



[2022] UKFTT 00248 (GRC)

Case Reference: PEN/2022/0050

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

Heard by: Judge in Chambers on the papers

Decision given on: 21st June 2022

Before

HHJ DAVID DIXON

Between

VIVEK TRANSPORT LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

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

REASONS

1. By this reference VIVEK Transport Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 11th February 2022 (Notice number 135021499102).
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 dated 17th December 2021. The Compliance Notices was issued under s. 35 of the Pensions Act 2008. It directed the Employer to complete the appropriate staging declaration as required by law. As the Employer did not provide evidence of compliance by the deadline, the Regulator issued the FPN.
3. The Employer referred the matter to the Tribunal on 28th February 2022.
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.
5. The Tribunal considered a bundle consisting of 111 pages.

The Appeal

6. 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.
7. The Employer’s Notice of Appeal, dated 28th February 2022, indicates they didn’t receive the CN as it was sent to the old address where they were staying, and wasn’t forwarded on to them. Compliance was completed immediately after receipt of the CN and the Appellant argues the FPN is therefore unfair.
8. The Regulator’s Response indicates that an initial CN, FPN and an escalating penalty notice were all issued, but due to issues over the address used the Regulator rescinded all of the same and reissued a further CN to the correct address. No response was received to the new CN so a FPN followed to the same “new” address. Four days after the FPN, compliance was met.
9. The Regulator indicates a Review was completed as a result of the Appellant’s request dated 15th February 2022. Having considered the circumstances advanced the FPN was confirmed.

Submissions

10. The Appellant argues the FPN was unfair as they had not received the CN. They also point to immediate compliance when the matter was reported to them.

11. The Regulator responds that there is no excuse for the late 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 FPN.

Conclusion

12. 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 here it could have and should have dealt with matters. In accordance with s7 Interpretation Act 1978 assumptions, 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.
13. The Appellant has raised nothing that displaces the presumption of service and therefore I deem the CN was properly served. The failure to comply rests solely with the company for failing to ensure that post sent to its registered office was dealt with properly. The fact that the FPN was so swiftly dealt with calls into question the suggestion of non-receipt, but also firmly supports the presumption of service.
14. Having failed to comply, the standard penalty was imposed. The penalty is designed to remind companies of the importance of compliance, and I do not see that the penalty in this case is inappropriate or disproportionate to the breach.
15. 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.
16. No further directions are required

Signed: HHJ David Dixon

DATE: 21st June 2022

Date Promulgated: 23rd June 2022