



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr JAMES TAYLOR

**Respondent:** SATCHELL MORAN SOLICITORS LIMITED

**Heard at:** Manchester

**On:** 16 & 17 May 2022

**Before:** Tribunal Judge AC Holt

## REPRESENTATION:

**Claimant:** In person

**Respondent:** Mr Williams (Counsel)

# JUDGMENT

The judgment of the Tribunal is that:

1. In dismissing the Claimant, the Respondent was not in breach of contract because the conduct amounted to a repudiatory breach of contract.
2. The claim for outstanding wages and compensation for breach of contract is dismissed.
3. The Tribunal has not made a costs order.

# REASONS

## Introduction

1. I am required to decide the Claimant's claim for damages and compensation arising out of an alleged breach of contract. The claim is for 3 months' loss of wages on the basis that the Claimant claims that he was not given notice.
2. The Respondent's position is that, whilst prima facie, the claim may appear to be for a breach of contract, in this case, the Respondent acted appropriately on

the basis that there was a repudiatory breach of contract on the part of the Claimant immediately before he was dismissed. The Respondent relies on the legal position that a breach of an express or implied term in the Claimant's employment contract by the Claimant could justify the employer dismissing the employee summarily, ie without notice.

3. Whether or not the summary dismissal is justified depends on the seriousness of the breach, which is at the heart of what I have to decide. For a breach of employment contract to fulfil the criteria to be a repudiatory breach, it has to be a **fundamental** breach, ie sufficiently serious to entitle the employer to treat the contract as discharged.
4. It should be noted that dismissal without notice can also be justified by discovery of sufficient grounds for dismissal *after* the dismissal has taken place. It will be seen that in this case, the Respondent relies, in part, on evidence in the form of the Claimant's Instagram posts, which he published after the dismissal, as supporting their assertions regarding the repudiatory breach of contract.
5. In this case the Claimant started his employment with the respondent on 1 June 2020. It is agreed that his employment ended on 26 January 2021. He worked 37.5 hours a week and was paid £1,411 per month and his take home pay was around £1,275 per month. (Figures given by the Respondent are slightly higher as a result of opportunities that the Claimant had to do overtime, but issue of quantum are academic for the reasons set out below). The date of the ACAS certificate is 27 January 2021, the claim was issued on an ET1 claim form on 1 February 2021. The ET3 response form for the Respondent is undated but I believe it would have been sent by email to the tribunal. No issue is taken with the date of the response.
6. There is, essentially, a difference of interpretation of events as between the parties. I therefore have to make factual findings as to what happened. Because there is a dispute as to whether the Claimant was in breach of contract, I have to consider the seriousness of any breach and whether it amounts to a repudiatory breach of contract.

**Claims and Issues**

7. In passing, I note that the Claimant's claim for unfair dismissal was struck out by Employment Judge Aspinall on 12 April 2021 because the Claimant had been employed less than 2 years. Also, his purported claim for discrimination under the Equality Act 2010 was not allowed to proceed by a decision of Employment Judge Horne on 26 October 2021 on the basis that the Claimant had not amended his claim by providing adequate grounds nor evidence to support the same.
8. I note the directions given about the hearing before me were set out by Judge Horne in a document dated 25 October 2021. Paras 20 and 21 refer to the Claimant's contract of employment with the Respondent and which refers to the Respondent's right to summarily dismiss an employee such as the Claimant for gross misconduct. At para 21, it is also stated by Judge Horne: "*Regardless of the express terms of the contract, the general law of contract entitles a party to a contract to terminate the contract if the other party "repudiates" it. (Repudiation means demonstrating an intention to refuse to perform the contract altogether). An employee repudiates a contract of employment if he commits gross misconduct. This means that, if the employee commits gross misconduct, the employer may terminate the contract without giving notice. If the employee does not commit gross misconduct, the contract cannot be repudiated and notice must be given. This is the case even where the employer genuinely (but mistakenly) believes that the Claimant has committed gross misconduct.*"
9. The issue for me to decide was identified by Judge Horne as whether or not the Claimant committed gross misconduct by bullying one or more of his colleagues.
10. The Claimant represented himself at the hearing. Mr Williams (Counsel) represented the Respondent at the hearing. Because the Claimant was a litigant in person, whilst presiding over the hearing I have borne in mind all the

guidance in the Equal Treatment Bench Book regarding facilitating the participation of litigants in person at hearings.

