



## EMPLOYMENT TRIBUNALS

**Claimant**

**Mr J Campbell**

**Respondent**

v (1) Yell UK Limited  
(2) Yell Sales Limited  
(formerly HIBU Sales Limited)  
(3) HIBU UK Limited

## PRELIMINARY HEARING

**Heard at: North Shields**

**On: 3 November 2017**

**Before: Employment Judge Hargrove**

**Appearances:**

**For the Claimant: In person**

**For the Respondents: Mr K Charles of Counsel**

## JUDGMENT ON PUBLIC PRELIMINARY HEARING

It is adjudged as follows:-

- 1 The claimant was at all material times employed by HIBU Sales Limited which has since changed its name to Yell Sales Limited. The claims against Yell UK Limited and HIBU UK Limited are dismissed.
- 2 The claimant's claims of unfair dismissal and for unpaid sick pay against the second respondent were presented outside the time limit of three months from the effective date of termination and the date when the last of any payments due for sick pay had passed. In those circumstances the Tribunal has no jurisdiction to consider the claimant's claims.

## REASONS

- 1 This hearing was listed by an order dated 5 October 2017 to consider at a preliminary hearing the following issues:-

- 1.1 To determine the name of the company which employed the claimant at the time of his resignation in February 2017.
  - 1.2 To determine the effective date of termination of employment of the claimant with the company which employed him.
  - 1.3 To determine whether it was reasonably practicable for the claimant to present his claim for unfair dismissal before the end of the period of three months beginning with the effective date of the termination of his employment and if not whether the claim has been presented within such further period as is reasonable pursuant to section 111(2) of the Employment Rights Act 1996 as amended by section 207B of that Act.
  - 1.4 To determine how the claim for unpaid sick pay is advanced and then to determine whether such claim is in time by reference to section 23 of the 1996 Act as amended by section 207B, or by reference to Article 7 of the Employment Tribunals Extension of Jurisdiction (England & Wales) Order 1994, as amended by Article 8B of the 1994 Order.
- 2 I heard evidence from the claimant by reference to a witness statement and also from two witnesses for the respondent, Ms Julie Smalley, Head of Employee Relations, and the former Regional Manager Mr Ian Clarke, also by reference to written witness statements.
- 3 At this hearing it became common ground that the claimant's employment had ended, and the effective date of termination fell on 14 February 2017 on expiry of a resignation by the claimant sent by e-mail on 8 February giving notice to expire on 14 February. The claimant did not work beyond that date. Section 111 of the Employment Rights Act 1996 provides as follows:-
- “(2) An employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal –
- (a) before the end of the period of three months beginning with the effective date of termination, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months”.

Section 207B provides that, in circumstances where early conciliation is commenced during that three period, time may be extended by the length of the conciliation period or by 28 days from the date that the early conciliation certificate is granted. The effective date of termination in the case of the claimant's claim for unfair constructive dismissal was 14 February 2017. Thus under section 111, such a claim became time barred on 13 May 2017. In respect of the claim for unpaid sick pay, under section 23 of the Employment Rights Act 1996 the time limit of three months commences on the date of the last non payment or underpayment of sick pay on the due date. In this case, that date will have been on or prior to 6 January 2017 when the claimant returned to work from sick leave, or possibly at the end of that month. In fact the claim was not presented to the Tribunal until 14 June 2017, one month and one day after the primary time limit expired for the unfair dismissal claim and at a considerably earlier date for the sick pay claim. The claimant is not entitled to any extension under the early conciliation procedure because he did not

commence early conciliation until after the primary limitation period had expired. In the case of the respondent Yell Sales Limited, HIBU UK Limited and HIBU Sales Limited the date of notification to ACAS was 22 May 2017. In the case of Yell UK Limited it was 18 May 2017. For this reason, each of the claimant's claims were presented out of time and it was thus for the claimant to satisfy the Tribunal that it was not reasonably practicable for him to have presented his claims within the time period. The claimant in his evidence has raised two possible matters. The first is a claim that he was unaware of the time limit which applied and the second is that he was, during the three month period, suffering from depression. As to the first point, it is not sufficient for the claimant merely to claim that he was unaware of the time limits. His ignorance must be reasonable and for that purpose he must have made any necessary enquiries as to his rights and how they should be enforced. In the present case I am satisfied from the contents of e-mails he sent to Mr Clarke on 6 February 2017 and on 15 February 2017 – pages 73 and 72 of the bundle – that he had taken advice from solicitors and his trade union, the GMB, in connection with his grievance, which are the facts upon which he relies in his ET1 to constitute the repudiatory conduct of the respondent amounting to constructive dismissal, and from his threat in the e-mail of 15 February to submit a legal claim against the respondents if his demand for sick pay was not met, that he was aware of his legal rights at the very least and had the opportunity also to take advice as to the length of time which he had to bring his claim if his grievance did not succeed. He has asserted during this hearing that he was referring to his right to bring a claim in a court but was unaware of his right to bring a claim in the Tribunal. I do not believe that that makes any material difference. He was ignorant of the time limit and his ignorance was not such as to make it not reasonably practicable for him to have commenced his claim within time. I have also considered whether the claimant has established on the balance of probabilities that he was incapacitated from making decisions about litigation because of his depression. I accept the claimant's evidence that he was receiving treatment for depression from the time of or shortly after his resignation but no medical evidence has been presented to the Tribunal as to the extent of the depression although I have accepted that he has been in receipt of antidepressant medication throughout that period. He was able to undertake albeit unsuccessfully a grievance process and an appeal, and he was also able to undertake work at least for an initial period after his resignation and thereafter to apply for alternative employment. In those circumstances I do not regard the fact that he had depression as making it not reasonably practicable for him to present his claims.

- 4 There is also an issue as to the identity of his employer. I have some sympathy for the claimant's position in that the only documents which properly evidence the identity of which of the respondent companies employed him insists in the written contract of employment issued on 14 May 2013 which clearly identifies the employer as being HIBU Sales Limited, page 86 onwards of the bundle, and the signed confirmation of the offer of employment which identifies the same company dated 15 May 2013, added to the bundle at pages 85A and B. The claimant asserts that notwithstanding these documents the reality of the matter was that he was employed by HIBU UK Limited because of other documents which cast doubt upon the identity of his employer including a document relating to the provision to him of a company car, and all of the payslips, which did not record his employer as being HIBU Sales Limited. Furthermore, it

appears to be common ground that the P45 issued to the claimant on 24 February 2017, ten days after the effective date of termination, identified the name of his employer as being Yell Limited. I accept that the claimant reasonably believed that his employer had in fact been Yell UK Limited or HIBU UK Limited and that in those circumstances he believed that he was entitled to the more favourable sick pay benefits contained within the HIBU UK Limited terms and conditions, than those in the HIBU Sales UK Limited handbook which restricted the claimant's rights to full sick pay for a period of 4 or 6 weeks after the start of the sickness to be followed by statutory sick pay. The fact that the claimant did so believe however does not establish that he was in fact employed by HIBU UK Limited. The identity of the employer is clearly established by the contract of employment and the signed letter of offer of employment.

- 5 In the above circumstances the claims are dismissed as having been presented out of time but I have raised as an issue at this hearing with the respondents that the paperwork generated during and after the end of the claimant's employment was clearly misleading as to the correct identity of the claimant's employer.

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**Employment Judge Hargrove**

**Date 15 November 2017**

**Sent to the parties on:**

**Entered in the register on:**

**16 November 2017**

**For the Tribunal:**

**G Palmer**