

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant

A2 Recruitment Limited

and

Respondent

The Gangmasters
Licensing Authority

Appointed Person: Mr R F Ashton

Representation:

For the appellant: Ms D Britstone
Lewis Hymanson Small LLP
Solicitors

For the respondent: Mr T Russell
Fraser Brown, Solicitors

DECISION

The licence granted to A2 Recruitment Limited under the Gangmasters (Licencing) Act 2004 is revoked with effect from 16 July 2010 and that Mr Amrik Singh is not a fit and proper person to hold such a licence.

REASONS

Background

1. I am the person appointed to deal with this appeal pursuant to regulation 3 of The Gangmasters (Appeals) Regulations 2006.
2. On 29 June 2009 the respondent served notice of termination of the appellant's licence without immediate effect, the decision to take effect on 27 July 2009 unless within the next 20 days the appellant submitted an appeal against that decision. On 23 July 2009 the appellant submitted an appeal which was listed for hearing in November 2009. On 12 November the Principal Authority, Mr Amrik Singh, was diagnosed as suffering from stress and his doctor certified that he was unfit to attend the hearing at which he was due to give evidence. As a result the hearing was adjourned until April 2010. On 10 April 2010 a note was provided by the Principal Authority's doctor that he was still suffering from the symptoms of stress and remained unfit to attend the hearing. An application for a further adjournment was refused and it was subsequently agreed that the matter be

dealt with on the basis of written submissions from each of the parties without an oral hearing.

3. In determining the appeal I had regard to:-

3.1 A bundle of documents prepared by the respondent which included the revocation letter of 29 June 2009, the appellant's appeal letter dated 23 July 2009 and the respondent's response to that appeal dated 3 September 2009 as well as a number of other documents, all of those documents being numbered 1 to 24 and comprising a total of 380 pages;

3.2 The witness statements of the Principal Authority dated 27 October 2009 and 23 April 2010; the witness statements of his daughter, Ms Gurpreet Kaur Singh (now Gurpreet Kaur Gill), dated 27 October 2009, 23 April and 11 May 2010; Mr Manjit Singh dated 22 April 2010 and Mr Gurnek Ark, the appellant's accountant, dated 17 May 2010, all of which were submitted on behalf of the appellant, and the statements of Ms Angila Holden dated 3 November 2009 and 1 April 2010; Mr Ian Wilkinson dated 4 November 2009; Mr Harbans Ajeet dated 1 October 2009 and Mr Amtul Khan dated 18 October 2009 submitted on behalf of the respondent;

3.3 The Additional Submissions on behalf of the appellant dated 11 May 2010 and the Submissions on behalf of the respondent dated 17 May 2010; and

3.4 The Gangmasters (Licensing) Act 2004 ("the Act"), the Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations"), the Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations"); the Compliance Code of Practice dated July 2006 ("the Code"), the Licensing Standards dated October 2006 ("the 2006 Standards"), the Gangmasters (Licensing Conditions) Rules 2009 ("the 2009 Rules") and the Licensing Standards dated April 2009 ("the 2009 Standards"), the 2006 Standards and the 2009 Standards being together referred to as "the Licensing Standards".

Law & Regulatory Framework

4. The purpose of the Act is to protect potentially vulnerable workers from exploitation in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority, section 6(1) providing that a person shall not act as a gangmaster except under authority of a licence. Section 7 provides that the respondent may grant a licence if it thinks fit and that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such Rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its

functions under sections 7, 8 and 9 of the Act and making Rules made under section 8, in determining:

- (a) the criteria for assessing the fitness of an applicant for a licence; and
- (b) the conditions of a licence and any modifications of those conditions

the respondent shall have regard to:

- (a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and
 - (b) compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conduct of the licence holder.
5. The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being the 2006 Standards and the 2009 Standards.
 6. The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances.
 7. Compliance with the Licensing Standards is assessed through inspections which test the relevant licensing standards and result in an overall score. The scoring system determines whether an applicant or licence holder has passed or failed an inspection. Under the 2009 Standards standards designated as "critical" are worth 30 points. All other standards are worth 8 points, except licence standard 1.4 which is worth 16 points.
 8. For a licence holder whose non-compliances are found to be critical, or which in total exceed 30 points, the Licensing Standards provide that the licence will be revoked immediately or from a given date. The 2006 Regulations provide for the right of appeal against any decision by the respondent to revoke a licence.
 9. Regulation 2 of the 2006 Regulations provides:
 - (1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.
 - (2) Dealing with an appeal justly includes, so far as practicable
 - (a) ensuring that the parties are on an equal footing;

(b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and

(c) ensuring it is dealt with expeditiously and fairly.

