



NCN: [2023] UKFTT 1062 (GRC)

Case Reference: PEN/2023/0164

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

Heard by: Judge in Chambers on the papers

Decision given on: 20th December 2023

Before

HHJ DAVID DIXON

Between

DR SNEHAL D'SOUZA

and

THE PENSIONS REGULATOR

Appellant

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The Penalty Notices are confirmed, without any further directions.

REASONS

1. By this reference Dr D'Souza ("the Employer"), challenges an Escalating Penalty Notice (EPN) under s41, which was issued on 26th May 2023. The escalating penalty was set at £500 per day. (An earlier FPN issued on 26th April is outside the scope of this appeal as no review has been requested and indeed the Appellant has not sought to challenge the £400 fine issued.)
2. The initial 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 27th February 2023. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer to file a redeclaration of compliance by 11th April 2023, but later extended that to 25th May 2023. No declaration followed so the EPN followed. The CN, FPN and indeed the EPN were all sent to the same address.
3. The Employer referred the matter to the Tribunal on 10th July 2023.
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 EPN 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 EPN 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 they never received the CN, the FPN and indeed have had difficulties with their post generally. They accept receiving the EPN and indicate they acted upon it immediately by completing the details required online. The Appellant rhetorically asks why wouldn't they deal with the Notices as the issue was so easy to deal with. The Appellant seeks the penalty be rescinded, stressing that the practice will find it difficult to meet a financial order of the type incurred.
7. The Regulator's Response indicates that the Appellant failed to provide certification of compliance, as is required; a compliance notice followed, which was sent to the registered office address of the entity. The FPN was sent to the same address. The EPN the same. The Regulator notes what is said by the Appellant regarding postal issues but indicates they have not received any post returned to them. They assert the "postal issues" are a mere suggestion with no supporting evidence.
8. The Regulator indicates a Review was completed as a result of the Appellant's request. Having considered the circumstances advanced the EPN was confirmed.
9. The Tribunal considered a bundle of 32 pages.

Submissions

10. The Appellant seeks to have the financial penalty removed as the initial documents (i.e. the CN and FPN) were not received. The Appellant asserts that a financial penalty of £3000 will be a severe blow for the enterprise.
11. 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 Notices.
12. The Regulator maintains that the Notices were 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 Notices was correctly served.

Conclusion

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN.
14. The Appellant argues that it never received the relevant indications that it must file a declaration by a CN, nor the FPN. The Regulator has provided details of the documents supplied to the Appellant, which were sent to the Dr's registered address. The Appellant accepts receiving the EPN as it was acted upon. The Regulator relies upon the presumption of service that indicates in basic terms that if post is properly addressed and sent, then it is deemed to have arrived unless and until cogent evidence is provided to doubt the same.
15. In accordance with s7 Interpretation Act 1978 presumptions, by sending letters and emails to the 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.
16. A simple denial of receipt is not enough to displace the presumption. Here there is only a denial of receipt nothing else to suggest the presumption is inappropriate. A mere suggestion that there have been postal issues without more simply isn't enough to displace the presumptions. Further to that the receipt of the EPN supports the presumption, nothing detracts, and therefore I find that the documents was properly served.
17. Having failed to comply, the standard penalty was imposed. The FPN penalty of £400 remains to be paid as a result. Having failed to comply with the CN still the EPN was validly issued and the daily rate set at £500. 6 days passed before compliance followed so the financial penalty accrued was £3000. I can see nothing wrong with the imposition of the penalties and find that they are due.
18. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding all of the Notices issued.
19. No further directions are required.

Signed: HHJ David Dixon

DATE: 20th December 2023