



[2022] UKFTT 00294 (GRC)

Case Reference: PEN/2022/0057

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

TRAVELFUSION 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 Travelfusion Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 4th 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 dated 10th 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 1st December 2021.
3. The Employer referred the matter to the Tribunal on 8th March 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 8th March 2022, indicates that during the pandemic and surrounding circumstances their staff were working from home and in effect post was not being checked properly. They believed they were complying with the government’s suggestions to work from home and that the Regulator has given no regard to this. They indicate that the Regulator has been inappropriate and is “out of touch.” The Appellant indicates they have continued to trade during the COVID times, but it hasn’t been easy. The Appellant seeks “cancellation of penalty charge, apology and compensation.”
7. The Regulator’s Response indicates that despite clear reminders and indications the situation regarding the redeclaration was not completed and as a result the CN and then the FPN were appropriate. No proper basis has been advanced as to why a sensible postal system was not in place that would have allowed the communications sent to be acted upon.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
9. The Tribunal considered a bundle of 99 pages.

Submissions

10. The Appellant argues the FPN was unfair. It accuses the Regulator of being out of touch and behaving in a threatening way.

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. It refutes any suggestion of impropriety.

Conclusion

12. It seems that the Appellant, like many employers, opted to allow its staff to work from home outside of the forced "work from home" periods. Doubtless this allowed the company to survive what have been difficult circumstances for many enterprises. However, whilst operating from home it seems that little if any regard was made for the need to ensure that post was dealt with properly. Even now the Appellant isn't sure if their post was received.

13. However, the post, that I accept on the information I have, was sent, were only reminders. It is the Appellant's obligation to be aware of its declaration responsibilities. Here they failed to have any regard to those obligations. As a result, the CN was entirely appropriate.

14. I am more than satisfied that the CN was properly served on the company, and again that no action by the Appellant followed. It was the Appellant responsibility to act upon the perfectly proper served CN. They failed and that led to the obvious next step of the FPN. Again, the Regulator acted perfectly properly, and I wholeheartedly reject any suggestion of being out of touch or heavy handed as levelled by the Appellant.

15. 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. As the Regulator indicates recent times have been challenging to a lot of companies, and they are prepared to allow payment by instalments to ease matters, but the level of the penalty is fixed by government and not susceptible to reduction.

16. In all the circumstances I am driven to the view the appeal has absolutely 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: 16th August 2022

Date Promulgated: 17th August 2022