represented by coins and notes of specified face values. Those figures are the same as those in the printed list, with a single exception. The manuscript note shows a total of £161 in 50-pence pieces. The print-out shows a total of £1590.00 in 50-pence pieces. If the figure of £161 were substituted for £1590, the total would come to £81899.32, the figure originally entered at 18:27:54 the previous night.
17. Mr. Morgan submitted that the figures shown in print-outs of stock of 20p. and 50p. coins for 15th January 2004 were implausible. There is a print-out of declared cash as of 07:33 on 15th January 2004. That is shown as week 42, being before opening time on the first day of week 43. There is also a print-out of cash on hand as of 17:32 on the same day. Cash on hand was counted and recorded daily in terms of the total value of the items of each denomination. There is a manuscript note of the count of cash on hand which was the basis of the print-out. Taking the figures in chronological order, we have 07:33; MS note; 17:32. I set out the figures in the table below, together with the numbers of coins, which are not in the original data.

Occasion	20p.		50p.	
	Value (£)	Number	Value (£)	Number
07:33	277.60	1388	1590.00	3180
MS	254.60	1273	161	322
17:32	2654.60	13273	84.50	169

18. It was said that week 42 had shown a loss of about £1100. The evidence is somewhat equivocal. Mr. Castleton wrote in his witness statement:

Until Wednesday 14th January 2004 we balanced £1103.15 short we could see no reason for this at the time.

Mrs. Christine Train was an experienced counter clerk who worked at Marine Drive at the material time. Mrs. Train wrote in her witness statement:

When in week 42 we carried out the balance and the system shows [sic] a loss of around £1100 it was a surprise but we thought we must have missed a bundle of notes and a bag of coins. The cash was recounted but we arrived at exactly the same figure again.....We were unable to identify the source of the problem on the following morning. Ultimately, Mr. Castleton had to make good the £1100 loss or so in cash from his own pocket to allow the system to balance and so enable us to roll over for the following week.

19. The difference between the cash declared at 18:27:54 on 14th January and the cash declared at 07:33:17 on 15th January is equal to the difference between £1590 and £161. Mr. Morgan submitted that it was implausible that Mr. Castleton should have paid in that sum, £1429, in 50p. pieces. He told me that they would weigh over 20 kilograms and, if placed in a pile, would reach a height of 5 metres. Moreover, I would add that all of them and more had apparently been used

up by the end of the day. At 17:32 on the same day, 15th January, the value of the stock of 50p. coins was shown as £84.50; at 17:34 on 16th January it was shown as £78.50. Mr. Castleton told me (though not by way of his evidence on oath) that he had an ample supply of 50p. pieces.

