



[2023] UKFTT 00092 (GRC).

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
PENSIONS REGULATION**

Case Reference: PEN/2022/0241

Heard: by determination on the papers
Heard on: 1 February 2023
Decision given on: 1 February 2023
Before: Judge Alison McKenna

Between:

THE BEACH HUT SOUTHEND LIMITED

Appellant

- and -

THE PENSIONS REGULATOR

Respondent

DECISION

1. The reference is dismissed, and the matter is remitted to the Regulator. The Penalty Notice is confirmed.

REASONS

Background

2. By this reference The Beach Hut Southend Limited (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 9 September 2022.

3. The Penalty Notice was issued under s. 40(1) of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a Notice of Compliance dated 13 July 2022, which required the Employer to provide the Regulator with information by 23 August 2022. This Notice was not complied with by the deadline, although I understand that compliance has subsequently been achieved.

4. The Regulator has completed a review of the decision to impose the Penalty Notice and informed the Employer on 30 September 2022 that the decision was confirmed. The Employer referred the matter to the Tribunal on 10 November 2022, having been given permission by the Tribunal to file a Notice of Appeal out of time.

5. 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 in a bundle numbered 1 to 30.

The Law

6. The Pensions Act 2008 imposed a number of legal obligations on employers in relation to the automatic enrolment of certain “jobholders” into occupational or workplace personal pension schemes. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers, including issuing an Unpaid Contributions Notice and, if this is not complied with, issuing a Fixed Penalty Notice.

7. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice 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 Fixed Penalty Notice 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.

Submissions

8. In the Notice of Appeal dated 10 November 2022, the Employer relied on grounds of appeal that the Notice of Compliance dated 13 July 2022 was not received. It is submitted that the Employer took steps to make good its compliance obligations as soon as it was aware of the default and that other employers in this position have not been treated so unfairly by the Regulator.

9. The Regulator has responded that all notices were issued to the Employer’s registered office address, which is the same address used in the Employer’s Notice of Appeal and on the Fixed Penalty Notice itself. No notices were returned undelivered. It is submitted that the Employer has not provided any evidence which is capable of rebutting the statutory presumption of service in s. 303(6) (a) of the Pensions Act 2004 and regulation 15 (4) of the Employers Duties (Registration and Compliance) Regulations 2010.

10. It is further submitted that the Employer has failed to establish a reasonable excuse for its non-compliance. In the circumstances, it is submitted that the Fixed Penalty Notice was the appropriate step to take.

Evidence

11. The Regulator has provided the Tribunal with copies of all relevant correspondence, addressed to the Employer at its registered office.

12. The Employer has not provided the Tribunal with any evidence to support its case that the Notice of Compliance was not received.

Conclusion

13. I am satisfied that the Employer had a duty to comply with the requirements of the Notice of Compliance but failed to do so. I am satisfied that all the statutory notices were issued to the correct address and thus that the Regulator is entitled to rely on a presumption of service.

14. The Employer is correct in stating that some employers are successful in challenging a Fixed Penalty Notice where their case is that they have a reasonable excuse for non-compliance because relevant correspondence was not received. However, in such cases credible evidence is presented to the Tribunal, such as evidence of a particular local postal disruption. In this case, no evidence has been presented, so the Employer's case rests on a bare assertion. I conclude that an assertion is insufficient to rebut the statutory presumption of service of documents sent to the Employer's registered address and so I find that no reasonable excuse for non-compliance has been established.

15. In all the circumstances, I determine that the Fixed Penalty Notice was the appropriate action for the Regulator to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

(Signed)

JUDGE ALISON MCKENNA

DATE: 1 February 2023

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