



NCN: [2023] UKFTT 1059 (GRC)

Case Reference: PEN/2023/0142/AE

**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

DAVE ELECTRICAL SERVICES LTD

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 Dave Electrical Services Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 19th May 2023.
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 23rd March 2023. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 3rd May 2023.
3. The Employer referred the matter to the Tribunal on 15th June 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 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 indicates that the company did not receive any reminders or the CN, and as a result they did not know that they needed to file a redeclaration. The Appellant indicates the FPN arrived and checks with the Royal Mail indicate there are no issues known of with their address, so are unclear why they didn’t receive any warnings etc. The Appellant stresses that the company is fully compliant and has completed all it believed it was required to.
7. The Regulator’s Response indicates that the Appellant failed to complete the declaration as required. The Regulator had tried to contact the Appellant and indeed had telephoned him to warn the declaration wasn’t complete. The Regulator avers in the circumstances the FPN was properly issued.
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 132 pages. Recordings of three phone calls were also supplied between the Regulator and the Appellant. One of the calls was a courtesy call to warn the Appellant that a due date was approaching.

Submissions

10. The Appellant seeks to have the notices overturned on the basis that the CN (and other documents) were not received and as such the imposition of the penalty is unfair. It is suggested that within the call pre FPN the advisor indicated that the penalty would be

waived. However this didn't happen. The Appellant stresses that the imposition of the FPN will cause hardship for the company.

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.

Conclusion

12. 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 that includes ensuring that all appropriate details are provided. The purpose of requiring employers to declare compliance is to ensure that appropriate steps have been taken. It is the employer's obligation to meet the regulations not the Regulator to ensure the same. The Regulator simply deals with those that have not.
13. Regular reminders of the need for compliance were sent here, as always, and the assertion that the employer didn't know of the need to declare is rejected. However, even if reminders were not sent the burden is upon the employer to declare and a failure to be aware of that is the employer's failure. Ignorance of the law is not a defence to a penalty.
14. Here the courtesy telephone call between the Regulator and the Appellant made it clear that action was required, yet none followed.
15. The Appellant argues that it never received the relevant indications that it must file a declaration by a CN. The Regulator has provided details of the documents supplied to the Appellant, which were sent to the company registered address. The Appellant accepts receiving the FPN 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.
16. 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.
17. 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. It is telling that the document that levelled a penalty was received and acted upon. The receipt of the FPN supports the presumption, nothing detracts and therefore I find that the CN was served.
18. The Appellant did not file a declaration of compliance when required, the FPN that followed was perfectly proper and I can see no basis for finding to the contrary. The appeal against the penalty itself is without merit.
19. The Appellant has suggested that he was told that if he sought a review that the Appeal would be allowed. I have listened to the call and that was not what was said. The call handler indicated that a review could be sought on the basis that was indicated (non-receipt of the CN) but that all cases are dealt with on a case by case basis. No waiver was offered, suggested or otherwise by the Regulator.

20. I note what is said about the penalty here and the consequences for the Appellant. Parliament has set the level of the penalty at a fixed sum of £400 to bring home the consequences of failure to comply. I have no discretion to vary that sum. I have however considered whether the imposition of the penalty would be unfair in the scheme of the breach. It seems to me that the breach was avoidable, and as such the imposition of a penalty was appropriate. I do not believe it disproportionate to apply the penalty here, and therefore find that there is nothing in the point advanced.
21. 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.
22. No further directions are required.

Signed: HHJ David Dixon

DATE: 20th December 2023