11. The hearing was conducted on a hybrid basis with me sitting in the Employment Tribunal hearing centre in Manchester and the parties appearing by the Tribunal CVP platform. The Claimant appeared to be at home, and all of the Respondent's witnesses, (bar one who was also at home,) attended virtually from the Respondent's office. After he had given evidence, I emphasised to the Respondent's Office Manager and Head of Crown Court Department, Mr Satchell, that it was crucial that neither he nor anyone else employed by the should try to influence the evidence of the Respondent's other witnesses whilst or before they were giving evidence. The Claimant made no objection to the arrangements.
12. There was no agreed bundle of documents. The Claimant had sent in a bundle running to 28 pages. The Respondent sent in a separate bundle running from pages 29 to 67. In addition, I was provided with and read witness statements from the Respondent's five witnesses:

Mark Satchell (witness statement dated 24 January 2022)
Shaunna Boylen (witness statement dated 25 January 2022)
Emily Kelly (witness statement dated 26 January 2022)
Georgina Saldanha (witness statement dated 26 January 2022)
Heidi Finnigan (witness statement dated 26 January 2022)

The Claimant split his witness evidence over five statements dealing with each of the Respondent's witnesses in turn all dated 24 March 2022. The Claimant had typed his name to the statement of truth in each of his witness statements. Mr Williams did not object to the slightly unusual way in which the Claimant had presented his evidence.

13. I heard evidence from the Respondent's witnesses first, starting with Mr Mark Satchell. The Respondent's witnesses all confirmed their witness statements which stood as evidence-in-chief and Mr Williams asked limited supplementary questions. After that Mr Taylor asked cross-examination questions with occasional guidance from me regarding how to construct his questions. In the afternoon of the first day, Mr Taylor gave evidence relying on his witness

statements, and Mr Williams asked cross-examination questions. All questioning, and indeed responses, was delivered appropriately politely and respectfully.

14. After the evidence was heard, each of the parties was given the opportunity to make submissions. I helped Mr Taylor frame his submissions.
15. Judgment was reserved overnight and now the Tribunal provides the Judgment and reasons outlined below.

### **Facts**

16. The Respondent is a firm of Solicitors. The areas of work that they deal with include Crime, actions against the police and housing disrepair. The Claimant worked for the Respondent as a call-handler in their First Response Unit.
17. It was explained to me that the three different teams working on different areas of legal claims mainly worked in an open plan office. Each staff member worked on a desk with computer equipment and there were dividing barriers between the work stations. More senior members of staff, including Mr Satchell, had offices with doors that closed, immediately adjacent to the main open plan office. The evidence regarding the meeting between Mr Satchell and the Claimant on 26 January 2021 included that the Claimant went into Mr Satchell's room and that the door was closed. It was agreed that the Claimant left the office in an emotional state (very angry or "totally annoyed 100%" according to the unagreed evidence), went to clear his desk and left the premises. Later in the afternoon the Claimant posted comments on his Instagram account which will be discussed below. At the hearing before me the Claimant accepted that the messages were ones that he had posted from his account.
18. At the hearing both parties relied on the Respondent's internal Disciplinary Rules and Procedures. I was provided with these from para 4.1 to 4.18. I was also provided with a Written Statement of Terms and Conditions signed by the Claimant on 17 June 2020. Additionally, I was provided with a copy of an email from Mr Satchell to the Claimant sent on 1 February 2021 which states, inter

alia, that Satchell Moran Solicitors had sacked the Claimant for acts of gross misconduct which entitled them to terminate his contract of employment summarily without notice, or pay in lieu of notice.

