



Telephone attendance

Client: Royal Mail Group PLC Sub Postmaster Litigation

Matter: Mr Lee Castleton

Matter no: 348035.134

Attending: Conference between TB,SD, AB & RM - Counsel

Name: Adrian Bratt

Location: N/A

Date: 16 August 2006

Start time:

Units:

Conference between Tom Beezer (TB), Stephen Dilley (SD), Adrian Bratt (AB) and RM – Richard Morgan, Counsel.

RM – discussing the next key dates. These being Witness Statements on 15 September, Experts’ Swapping on 13 October, Experts’ meeting on 27 October and Exchange on 10 November.

Particulars of Claim

RM – para 1-5 are admitted. RM would like a Witness Statement submitted by an appropriate person to explain the structure of the Post Office business and how the sub-postmaster and sub-Post Offices work as a matter of law. For example, a potential sub-postmaster is identified, he owns the site he would like an explanation how the contract works and who owns what.

TB – so effectively the Witness statement has an “idiot’s guide” to how the process works and for example including a plan of the shop at Marine Drive and an explanation saying “this is how it works.”

RM – referring to paragraph 6 of Particulars of Claim, the first issue £27,000 loss. This is the core battleground. If we win here we will win the wrongful dismissal argument. We can still win the dismissal argument if we lose on the first point, but it is more difficult.

Paragraph 7 – responsibility for the loss incurred.

Paragraph 8 – Is the Defendant liable to repay the loss.

It may have been better from the outset if we would have pleaded that he was an agent.

SJD explaining the wider picture in that Post Office Ltd (POL) was well aware that costs will actually exceed the claim here.

RM – querying whether we should amend the Particulars of Claim.

TB – we need to ask the question of the client.

RM – with denial of paragraph 7 if we are saying there was a duty to account there was no particular worry about the errors.

Paragraph 8 – We are suing on the contract and effectively Castleton admits he is an agent. What we need to say has he actually received the cash and failed to account for it and they need to prove this under paragraph 6.

SD – we must prove the loss and show he failed to authorise it.

RM – it is either received cash which he hasn't accounted for or disposed of stock which he hasn't accounted for. I need to know how the loss is made up.

SD – Castleton's Counsel is Alex Gould.

RM – Alex Gould is at Hardwicke Buildings. If we need to amend the Particulars of Claim we will need to amend paragraph 7 and the agency point will help here.

Defence

RM – Castleton claims he is not responsible for losses after 23.3. 2004.

SD our audit team typed the date of the audit incorrectly as 25 not 23.03.04.

TB - Chesterfield are the POL investigation section.

RM – referring to the small error of £176 from National Lottery losses. SD – if we don't pursue it we could damage our credibility. We don't know how it arises, and need to bottom this out. RM – Castleton says it is for game sales on 24 March, after he has left. Maybe still contractually liable for it but do we want to pursue it? It is an unattractive argument. SD – will speak to Cheryl Woodward and we also need to state that the audit report is incorrectly dated.

RM – referring to paragraph 3 of the Defence and the £1,256.88 which has gone. We need to amend our reply and counterclaim to acknowledge this.

Referring to paragraph 2 of the reply. We don't admit the point and this needs taking out effectively just tidying up. And we need to amend the claim to take it out.

RM – the allowance for the National Lottery Prize payments I don't know that should be there.

*SD – *Action Point* The issue of the National Lottery prize payments needs discussion with Chesterfield.

RM referring to para 5 and 6 of the Defence. This seems to be the core but actually he doesn't think it really is. Castleton thinks his losses are illusory as a result of Horizon and the way to disprove it is to show that there were actual losses. How this is actually disclosed is neither here nor there. We need to show effectively from date A and date B from physical products or physical cash that there is a discrepancy.

With regard to his counter claim and the wrongful termination the Particulars of Claim have gone further saying there wasn't a loss and there were procedural irregularities although any procedural irregularities won't stop wrongful termination if the breach of contract is so serious to allow it.

RM would like to come back with a properly pleaded Defence to the Counterclaim ie. The contract was lawfully terminated etc. This would make the focus of the whole dispute into whether there was a loss or not.

RM – Did we support the application for the transfer of this case to the High Court?

*SD – *must check this.*

RM – I think this would be better off in the Chancery/Commercial list of the Central London County Court. We should write to the other side and explain issues of proportionate use of High Court time and effectively use our letter as a shield to the Judge.

SD – this would have settled without the computer/Horizon issue and the subsequent sub-Post Master's bloggers website.

RM – We run the risk of a full High Court Judge Hearing this and it is make a capping order with respect to costs.

SD – Castleton has disclosed no evidence of loss. Under the contract we can terminate for whatever issue on 3 months' loss therefore this caps any liability we have for termination. Our part 36 accounts for his wrongful termination. We suggested mediation before disclosure but the other side were not prepared to.

Replies to the Defence

RM – This needs to be amended to pick up the points. We need to make sure we are raising all grounds of liability that can be raised with respect to the loss.