20. Mr. Morgan also submitted that it was implausible that the stock of 20p. coins should have increased by 11,885 over the day. He gave me even larger figures of weight and height. I accept that, especially given that the print-out of the cash on hand at 17:34 on the following day, 16th January, shows the stock of 20p.coins as having the value of £262.40. I am satisfied that the intermediate figure of £2654.60 cannot be right. It may be a mistyping of the entry into the computer. The error (and I am satisfied that the figure of £2654.60 must be wrong, whatever the reason) does not affect the weekly accounts. Nor has it been put forward as evidence of a fault in the Horizon system.
21. Mrs. Train was cross-examined about her recollection of the payment in of £1100, specifically whether it involved a large number of coins. She was clearly embarrassed by the questions and gave no definite answer. I am not satisfied that the sum was paid in.
22. During the hearing, Mr. Castleton sought to adduce evidence of other complaints from subpostmasters of other post offices about the Horizon system. I admitted in evidence the fact that there were a few such complaints, but I refused to admit evidence of the facts underlying such complaints, since that would have involved a trial within a trial. I heard evidence from Dorothy Day, who was currently the temporary subpostmaster at Marine Drive. She had found intermittent problems with the system. The most worrying and inconvenient problem was that debit and credit cards would intermittently fail to register when swiped through the gateway keyboard to pay for customers' transactions. She found a way round the problem, though it took some time before it was solved. ~~Mrs. Day said that she had now been at Marine Drive post office~~ for about 2½ years and she was convinced that the problem was with the Horizon system. She recalled that in her previous post office, a small village post office, she experienced two anomalies that she could not explain. On one occasion she was several hundred pounds in surplus "which never turned up". The same thing happened again, inexplicably. Surely, she said, if she had missed inputting a Gyro payment or a National Savings and Investment payment someone would have missed it sooner or later?
23. I heard evidence from Anne Chambers, a system specialist employed by Fujitsu, the company that provides the Horizon service. She has a working knowledge of the Horizon computer system used by the claimant. She said that calls from postmasters relating to potential system problems are initially taken and logged by the Horizon system Helpdesk. I accept evidence of Mr. Castleton that he contacted the Helpdesk over problems with discrepancies in balancing accounts at Marine Drive on a number of occasions. If the helpdesks are unable to resolve the problem, calls may be passed to the System Support Centre, where Mrs. Chambers works. In this case, her first involvement with Marine Drive was on 26th February 2004. Mrs. Chambers examined the questions raised and concluded that there was no evidence whatsoever of any problem with the system. She was unable to identify any basis upon which the Horizon system could have caused the losses. Mr. Castleton cross-examined her about complaints from another branch, which he did not identify. She immediately recognized the branch with confidence as being a branch at Callender Square in Falkirk. The problem at Callender Square had, she said, arisen from an error in the Horizon system, but there was no evidence of such a thing at Mr. Castleton's branch. I found Mrs. Chambers to be a clear, knowledgeable and reliable witness, and I accept her evidence.

24. Successors to Mr. Castleton as subpostmasters at Marine Drive gave evidence before me. They were Ruth Simpson, Gregory Booth and Mrs. Day. Mrs. Simpson took over Marine Drive as temporary subpostmistress on Tuesday 23rd March 2004 and remained in that position until Wednesday 21st April 2004. Mr. Booth acted as temporary subpostmaster from 21st April 2004 until 28th May 2004. Mrs. Day, to whose evidence I have referred above, became temporary subpostmistress from about 29th May 2004. Mrs. Simpson said that she had had no problems with the computers other than the usual trivial problems that one tends to experience with computers on occasions. In particular, when the touch-sensitive computer screen was dirty, it would not accept commands, and information had to be entered via the keyboard. The screen did not freeze, nor was there any failure of communication between the two terminals. She once had to re-boot the computer because the screen went blank. She did not remember any of the equipment being changed. There were no large discrepancies during her term of office. The maximum discrepancy was £101.95. She thought it might have been due to a pension having been paid out twice. The next largest discrepancy was £19.38. Mr. Booth experienced no significant discrepancies other than two which were deliberately induced to check the operation of the Horizon system having regard to Mr. Castleton's allegations. Mrs. Day did not give evidence of having experienced any discrepancies at Marine Drive.

25. Mr. Andrew Wise, of the Network Directorate of the claimant, had worked for the Post Office since 1991 and had a working knowledge of the Horizon computer system. He wrote in his witness statement that he thought that every transaction (apart from online banking such as withdrawing or depositing cash at the counter) recorded by the clerk on to their computer has a corresponding physical document, such as TV licence counterfoil, savings bank deposit [or] withdrawal slip or cheque. After explaining the matter in some detail, he wrote this:

Accordingly, it can be seen that if the clerk or subpostmaster makes a mistake when imputing [sic: inputting?] transaction details into their computer, there are a number of points at which this can be picked up, because there are daily and weekly reports that the subpostmaster[s] have to produce at which stage they have to check and satisfy themselves that the physical documents evidencing transactions (for example, cheques, giros, pensions and allowances) match what they have entered on the system. In addition to that, there are various teams responsible for different sorts of paperwork produced by the branch, including a giro bank team, cheques team and pension team. For example, if the clerk records an item incorrectly on the system, they should pick this up on either their daily or weekly report. However, if they fail to do so, this will be picked up at the Processing Centre. If an item has been wrongly recorded, an error notice would be generated, although this can easily take up to 12 weeks or so. This will mean that if a transaction has been over or under stated there will be either a claim error or a charge error respectively.

