



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Ike Efobi

**Respondents:** 1. Royal Mail Group Limited  
2. Royal Mail plc

## JUDGMENT

The claimant's complaint of "bullying in breach of common law" is struck out.

## REASONS

1. By a claim form presented on 13 March 2020, the claimant raised a complaint of "bullying in breach of common law".
2. At the time of presenting the claim, the claimant was an employee of the respondent.
3. A preliminary hearing of the claim took place on 3 July 2020. At that time the claimant was still the respondent's employee. I explained to the claimant that the onus was on him to explain how the tribunal had the legal power to deal with this part of the claim. Otherwise, his claim would be struck out.
4. The claimant indicated at the preliminary hearing that he would not seek a hearing to consider the question of striking out this part of the claim. It was his intention, he said, to rely solely on written submissions.
5. Following the preliminary hearing, a strike-out warning was sent to the parties on 24 July 2020.
6. The strike-out warning read as follows:
  - (1) This strike-out warning relates to the claimant's complaint of "bullying in breach of common law".
  - (2) Employment Judge Horne has formed the preliminary view that this part of the claim has no reasonable prospect of success. This is for two reasons. The first is that, although the common law recognises some torts that are similar to bullying, it does not prohibit "bullying" or provide a legal remedy for it. More fundamentally, employment tribunals are statutory bodies with no general powers to enforce the common law. They do not have jurisdiction except where statute has specifically conferred jurisdiction to consider a

particular complaint (or, in rare cases, to provide an effective remedy for breaches of European Union law). The tribunal proposes to strike out this part of the claim on these grounds.

- (3) The claimant may make written representations explaining why this part of the claim should not be struck out. He may also request a hearing at which the tribunal should consider the question of whether or not to strike out this part of the claim. Any written representations, or request for a hearing, must be delivered to the tribunal by 4pm on **8 July 2020**.
  - (4) The remainder of the claimant's claim is unaffected, and will proceed to a hearing."
7. On 7 July 2020 the claimant sent his written submissions to the tribunal. They were well researched and attractively presented.
  8. The claimant did not make any request for a hearing.
  9. Essentially, the claimant contends:
    - 9.1. that the common law recognises characteristic implied terms in contracts of employment;
    - 9.2. that every contract of employment contains an implied term ("the trust and confidence term") that the employer will not conduct itself without reasonable and proper cause in a manner that is calculated or likely to destroy or seriously damage the relationship of trust and confidence;
    - 9.3. that a breach of the trust and confidence term is always fundamental;
    - 9.4. that the respondent bullied him; and
    - 9.5. that the respondent's bullying behaviour breached the trust and confidence term.
  10. The first three points are undisputably correct. For the purpose of this judgment I assume that the claimant has a reasonable prospect of establishing the last two points, and therefore that the respondent fundamentally breached his contract.
  11. Nevertheless, this part of the claim is doomed to fail. The claimant's difficulty is not in showing that his contract was breached, but in obtaining any remedy for the alleged breach from the employment tribunal.
  12. Employment tribunals have only limited powers to consider claims for damages for breach of contract. Article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 provides:

"Proceedings may be brought before an employment tribunal in respect of a claim of an employee for the recovery of damages... if ...(c) the claim arises or is outstanding on the termination of the employee's employment."
  13. Put more simply, serving employees cannot bring claims for damages for breach of contract. They may be entitled to resign and complain to the tribunal that they have been unfairly constructively dismissed, or wrongfully constructively dismissed, but that is not what this claimant has done. He was still employed at the time of presenting his claim.
  14. The tribunal therefore has no jurisdiction to consider a claim for damages for breach of contract. Since this is the only basis upon which the claimant seeks

to pursue his complaint of “bullying contrary to common law”, it follows that he has no reasonable prospect of success in relation to this part of his claim. I strike it out accordingly.

15. Two further matters are worth noting:
  - 15.1. This judgment only affects one part of the claimant’s claim. The remainder of the claim will be determined at a hearing.
  - 15.2. The claimant should not take this judgment as any kind of indication as to whether or not it is in his interests to resign. That decision is entirely a matter for him.

Employment Judge Horne

28 July 2020

ORDER SENT TO THE PARTIES ON  
25 August 2020

FOR THE TRIBUNAL OFFICE

Note: this judgment and reasons will be entered onto the tribunal’s online register, which is visible to internet searches.