
From: Rod Ismay[CN=Rod Ismay/OU=e/O=POSTOFFICE]
Sent: Mon 26/07/2004 5:48:32 PM (UTC)
To: Donna Parker[]; Mandy Talbot[];
Tony Marsh[]; Carol King[]
Subject: Legal case - Cleveleys PO 153 405 Mrs J Wolstenholme
Attachment: Advice from S Lewinski - 26.07.04.doc

Donna - as discussed here is the correspondence re the legal case.
The first arrow below contains a note from Group Legal today (Mandy Talbot is acting on this case). This is Counsels Opinion.
The other arrow sections below contain some more background from Carol King in Chesterfield Debt Recovery Team.

In summary we suspended Mrs Wolstenholme in 2001 after apparent discrepancies in her cash accounts. We claimed for the value of these losses and she counterclaimed for loss of earnings. Within her claim was an "experts opinion" which was unfavourable concerning Horizon and Fujitsu.
We have lodged £25k in court but Mrs W has no legal representation and is pursuing the full amount of her claim (£188k). It goes to court next month.

Mandy - Peter Corbett is on holiday now. I am therefore escalating this to Dave Miller. Do you have a copy of the IT "experts opinion" ?

Tony - please can you advise who in your team is leading in this case?

Carol - thanks for your correspondence this afternoon.

All - please do not circulate this any further than is necessary to support Dave and Group Legal with this case.

Kind regards

Rod Ismay []

26 July - Group Legal - receipt of opinion from Counsel

Mandy Talbot
26/07/2004 14:38

To: Rod Ismay/e/POSTOFFICE@POS
cc:
Subject: Wolstenholme

As requested.

I shall be in the office until 6.30 this evening to answer any queries.

As you are briefing Mr Corbett in this matter is it appropriate for my future instruction in this case to come directly from him or shall we continue to take instructions from Chesterfield?

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

Tel: [] Fax: []
Email: []

----- Forwarded by Mandy Talbot/e/POSTOFFICE on 26/07/2004 14:36 -----

Mandy Talbot
26/07/2004 13:38

To: Clare Wardle/e/POSTOFFICE@PC
Silkin/e/POSTOFFICE@POSTOFFICE
cc:
Subject: Wolstenholme

Please find attached the advice from Counsel in this matter.

Rory if the business does wish to apply to adduce evidence from Fujitsu at this stage can you suggest who would be an appropriate party.

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

Tel: **GRO** Fax: **GRO**
Email: **GRO**

----- Forwarded by Mandy Talbot/e/POSTOFFICE on 26/07/2004 13:05 -----

GRO

26/07/2004 10:36
Please respond to
Susanne Helliwell

To: "mandy.talbot@**GRO**" <r
cc: Susanne Helliwell <susanne.helliwell@**GRO**>
Subject: Wolstenholme

Please find enclosed advice received regarding the above.

<<Advice from S Lewinski - 26.07.04.doc>>
This email is sent on behalf of Susanne Helliwell - please reply to her,
GRO
Secretary to Susanne Helliwell
Commercial Litigation Department
Weightmans

Tel:: **GRO**
Fax: **GRO**
Address: 41 Spring Gardens Manchester M2 2BG
Email: **GRO**
> Website www.weightmans.com

> _____
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>
>
>

17 March 2004 - Group Legal update and case background

Jim Cruise

17/03/2004 16:42

To: Carol King/e/POSTOFFICE@POS'
cc: Andy R Pearson/e/POSTOFFICE@
Subject: Cleveleys MSPO 153 405

I have set out for Mandy Talbot, my team leader, the history of this case and the latest developments and why I am of the opinion that POL should try, as far as reasonably possible, to settle this case as soon as possible. I can provide you with a copy of the expert computer witness's report and of the latest letter from my agents if you wish to see these.

I advise, for the reasons mentioned, paying in a further sum of £20,000 at this stage. I do not think that it will be accepted in view of the amount she says she wants to settle but this further sum would cover 3 months remuneration plus interest which should be all a court would award her.

Please let me know if you agree with this and I will arrange for the additional payment-in to be made.

----- Forwarded by Jim Cruise/e/POSTOFFICE on 17/03/2004 16:32 -----

Jim Cruise

17/03/2004 16:15

To: Mandy Talbot/e/POSTOFFICE@P
cc:
Subject: Cleveleys MSPO Mrs J. W

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 negotiations 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 "ingoining"; 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.

26 March 2004 - Group Legal and Chesterfield correspondence re payment into court

Jim Cruise

26/03/2004 15:40

To: Carol King/e/POSTOFFICE@PO:
cc:
Subject: Re: Cleveleys PO 153 40

If the payment-in was increased by £20,000 and accepted, the case would settle and because there would have been no trial there would be no determination by the court on any of the disputed facts in the case and it could not be held up as a precedent for any future claims. Each case has to be assessed on its own merits and a settlement in this particularly difficult case for POL would not mean that future claims where the Horizon system was involved would need to be or should be settled. There would be no admission that the Horizon system was at fault if the case settled at this stage on the basis of an improved payment-in.

A large part of the problem in this case is the age of the claim and the fact that not all the call logs/records are available as they have been destroyed by Fujitsu which is one reason why we do not particularly wish there to be a trial of this case.

Carol King

26/03/2004 14:57

To: Jim Cruise/e/POSTOFFICE@PO
cc: Jennifer Robson/e/POSTOFFICE
Burton/e/POSTOFFICE@POSTOFFICE
Subject: Re: Cleveleys PO 153 40

Jim

I have read the notes and spoken to Jennifer Robson about this case and wondered if you could clarify something for us please? If we were to settle (and we are not stating at this point that we will) could we ask for this to be without prejudice and settle without admitting that Horizon was at fault. There have been a number of postmasters who have not been able to use the equipment though trained fully at the time of installation and it has frequently been used as an excuse for errors. We would not want this case to set a precedent for similar cases in the future.

Regards
Carol

Jim Cruise
26/03/2004 14:11

To: Carol King/e/POSTOFFICE@POS
cc: Andy R Pearson/e/POSTOFFICE@
Subject: Cleveleys PO 153 405 Mr

I refer to my email to you dated 17/3/04. Can you please let me know if you are willing to increase the payment-in by £20,000 as my agents in Manchester have written to say that they feel the payment-in should be increased as soon as possible.

3 April 2004 - Debt Write Off

Carol King
03/04/2004 11:03

To: Jim Cruise/e/POSTOFFICE@POS
cc:
Subject: MRS JULIE WOLSTENHC
CLEVELEYS POST OFFICE - FAD CODE: 153/405

Jim
Please see Clive's mail below. Vicky Noble has authorised this.
Cheers
Carol

----- Forwarded by Carol King/e/POSTOFFICE on 03/04/2004 11:03 -----

Clive Burton
02/04/2004 16:21

To: Carol King/e/POSTOFFICE@POS
cc:
Subject: MRS JULIE WOLSTENHC
CLEVELEYS POST OFFICE - FAD CODE: 153/405

Jim,

I can now confirm that authority has now been given for POL to pay Mrs Wolstenholme £20,000.00 (3 months remuneration plus interest) as advocated in your E-Mail of 17.03.2004. The balance of £25,034.04, being held as a shortage in the former sub postmaster's Late Account, will now be written off locally.
Please proceed accordingly.

Regards

Clive W. Burton
Agents Debt 3/ Former Sub Postmasters Accounts

GRO

Tel: **GRO**