19. At para 4.1, the Respondent's internal Disciplinary Rules and Procedures states that the Respondent reserves the right to terminate an employee's employment without having used the Disciplinary Procedure where the employee has completed less than 24 months and also that offences amounting to disciplinary offences included (but were not limited to) abusive behaviour.
20. Turning to events on 26 January 2021, I am satisfied that the Claimant had previously been called into the office of senior manager, Mr Mark Satchell in November of 2020. This came about because his colleague Shaunna Boylen had been promoted. Following that promotion, the Claimant had behaved bizarrely towards Ms Boylen. Nonetheless, the parties were in agreement that, following an informal "chat" between the Claimant and Mr Satchell, things had been calm because the Claimant had been told that if he "knuckled down" then there would be a distinct possibility that he would also receive promotion in due course. (Para 19 of Mr Satchell's unchallenged witness statement says: "*At the meeting we had a dialog and Mr Taylor indicated a willingness to put his perceived indifference towards his colleague aside and knuckle down without further quibble*").
21. In relation to events on 26 January 2021 there is limited agreement. The Claimant accepts that he was called into the office of Mr Mark Satchell and that, upon entering the office there was no suggestion of anything other than an "informal chat". The evidence was that it was a private conversation with the door of the office closed.
22. What happened next and the order of the conversation is the subject of the claim. The Claimant claims (noting that there were several accounts spread through different documents and his oral evidence, but the most potentially damning was) that: Mr Satchell told him that he was causing problems in the office with other members of staff because of his behaviour; that Mr Satchell sacked the Claimant "on the spot"; after this, and whilst still in the office, the

Claimant demanded more information about the unexpected sacking; that the Claimant was deprived of an opportunity to explain, he says, why he had perhaps demonstrated a change in behaviour, although that behaviour had not amounted to abuse or bullying of his colleagues; when Mr Satchell would not tell the Claimant who had made complaints nor who had commented adversely about the Claimant's behaviour in the office, then the Claimant became, he says, annoyed; the Claimant left Mr Satchell's office, went into the open plan office area and emptied his desk of his possessions noisily because he was dealing with heavy items; and then left the premises. The Claimant agreed that, later he made postings on his personal Instagram account. One said "*intimidating ... fucking shitbag snitches*". The second Instagram message said "*absolute fucking weirdos who stalk the life out of you and then because you avoid them for 2 days they say your [sic] being intimidating no wonder you've got about 3 mates you absolute freak imagine being a grass though when your [sic] a full grown adult*".

23. In contrast, I note that Mr Satchell says that he invited the Claimant to go into his office on 26 January 2021 for an "informal meeting" and that "*The reasoning behind such a meeting was to try and resolve issues with regards to his relationship(s) with a number of members of staff. I genuinely believed that he would benefit from such a chat. I believed that the benefit of having an informal meeting would produce a positive outcome to all those concerned, as I had already had one such meeting in the past with Mr Taylor and hoped this would be the case once again.*" Mr Satchell goes on in his witness statement to say that he explained to the Claimant his dissatisfaction about the Claimant's conduct because Mr Satchell had received a number of complaints about the Claimant's behaviour towards his colleagues which was deemed to be "*disrespectful behaviour*". Mr Satchell said that he had been informed that "*several*" of his colleagues had reported interaction, or, on occasions lack of interactions, which they found to be "*quite intimidating*". Mr Satchell says that he informed the Claimant that they deemed his attitude towards them amounted to, at the very least, passive aggression, but that Mr Satchell thought that the complaints sounded more like harassment and bullying. He said that he explained to the Claimant that his behaviour towards his colleagues was

causing them anxiety and distress and that those who had reported the information were upset and tearful. Mr Satchell also said that those upset colleagues had reported concerns about their safety. Mr Satchell reminded the Claimant in the meeting of 26 January 2021 that the October 2020 meeting had come about in the context of another staff member having been promoted and Mr Satchell describes his assessment of the situation in November 2020 as one of *“outright jealousy”*.

