



NCN: [2024] UKFTT 63 (GRC)

Case Reference: PEN/2023/0204 P

**First-tier Tribunal
General Regulatory Chamber
[Pensions]**

**Heard by determination on the papers.
Heard on: 22 January 2024
Decision given on: 22 January 2024**

Before

TRIBUNAL JUDGE ALISON McKENNA

Between

A C PRECISION ENGINEERING LIMITED

Appellant

And

THE PENSIONS REGULATOR

Respondent

DECISION

1. The reference is dismissed, and the matter is remitted to the Regulator. The Fixed Penalty Notice is confirmed.

REASONS

Background

2. By this reference AC Precision Engineering Ltd (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 3 August 2023.

3. The Penalty Notice was issued under s. 40(1) of the Pensions Act 2008¹. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a Notice of Compliance dated 8 June 2023. This Notice was not complied with by the deadline, although I understand that compliance has subsequently been achieved.

4. The Regulator has completed a review of the decision to impose the Penalty Notice and informed the Employer on 11 August 2023 that the decision was confirmed. The Employer referred the matter to the Tribunal on 6 September 2023.

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 amended². The Tribunal considered all the evidence and submissions made by both parties in a bundle numbered page 1 to 73.

The Law

6. The Pensions Act 2008 imposed a number of legal obligations on employers in relation to the automatic enrolment of certain “jobholders” into occupational or workplace personal pension schemes. Once enrolled, there is a further obligation to re-enrol within 5 months of the 3rd anniversary of the original staging date³. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers, including issuing a Notice of Compliance and, if this is not complied with, issuing a Fixed Penalty Notice.

7. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice 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 Fixed Penalty Notice 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.

Submissions

8. In the Notice of Appeal dated 6 September 2023, the Employer relied on grounds of appeal that no correspondence was received, apart from the Fixed Penalty Notice itself. It is accepted that they appear to have been sent to the correct address, but further submitted that the post to that area is unreliable. The Employer states that it contacted the Regulator immediately on receipt of the Fixed Penalty Notice and has since changed its registered address to one with more reliable postal deliveries. It has now complied with all its legal duties.

9. The Regulator has responded that all notices were issued to the Employer’s registered office address, which is the same address used on the Fixed Penalty Notice itself. No notices were returned undelivered. It is submitted that the Employer has not

¹ [Pensions Act 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [The Tribunal Procedure \(First-tier Tribunal\) \(General Regulatory Chamber\) Rules 2009 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

³ [The Employers’ Duties \(Registration and Compliance\) Regulations 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

provided any evidence which is capable of rebutting the statutory presumption of service in s. 303(6) (a) of the Pensions Act 2004 and regulation 15 (4) of the Employers Duties (Registration and Compliance) Regulations 2010. Further, that Upper Tribunal case law (cited at paragraph 18 of the Response) has confirmed that a bare assertion of non-receipt of post is insufficient to rebut the statutory presumption of service and that the Employer in this case has offered only a bare assertion, unsupported by evidence.

10. The Employer did not file a Reply.

Evidence

11. The Regulator has provided the Tribunal with copies of all relevant correspondence, addressed to the Employer at its registered office.

12. The Employer has not provided the Tribunal with any evidence to support its case.

Conclusion

13. I am satisfied that the Employer had a duty to comply with the requirements of the Notice of Compliance but failed to do so. I am satisfied that all the statutory notices were issued to the correct address and thus that the Regulator is entitled to rely on a presumption of service. I am also satisfied that, as a review was carried out, the Tribunal has jurisdiction to determine this appeal.

14. In this case, I note that the Employer's case relies on mitigating circumstances, namely the non-receipt of post. However, no evidence to support the non-receipt of the Notice has been presented, such as evidence of local postal disruption. It follows that the Employer's case rests on a bare assertion in this respect. I note that I am bound by the statutory provisions and by the decisions of the Upper Tribunal, which the Regulator has referred me to, to find that an assertion on its own is insufficient to rebut the statutory presumption of service of documents sent to the Employer's registered address. I

15. In all the circumstances therefore, I conclude that no reasonable excuse for non-compliance has been established in this case. I therefore determine that the Fixed Penalty Notice was the appropriate action for the Regulator to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

(Signed)

JUDGE ALISON MCKENNA

DATE: 22 January 2024

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