

Clare Wardle
19/05/2004 09:40

To: John D Cole/e/POSTOFFICE [GRO]
CC:
Subject: Cleveleys MSPO Mrs J. Wolstenholme

Below is a resume of the case so far.

Regards

Clare

----- Forwarded by Clare Wardle/e/POSTOFFICE on 19/05/2004 09:39 -----

Mandy Talbot
18/05/2004 17:45

To: Clare Wardle/e/POSTOFFICE [GRO]
CC:
Subject: Cleveleys MSPO Mrs J. Wolstenholme

Mandy Talbot
Royal Mail Legal Services
Impact House
2 Edridge Road
CROYDON CR9 1PJ

Tel: [GRO] Fax: [GRO]

Email: [GRO]

----- Forwarded by Mandy Talbot [GRO] on 18/05/2004 17:44 -----

Jim Cruise
17/03/2004 16:15

To: Mandy Talbot/e/POSTOFFICE [GRO]
CC:
Subject: Cleveleys MSPO Mrs J. Wolstenholme

This case started back on 17/1/01 with an email query from the then Personnel Dept. in Leeds about the above office when the spm's contract was suspended on 30/11/00 as there were a large number of error notices and losses and gains. At that time the losses were £14K and the spm was refusing to make them good blaming the losses on the Horizon system which had been introduced in February 2000 at her office.

She was given 3 months notice and her remuneration for the 3 months came to about £19,300 which was set against losses. An attempt was made to instal a temporary spm at the premises but negotiatons eventually broke down but Mrs W. had by then made a claim for rent for POL equipment remaining at the premises after 30/11/00. The claim was not accepted as it was felt to be in both side's interests for the equipment to stay while there was a chance of a temporary spm being installed.

On 7/2/01 the spm's partner, Roger Harrison, asked if ICL could look at the computer system as he believed that there were problems with it. On 23/2/01, R.H refused to allow the safes and Horizon equipment to be removed from the PO which POL wished to do as the claim for rent had been made. The refusal was because of the dispute with POL. Mrs W. asked for proof that the losses were her fault and caused by computer failure. She also asked for copies of all error notices but Chesterfield said that these were not available.

On 27/2/01 I advised Elaine Tagg, the RLM, that because of the allegation of computer failure the printouts should be obtained from the National Audit Team showing a full audit trail at this PO. On 28/2/01 Elaine Tagg told me that she had the call logs for the office.

On 12/3/01 I wrote to Mrs W. with a letter before action over the unlawfully detained goods at the PO. On 19/4/01 proceedings were issued for delivery up of POL's goods. By this time Mrs W. had made an Employment Tribunal application for unfair dismissal and reinstatement. A Defence and Counterclaim were received and the case was passed to Weightmans on 13/6/01 as the case had been transferred to Blackpool County Court.

The Def. & cc has been drafted by Counsel but the defence is based upon Mrs W. being an employee. The cc is that the contract was wrongly terminated ; that the computer system was unfit for its purpose and throws in the Human Rights Act and the Commercial Agents regs! It claims £82.5K for loss of "ingoing"; loss of earnings from Nov.2000 onwards @ £5,300 per month etc. A reply and defence to the cc has been entered. The P's of Claim were later amended to claim losses of £25,034.04 as well. Disclosure has been made and statements exchanged.

In August 2002 an M.P.'s letter was received and replied to by David Mills. Mrs W. took her employment case to the Appeal Tribunal but was not successful there in December 2002. The civil proceedings were stayed while the EAT matter was finalised.

On 23/1/03 Mrs W.'s solicitors asked for the error notices from Feb.2000 to Nov 2000 together with the computer logs for June 2000 to Nov. 2000. There was also a query about whether the losses had been set against the remuneration due to her.

A CMC was then held in Feb 2003 at which an order was made to instruct a single joint expert in the field of computer technology on the issue of liability and causation with the fees to be shared by both parties. Mrs W. was now a litigant in person and has been so since then. Mrs W. at that time had call logs from Feb. to June 2000 and was claiming that "Horizon" were refusing to provide copies of logs from June to Nov. 2000. She also claimed to be on income support with no assets.

It was confirmed at this point that there were no copies of error notices or entries in the suspense a/c for this office. The agents expressed their concern at the lack of documentation for the losses. I advised FSA that the case should settle with the remuneration due being set against the losses and the balance of just over £5k being written off with Mrs W. to surrender the equipment. She declined to settle saying the losses were not accepted as her fault but let POL remove all the equipment other than the computer equipment.

POL then agreed to offer her up to £5K to settle. This sum was paid into court in July 2003 but has not been accepted. Since then the report of the computer expert ,Best Practice plc, based on the available call logs has been received and as you are aware is unfavourable and unflattering to Fujitsu if not actually hostile. In the light of the report, which cannot really be challenged, I do not think that POL will be able to prove, even on the balance of probabilities that the losses were the fault of the spm and our agents are still concerned about the lack of evidence for the losses. They want to obtain Counsel's opinion on liability and quantum and the question of mediation has now been raised at the recent CMC.

At court Mrs W. said that she would settle for two and a half times her annual remuneration , a total figure in the region of £187,500, as this is the figure being paid to spm's when offices are closed. POL clearly cannot settle on the basis of such a sum but the question of further questions to the expert has been raised and I can only see further costs being run up in this case with very little chance of POL getting its money even if it proves its case. I intend therefore to advise that POL should pay Mrs W. or pay into court the figure of 3 months remuneration plus interest on the basis that although it is unlikely that POL can now prove the losses were her fault alone, as per the contract for services, POL can give 3 months notice without giving reasons and this is all she will be able to obtain by way of damages in any event if she takes the matter to trial. The payment-in should be of another £20,000 to take account of interest since November 2000. If it is not accepted the case will have to be fought to resist the counterclaim which cannot be accepted but costs should be cut by accepting the expert's report and not seeking to challenge it further and effectively not pursuing the losses and paying her the full remuneration for the 3 month notice period on the basis that this is all she will obtain by way of damages after a full trial.