That evidence was not challenged, and I accept it.

26. Only three error notices relating to the operations of Marine Drive during the period in question, apart from those mentioned below relating to lottery moneys, were in evidence. One error notice was reversed and does not form part of the claim. The others are charge notices totalling £292. They are not separately claimed: I assume that they are included in the audited figure. The paucity of their number is consistent with the proper working of the Horizon system. An error due to a fault in the Horizon system could conceivably be ignored by the ultimate interested party and thus not relayed to the branch as an error notice, but there is no reason to suppose on that account that such a fault exists.

27. Helen Rose was at the material time an auditor employed by the claimant. On 23rd March 2004, she carried out an audit at Marine Drive. That involved counting the cash and stock and checking the paperwork such as Giro deposits and withdrawal receipts, Pensions and Allowances Reports. She found that the branch was short of cash in the sum of £25,758.75. I accept the accuracy of her audit. Moreover, it confirms that the shortfall at the end of the previous accounts week was real. It has not been suggested that Mr. Castleton did not start with a clean sheet.

28. There is a claim for £100.20 as the net receipts in Mr. Castleton's shop at Marine Drive of moneys placed in the National Lottery after close of post office business at 5.30 p.m. on 22nd March and during 23rd March 2004 when the post office was closed and the audit was carried out there. The till was in the shop, which was open at the material time. The claimant alleges that £176 was received at those times for lottery tickets, and that £75.80 was given out to customers by way of prize money. The normal practice was for those moneys to be taken into the post office accounts. That did not happen on this occasion since the post office was closed. The claimant claims by paragraph 11 of the particulars of claim a further adjustment to the account in the sum of £100.20. Before considering the merits of this claim, I shall describe the system.

29. I read evidence of Mr. Michael Johnson, whom Mr. Castleton did not require to be called as a witness. He was employed by the claimant in the Lottery Exceptions Team. The following description of the lottery system is derived largely from his evidence. At the lottery terminal in the shop the customer pays the shop clerk for a lottery ticket, which is printed by the terminal. Details of the transaction are almost instantaneously downloaded to Camelot, which runs the National Lottery. The subpostmaster uses the shop till receipts to input the details of the lottery transactions into the Horizon computer terminal. Prizes up to a certain amount are paid out by the clerk on presentation of a winning ticket (not necessarily purchased in the shop). Those details are also entered into the Horizon system. Camelot electronically sends to the claimant's data centre details of the transactions for every relevant retailer. The information is automatically compared to the information received on the Horizon system from each branch. If there is a discrepancy, an error notice will be issued unless (not this case) the matter is dealt with directly with the branch. Mr. Johnson exhibited extracts from a spreadsheet taken from the claimant's Issued Errors Database for the Marine Drive branch. They showed a lottery charge error that occurred on 23rd March 2004 for £176, an amount by which lottery online sales had been understated in the receipts section. The money represented money that was received by the branch in relation to the National Lottery but not entered by the branch into the Horizon computer. In addition, a claim error notice was issued for £75.80. That represented Lottery prize payments that were understated by the Marine Drive Branch in the payments section. It represents a credit in favour of the branch.

30. The Cash Account (Final) for Mrs. Simpson's first week as postmistress, week 52, shows that £2218.50 had been entered as the amount of the lottery ticket receipts for that week. The figures from Camelot of lottery transactions at the shop for that week totalled £2394.50, a discrepancy of £176. Those figures were broken down into daily amounts. The amount for 23rd March was £176. I am satisfied that that error arose because Mrs. Simpson did not enter the amounts shown on the relevant till receipts into the Horizon system. Similarly, the figure entered in the Cash Account (Final) as National Lottery prizes for that week was £5792.80. According to Camelot, the figure should have been £5868.60, a discrepancy of £75.80. Mr. Johnson said, without explaining the mechanism, that the figure of £75.80 represented National Lottery prize payments that were understated by the Marine Drive branch.

