

EMPLOYMENT APPEAL TRIBUNAL

4 St. James's Square, London, S.W.1.

At the Tribunal

On 11 September 1981
Judgment: 9 October 1981

Before

The Hon. Mr. Justice Bristow
Miss J. W. Collerson
Mr. S. C. Marley JP

THE POST OFFICE

Appellants

-v-

STRANGE

Respondent

Transcript of Proceedings

JUDGMENT

Revised

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B

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APPEARANCES

D

For the Appellants: MR. C. CARR instructed by
The Post Office Solicitor,
Euston Tower, 286 Euston Rd.,
London NW1 3DE.

For the Respondent: In person.

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A MISS J. W. COLLERSON read the following reserved judgment of the Court:

B In 1967, Andrew Strange was employed by the Post Office as a postman driver at the South Eastern District Office, London, and by 1979 he had been employed on regular night duty for about five years. Night duty is more highly paid than day duty.

C In the small hours of Saturday, 10th November 1979 he was involved in a fracas with a fellow employee called Sembi. As a result, Mr. Sembi got a cut eye and cut lip, and received hospital treatment. On 29th November, 1979 Mr. Strange was disciplined by the District Postmaster, Mr. Fish, in accordance with the disciplinary procedure contained in the personnel manual and forming part of his contract of employment. The decision was that what he had done was to be recorded as a serious offence, his pay was to be stopped for the period of five hours during which he had been suspended during the investigation of the matter, and he was penalised by compulsory transfer under Rule 3.2(4) of the disciplinary procedure to day duties for a period of two years. By Mr. Strange's calculation, which has not been disputed by the Post Office, that meant a loss of pay of at least £3,000.

F By Rule 7 of the disciplinary procedure there is a right of appeal which must be exercised within three days. By Rule 7.2 an officer is allowed one appeal against the award of a Serious Offence. Appeal may be made personally or through a staff association. The intention to appeal may be made known in writing to the officer's superior officer. Post Office Gazette for November 1973 underlines that under this rule any employee who wishes to appeal against a Serious Offence award may do so orally at an interview, and may be accompanied by, among others, his local Staff Association represen-

A tative either to act as observer or to help him present his case.

B Rule 7.2 further states: "In cases where the Local Manager
"personally has given the original decision the appeal will be to
"the Regional Director. When the decision has been given at a lower
"level, the appeal will be to the Local Manager." An officer making
C a personal appeal to the Regional Director should forward it through
the Local Manager. A Staff Association appeal, which we think must
mean where the officer does not wish to present his appeal orally at
D an interview, with or without the help of his local Staff Association
representative, but wants to leave it entirely to his Union, should
be made at local Branch level if addressed to the Local Manager, or
by Union H.Q. if addressed to the Regional Director. So in the case
of an appeal from a Serious Offence award which does not lie to the
Local Manager, a Staff Association appeal is to be initiated at
Union H.Q. to Regional Director level.

E Rule 2 of the disciplinary procedure, dealing with the powers
of local managers, states that (subject to exceptions which do not
arise here) they may deal with all offences against discipline com-
mitted by staff under their control themselves, or by their deputies
F in their absence. But in the case of certain penalties, including
compulsory transfer, the Local Manager must personally make the award.
This means that the Local Manager must personally adjudicate upon
the offence. Otherwise in authorising the penalty he would simply
be rubber stamping the decision of an inferior officer.

G There is no provision in this disciplinary procedure that the
Regional Director may adjudicate upon appeals by a deputy. As a matter
of administrative convenience, in practice appeals which the
disciplinary procedure requires to be made to him are, we are told,
H always dealt with by deputy, without objection by appellants or the

A union. In our judgment, so long as the disciplinary procedure remains in its present terms, if any officer says he wishes his appeal to be by way of personal interview with the Regional Director, and does not consent to it being dealt with by deputy, to deal with it by deputy is a breach by the Post Office of its own disciplinary procedures, and so a breach of the contract of employment.

On 30th November 1979 Mr. Smith, the local Branch Secretary of Mr. Strange's union, wrote to Mr. Fish as follows:

"Dear Mr. Fish,

" With reference to a recent decision made by you on one of my members, i.e. Mr. A. J. Strange, I wish to hereby give notice that he wishes to lodge an appeal against the severity of the sentence, and will also be represented by the Union.

" Yours sincerely,

" (R. Smith)

" Secretary."

