



Neutral citation number: [2024] UKFTT 001141 (GRC)

Case Reference: FT/PEN/2024/0129 &131

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

**Listed for Oral Hearing
on: 18th December 2024**

Decision given on: 02 January 2025

Before

HHJ DAVID DIXON

Between

WEST WORTHING PO LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The reference is remitted to the Regulator with the Fixed Penalty Notice and the Escalating Penalty Notice upheld to the levels set.

REASONS

1. By this reference West Worthing PO Ltd (“the Employer”), challenges a fixed penalty notice of £400 (“FPN”) issued by the Regulator on 20th December 2023 and an Escalating Penalty Notice of £500 per day (“EPN”) dated 19th January 2024.
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 25th October 2023. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance.
3. The EPN was issued on 19th January 2024 for failing to comply with the initial Compliance Notice. The daily rate was to be in force from 16th February 2024. Ten days of non-compliance followed the Respondent avers and therefore penalties of £5000 accrued.
4. The Employer referred the matter to the Tribunal on 17th April 2024.
5. The parties and the Tribunal initially 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. Subsequently the Appellant provided witness statements, which the Respondent was unable to accept. The Respondent accordingly withdrew its consent to a paper determination, and as a result DJ Watkins issued fresh Case Management Directions on 1st October 2024. In those revised CMD it was indicated the case was to be determined at an oral hearing on the first available date after 1st December 2024.
6. For reasons that were unclear the case was listed before me on 24th October 2024, but was unable to proceed as statements were not in the bundle and a CVP hearing was not convened. As a result the hearing was adjourned to today’s date with further directions.

The Appeal

7. Under s. 44 of the 2008 Act, a person who has been issued with a FPN and or 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 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.
8. The Employer’s Notice of Appeal seeks to challenge the Notices, but accepts that no Review has taken place. The Appellant asserts that despite the Notice being dated 19th January (the EPN) it was not received by the Appellant until the 1st March 2024. Upon receipt the Appellant contacted the Regulator informing them on 4th March 2024 that they had opted out of the scheme. On 7th March 2024 the Regulator confirmed receipt of the re-declaration, but noted the FPN and the EPN remained outstanding. Review details were then sent. The Employer avers that on 22nd March 2024 a Review was sought, but on 3rd April 2024 the Regulator indicated a Review was not possible as the request was time barred, having been sent beyond the 28 day limit.

9. The Appellant seeks the FPN and EPNs removal, as service is not proved in effect. Evidence from the Royal Mail is supplied to support the Appellant's stance. The case of *Philp Freeman Mobile Welders Limited v The Pension Regulator* [2022] UKUT 62 (AAC) is heavily relied upon.
10. The Regulator's Response indicates that whilst the request for Reviews were served out of time, a Review has taken place, on 27th June 2024, and therefore the Tribunal has jurisdiction to hear the Appeal. The Review upheld the initial decisions to issue both the FPN and the EPN.
11. The Regulator sets out the background details to the issue of the CN, in essence that a declaration of compliance was due by 5th October 2020. At that stage no action was taken due to a policy decision during COVID. However the next declaration date was 5th October 2023. No declaration was received hence the CN following. When the CN was not met the FPN followed, with the warning re EPNs and when that was not met the EPN was issued
12. The Regulator relies upon the presumptions of service as proof the CN, FPN and EPN were properly served. They assert the evidence provided by the Appellant is insufficient to rebut the presumption of service. No other basis for non-compliance is raised and therefore the Respondent asks that the Appeal be dismissed.
13. The Respondent provided the following timeline of events, (to which I've added a few extra dates):

Chronology:

- 6 May 2020 – Staging date of West Worthing PO Ltd.
- 21 December 2020 – Welcome pack sent to Appellant.
- 5 October 2020 – Declaration of compliance deadline.
- 27 January 2023 – Redecoration reminder letter sent to Appellant
- 7 July 2023 - Redecoration reminder letter sent to Appellant
- 5 October 2023 – Redecoration of compliance deadline
- 25 October 2023 – Compliance Notice issued
- 5 December 2023 – Compliance Notice deadline
- 20 December 2023 – Fixed Penalty Notice issued
- 19 January 2024 – Escalating Penalty Issued
- 19 January 2024 – Penalty reminder letter sent
- 15 February 2024 – Escalating Penalty deadline -accrual starts
- 16 February 2024 – Penalty reminder letter sent

