



[2022] UKFTT 00477 (GRC)

Case Reference: PEN/2022/0130

First-tier Tribunal
General Regulatory Chamber
Pensions Regulation

Heard by: Judge in Chambers on the papers

Decision given on: 13th December 2022

Before

HHJ DAVID DIXON

Between

CONSCIOUS VENTURES 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 Conscious Ventures Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 10th June 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 13th April 2022. The Compliance Notice was issued under s35 of the Pensions Act 2008. It directed the Employer to file a declaration of compliance with the Regulator.
3. The Employer referred the matter to the Tribunal on 27th June 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, dated 27th June 2022, indicates that the Appellant is a small company that has already incurred significant costs to comply. It indicates that the Regulator has failed to show that the CN was sent, but it certainly was never received.
7. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
8. The Tribunal considered a bundle of 137 pages.

Submissions

9. The Appellant argues the FPN was unfair as they had no prior notice of the Compliance Notice. It further avers that the fine is disproportionate and unfair for a small business.
10. The Regulator responds that there is no excuse for the late compliance, let alone a reasonable one. The Regulator indicates that various letters were sent before the CN indicating compliance was required. All of the letters and the relevant notices, including the FPN, were sent to the company’s registered address.
11. They rely upon the presumptions of service and indicate nothing has been provided to justify a departure from the same. 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

1. 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 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. I note that the FPN, sent to the same address as the CN, was replied to promptly, with a request for a Review and compliance. It seems to me this confirms post was being delivered, and therefore supports the presumption.
2. The Appellant has raised nothing that displaces the presumption of service and therefore I deem the CN was properly served. A bare assertion of non-receipt is simply not enough to displace the presumption. The failure to comply rests solely with the company for failing to ensure that post sent to its registered office was dealt with.
3. 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. Whilst the size of the Appellant's enterprise might be said to be relevant, Parliament has set the penalty at a fixed rate and therefore removed any discretion from the Regulator. A penalty was appropriate here, and therefore the sum indicated must stand.
4. 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.
5. No further directions are required

Signed: HHJ David Dixon

DATE: 13th December 2022