The District Postmaster for appeal purposes equals the Local Manager. As an appeal in respect of a Serious Offence award this appeal must lie to the Regional Director. If the terms of the letter do not clearly show that this was to be a personal, not a Staff Association, appeal, the level at which it is communicated, and reference to Rule 7.2, makes that clear.

On 6th December 1979 Mr. Fish interviewed Mr. Strange and Mr. Smith, his union representative. Mr. Fish, as notes taken by a subordinate called Keating show, thought that he was adjudicating on the appeal.

On 10th December he saw Mr. Strange and Mr. Smith again. Having consulted the Disciplinary Procedure meanwhile, Mr. Strange said that Mr. Fish could not hear the appeal. Mr. Fish insisted that he would, and the outcome was a letter in the following terms:

19th December 1979

"Mr. A. J. Strange,
"Postman,
"S.E.D.O.

"Following your appeal to the District Postmaster against the
"disciplinary award of 28th November 1979 the award is to be
"reduced as follows:

"Decision in full:

" To be recorded as a Serious Offence and pay to be stopped
" for the period of suspension, i.e., 5 hours. You are also
" to be compulsorily transferred to day duties for a period
" of six months.

"Decision given by the District Postmaster, 10th December 1979.

" (signed) A. F. KEATING

" for District Postmaster."

Mr. Strange's solicitors now took a hand:

13th December 1979

"Mr. Fish, J.P.,
"District Post Master,
"G.P.O.,
"239 Borough High Street,
"London, S.E.1.

"Dear Sir,

"Re: Discipline of Mr. Strange

"We are instructed by Mr. Strange of 57, Orissa Road, Plumstead,
"S.E.18., in the matter of his discipline as the result of an
"incident of assault on the 10th November 1979.

"Our Client has asked us to approach you on two separate but
"connected matters.

"Firstly, the existence on his work record of possibly
"defamatory statements concerning a past incident of assault
"with which he had no connection and secondly the procedure
"adopted by yourself and your assistants in disciplining him
"for an assault on a Mr. Sembi.

"Dealing with the first matter, our Client informs us that your
"Mr. Haslam informed him of the existence of a statement on his
"record that he was involved in an assault on a Mr. Yardley.
"Our Client now wishes to put on the record that he had nothing
"to do with any assault on a Mr. Yardley and regards Mr. Yardley
"as a friend. More seriously, the existence of such an
"allegation in writing may constitute a libel on him and

A "furthermore its oral publication to his work colleagues by
"less discreet member of your staff may constitute a slander
"as it imputes some form of criminality to our Client.
"Our Client finds that it is common knowledge on the 'floor'
"that he is supposed to have assaulted Mr. Yardley which is
"untrue and causes him distress and embarrassment. We would
"therefore appreciate if any reference to this alleged assault
B "is erased from the record and a note put on his file to record
"this fact. You might also wish to consider a more general
"apology to him which would come to the knowledge of his work
"mates.

C "More importantly, we understand that as a result of his
"assault on Mr. Sembli which he has admitted and for which he
"has apologised, even though he regards the assault as being
"largely provoked, he was severely disciplined. Our Client
"was led to believe by Mr. Haslam that his work folder had
"been sent to you with a report of the assault for your judgment.
"Our Client was further led to believe that the disciplinary
"measures ordered, were ordered in person by you and evidenced
"by a communication to him referred to as 'notification of a
"serious offence.' We have a copy of this notification in
D "front of us and it clearly states that the decision to suspend
"him for a period of five hours and to return him to day duties
"for a period of two years was taken by you personally.
"On a later meeting with you, he was told that you did not
"take the decision but that one of your assistants had and
"that you were personally going to hear the appeal which you
"did on Thursday 6th December. Our Client is alarmed by
"aspects of these events. Firstly, the original decision was
E "made on the basis of a work record which contained false
"information and secondly, when his appeal was lodged it was
"not transmitted to the appropriate authority at your regional
"headquarters. We have asked to see a copy of the G.P.O.'s
"code of practice with particular reference to the disciplinary
"procedures to be followed but if our Client's intention is
"correct, that the Appeal should have gone to a higher authority
F "then we regard your decision as in breach of natural justice
"and will be assisting him to appeal in the proper manner.

