



NCN: [2023] UKFTT 1052 (GRC)

Case Reference: PEN/2023/0133/AE

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

Heard by: Judge in Chambers on the papers

Decision given on: 19th December 2023

Before

HHJ DAVID DIXON

Between

PAUL AGIUS

and

THE PENSIONS REGULATOR

Appellant

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 Paul Agius (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 12th 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 15th 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 25th April 2023.
3. The Employer referred the matter to the Tribunal on 25th May 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, dated 25th May 2023, indicates that he had delayed returning the declaration as his business was in potential jeopardy. Fortunately things turned around, but he forgot to complete the declaration. He received a reminder and believed he had completed the necessary online form. However, it seems the employer failed to complete a section of the form and the FPN was invoked. The Appellant asks that the fine be rescinded as the online form isn’t clear, and it asserts it is unfair to fine him accordingly. The Appellant indicates a proper response has now been filed.
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 87 pages.

Submissions

10. The Appellant seeks to have the notices overturned on the basis that the online form isn’t clear and he honestly believed that the necessary declaration had been made. The Appellant argues that most other online forms will not “complete” if compulsory materials are not provided. It avers that the form is at fault in effect and it is unfair to impose the fine upon him as a result.

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. It is not a defence to say its not my fault the form isn't as exhaustive as some agencies' forms are. The Appellant should have carefully checked the whole form for accuracy and completeness before submitting the same. The Appellant failed to do so and was therefore in breach by failing to declare appropriately. The Notices, and all of them, that followed were all therefore entirely appropriate.
13. 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.
14. 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 Notice issued.
15. No further directions are required.

Signed: HHJ David Dixon

DATE: 19th December 2023