



[2022] UKFTT 00246 (GRC)

Case Reference: PEN/2021/0344

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

Heard by: Judge in Chambers on the papers

**Heard on: 25th April 2022
Decision given on:**

Before

HHJ DAVID DIXON

Between

GOUPIE 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 Goupie Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 18th November 2021 (Notice number 155987776228).
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 6th October 2021. The Compliance Notices was issued under s. 35 of the Pensions Act 2008. It directed the Employer to complete their declaration of compliance by an extended deadline of 16th November 2021. As the Employer did not provide evidence of compliance by the deadline, the Regulator issued the fixed penalty notice.
3. A Review was requested, on the basis that compliance was completed on 22nd November 2021, and the penalty was unfair in the circumstances. The Regulator completed a Review informing the Employer on 25th November 2021 that the notice was upheld.
4. The Employer referred the matter to the Tribunal on 30th November 2021.
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 indicates that it never received the compliance notice; the first warning they had of matters was via a phone call from the Regulator. The Employer indicates that the compliance notice was sent it seems to the Registered Address of the company, at the company’s accountant’s offices. Unfortunately, it seems the accountants were not working from that office at the time. It is argued the telephone notification came at a busy trading time and compliance was met within 9 days of that call. In the circumstances it is argued that the penalty is unfair, further it isn’t proportionate for the business.
8. The Regulator’s Response indicates that the CN was correctly posted to the Appellant and has provided evidence supporting the electronic data trail that in its view confirms the same. It argues that reminder letters plus the CN were sent to the Registered Address of the company as required and following the statutory presumptions service is then proved. It is argued that it is the company’s duty to comply and to ensure its postal services are in order.

Submissions

9. The Appellant argues the FPN was disproportionate and unfair.
10. 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.

Conclusion

11. I find that the Appellant has failed to provide any proper basis for not complying with the FPN. 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. Whilst arranging for an accountant to assist is entirely appropriate for some employers, the ultimate responsibility rests with the employer. (If the accountant hasn't dealt with matters appropriately that is a separate matter for the Appellant to raise with them.)
12. 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 not dealt with properly.
13. I note that within a short time of the courtesy call from the Regulator that compliance was met. It could have been completed earlier, and that would have prevented the FPN being issued. No real justification has been given why it took 9 days to comply, save it was a busy trading time. If compliance had taken place 2 days earlier no FPN would have followed.
14. In any event, 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 reaching the aforesaid decision I have considered the size of the company and the profitability level suggested. The reality is the Government has set a standard penalty that applies and therefore such matters have already in my view been deemed irrelevant.
15. Both sides have spent some time dealing with the content of the telephone conversation where the indication was given of non-compliance. I have listened to the call and note what was said, but neither the call nor the content are relevant to this matter. The simple issue is that the Appellant has failed to have an appropriate system for postal communication in place and has missed important documentation as a result. The penalty follows from that.
16. 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.
17. No further directions are required

Signed: HHJ David Dixon

DATE: 25th April 2022