27 February 2024 – penalty reminder letter sent

27 February 2024 – phone call from Appellant to Respondent

28 February 2024 -phone call from Appellant to Respondent

28 February 2024 – Declaration of Compliance and Re declaration of compliance
submitted by Appellant

1 March 2024 – Date Appellant says received the EPN

4 March 2024 – Letter from Appellant saying received EPN on 1 March 24 p170

5 March 2024 – Debt chaser e-mail

6 March 2024 – Phone call from Appellant to Respondent

12 March 2024 – Letter Before Action

17 March 2025 – Royal Mail Letter saying delays (p31)

22 March 2024 – 1st Review request submitted by Appellant

3 April 2024 – Review rejected letter from Respondent to Appellant

17 April 2024 – Appeal document dated re the Tribunal Appeal

24 May 2024 – First Tier Tribunal references received by Respondent

27 June 2024 – Review outcome letter from Respondent to Appellant – both notices
upheld.

Determination

14. The case was listed for an oral hearing to be heard via the CVP enabled system.
15. The parties were represented as follows:
 - a. The Appellant, by Mrs Heise of Counsel,
 - i. Mr Sheyed Abbas Muthalif, Company Director, and Mr Anees Hameed attended as witnesses
 - b. The Respondent by Ms Emma Cranfield, solicitor for the Regulator.
 - i. Mr Mark Mellor attended as witnesses, however he was released when the thrust of his evidence was agreed.

16. The Tribunal considered a bundle of 223 pages. (Initially only the original bundle of 203 pages was with the Tribunal, but during the hearing the parties supplied a full bundle that was used during the hearing, and which the Tribunal took time to revisit in full after the hearing.)

Evidence

17. The Tribunal heard from the witnesses. The witness statements were taken as evidence in chief.
18. Mr Hameed confirmed his statement (p192) was accurate and true. He was cross examined and asked about reminders that were sent and he said that he wasn't aware of any earlier letters/reminders. The first letter received was on 1st March 2024 and it was a demand to pay money, a number of letters arrived at the same time and they were passed to the managers. A large amount of letters arrived at the same time, some from the Regulator plus other communications from other persons. Mr Hameed said he wasn't aware of any calls to the Regulator at the end of February 2024. The letter from the Royal Mail (see below) was as a result of a complaint that the Appellant made on their behalf and others. Mr Hameed said there were disruptions with deliveries from December 2023. He said no complaints were made until mid-February due to believing things would work themselves out. He said he wasn't responsible for payrolls, or pensions. He said he was the only one that opened the post and then passed the details onto the managers if required. He was unclear what was delivered on 1st March or of its exact contents.
19. Mr Muthalif confirmed his statement (p194) was accurate and true. He was cross examined and asked to describe his role and he indicated he was director of the company and ran other branches. He said he was in charge of the payroll by passing the information to his accountant. He was also in charge of compliance issues. The Penalty letter he received said that he needed to pay £500 a day after the initial fine. A telephone call to the Regulator made on 28th February 2024 Mr Muthalif didn't remember but had made a number of calls to the Regulator to resolve issues. He said he never received any reminder letters or anything else until the EPN on 1st March 2024. On 1st March 2024 a bundle of letters from the Regulator arrived. He described that from the 3rd week of November to December due to volume of letters delays normally follow. He said in 2023/24 customers were complaining about delays, which continued into January/February 2024 which was unusual. It was then that information came from the Royal Mail about delays.
20. He said he had been a post master for 10 years and had received a community award for this activity. He asserted his job is responsible and he would not have avoided the compliance required. He said a threat of £500 a day was something that would not be ignored, not just because of the financial pressure that such a penalty would impose, but also because of the community impact that such a fine would have. He was adamant that he had not received any details of the requirements from the Regulator until March 2024.
21. A statement from Mark Mellor (p169) was tendered by the Respondent setting out the procedure and process involved in Notices/Reminders etc being sent by the Regulator. In essence he describes a fully automated system that has internal checks inbuilt within it. The process and safeguards means that he is very confident that the data he can see shows that the relevant Notices in this case were all sent to the Royal Mail for onward delivery. *The Appellant*

accepted the evidence that the systems showed that the letters/notices would have got to the Royal Mail, but thereafter there was no evidence to say what happened. Neither side took issue with that interpretation and thus Mr Mellor was released.)

22. A letter from the Royal Mail dated 17th March 2024 was provided by the Appellant (p124 of the bundle) that is titled “Important Notice: Delivery Delays Due to Operational Issues at Worthing Royal Mail Delivery Office.” The letter reads “we are reaching out to inform you of an issue that may impact the timely delivery of your orders. Unfortunately, we have been experiencing operational challenges at the Worthing Royal Mail Delivery Office, which have resulted in unavoidable delays in processing and delivering parcels and letters.”

