

First-tier Tribunal [2022] UKFTT 00438 (GRC)

(General Regulatory Chamber)

Pensions Regulation

Before

TRIBUNAL JUDGE NEVILLE

Between

SECTIONS CONTRACTING AND TRADING LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

DECISION ON RULE 4(3) APPLICATION

1.

The appellant seeks to challenge two penalty notices issued by the respondent on 23 February 2022 and 25 March 2022. In a decision dated 7 October 2022, a Tribunal Registrar struck out these proceedings on the grounds that the Tribunal lacked jurisdiction. The appellant has exercised its right to have the matter considered afresh by a Judge pursuant to rule 4(3) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. While the application is late, apparently due to foreign travel, I consider it right to extend the 14 day time limit.

2.

A person against whom a penalty notice has been issued may make an application to the respondent under s.43 of the Pensions Act 2003 for it to be reviewed. Regulation 15 of the Employers' Duties (Registration and Compliance) Regulations 2010 provides that any such application must be made within 28 days, starting from the day the notice is issued. Only if it was made in time will the Tribunal then have jurisdiction to consider a reference. So the Tribunal **cannot** by law consider this appeal if the appellant did not first request a review from the respondent within 28 days of receiving the relevant notice.

3.

In this case, requests for a review of each notice were made on 23 May 2022. This was after the expiry of the 28 day time limit, even allowing time for receipt of the penalty notices. A review could therefore only be undertaken if the respondent chose to undertake one of its own motion. In an email dated 1 June 2022 it declined to do so, and the Tribunal has no power to overrule that decision.

4.

As set out in Philip Freeman Mobile Welders Ltd v The Pensions Regulator (Tribunal procedure and practice - tribunal jurisdiction) [2022] UKUT 62 (AAC), in some cases there will be a question of whether the penalty notices were actually received. If a person proves that the posted notice went astray and was undelivered, then the 28 day period would have begun later and the review may have been requested in time. There are no such circumstances in this case, where the appellant freely and

candidly admits that the delay in responding to the penalty notices arose solely from its financial problems.

5.

There is therefore no basis in law upon which the Tribunal can accept these proceedings, and I confirm the decision to strike them out for lack of jurisdiction.

Signed Date:

Judge Neville 28 November 2022