



[2022] UKFTT 00292 (GRC)

Case Reference: PEN/2022/0045

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

Heard by: Judge in Chambers on the papers

Decision given on: 16th August 2022

Before

HHJ DAVID DIXON

Between

M P SPORTS CAR 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, without any further directions.

REASONS

1. By this reference M P Sports Car Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 8th February 2022.
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 14th December 2021. The Compliance Notices was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 24th January 2022.
3. The Employer referred the matter to the Tribunal on 17th 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.

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 indicates that an accountant’s firm has responsibility for the Appellant to complete the declarations etc regarding the Pension scheme. They dispute receiving any earlier notifications that a redeclaration was required, querying whether it had been sent to an earlier accountancy firm. They indicate that they did all they could upon receipt of the CN to comply, filing the reenrolments as soon as was practicable. They assert that they had difficulties entering a date on the online form, and then due to pressure of work forgot to correct the problem. They assert after receipt of the FPN they eventually managed to enter the correct date, but it was less than straightforward. They ask the Tribunal to overturn the FPN on the basis of fairness.
7. The Regulator’s Response indicates that the redeclaration was not completed and as a result the CN and then the FPN were appropriate. The Regulator stresses it is the employer’s obligation to comply with the Regulations. The Regulator accepts that it sent correspondence to the incorrect address, and so revoked earlier CN/FPN/EPNs. Following revocation, a further CN was issued on 14th December 2021 to the correct registered address. Within days of that CN the Appellant’s agent indicated that there were difficulties with reenrolment, advice was given but no further contact was received. The Regulator indicates that a redeclaration of compliance was not received and so the FPN was issued properly. The Regulator indicates the Appellant’s agent’s failings do not override the Employer’s obligations.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request. The Review indicated that the relevant staff were enrolled. A redeclaration had still not been completed as at the request for a Review. Having considered the circumstances advanced the FPN was confirmed.

9. The Tribunal considered a bundle of 70 pages.

Submissions

10. The Appellant argues the FPN was unfair as they had tried to comply and failings in the system led to issues. The Appellant in effect suggests that they had complied with the main thrust of the Regulations and the final redeclaration is a technicality.
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. If there is a failure here it is the responsibility of the Appellant's agent, but that is not a reason to avoid the penalty.

Conclusion

12. The general obligation to comply with the Regulations remains upon the employer. Whilst it is not uncommon for employers to contract out their responsibility to agents, as here, this does not detract from the central responsibility remaining with the employer.
13. Initially the Regulator did not follow correct procedures and as a result sent communications to the wrong address. This was unhelpful but doesn't subvert the basic principle that the employer must comply. Upon realising their error, the Regulator re-issued the CN to the correct address, and it was acted upon by the Appellant as the agent's contact with the Regulator confirms.
14. Whilst there seems agreement that the employer enrolled the staff it failed to comply with the redeclaration. There is no doubt that this was a step that was appreciated had to be completed. The simple reality is that the Appellant's agent failed to complete the form as it seems it was contracted to. A suggestion of problems arising with the online form, then of being too busy and/or simply forgetting to come back and complete the form they had started, is to say the least unfortunate. The agent had plenty of time to seek further guidance from the Regulator or the scheme provider but omitted to do so. By inference the employer didn't check that its obligations had been met, or else common sense dictates that steps would have been taken to complete the simple process started.
15. Whilst on the one hand an agent failing to do what was asked could lead an individual to accept that an employer felt aggrieved, it doesn't avoid the obvious position that a declaration was not met. It seems that a declaration was eventually made, so it wasn't an impossible task to complete. In simple terms there was a failure to do it.
16. In all the circumstances I am therefore driven to the view the appeal has no merit. Whatever the position between the Appellant and its accountant, the Appellant failed to do what was required, and the Regulator has acted properly in forcing compliance. I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
17. No further directions are required

Signed: HHJ David Dixon

DATE: 16th August 2022

Date Promulgated: 17th August 2022