31. The defence pleaded by Mr. Castleton's then counsel to the claim for £100.20 was

No admissions are made as to the facts in paragraph 11, being matters that occurred after the defendant's suspension, and the claimant is put to proof of them but the defendant's liability is denied. Having been suspended as set out in paragraph 2 above, the defendant had no way of transacting those matters and/or the claimant's temporary subpostmaster had already assumed responsibility for the branch and/or the claimant's audit staff had balanced the accounts prior to her doing so.

In his skeleton opening argument, Mr. Castleton said that the lottery moneys and terminal receipts were given to Mrs. Simpson on the morning of 24th March. Although he wrote about Mrs. Simpson at some length in his witness statement, he made no mention there of any payment made to her or of the handing over of any documents to her. Mr. Castleton was cross-examined about the lottery moneys:

Q. Moving on to consider the National Lottery, am I right in thinking that you now accept that you received £176 on 23rd March 2004 in respect to National Lottery sales and paid out prizes of £75.80?

A. That has never been in question.

Q. Is that a yes then?

A. Yes. It was never a question of receiving the moneys. The fact that repaid ...[inaudible].

I assume that it is payment to Mrs. Simpson that he was referring to in the above partly inaudible answer. He did not say that he himself had paid the moneys to Mrs. Simpson. Mrs. Simpson gave evidence about the subject of lottery moneys generally in her witness statement. The relevant paragraph, paragraph 11, reads as follows:

There were two things at the Marine Drive branch that struck me as being strange at the time. One related to the National Lottery cash. The National Lottery terminal at the Marine Drive branch is in the shop rather than behind the post office counter. As the shop stayed open later than the post office counter, it would continue to sell lottery tickets, and this meant that before the opening of the post office business the next day, I would use the shop till receipts to input details of the lottery transactions into the Horizon computer terminal. When I came into the branch each morning, I would find the lottery cash that the shop had received overnight left in a bag just under the post office counter screen together with the lottery till receipt. I was therefore concerned that the lottery cash was being left unattended, because it was not secure and a customer could have taken it. On one occasion (I cannot recall precisely when), the lottery print-out (showing about £50 worth of sales) was there but there was no lottery cash. I therefore asked Mr. Castleton to make this amount good from the shop, which he did. I also asked for the lottery cash to be handed to me personally.

I accept that evidence of Mrs. Simpson.

32. Although the post office at Marine Drive was closed all day on 23rd March, the shop was open. The sum of £176 must have been paid in by customers, and the prize money paid out to customers, between 5.30 p.m. on 22nd March, when the post office closed, and 7.30 p.m., when the shop closed, and during the opening hours of the shop on 23rd March. Mr. Castleton did not put to Mrs. Simpson that he had paid her the lottery money. The nearest that he came to it was

this. The discrepancy shown in the Cash Account (Final) for week 52, Mrs. Simpson's first week at Marine Drive, was £2.14 (Representing a loss of £2.14). Mr. Castleton put to her that she should have been £98 up. She gave a conditional answer that was inconclusive.

33. In her witness statement, Mrs. Train wrote that she went through Mrs. Simpson's paperwork and found the lottery tickets loose in an envelope that had not been entered

"which created the error notices. There is also a summary on which she wrote the amount of cash received from the shop on her first [day] in post. Not having a lottery terminal herself, she had made a mistake and did not account for the prize money already paid out. This should've been given back to Mr. Castleton or at least shown in the balance as being a gain-but it was not".

I have added the word "day" which seems to be required by the sense of the passage.

34. The lottery receipts in question were not in evidence. Mr. Castleton, when cross-examined as to their whereabouts, said that they were in the post office. They were disclosed by neither party to the proceedings. During the course of the cross-examination of Mrs. Simpson by Mr. Castleton, the following exchange took place:

A. So have you got the actual lottery receipts?

Q. They are not in evidence, I'm afraid.

A. Right. Well I would want to see those before I made that (inaudible).

When Mrs. Simpson was recalled for other reasons after the end of the evidence and submissions, Mr. Castleton indicated that he was in possession of the lottery receipts and wanted to put them to Mrs. Simpson in further cross-examination. On Mr. Morgan's objection, I refused to allow him to do so.

