

Bond Pearce

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Fujitsu Services

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URGENT

Dear Sirs,

Post Office Limited -v- Mr L Castleton
14 South Marine Drive, Bridlington, WY15 3DB ("the Marine Drive Post Office")

(1) Background

We act on behalf of the Post Office Limited ("PO"). From approximately 18 July 2003 to 23 March 2004, Mr Castleton was a Sub Postmaster at the Marine Drive Post Office. He was strictly responsible for the safe custody of cash and stock and was obliged to make good all losses caused through his own negligence, carelessness or error and losses of any kind caused by his assistants.

Between 18 July 2003 and 25 March 2004, net losses of £27,115.83 occurred at the Sub Post Office. Mr Castleton was suspended on 23 March 2004 and dismissed on 17 May 2004. The Post Office has now issued a claim against him to try and recover these net losses. Mr Castleton has issued a Counterclaim claiming wrongful termination of his contract.

(2) Mr Castleton's Defence

Mr Castleton's case is that any shortfall is entirely the fault of problems with the Horizon computer and accounting system at the Marine Drive Post Office and that the PO wrongfully terminated his Sub Postmaster contract in respect of which has suffered loss not exceeding £250,000.

We attach copies of the following:

- A. Without prejudice letter dated 30 September from Mr Castleton's solicitors to Bond Pearce LLP.
- B. Bentley Jennison's Report dated 23 September and attachments;
- C. White & Hoggard's Report dated 18 August.

Bentley Jennison state that deficiencies have probably been brought forward despite the fact that they have been entered onto the suspense account entry. They suspect this is because the Horizon system, despite the suspense account entry, has failed to recognise the entry on the daily snapshots. They have drawn this conclusion through looking at the discrepancy of £3,509.18 on Thursday 26 February 2004. They then suggest that this double accounting could have continued over a number of weeks and that as such, Mr Castleton's Defence, "appears to hold potential merit based on the limited documentation" they have so far reviewed. White & Hoggard reach a similar conclusion in their Report.

Mr Castleton believes that if he can obtain further documents, such as the daily snapshots, he will be able to undertake a manual reconciliation of the cash account in order to substantiate his belief that the losses are not real but attributable to computer error. We attach an email from Fujitsu to Richard Benton at the Post Office dated 5 May 2004 in which Fujitsu state "It is possible that they are not accurately recording all transactions on the system" and that there was no evidence whatsoever of any system problem.

(3) Report

Please could you review Mr Castleton's experts' Reports and prepare a formal Report dealing with the following points (to the extent you are able):

1. We need to explain to a Judge who will know nothing about Horizon exactly how it works. What precisely happens when a customer goes into a Post Office to buy an item? How is this recorded? Is it manually recorded into the Horizon system at the same time or later in the day? Is the cash register linked to Horizon?
2. Precisely what steps Fujitsu took to examine the Horizon system at the Marine Drive Post Office in 2004 and what their conclusions were.
3. Whether there have been any similar or serious problems with the Horizon system at the Marine Drive Post Office since Mr Castleton's suspension and dismissal.
4. Whether you believe that the suggestion put forward by Mr Castleton's experts is likely to be correct and your reasons, either way (if you are able to comment on this).
5. If there have been human errors in recording the transactions, could an explanation be that:
 - (a) There was nothing wrong with Horizon, because it simply reflected the information entered on to it; but
 - (b) If staff entered the wrong numbers into Horizon there may have been no real loss (even though Horizon would show a loss), because there could be a human error in accurately recording transactions.

If so, would that be a likely explanation?

6. Any other information that you believe may be relevant.

(4) Duty to the Court

As a result of the instruction you may be asked to give evidence before the Court. Whilst the PO will be liable to pay your fees, in preparing your Report and giving evidence, your over riding duty will be to help the Court on the matters within your expertise.

You agree to meet the requirements of the Civil Procedure Rules Part 35 Practice Direction (copy enclosed) and that your Report will:-

1. Be addressed to the Court and not to the Post Office (but it should be sent to Mr Dilley of this firm).
2. Confirm that you understand your duty to the Court and that you have complied and will continue to comply with that duty;
3. Contain a statement setting out the substance of all material facts and instructions (whether written or oral) on the basis on which your Report is written. This statement should summarize the facts and instructions given to you which are material to the opinions expressed in the Report or upon which those opinions are based and if any of the facts are within your own knowledge which they are;
4. Contain a chronology of the relevant events;
5. Contain a Statement of Truth in the following form:

"I confirm that insofar as the facts stated in my Report are within my own knowledge I have made clear which they are and I believe them to be true and that the opinions I have expressed represent my true and complete professional opinion".
6. You should not that proceedings for contempt of Court may be brought against you if you make a false statement and Report verified by a Statement of Truth without an honest belief it was true;
7. Contain a declaration that the Report has been prepared in accordance with the Code of Guidance on Expert Evidence (enclosed).
8. Give details of your qualifications;

9. Give details of any literature or other material which you rely on in making the Report;
10. So who carried out any test or experiment which you use for the Report and whether or not the test or experiment has been carried out under your supervision;
11. Give the qualifications of the person who carried out any such test or experiment;
12. Where there is a range of opinion on the matters dealt with in the Report – sub-paragraph 11.1 summarises the range of opinion.
13. Give reasons for your own opinion.
14. Contain a summary of the conclusions reached including any qualifications to the same;

Given the fundamental importance of meeting these requirements, you should endeavour in your Report to be not only accurate but complete. You should mention all matters which you regard as being material to the opinions you express and draw the Court's attention to any matter to which you are aware which might adversely affect the validity of those opinions. This applies in relation to the factual matters to which you refer and also to the opinions which you express.

You should not include in your Report anything that is suggested to you by anyone without forming your own independent view.

If, on reading the Report of any other expert in this matter, or for any reason, you consider, at any stage, that any existing report of yours requires correction or qualification you will immediately notify us in writing of that fact.

(5) Duty to the Post Office

In performing all your duties for which the client will pay, you will owe a duty to the client to act with the professional standards of skill, care and diligence adhered to by experienced and competent consultants acting as expert witnesses.

You will take reasonable care of any documents, materials or samples sent to you by the clients and shall return them immediately (together with any copies taken) to the clients upon request.

In complying with your duties to the Court, you will not, without having first obtained prior written approval of the client, divulge to any third party any information relating to the dispute.

You confirmed that you:

1. Are an independent party and not the client's employee or agent, other than at the material time Fujitsu was responsible for looking after the Horizon system;
2. Know of no reason why you should not act as a witness for the Post Office in relation to the dispute;
3. Will advise us in writing immediately if any conflict between your interests and the Post Office's interests should arise in relation to the dispute.

We would be grateful if you could treat this matter as urgent, because Mr Castleton's solicitors have applied for Judgment against the Post Office, so we will need to obtain your report quickly.

We look forward to hearing from you.

Yours faithfully

Bond Pearce LLP