"Our Client accepts that he deserves some reprimand for what
"amounts to an uncharacteristic action but regards the first
"decision and indeed the result of the 'Appeal' to be severe
"and unwarranted. We understand that if the first decision
"was implemented our Client would lose not only his good name
"but in excess of £3,000 in wages. It should also be stated
G "that our Client has no wish to make a 'cause celebre' of this
"matter and would hope that the matter could be decided on an
"amicable basis on a future discussion with himself and his
"union representative. If this is not possible, you will of
"course proceed to Appeal.

"We would be grateful if you would take the matter up with our
"Client or indeed ourselves.

H "
"

Yours faithfully,
DILWORTH & CO."

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On 14th December Mr. Smith wrote that as far as the union was concerned the matter was closed.

B

On 31st December, Mr. Begg, as acting District Postmaster, replied that if Mr. Strange wished to pursue the matter further it was open to him to do so under existing procedures. On 3rd January 1980 Mr. Keating signed for the District Postmaster the order transferring Mr. Strange to day duties for six months, but Mr. Strange was off sick. On 7th January he presented himself for night duty and was sent home. On 9th January he and Mr. Smith went to the District Postmaster's office when Mr. Haslam (Mr. Fish's subordinate who had conducted the original investigation and recommended the award made by Mr. Fish) handed Mr. Strange the 3rd January letter as an opening gambit. Mr. Strange refused to obey the instruction, saying that Mr. Fish had no power to deal with his appeal, and that he would accept the Regional Director's decision even if it restored the original penalty. Mr. Haslam and Mr. Smith arranged that Mr. Smith should write a letter setting out the union request that the appeal be heard by the Regional Director and requesting that Mr. Strange should continue on night duty meanwhile. Mr. Smith wrote accordingly in these terms:

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"

9th January 1980.

"Mr. J. Haslam P.E.A.
"Staff Branch,
"Harper Road,
"S.F.1.

G

"Dear Mr. Haslam,

"

Mr. A. Strange

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"Reference to our meeting this morning and in answer to the letter received by Mr. Strange, we feel that the proper procedure of the Discipline Code was not carried out, in as much that my member Mr. Strange was given a letter informing

/"him of the.....

A "him of the sentence placed upon him and this letter was
"signed by the Post Master, and on that understanding we
"feel that our appeal should therefore have been sent to
"the Regional Director.

B "We therefore submit that until this appeal has been dealt
"with at Region my member Mr. Strange should be allowed to
"perform his normal duties on the Thro Duty and we hope
"that this will be endorsed by you.

"
" Yours sincerely,
" (sgd.) R. SMITH
" Secretary."

C By now at last it occurred to someone that something had gone
wrong, and on 23rd January Mr. Line, Mr. Fish's successor as District
Postmaster, sent a memorandum to Director, L.P.R. Personnel Division,
Discipline, setting out what had happened. To show the attitude of
D the Post Office officials who have had charge of Mr. Strange's appeal
against a decision which would cost him at least £3,000 over two
years, we cannot do better than quote the last paragraph of Mr. Line's
memorandum:

E "It was of course procedurally incorrect for the appeal to
"have been taken locally once the original award had been
"made over the District Postmaster's signature, even although
"he was, in effect, merely formalising a decision reached at
"ADP level. Nevertheless, in view of the severity of the
"offence involved, the complete absence of remorse or regret
"on the part of Mr. Strange, and (not least) the possible
F "damaging effect on morale should the incident go unpunished,
"it is hoped that PD will find itself able to take the appeal
"on its original merits: as mentioned in the case papers,
"both Mr. Strange and his UPW Secretary have indicated
"acceptance of the possibility that the penalty originally
"might be upheld, or increased."

The message this letter conveys to us is:

- G 1. Mr. Line regards it as no more than "procedurally incorrect"
for Mr. Fish to have sat on appeal against his own order.
He mitigates because:-
- H 2. The reality was that Mr. Fish had originally done no more than
rubber stamp a decision taken by an official who had no right

A under the disciplinary procedure to take it, so Mr. Fish hearing the appeal was only a technical hitch. He urges:-

3. It was a bad offence as that official and Mr. Fish had decided; it would be bad for morale if it went unpunished; so he hopes the addressee will restore or increase the original penalty.

B "We've made a mess of it but only a little one. Don't let us down."

C The fact that the morale of Mr. Strange and his fellow workers might be adversely affected by what had happened, or that two grave injustices had been done, does not seem to have occurred to Mr. Line, any more than it occurred to Mr. Fish that he was doing anything wrong when he did them.

