



[2023] UKFTT 00684 (GRC)

Case Reference: PEN/2023/0102/AE.

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

Heard on the papers.

Heard on: 7 August 2023.

Decision given on: 7 August 2023.

Tribunal Judge: Brian Kennedy KC

Between:

**SLB RECRUITMENT LIMITED
APPEAL**

Appellant

and

THE PENSIONS REGULATOR

Respondent

**APPLICATION BY THE RESPONDENT TO STRIKE OUT
THE APPEAL PURSUANT TO RULE 8(2)(a)**

The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules
2009.

Decision: The application is allowed, and the appeal is Struck Out.

REASONS

Introduction:

- [1]** The Tribunal has been asked to strike out SLB Recruitment Limited’s case, that is bring it to an end on the ground that the Tribunal does not have jurisdiction in relation to the reference (“appeal”).
- [2]** The Respondent is responsible for the regulation of work-based pension schemes. Established by section 1 of the Pensions Act 2004 (‘PA 04’), its objectives are set out in section 5. These include maximising compliance with the Employers’ Duties under Chapter 1 of Part 1 of the of the Pensions Act 2008 (‘PA08’) and safeguards in sections 50 and 54 of that Act (s.5(1)(ca)).
- [3]** The Appellant is the employer for the purposes of the ‘Employer Duties’ under the PA08. The Appellant’s duties start date was 6 July 2019 and their re-declaration deadline was 5 December 2022 confirming the Employers’ Duties had been complied with by providing the prescribed information.
- [4]** This appeal is concerned with the duty to give prescribed information to the Respondent under s.11 PA08 and is in respect of a Fixed Penalty Notice (“FPN”) dated 10 March 2023 issued under section 40 of the PA08. The FPN was issued because the Respondent was of the opinion that the Appellant had failed to comply with the directions in the Compliance Notice (“CN”) dated 13 January 2023, issued under section 35 PA 08 on 13 January 2023, by the extended deadline of 23 February 2023.
- [5]** The issue of service has been raised by the Appellant, but the Respondent maintain that all Notices were validly served. Both the CN and the FPN were issued to the Appellant’s registered office address. As such, both benefit from the statutory presumptions of service outlined in section 303(6)(a) of the PA04 and

Regulation 15(4) of the Employers Duties (Registration and Compliance) Regulations 2010 (“the 2010 Regulations”).

- [6]** The Respondent did not receive any notification that either notice had not been delivered and has no record of either of them being returned. The Respondent relies on the valid service and receipt of the statutory notices. The Notices were issued to the Appellant’s registered office address of 27 Greens Valley Drive, Hartburn, Stockton on Tees, TS18 5QH. This is the same address used to send the letter before action dated 27 April 2023 which the Appellant appears to acknowledge receipt of.
- [7]** The Tribunal notes that the Respondent has provided copies of all relevant documents to support their assertions herein while the Appellant have provided nothing to support their position. No evidence of rebuttal has been provided by the Appellant in this appeal and the Appellant does not actually appear to dispute the address or email address used. The Respondent submits that, on the available evidence, there is no basis for displacing the statutory presumption outlined above. In those circumstances, the Respondent properly submit that the Compliance Notice and Fixed Penalty Notice were lawfully and correctly served and were received by the Appellant.
- [8]** The circumstances of this case effectively mean that no review of the FPN was sought by the Appellant within the required 28 days. The 28-day period is set down in Regulation 15(1) of the 2010 Regulations. There is no provision in those (or other) Regulations, or the PA08, for that deadline to be extended. The evidence before this Tribunal is that the only request for a review made by the Appellant with respect to the Fixed Penalty Notice was received on the 20 April 2023, 41 days after the issue of this notice. On 16 June 2023 the Respondent was notified of the Appellant’s reference (appeal) to this Tribunal.
- [9]** The Respondent has not refused to carry out a review requested by the Appellant. Although in the reply by the Respondent it is stated that no review has been carried out, and the Respondent argue that is not a refusal to carry out a review for the purposes of section 44(2)(b) PA08. For section 44(2)(b) PA08 to be engaged, the Respondent must have refused to conduct a review which had

been requested within the timescale set down in section 43(1)(a) PA08 – i.e. a review requested within 28 days of issue of the Fixed Penalty Notice. The evidence is that no review was requested within this period. Therefore, the Respondent argues neither of the conditions in section 44(2) PA08 are satisfied thus, the absolute and necessary conditions in s.44 PA08 are not met, such that a reference may not be made to the Tribunal. There is no valid application under s.43(1)(a) PA08 and the requirement in s.44(2)(b) PA08 is not satisfied. Therefore, the Respondent did not conduct a review of the notice under section 43(1)(a) or (b) PA08 and the requirement in section 44(2)(a) PA08 is not satisfied.

[10] It seems the Respondent did not carry out, nor did it refuse to carry out the review of the Fixed Penalty Notice for the purposes of section 44(2)(b) PA08. For section 44(2)(b) to be engaged, the Respondent must have refused to conduct a review which had been requested within the timescale set down in section 43(1)(a) – i.e., a review requested *within* 28 days of issue of the Fixed Penalty Notice.

[11] Accordingly, the Respondent argues that the absolute and necessary conditions in s.44 PA 08 are not met, such that a reference may not be made to the Tribunal. This was not a valid application under s.43(1)(a) and the requirement in s.44(2)(b) is not satisfied. Therefore, the Respondent did not conduct a review of the notice under section 43(1)(a) or (b) and the requirement in section 44(2)(a) is not satisfied.

[12] Parliament has provided that this Tribunal only has jurisdiction to consider appeals against financial penalties imposed by The Pensions Regulator when certain pre-conditions have been met. These include a requirement for The Pensions Regulator to have conducted a review. In this case, the Regulator did not review the FPN because the application for review was received outside the time limit.

[13] I therefore conclude that the necessary conditions for referral to the Tribunal under s. 44 (2) of the 2008 Act have not been met in this case. If the Tribunal lacks jurisdiction to determine an appeal, it is required to strike it out and has no discretion to consider it. I therefore must direct that this appeal is struck out.

Brian Kennedy KC

7 August 2023.