24. In the discussions, according to Mr Satchell, the Claimant responded to Mr Satchell by not denying that he had acted in the manner alleged by the colleagues but, Mr Satchell asserts in his witness statement, that the Claimant's response was aggressive and intimidating. At paragraph 23 of his witness statement, Mr Satchell says that the Claimant began to suggest that he would confront the members of staff who had reported the issues and wanted their names. Mr Satchell says that he denied giving the Claimant the information for obvious reasons (ie to protect the complainers from further unpleasant interactions with the Claimant). Mr Satchell notes that the Claimant did not make any apologies and that his demeanor was: *“shouting and growling when responding to me, his face was contorted and his fists were clenched”*. Mr Satchell goes on to say that he thinks he was concerned that the Claimant might have behaved in a physically aggressive way towards him. Mr Satchell says that he was shocked. At paragraph 27 Mr Satchell says that he was concerned that the Claimant's rage was at such a level that he could cause damage to Satchell Moran Solicitors' property, or even assault a member of staff, including Mr Satchell himself.

25. At paragraph 28 of his witness statement, Mr Satchell says that he decided that the informal meeting should end and that the Claimant's actions and conduct at that point amounted to nothing less than gross misconduct. Mr Satchell told the Claimant that the appropriate remedy was for the company to summarily dismiss him with immediate effect, and that his actions were tantamount to insubordination, bullying, intimidation and aggression and not commensurate with his employment with the solicitors.



26. When the Claimant cross-examined Mr Satchel, I found it striking that the Claimant did not ask questions which might have amounted to his denying his behaviour or confrontation with Mr Satchell. Crucially, the Claimant did not challenge Mr Satchell about the order of the topics in the “chat”; ie the allegation that the Claimant was summarily dismissed *before* the Claimant had opportunity to either ask who had reported complaints to Mr Satchell and that he was deprived of the opportunity to explain his personal circumstances at the time and the reason for his mood. Further, the Claimant did not challenge Mr Satchell about his allegations about the state of Mr Taylor’s mood, nor Mr Satchell’s claimed reaction to the Claimant’s demeanour.
27. I note the evidence in the Claimant’s witness statements and his answers to cross-examination questions from Mr Williams. He admitted that he became “annoyed” in Mr Satchell’s office. The Claimant told me: *“Yes you could say that, I was annoyed, 100%”*
28. Having considered the evidence from both the Claimant and Mr Satchell, I find the Claimant behaved wholly inappropriately in Mr Satchell’s office on 26 January 2021. I am not remotely satisfied that the Claimant’s rude and aggressive behaviour can be excused on the basis of what was going on in his private life at the time. I am not satisfied that Mr Satchell was in any way at fault for failing to tease out from the Claimant why his reaction was so emotional and marked. I find unreservedly that the Claimant lost control of his behaviour and therefore that it was reasonable for Mr Satchell to have concerns for his safety and that of other staff members. The situation was aggravated by the fact that Mr Satchell was the Claimant’s superior and his reaction was apparently lacking in any respect for Mr Satchell as a member of the senior management team.
29. In relation to the Claimant’s evidence about his behaviour, the Claimant admitted that he had raised his voice whilst in Mr Satchell’s office only. Nonetheless, I note that this seems to be a significant mis-assessment of the situation because Miss Boylen who worked in the main office could hear the shouting even though the door to Mr Satchell’s office was closed.

30. Consequently, I find that the Claimant's behaviour in Mr Satchell's office amounted to a repudiatory breach of contract and so Mr Satchell was entirely justified in dismissing the Claimant with immediate effect.
31. For completeness, I do not find that the Claimant's behaviour vis a vis his colleagues in the run up to the 26 January 2021 meeting had amounted to abuse and bullying. The other witnesses said as much, although they clearly explained that his unpredictability and "hot and cold" reactions to the social dimension of their office life and been confusing, such that he had upset them and they had become wary of him. To that end, this is why Mr Satchell invited the Claimant into his private office fully intending to try to resolve matters through an informal chat. I find without doubt that it was the Claimant's loss of temper and control of his emotions that lead to him being summarily dismissed when Mr Satchell saw how the Claimant's behaviour had comprehensively broken down and he had "lost it" in the office.
32. As set out above, I find that the Claimant's extremely rude and aggressive behaviour amounted to a repudiatory breach of contract. However, this was not the end of matters and I will deal now with other findings which bolster my initial finding of repudiatory breach of contract.
33. At the hearing before me, the Claimant somewhat unconvincingly said that he was only aware at the time of the meeting with Mr Satchell that there had been a complaint criticising the Claimant from one member of the staff. In contrast, what is said at paragraph 8.2 of the claim form is that, within a week of the dismissal, the Claimant was referring to the fact that there had been "*an atmosphere on the main floor, some people have said that they find you intimidating*". Despite having put this in the claim form the Claimant said in cross-examination that he had not realised that there were several people on the basis that he did not know their names. Whilst the Claimant seemed to be diminishing his behaviour by stating that the whole scenario in Mr Satchell's office was brought about by one complaint, I found this to be disingenuous. I find that he changed his evidence and so find him not to be a reliable witness. In any event, this misses the point. The focus of the case and my findings is not the degree to which he was/is aggrieved; the point is the nature and quality of