SD – look at the lottery and £1,200 point. If we can prove a loss we can win on our claim and defeat the counterclaim. Key question effectively is the unauthorised loss of £26,000.

RM – we need to sequence carefully and need to get the forensic accountant in to determine how much money should have been received, how much was actually received, effectively shows as a loss and compare this to this cash declaration. Once this is produced the IT expert could confirm the balancing exercise on the accounts.

SD – with regards to issues of screen freezing and the PC's not communicating this would not make a difference to the figures on the system. End of March 04 the audit was a physical stock take and thus whatever the PC says there is a physical loss.

RM – It is very obvious one would declare a loss and then say that is what the PC told him to say. RM then questioning how is the cash handled and how is cash transferred in and out of the sub-Post Office branches for example by Securicor and asking what is a cash account.

SD – We have disclosed our version of remittances but he hasn't disclosed his version.

RM – We need to set out what documents should have been kept with respect to remittances.

SD – referring to the sub-Postmasters' obligation each day with respect to reporting requirements. SD then explaining the Horizon terminal and 2 tills and that Castleton didn't find out which till was losing the money although every transaction is recorded electronically. SD then explaining the check issue point. SD stating that we haven't got every giro receipt he produced but we have Horizon's log of every giro receipt he produced, which we know is correct as there are no error notices to accompany it. He is supposed to check the Horizon report matches what he sends off and with respect to cash he must declare how much cash he has he must count it but the centre would not know if Castleton was wrong without an audit. Castleton didn't actually need the volume of cash to service the transactions he did.

RM – Castleton took over the business in June 03 when he started he had x-stock and y-cash. Was there an audit when he started?

*(*SD would need to ask that question of Post Office Ltd).*

RM – saying for example at the start he had had say cash of £100 and stock of £500. At the end of his term he had cash of £200 and stock of £300, and in between he had stock in of £1,000 and cash in of £5,000 so overall he had stock out of x and cash out of y. Therefore we add these figures up from Horizon records can we not prove it that way? Castleton may say he entered the wrong figures in the giro books.

SD – when he gets a stock delivery he must enter it into the system what you have been delivered and an error notice is generated if there is a difference. SD referring to the email from Graham Ward of 21 June 2006.

RM – we need to find out how they account for what stock leaves the centre.

*(*TB – we need someone to explain the Stock despatch and REM in process, and that there were no error notices generated).*

RM – yes, the operation computer system is important only after the witness evidences and the experts sort out the physical evidence of the ins and outs.

SD – recent point was raised with regards to week 42 transaction log and this not marrying with the cash account. POL are currently asking Fujitsu the questions. Cash account is produced by Castleton based on system information. Any weakness for us is one where we say we need all the giro receipts as the system has the information but we must be sure that information is correct.

TB – isn't he asking us to explain both ends of the transaction he controls.

SD – showing Rowe Cohen's latest letter.

TB – I will push Mandy Talbot on the RC letter. We also need to know what RC mean by "manual reconciliation".

SD – There has been no on site visit with respect to the IT facilities although the hard drive has been changed and broadband installation has occurred although the broadband was not switched on until after Castleton left.

RM- we need to explain each day's processes and this might be primary evidence by way of schedules. I prefer to know the experts' answer before we ask the question.

RM – the PC expert must understand how Horizon works and how the events complained of could give rise to errors.

**Is it suggested that it is a hardware fault or software fault. We need to ask Rowe Cohen this question.*

TB – is it worth a Part 18?

SD – the Part 20 Reply would provide a mention of screen freeze and non-communication.

RM – how do we know what physical equipment was actually used.

**Have the actual machines changed between May 03 and now and, if so, how?*

TB – The expert would need to see those terminals and would need to see a log of software upgrades from May 03 to July 04 and explain what these upgrades did.

RM – Someone from Fujitsu needs to explain the physical makeup of that branch and the software configuration. Do we know who set up marine drive?

**SD – we can ask that question.*

RM – Can we tell for example at week 43 which physical goods the cash discrepancy relates to.

RM looking at the final cash account for week 49 and stating that line 50 says he has £72,000 with everything else being stock. Item number 3L refers to 10. Is it £10 worth or 10 cards?

**SD – We don't know that one.*

RM – Table 5 is a total of 93 – how does he calculate the shortage.

Payments total is 172 and the balance due to the Post Office is 97.

SD – we need to get someone to explain how the shortage is calculated.

RM – how the figures inputted by machine or by him? If he has to count cash and stock at the end of each week this should give him an indication of what has happened in between. Although he made good an 11,000 pounds shortfall in week 39.

RM – someone needs to explain the voucher side of giros etc and the cash count figure input process.

RM – referring to witnesses for him: Helen H, Cath Oglesby, Ann Chambers, John Jones, Ruth Simpson and Greg Booth, Cheryl Woodward and Castleton's assistant. (She needs to be interviewed or at least asked to be interviewed). RM referring to the auction house run by Castleton and stating that we need disclosure on that. RM referring to personnel from

Chesterfield and Girobank who will explain how the process works and each step and they will need real accounting credentials and would need to be the person who was physically doing the job. They will need to know the physical aspects and what happens to deposit slips, cheques etc. RM also questioning are there any other categories we should look for the loss other than the Giro, the National Lottery and Chesterfield. RM stated that we need to ensure Cath Oglesby's evidence is correct with respect to no losses. Need to check the new sub-postmaster loss, we need to check the hardware and software upgrades if there are any.