D Time passed. Mr. Strange continued to work night duty and received night duty pay. Not until 15th February 1980 did Mr. Bassett, of Personnel Department, minute Mr. Line in the following terms:

E "District Postmaster,
"S.E.D.O.

F "Mr. A. J. Strange, Postman, personal appeal against the award of a serious offence with stoppage of pay for 5 hours and compulsory transfer to day duties for period of 2 years. Papers concerning Mr. Strange's personal appeal were forwarded to AC/G PD, on 23rd January. Mr. Tamplin T/DC, PD, has agreed to hear Mr. Strange's appeal and has suggested 10.30 hours on Thursday, 21st February, as a suitable time and date. Would you please write to Mr. Strange in the terms of the attached letter enclosing the two maps provided and a return envelope and inform this duty of his reply as soon as possible.

" D. J. Bassett
" 15.2.80."

G Mr. Keating then sent a letter to Mr. Strange:

" 18th February 1980.

"Mr. A. J. Strange,
"Postman,
"S.E.D.O.

H "Mr. Strange,

/"In connection

A "In connection with your request for a personal appeal against
"the award of a serious offence, with stoppage of pay for
"5 hours and compulsory transfer to day duties for a period of
"2 years, arrangements have now been made for the Director's
"Representative to hear your appeal on Thursday, 21st February
"1980 at 10.30 a.m. at RHQ 148-166 Old Street, E.C.1.

B "Would you please inform this section if the above date and
"time is convenient for you to attend. If it is, would you
"also inform us whether or not you will be accompanied by a
"friend, who must be a Post Office employee and who may be a
"Union representative, to assist you in representing your case,
"and if so, please give their name, rank and office. Attached
"for your information are 2 copies of a map indicating the
"position of RHQ 148-166 Old Street, London EC1V 9HQ.
C "On arrival at the RHQ you should report to the Receptionist/
"Doorkeeper and ask for Mr. Bassett PD/D (Ext. 2331).

"An addressed envelope is enclosed for your reply.

"
" (signed) A. F. KEATING
" for District Postmaster."

D We are unable to find in Mr. Bassett's memorandum any trace
that the Regional Director has got anywhere near Mr. Strange's appeal,
or has delegated his duty under the disciplinary procedure to deal
with it to Mr. Tamplin. Any expression of regret for what has
E happened is conspicuous by its absence. All we know is that Mr.
Tamplin has agreed to hear the appeal requested by Mr. Strange. No-one
takes the trouble to tell Mr. Strange who or what Mr. Tamplin is,
or that it is recognised that Mr. Fish's effort is a nullity.

F On 18th February Mr. Strange wrote as follows:

"P.E.D.
"S.E.D.O.

"Sir,

G "Thank you for arranging an appeal on my behalf, but according
"to 'time limits' in the Discipline Code the appeal should
"have been heard in December.

"Also I do not believe that an appeal at this late stage would
"be to my advantage after all this has transpired.

"I therefore decline to appeal on this basis and trust that
"my position on nights will be confirmed.

H Yours faithfully,
(signed) A. STRANGE."

A Mr. Keating replied on 19th February:

"Mr. A. J. Strange,
"Postman,
"S.E.D.O.

B "Reference your letter of 18th February 1980 I must inform
"you that there are no stipulated time limits within which
"personal appeals against disciplinary awards must be heard.
"The only time limits which exist relate to the submission
"of appeals.

C "Arrangements have been made for the Director's Representative
"to hear your appeal on Thursday, 21st February 1980 at
"10.30 a.m. If you do not intend to attend and now wish to
"withdraw your appeal then the disciplinary award as advised
"to you on 3rd January 1980 will be implemented forthwith and
"your transfer to day duties, for a period of six months
"arranged.

D "In the circumstances do you wish the appeal to continue?
"Please advise if you will attend, would you also inform us
"Whether or not you will be accompanied by a friend, who must
"be a Post Office employee and who may be a Union representative,
"to assist you in representing your case, and if so, please
"give their name, rank and office. Attached for your informa-
"tion are two copies of a map indicating the position of
"RHQ, 148-166 Old Street London EC1V 9HQ. On arrival at the
"RHQ you should report to the Receptionist/Doorkeeper and ask
"for Mr. Bassett Pd/D (Ex. 2331).

E "An addressed envelope is enclosed for your reply.

