



Neutral citation number: **[2022] UKFTT 00377 (GRC)**.

Case Reference: PEN/2022/0056 and 65

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

Heard by: Judge in Chambers on the papers

Decision given on: 18th October 2022

Before

HHJ DAVID DIXON

Between

ABEESO SECURITY SERVICES 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 Abeeso Security Services Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 25th November 2021.
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 11th October 2021. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 22nd November 2021.
3. The FPN also required compliance of the initial CN by 23rd December 2021 or else an escalating penalty notice (EPN) would be issued. No compliance was met so an EPN was issued on 30th December 2021 setting a daily penalty of £500, if compliance wasn’t met by 26th January 2022.
4. The Employer referred the matter to the Tribunal on 7th March 2022.
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.

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 7th March 2022, indicates that the CN was never received, and that the first the Appellant knew about these matters was when a letter issued on 25th November 2021 was received late. The Appellant indicates that they have been isolating, also dealing with acute eye problems and other medical issues. They request waiver of the penalties due to “extreme circumstances of the time.” A further message was later conveyed indicating that the company was recently started and was struggling to survive. It was indicated that a penalty couldn’t be afforded.
8. The Regulator’s Response indicates that courtesy reminder letters were sent to the Appellant in June and July 2021, to which no response was received. A warning letter then followed, again to no response. The Regulator then felt compelled to send the CN on 11th October 2021 as no certification was received as required. On 23rd November 2021 the Appellant’s online account was accessed and contact details were varied. Compliance was however not met. As compliance didn’t follow the FPN was issued on 25th November 2021.
9. Following the FPN there was still no compliance, nor payment of the penalty, thus the EPN was issued. On 25th January 2022, two days before the EPN penalty came into effect, a request for review was received. The review upheld the FPN and EPN but suspended the

operation of the EPN penalty until 9th February 2022 to allow compliance to follow. Compliance was eventually met on 7th February 2022.

10. The Regulator relies upon the presumptions of service and avers that the CN was corrected delivered and simply the Appellant has failed to act upon it. The Regulator asserts the FPN was just and appropriate.
11. The Regulator indicates a Review was completed as a result of the Appellant's request. Having considered the circumstances advanced the FPN was confirmed.
12. The Regulator sought details of the eye condition affecting the director of the Appellant when that matter was raised. The evidence supplied was not easy to navigate and was incomplete. However, the materials provided indicated that in August 2021 the Appellant was complaining of "floaters" in his vision. There was no suggestion of pain or incapacity. The doctor providing the report indicated that the Appellant director "enjoys good general health." In April 2022 a GP letter seeks an emergency referral as a result of eye pain and/or decreased vision. There was nothing else of note between the two dates. Other materials revealed that the company had between 14 and 17 employees; no evidence was proffered why one of them couldn't assist with the relevant paperwork.
13. The Tribunal considered a bundle of 174 pages, of which some are in the Welsh language.

Submissions

14. The Appellant seeks to have the FPN overturned on the basis the CN was never received and also that the Director suffered extreme ill health that has a bearing upon compliance.
15. 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 FPN. The ill health referred to was not of the degree that warrants a deviation from the normal position.
16. The Regulator maintains that the CN was correctly posted and following the presumptions is deemed to have been received, unless contrary material is shown to rebut the presumptions. The Regulator avers no such material is shown and as such the CN was correctly served.

Conclusion

17. 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. I note that the EPN sent to the same address as the CN and FPN was replied to. It seems to me this confirms post was being delivered, and therefore supports the presumption.
18. 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

others within the company could have dealt with matters is a further matter bearing on the issue of ill health.

19. The extreme ill health that might have assisted the Appellant, simply isn't made out on the evidence provided. As the Regulator makes plain in its submissions it is clear that the Appellant was suffering from eye related conditions. By April 2022 this was self reported to involve pain and vision difficulties. However, in the previous summer the complaints were of "floaters" in his vision but little else. The comment of generally good health undermines the suggestion of incapacity. I do not accept on the materials available to me that any condition had such a bearing on the Appellant that compliance was difficult, let alone impossible. As already indicated no explanation has been provided why others couldn't assist, even if the aforesaid was wrong. Whilst, as the Regulator, I sympathise with the Appellant's position, not to the extent that justifies a deviation from the norm. The simple position is the Appellant could have and should have complied but didn't. The CN, FPN and EPN were all appropriately deployed, and I can find no basis for criticising the Regulator's approach.
20. 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. In a number of ways, the Regulator has been somewhat charitable to the Appellant, it could have imposed a further £5000 and more penalties but chose to suspend the same. The Appellant is somewhat lucky the Regulator was so understanding.
21. 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, the Enhanced Penalty notice and the fixed penalty which was limited to only £400.
22. No further directions are required

Signed: HHJ David Dixon

DATE: 18th October 2022