SD – discussing other potential witnesses being Miss Morgan, Davlynn Cumberland and Anita Turner. Data was sent to these people for checking. RM stated that we will need statements from these people if the Post Office wants a Rolls Royce job on this one. SD also referring to Gareth Jenkins.

RM – referring to the cash declarations in SD's exhibits page 7. He doesn't understand the figures these need explaining and these are repeated in the email of 22 March. He does not understand the 1st page of the audit report and what is the purpose, why is it set out like that.

John Jones

This statement was the basis of the wrongful dismissal claim. RM questioning why he did not want it recorded. SD not knowing.

Referring to para 8 page 2. Do we need to re-exhibit and referring to para 14 at page 4 is it NBSC or NSBC? Also, if they carry out tests they must have had concerns what were the concerns and what did you do.

**RM- we need to know what sort of security or protection Marine Drive had on its dial up internet. Was it password protected? Can Fujitsu get in and change the raw data after Castleton inputted this?*

Paragraph 18 page 5 – this needs qualifying. What is he saying and so what if it is foreign currency? Why is there foreign currency?

Para 23 – where is the analysis.

RM – I want to get the with statements further along the track now and need to see everything warts and all now.

Cath Oglesby

Paragraph 10 – Need to explain the operations and suspense account and the process what is done, why it is done and what effect it has.

Paragraph 40 – I do not understand the use of the word "needed".

RM states that he paid out £92,000 in cash but he had £97,000 and it reads as if he had more cash. Does it need to be the other way around? The whole paragraph needs clarifying. RM week 47 needs to be looked at.

Paragraph 40 doesn't make any sense to RM at all. 40(d) should this be 78,103? RM doesn't understand how it works at all. It must be written in very basic careful terms and must be accessible for the Judge.

Paragraph 13. This needs clarification what report, what period and the reference to technical jargon 'REMd' in.

Paragraph 20 – RM – it would be nice if we could read an explanation of yes this is how I did it. This is the approach that is proportionate referring to the example of one week if you want the lot I can acquire it for you.

With regard to the broadband we need to explain what actually happened with the connection. Is there a hardware and software firewall? Was it physically plugged in but not activated? It was switched on 21 April 04 and installed on 20 January 04.

SD referring to Castleton's lawyers calling Lee Castleton, Lisa Castleton and Christine Train.

There followed some discussion about the level of the trial listing being 5 days or 9 days. RM says that we need to increase the number of witnesses on the AQ and also extend the time-estimate of the trial.

RM stating that it should be stated to POL that this is madness and we could settle with a drop hands and the confidentiality clause. We will all need to readdress the estimate of costs with the Court.

We need to send a letter to Rowe Cohen detailing amendments to Particulars of Claim, new witnesses, new costs estimate, time extension, and the move of Courts. SD needs to speak to RM before next Friday.

RM referring to the instructions to experts stating that SD shouldn't refer to Without Prejudice documentation and they need to give him a clear idea of what to do. As far as accountancy experts are concerned it is effectively a vouching exercise. Do we know the answer to the question before we ask it. RM questioning as to whether the Post Offices have accountants who could do this. RM asking can we speak to Kath Oglesby and how we would go about the vouching exercise from the raw data. We need raw evidence in place before we compile a report.

We could send preliminary instructions to BDO for IT and Accountancy just asking on the loss side of things the opening stock, the closing audit and the stuff in between and ask them to give an opinion as to whether the loss is real or not. With regard to the IT side of things they need to do a physical examination to the PCs and we will give them all the Witness Statements with respect to the software upgrades etc. SD needs to write 2 letters to the Experts.

RM –with respect to the Horizon and software we need to send a letter to RC, possibly explaining that we don't understand the allegations on the software points and suggesting a sequential exchange of reports on IT. We need to say to BDO machines are here, these are the allegations, go and inspect them, what further information do you need and tell them to go to Manchester for a familiarisation session.

Tell Rowe Cohen, that would be of great assistance to both experts to go to Manchester together and conduct the site inspection at the same time.

TB – it is a crucial point that we concentrate on the physical items in order to bring back from the Horizon to the double entry bookkeeping and double document book keeping point.

RM – I would also like to know if it is a genuine one off and I would like to know if the number of allegations and the number of paper cases that have occurred. Other than the Bhajaj and the Bilkhu cases how many other allegations have been made and how many have come to trial and the outcomes of those. These need to be of a particular issue of persistent shortfalls allegedly attributable to the computer system.

RM – I need to meet someone from POL in September and before the trial to go through the accounts.

RM – Basically the witness order should be that in which they have become involved and I would like to see the witnesses before their Witness Statements are finalised.