"
" (signed) A. F. KEATING
" for District Postmaster
" 19th February 1980."

On 20th February Mr. Strange answered as follows:

F "Sir,

"Thank you for your letter of 19th instant.

"As requested I am writing to confirm that I will not attend
"an appeal at this stage, for the reasons stated in my previous
"letter."

G On 21st February 1980 Mr. Keating wrote that since Mr. Strange
had twice declined the opportunity to attend, the 19th December
penalty would now be implemented and he was to report for day duty
on 25th February. The 19th December penalty was that imposed as a
H result of the appeal which was a nullity. On 22nd February Mr. Strange

A answered as follows:

"P.E.C.
"Discipline Duty
"S.E.D.O.

B "Sir,

"Re your letter of the 21st instant my appeal against the
"District Postmasters award of the 28.11.79 was not heard
"in accordance with disciplinary procedures as laid down in
"the Discipline Code.

C "Therefore, I cannot comply with your instructions to report
"for day duty and request that no further action be taken
"against me."

D From 25th February to 27th March 1980 Mr. Strange reported for
night duty and each time was told to report for day duty. He was
not paid at all as from 25th March. On 3rd March Mr. Haslam wrote
setting out the position as the Post Office saw it, threatening
further disciplinary action because of his refusal to report for day
duty and saying that was why his pay had been stopped.

E Next day, Mr. Strange replied:

"

4.3.80.

"Sir,

"I have no intention whatsoever of complying with your
"instruction to attend for day duty, as you cannot impose
"this penalty for reasons previously stated.

F "My pay has now been stopped and I would like to know the
"reason for this as I have attended for night duty each night
"at my schedule time of attendance but was not allowed to
"sign on."

G On 7th March, Mr. Strange's solicitors wrote that Mr. Strange
did not wish to appeal against the 10th December decision, which, of
course, was Mr. Fish's decision imposing the penalty now according to
Mr. Keating being implemented, i.e., six months transfer. They say
that the correspondence shows that this was the decision from which
H Mr. Strange was being invited to appeal during February, and that he

A still wants to appeal against the original Local Manager decision by way of personal appeal to the Regional Director himself.

B After consultation with Personnel Division, Mr. Keating replied again setting out the picture as it appeared to the Post Office, telling him to report for day duty on 31st March and threatening dismissal on 7th April if he did not. Meanwhile Mr. Strange had told the day and night staff union members what had been happening. C There was a prospect of a walk out because the Union maintained its stand that his case was closed from its point of view. On 28th March Mr. Strange resigned, taking the view that he could not take his case further without union support, because he could not resume work unless he obeyed an order which he regarded as in breach of contract, D and unwilling to be the cause of a serious confrontation between management and staff.

The facts we have set out are not in dispute.

E On 9th April, Mr. Strange issued an originating application to the Industrial Tribunal claiming compensation on the ground of constructive dismissal. The claim was heard on 17th December 1980 and 15th January 1981, and on 6th March 1981 a decision in his favour was communicated by the tribunal. From that decision the Post Office F appeals.

G Whether Mr. Strange brought the contract of employment to an end by his resignation, or whether he was dismissed within the meaning of section 55(2)(c) of the Employment Protection (Consolidation) Act 1978 because he resigned in circumstances such that he was entitled to terminate his contract without notice by reason of his employer's conduct, that is, by reason of repudiation by the employer, depends H upon the proper inferences to be drawn from the undisputed facts which followed upon the notice of intention to appeal, given by

A Mr. Smith on his behalf on 30th November 1979, from Mr. Fish's award notified on 30th November 1979. We set out what in our judgment is the true analysis of what happened following the award.

- B 1. Although under the Disciplinary Procedure Rule 7.2 the appeal lay to the Regional Director it was heard by Mr. Fish himself, and the result of the hearing was the purported award of the reduced penalty of six months compulsory transfer to day duty, notified to Mr. Strange by Mr. Keating's letter of 19th December C 1979 and sought to be implemented by Mr. Keating's letter of 3rd January 1980. The award was a nullity, and the order implementing it was a breach of contract by the Post Office.
- D 2. The only effect in law of the meeting between Mr. Haslam, Mr. Strange and Mr. Smith on 9th January 1980 was that Mr. Haslam on behalf of the Post Office suspended implementation of the penalty, and by his letter on that day Mr. Smith on Mr. Strange's E behalf protested that the proper procedure on appeal had not been followed.
- F 3. On 18th February Mr. Keating offered an appeal from the two years transfer to day duty award to "the Director's representative". In our judgment on the construction of Rule 7.2, read in the light of the provisions of Rule 2 and in the absence G of any power to deal with such an appeal by deputy, this offer, unless accepted by Mr. Strange, who would in accepting it have waived his right to an interview with the Regional Director himself, was not an offer by the Post Office of an appeal in performance of its contractual obligation.
- H 4. In these circumstances, if Mr. Strange's letter is to be read as a refusal to appeal, it is the appeal now offered, in breach of contract, to the Regional Director's deputy which he is