his reaction to Mr Satchell's challenge to the Claimant's recent behaviour in January 2021 and the Claimant's extreme and wholly inappropriate reaction to being confronted with his poor and bizarre treatment of his colleagues.

34. I noted the Claimant's complete failure to apologise or accept that he might have been in the wrong at any point in the meeting of 26 January 2021 and thereafter. I find it illogical for the Claimant to say under cross-examination that he could not apologise, simply on the basis that he did not know precisely who was accusing him of poor behaviour in the office. He, in effect, did not deny the behaviour in the run up to the 26 January 2021 meeting, but his concern seems to have focused on *who* was making the accusation. Such a stance indicates an inappropriate lack of self-awareness in a work setting and bolsters the Respondent's decision to dismiss the Claimant when this lack of self-awareness manifested itself in his angry and aggressive demeanour towards Mr Satchell.

35. On the theme of the Claimant apparently having no insight into his behaviour and its effect on others, in cross-examination the Claimant accepted that he had ignored Shaunna Boylen in October 2020 because he was "*disheartened*", but not because he was jealous. He then went on to say that he was not ignoring her and that was just her interpretation of his behaviour. I emphasise, however, that I have to assess the Claimant's behaviour on an objective basis. The fact that the Claimant asserts that his behaviour was in fact not so bad is, I find, misguided. It is not his assessment of his own behaviour that is central to my assessment of the case.

36. Returning to point already touched on, the Claimant somewhat illogically said that he had "a lot going on" at the time of 26 January 2021 in his personal life and that Mr Satchell had not given him chance to explain what was going on; rather, Mr Satchell had pushed him aside (metaphorically). Illogically and in contrast, at the hearing before me the Claimant said that Mr Satchell "*must have been aware*" of his "*issues*" because all of the office knew about his personal issues. This begged the question, as highlighted by Mr Williams, that if Mr Satchell was already aware of the issues, then why the Claimant was

complaining that he had been deprived of the opportunity to tell Mr Satchell at the meeting. In any event, I firmly find that this is a red herring. I agree with the point made by various witnesses that all of us are required to behave in a respectful manner towards work colleagues whatever else we are dealing with in a personal context. The Claimant's alluded-to private stresses do not excuse rude and aggressive behaviour, even if there was evidence that on other occasions, he had been a friendly and sociable colleague.

37. I note that the Claimant's behaviour once he left the office in terms of noisily and angrily emptying his desk corroborates allegations about his inappropriate behaviour whilst in the office of Mr Satchell. I do not accept that the noise was simply generated by some items being heavy, as the Claimant asserted.

38. Further I note that after the incident in the office, Miss Boylen says that the Claimant had said to the office in general regarding Mr Satchell: "*I wouldn't give the steam of my shit*". Her colleague Miss Kelly says that the Claimant also announced "*Who the fuck finds me intimidating?*". I note with interest that the Claimant did not challenge any of these statements in his cross-examination of these two witnesses. I also find that the colourful and unusual utterances do have a very real quality to them, ie they are unlikely to be assertions that have been fabricated by those witnesses. In not denying that he said these things the Claimant, when he was cross-examined, dodged the issue by intimating that he could not have said these things because the accounts "*did not match up*". In fact, I find that the fact that the evidence of the Respondent's witnesses is slightly different, with different emphases and slightly different accounts, shows that the witnesses have produced their own evidence uninfluenced by each other, and I am not perturbed by the fact that the quotes from the Claimant that they have recalled were slightly different. Rather, these utterances of someone on duty at work are evidence of someone behaving wholly unprofessionally whilst being very out of control.