35. Mrs. Oglesby invited Mrs. Simpson to run Marine Drive on a temporary basis to take the place of Mr. Castleton. She described Mrs. Simpson as a very experienced postmaster. I accept that she was, and I found her to be a reliable witness. If Mrs. Simpson had had the lottery vouchers at the material time and entered them into the Horizon system, the error notices would not have been generated. I am satisfied that the reason why she did not enter them into the Horizon system is that she did not have them. Moreover, if she had received the moneys, then given that she did not enter the transactions into the computer, the system ought to have shown a corresponding gain of £100.20. It did not. It showed a loss of £2.14. However, that evidence is by no means conclusive since there could have been other errors.

36. Mr. Castleton was suspended from his postmastership on 23rd March. His duty to account to the claimant for the lottery moneys received on 23rd and 24th March in my judgement arises from his admitted receipt of the moneys. That point is not pleaded: but nor is the defendant's allegation that the moneys have been accounted for by way of payment to Mrs. Simpson. I am satisfied that the claimant is entitled to restitution of those moneys.

37. There will thus be judgment on the claim against the defendant for £25,858.95. I shall hear counsel and Mr. Castleton on the question of interest.

HIS HONOUR JUDGE RICHARD HAVERY Q.C.
Approved Judgment

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38. There is a counterclaim for damages in the sum of £11,250 on the ground that the claimant wrongfully determined the defendant's contract as a subpostmaster following his suspension.
39. The defendant's contract with the claimant was a contract for services dated 18th July 2003. The contract provides, by section 1, clause 5, that the subpostmaster is required to accept full responsibility for the proper running of his sub-office. Retention of his appointment is dependent on the sub-office being well managed and the work performed properly to the satisfaction of the claimant. Clause 8 provides that the terms of the appointment of the subpostmaster do not entitle the holder to be paid compensation for loss of office. Clause 10 provides for summary determination of the contract by the claimant in case of breach of condition by the subpostmaster or non-performance of his obligation; otherwise it may be determined by the claimant on not less than three months' notice. Section 12 clause 5 provides that the subpostmaster is held strictly responsible for the safe custody of cash, stock of all kinds and other property, papers and documents of the claimant, whether held by himself or by his assistants. Clause 12 provides that the subpostmaster is responsible for all losses caused through his own negligence, carelessness or error, and also for all losses of all kinds caused by his assistants. Deficiencies due to such losses must be made good without delay. Clause 13 provides that the financial responsibility of the subpostmaster does not cease when he relinquishes his appointment and he will be required to make good any losses incurred during his term of office which may subsequently come to light. Clause 15 provides that if a theft or burglary is committed or attempted at a sub-office....the facts must be reported at once to the police and to the regional general manager. Clause 16 provides that if a sub-postmaster considers that any stock items have been accidentally lost or stolen he should make a report as quickly as possible to the Regional General Manager. There is no evidence of any such reports, and it is no part of the defendant's case that stock was lost whether by theft or accidentally. Section 15, clause 2, provides that a subpostmaster will be required to make good any deficiency of cash or stock which may result from his assistants' actions. Section 22 clause 3 provides that the subpostmaster will be responsible for ensuring that transactions will be carried out accurately....and that all documentation is properly completed and despatched at the due time.
40. I am satisfied that the substantial unexplained deficiencies incurred in weeks 42 to 51 and in week 52 up to the close of business on 22nd March 2004 are real deficiencies and as such are irrefutable evidence that Marine Drive was not properly managed at the material time. I conclude that the claimant was entitled under clause 10 of section 1 to determine Mr. Castleton's contract summarily for non-performance of his obligation under clause 5 of that section. Moreover, the losses must have been caused by his own error or that of his assistants.
41. The counterclaim is dismissed.