Submissions

23. The Appellant seeks to have the notices overturned on the basis that none of the Notices were received. Mrs Heiss submits that on the balance of probabilities the Appellant has shown that the presumption should not apply. Mrs Heiss placed particular reliance upon;
 - a. The letter from the Royal Mail which made it clear there were issues with the postal deliveries at the time. This supports aspects of the Appellant’s case she asserted.
 - b. The letter from the Appellant on 4th March 2024 shows the Appellant’s contemporaneous view of the issues, showing he wasn’t aware of the need to declare until 1st March 2024.
 - c. The Appellant’s evidence generally was reliable and consistent and should be accepted. Mr Hameed’s evidence was candid which gives further basis to rely upon it. Mr Muthalif was an honest and reliable witness. His speed of action supports his position.
24. 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. Ms Cranfield said that the presumption of service had not been overturned. She relied upon the following points in particular:
 - a. It is clear all letters were sent. They are presumed to have arrived unless the presumption is rebutted. Here whilst there is more than a mere paper denial, it is not sufficient to rebut the presumption because:
 - i. None of the reminders notices are accepted as being received – bearing in mind this means 9 letters in all from Jan 2023 to February 2024 were not received, save some of them on 1st March 2024, it is argued that this is lacking in credibility;
 - ii. The Appellant’s evidence that the letters were not received until 1st March 2024 doesn’t fit with the telephone calls received in late February 2024, and as such there are issues over the credibility of the Appellant’s account.

Conclusion

25. The Tribunal looked at and considered the papers and evidence before it with care.
26. The ultimate issue was whether the Notices, or any of them, had been served upon the Appellant. The Respondent indicated that all of the Notices were sent to 112 George V Avenue, Worthing, West Sussex, the registered address of the Appellant. The Appellant indicates it never received them, in fact it only received the information on 1st March 2024 that it then immediately acted upon.
27. The Tribunal had difficulties accepting the Appellant's evidence in full due to the inconsistencies over date and more. The evidence before the Tribunal was to the effect that they knew nothing of the requirements until the 1st March 2024. It is clear from the telephone calls (that stopped the daily rate accruing at 10 days) that they knew of matters on the 27th March 2024. The call makes it clear an EPN has been received and seeks assistance. This undermines the evidence from the Appellant's witnesses. The account that they did not know of such matters until 1st March 2024 until the post was opened is simply untrue.
28. The Tribunal reflected whether this was a deliberate lie or a simple mistake and on its own would have struggled to say it was a deliberate lie as little if anything is gained by such a falsehood. It is actually better for the Appellant to have used the 27th February 2024 as the date of knowledge, as that would at least be consistent.
29. However, the Tribunal listened with care to the evidence that not one letter from the Regulator was received between January 2023 and 28th February 2024. In that time 9 letters were sent. Reminders, the CN, the FPN, the EPN and more. The Tribunal simply couldn't accept that not one of those letters was received.
30. The evidence provided by the Royal Mail in March 2024 was to the effect that there were delays due to operational issues at the relevant sorting office. The Appellant did not suggest that there were any issues with the post between January 2023 and the 3rd week of November 2023. In that time 3 letters were sent, including the Compliance Notice. No evidence was given that could rebut the presumption of service for those letters and therefore the Tribunal accepts they were duly received by the Appellant. Receipt of the CN should have caused action by the Appellant, but it did not.
31. The FPN and subsequent reminders, the EPN and enforcement letters, are potentially covered by the period of Xmas deliveries and possibly the delays referred to in the Royal Mail letter (albeit that is a generous interpretation of that letter). The Appellant's case seems to be that letters from 20th December 2023 up to 27th February 2024 all arrived together as one parcel of post on 1st March 2024, with other letters too. 5 letters from the Regulator just by chance, despite being 10 weeks apart in terms of delivery to the Royal Mail, arrive all at the same time. The Tribunal doesn't accept that this is realistic and therefore can not accept the evidence is accurate or truthful. When this is put alongside the issue over the Appellant's supposed receipt of the letters the Tribunal is simply unable to accept the Appellant's evidence as honest or reliable.
32. The presumptions of service are set at a high bar, and whilst they are rebuttable presumptions, the evidence to do so must be clear and compelling. Here, even allowing for the civil standard, I do not accept the Appellant's evidence and therefore do not accept that the presumption has been rebutted.

33. In accordance with s7 Interpretation Act 1978 presumptions, by sending letters 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.
34. I am driven to the conclusion that the Notices were firstly properly sent to the Royal mail and delivered by them at a time proximate to their indicated dates, and therefore that due service was met. The failure of the Appellant to act upon the CN meant that the Regulator was entirely correct to serve the FPN and then the EPN and no criticisms of their actions can be levied.
35. In all the circumstances I am driven to the view the appeal must be dismissed and I remit the matter to the Regulator, upholding the Fixed Penalty Notice and the Escalating Penalty Notice to the levels indicated.
36. No further directions are required.
37. The Appellant is perhaps best advised to contact the Regulator and seeks assistance with a hardship application if required, as indicated can be considered by Ms Cranfield at the hearing.

Signed: HHJ David Dixon

DATE: 18th December 2024