39. The Claimant also says that after the incident when he was back in the main part of the office others told him to "*leave it*". Nonetheless in cross-examination he did not accept that this is not advice that would be given to somebody who

was upset, and that, rather, it was the type of advice that would be given to somebody whose behaviour was out of control (my description of the situation and choice of words). I find this yet another example of the Claimants lack of self-awareness and inability to see the effect of his behaviour on others.

40. At the hearing, the Claimant also admitted deleting some information in a spreadsheet before he left the office on the afternoon of 26 January 2021 which is in line with Heidi Finnigan's evidence that she had seen him deleting a spreadsheet. Nonetheless he said, and I find unconvincingly, that Heidi would not be able to see what it was, and that it was simply personal information that he had been working on, on the day in question. I am satisfied that he is not being frank about that detail, not least because the Respondent's IT department, after the event, clarified that it was in fact the Respondent's working information that had been deleted.

41. Finally, I find that the content of the Instagram messages, insulting the Respondent and accusing colleagues of being "*weirdos*", "*a grass*" and "*fucking shitbag snitches*" bolsters the claims surrounding the Claimant's loss of control in Mr Satchell's office amounting to a repudiatory breach of contract and is yet further evidence of the Claimant's state of mind, if he was still so angry to post these unguarded and wholly unprofessional comments even after he had left the office and had had the opportunity to calm down.

### **Conclusions – applying the Law to the Facts**

42. For the reasons set out above, I find that the Claimant's behaviour was so extreme, rude and aggressive that Mr Satchell was entirely justified in dismissing the Claimant summarily. The Claimant compounded matters by continuing to be unprofessional in the office when emptying his desk and by deleting his work. Finally, again the summary dismissal is justified when the Claimant posted wholly inappropriate comments about the Respondent and his colleagues from his Instagram account.

43. Since the incident, I am pleased to note that the Claimant has found other work. I am very much alive to the fact that many people in work at the moment are

dealing with multiple generalised stresses and challenges. I also recall that January 2021 was in the middle of the third COVID-19 lockdown. I note with approval that the Claimant was very polite and courteous to all involved in the hearing. I therefore hope that the Claimant will have had time to reflect now and that he is able to pursue his career without letting non-work-related matters to cloud his judgement and adversely affect his behaviour.

### **Costs**

44. At the end of the hearing, Mr Williams made an application for costs on the basis that the case never had prospects of success and that the Claimant was in breach of a court order by serving his witness statement late.

45. I reject that application for the following reasons. I note that costs are a discretionary remedy under Rule 76 of the Tribunal Rules. In relation to the lateness, I find that he served his witness statements in March 2022 which was in good time before the hearing and so the Respondent was not disadvantaged. I accept the Claimant's explanation that he had wrongly believed that he did not need to serve a witness statement about his own evidence and that, because he was not calling any witnesses, then no witness statements were needed. In relation to the assertion that the Claimant brought an unreasonable claim and/or the claim had no reasonable prospects of success, I do not agree. Whilst the claim was at the weak end of the spectrum, there were prospects and I note that the Defendant's witnesses did agree with some of the Claimant's assertions that, in effect, he had not bullied them. Finally, even at the hearing, I noted that the Respondent has not provided a breakdown of the claimed costs nor gave me any figures at the hearing, other than to refer generally to counsel's fees.

**Summary**

46. For the reasons explained above, the Tribunal dismisses the Claim and so there will be no award of damages or compensation. I do not award the Respondent any costs.

Tribunal Judge AC Holt  
17 May 2022

DECISION AND REASONS  
SENT TO THE PARTIES ON  
6 JUNE 2022

FOR THE TRIBUNAL OFFICE