



[2022] UKFTT 00476 (GRC)

Case Reference: PEN/2022/0113

**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

MPS CARE (HAYLE) 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 MPS Care (Hayle) Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 13th April 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 (CN) issued on 16th February 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 29th March 2022.
3. The Employer referred the matter to the Tribunal on 1st 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 1st June 2022, indicates that the company didn’t receive the CN. They assert that there were a number of issues with either internet provision or about email addresses used to contact the Appellant. It seems an agent was used and for some reason, as the employer sees it, an inappropriate address was being used for email communication.
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 by post to the registered office address of the company. The FPN was sent to the same address. 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.
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 117 pages.

Submissions

10. The Appellant seeks to have the FPN overturned on the basis that the CN was never received.

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 FPN.
12. 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.
13. The Email address used by the Respondent is argued to be one that was provided to the Regulator by the employer, and indeed one that was asked to be confirmed. However, as the CN was sent by post the email issue isn't of the highest import.

Conclusion

14. 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.
15. The issue over email addresses simply isn't relevant to the imposition of a penalty. It is for the Employer to comply with its legal requirements. The fact that it hasn't, is their issue not the Regulators.
16. 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.
17. 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.
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 the Fixed Penalty Notice.
19. No further directions are required

Signed: HHJ David Dixon

DATE: 13th December 2022