



NCN: [2023] UKFTT 1053 (GRC)

Case Reference: PEN/2023/0138

**First-tier Tribunal
General Regulatory Chamber
Pensions Regulation**

Heard by: Judge in Chambers on the papers

Decision given on: 19th December 2023

Before

HHJ DAVID DIXON

Between

TAUNTON PROPERTY CENTRE LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

REASONS

1. By this reference Taunton Property Centre Ltd (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 20th April 2023.
2. The FPN was issued under s. 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a compliance notice (CN) issued on 20th February 2023. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 3rd April 2023.
3. The Employer referred the matter to the Tribunal on 15th May 2023.
4. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

The Appeal

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided an application for review has first been made to the Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Regulator to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN and when it reaches a decision must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.
6. The Employer’s Notice of Appeal, dated 25th May 2023, indicates that they never received the CN and as such didn’t know they needed to act upon anything. They argue that they had no basis for knowing that they were required to file a redeclaration every three years and submit it is in effect illogical to require companies to do so. The Employer also argues that a fine of £400 is unfair when a company is compliant, as Taunton is, over what is a very strange requirement.
7. The Employer asks the Tribunal to ascertain if a CN was ever sent, and secondly to consider a more general inquiry into the whole postal/communication system of the Regulator.
8. The Regulator’s Response indicates that the Appellant failed to complete the declaration as required. The Regulator indicates it is a legal requirement to file the redeclaration and varies warnings of the same are given to employers. They indicate that they tried to ensure compliance to the last known address, but received certain communications back via the postal system and so cancelled the first penalties imposed. A second CN was issued to the registered address of the company, and then a FPN followed. A review was sought after this document arrived, and that subsequently took place, where the FPN was confirmed. The Regulator indicates that the FPN was properly imposed, after the CN was sent, and not complied with. The Regulator avers that the CN was sent to the registered address and therefore the relevant rules have been complied with.
9. The Regulator relies upon the presumptions of service and upon the aforesaid as proof the CN was properly served. They assert no evidence has been offered to show that there were issues with the postal system and therefore the presumptions stand. Furthermore, the

Regulator indicates that telephone calls were made to the Appellant and they were not acted upon.

10. The Tribunal considered a bundle of 125 pages.

Submissions

11. The Appellant seeks to have the notice overturned on the basis that CN was never sent. The Appellant suggest in effect that the Regulator is being dishonest in suggesting that post was sent, when it “never made its way to the post office.” The Appellant also argues that there was no reason for him to redeclare, or warning that he needed to. He argues that the fine is unfair when he is compliant.

12. The Regulator responds that there is no excuse for non-compliance, let alone a reasonable one. It is the Employer’s responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the Notice.

Conclusion

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and that includes ensuring that all appropriate details are provided. The purpose of requiring employers to declare compliance is to ensure that appropriate steps have been taken. It is the employer’s obligation to meet the regulations not the Regulator to ensure the same. The Regulator simply deals with those that have not.

14. Regular reminders of the need for compliance were sent here, as always, and the assertion that the employer didn’t know of the need to declare is rejected. However, even if reminders were not sent the burden is upon the employer to declare and a failure to be aware of that is the employer’s failure. Ignorance of the law is not a defence to a penalty.

15. The Appellant argues that it never received the relevant indications that it must file a declaration by a CN. The Regulator has provided details of the documents supplied to the Appellant, which were sent to the company registered address. The Appellant accepts receiving the FPN as it was acted upon. The Regulator relies upon the presumption of service that indicates in basic terms that if post is properly addressed and sent, then it is deemed to have arrived unless and until cogent evidence is provided to doubt the same.

16. In accordance with s7 Interpretation Act 1978 presumptions, by sending letters and emails to the Companies Registered address the Regulator had met its obligations and more. The further presumptions within the Employers Duties (Registration and Compliance) Regulations 2010 (SI 2010/5), particularly Regulation 15, further support the Regulator’s position.

17. A simple denial of receipt is not enough to displace the presumption. Here there is only a denial of receipt nothing else to suggest the presumption is inappropriate. It is telling that the document that levelled a penalty was received and acted upon. The receipt of the FPN supports the presumption, nothing detracts and therefore I find that the CN was served.

18. The Appellant did not file a declaration of compliance when required, the FPN that followed was perfectly proper and I can see no basis for finding to the contrary. The appeal against the penalty itself is without merit.

19. The Appellant criticises the imposition of the standard £400 fine, when it was compliant. Parliament set the level of the fine, which applies to all equally. I have considered the submissions of the Appellant, but find that the penalty was appropriately levelled, in the scheme of this particular case.
20. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
21. No further directions are required.

Signed: HHJ David Dixon

DATE: 19th December 2023