A refusing. In our judgment that refusal does not relieve the
Post Office of its contractual obligation to hear his appeal
against the 25th November award as required by Rule 7.2.

- B 5. When Mr. Keating wrote on 19th February saying that if Mr.
Strange did not wish to attend and now wished to withdraw his
C appeal, the award which would be implemented was the 3rd January
award of six months transfer, that is the award made upon the
D appeal which was a nullity. The Post Office had never told
Mr. Strange that it accepted that the Fish appeal performance
was a nullity. So what was now being canvassed was an appeal
not against the original disciplinary award of two years on
25th November, but an appeal against the Fish appeal award.
E Even if an appeal to the Regional Director's deputy would have
been a performance of the contract by the Post Office, an appeal
to him, or the Director himself, from an award that was a nullity
would certainly not be a performance of the contract.
- F 6. Mr. Strange's refusal on 20th February to attend an appeal in
answer to this invitation does not in our judgment relieve the
Post Office of its contractual obligation to hear his appeal
from the 25th November award as required by Rule 7.2.
- G 7. The Post Office did not hear the appeal in Mr. Strange's absence
by the Director's deputy and reject it. It did nothing more
about an appeal on any basis. By Mr. Keating's letter of 21st
H February it said it was implementing the 19th December adjudica-
tion forthwith, that is to say, the penalty which followed the
appeal which was a nullity. The order to attend for day duty
which that letter contains was one which was given in breach
of contract by the Post Office.

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8. On 22nd February Mr. Strange told the Post Office that he would
not comply because the appeal which led to the order had been
B wrongly dealt with. On 3rd March Mr. Haslam wrote reiterating
the Post Office position, threatening further action for
disobedience, and recording that Mr. Strange's pay had been
stopped. On 4th March Mr. Strange reiterated his own position,
C and on 7th March his solicitors, in reiterating it, pointed out
that from the correspondence to which we have referred it looked
as if Mr. Strange was being invited to appeal against Mr. Fish's
D decision on appeal, which must be a nullity. They said he
still wished his appeal against the 25th November award to be
heard by the Regional Director himself; that is, in accordance
with Rule 7.2.

Mr. Keating replied on 27th March. To summarise, he said that
E as an act of grace when Mr. Strange would not attend the hearing
by deputy that had been offered, instead of transferring him
to day duty for two years in accordance with the 25th November
award they had given him "the benefit of the modification which
F the District Postmaster had been prepared to allow." He said
that "Regional Director" in the rules did not mean the Director
personally. He gave a final instruction to attend for day duty
on 31st March or else.

So at no stage did the Post Office expressly concede to Mr.
G Strange, its employee, that the Fish appeal award of 19th December
was a nullity, though Mr. Line's memorandum, however grudgingly, had
recognised this as early as 23rd January. It never offered Mr. Strange
H an appeal in accordance with Rule 7.2. It made what looks like
two different offers, neither in conformity with the rules, and then
took and maintained action against Mr. Strange without repairing the

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flagrant breach of contract constituted by the Fish appeal performance and in face of Mr. Strange's own and his solicitor's protests.

In these circumstances in our judgment the Post Office's failure to perform its contract in the proper observance of its own disciplinary procedures, and the action it took against Mr. Strange as a result, amounted to a repudiation of the contract, Mr. Strange was entitled to treat it as at an end, and he is to be treated under section 55(2)(c) of the 1978 Act as dismissed.

The Post Office did not contend that if he was dismissed they had acted reasonably in treating his refusal to obey the order to work days as a reason for dismissal. Accordingly in our judgment the industrial tribunal came to a right conclusion in law when they decided that Mr. Strange was entitled to compensation for unfair dismissal, and this appeal fails.

Leave to appeal to Court of Appeal.