



[2023] UKFTT 00520 (GRC).

Case Reference: PEN/2023/0035

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

Heard by: Judge in Chambers on the papers

Decision given on: 20th June 2023

Before

HHJ DAVID DIXON

Between

POBL BACH SOUTH WALES CIC

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 POBL BACH South Wales Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 14th December 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 17th October 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer to file a redeclaration of compliance by 28th November 2022.
3. The Employer referred the matter to the Tribunal on 7th February 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 7th February 2023, indicates it is a small charity providing children services. It asserts that the responsibility to file the relevant statements was contracted out to another. After he no longer provided the services, a new entity took over and they have now resolved issues. The Appeal asserts that the relevant CN was not received until the FPN and there was no time to comply in the circumstances. It stressed the fine imposed will severely affected the charity.
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 to the registered office address of the company. The Regulator indicates that the CN was accepted being received by the Appellant in a telephone call on 4th November, but difficulties accessing the NEST scheme were indicated. The Appellant was advised to seek an extension to the CN to allow time to access NEST. No such application was made, and as a result the FPN was issued.
8. The FPN was sent to the same address. The Regulator provides materials indicated that well before the CN regular reminders were sent to the Appellant, which were not heeded.
9. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
10. The Tribunal considered a bundle of 165 pages, and an audio recording of the telephone call referred to in paragraph 7 above.

Submissions

11. The Appellant seeks to have the notices overturned on the basis that the CN arrived late, which didn't give time to react, and the level of the fine is excessive and disproportionate.
12. 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.
13. The Regulator maintains that the CN and FPN were 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 Notices was correctly served.

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. It seems that there may well have been difficulties in the hand over from one accountant to another, but that doesn't avoid the requirements. It is clear from the recording that firstly the CN was received and that there was time to act. Further, the Appellant was advised to seek an extension if there were difficulties, which opportunity sadly was simply not taken.
15. As a result the Appellant failed to comply and the FPN was entirely appropriate.
16. The standard penalty fixed by law 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. Having failed to meet that the requirements the EPN was imposed, correctly. There is no discretion to vary the level of the fine.
17. I have considered the entity itself, the submissions advanced about the consequences to the Appellant, but nothing said renders the penalty unjust or disproportionate. Whilst I have sympathy with the charity, to avoid the penalty in effect opens the door for all charities to not comply. The penalty is there for a reason set by Parliament and nothing here subverts the clear intention of the legislature.
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 FPN.
19. No further directions are required

Signed: HHJ David Dixon

DATE: 20th June 2023