(3) The appointed person shall seek to give effect to the overriding objective when he

(a) exercises powers given to him by these Regulations; and

(b) interprets any provision.

(4) The parties shall assist the appointed person to further the overriding objective.

10. In the absence of any authority, I accept the submissions by the respondent that the appeal is by way of a re-hearing rather than a review. The question of whether the appellant was compliant with the Licensing Standards has though to be determined as at the date of the inspection and not some later date.

Facts

11. Since the matter is to be determined without an oral hearing, I have not had the benefit of hearing the witnesses or of their evidence being tested under cross-examination. I have therefore examined all the submissions, documentary evidence and witness statements, resolving where necessary any conflicts of evidence on the balance of probabilities. T

Findings

12. The appellant was incorporated on 3 April 2008. It is a small business having the Principal Authority's home address as its registered office and principal place of business. It has two clients to whom it supplies between 12 and 15 workers.
13. The appellant applied for a Licence on 11 May 2008 and an Application Inspection was carried out by Ms Holden on 17 June 2008. From her notes which appear at pages 173 to 184 in the bundle, I am satisfied that in the course of that inspection Ms Holden:

13.1 established that the Principal Authority speaks Punjabi and has a very poor command of the English language. He did not though consider that as presenting any difficulties as his daughter, who was also named in the application, would speak on his behalf;

13.2 stressed the importance of the Principal Authority keeping his licence details up to date;

13.3 told the Principal Authority that he must have a system in place for tracking holidays to ensure that workers receive their entitlement;

13.4 established that the business would be operated from the Principal Authority's home address and advised him to purchase a lockable cabinet to store workers files in at all times;

13.5 explained that it was important to check each site conforms to Health & Safety legislation before sending labour there; that workers must be properly inducted at each site, that it was good practice to keep records of these inductions and that as part of future inspections these sites would be visited and workers interviewed and that it was necessary to check that the labour user has written risk assessments that are reviewed on a regular basis before workers are sent there;

13.6 advised that vehicles should be maintained and records kept; and

13.7 advised the Principal Authority of the relevant documents she would expect to see on a worker file.

- 14 Following this inspection a Licence was issued to the appellant on 7 July 2008. That letter, addressed to Mr Singh as the Principal Authority stated:

"It is a requirement of the licence that you and your organisation continue to comply with the GLA's licensing conditions, the applicable licensing standards and continue to be classed as "fit and proper" to hold a licence.

As you are a new business and have no current contracts with labour users, your entry on our public register will be noted as "New Business". To change this status please contact the GLA when you begin to supply labour to sectors covered by the Gangmasters (Licensing) Act 2004."

- 15 By letter dated 13 February 2009 the respondent provided all licence holders with its new Licensing Standards which it said would take effect from 6 April 2009 and that from that date GLA inspections would be against the new Standards. In particular the letter continued:

"The new Licensing Standards are similar to the current version. However, there are some important changes. With regard to your licence, you are currently classed as a "new business" on the GLA Public Register of licence holders. This indicates that you have not yet started to trade in the GLA sectors. New Licensing Standard 1.3 will require "new business" licence holders to notify the GLA within 20 working days of trading in the regulated sectors. This new

standard is “critical” – **If you do not notify us once you have started trading you risk having your licence revoked.**”

This requirement was further emphasised in newsletters issued by the respondent to all licence holders.

- 16 By Schedule 1, paragraph 4(1) of the 2009 Rules the Principal Authority must at all times act in a fit and proper manner. The principles set out in Rule 12(2) of the 2005 Regulations are applicable.
- 17 On 13 May 2009 Ms Holden went to the appellant’s address to carry out an unannounced compliance inspection. The exact events and what was said during the course of that inspection are a matter of some dispute between the parties in relation to which I make the following findings:

17.1 Based on the statement of Mr Ajeet and the receipt that appears at page 371 in the bundle, I find that the inspection commenced at about 9:30am and not 8:30am as claimed in the statements submitted on behalf of the appellant;

17.2 Again based on the statement of Mr Ajeet, I find that they were greeted at the door by Mr Singh who called Ms Gill from an upstairs room. Ms Gill appeared in jogging trousers and top, as later did her younger sister. Neither appeared to be uncomfortable or to be in what were obviously their night clothes. Had they been it would have been very easy for a short break to be taken while they got dressed. If Ms Gill had time, as she says, to brush her teeth before going downstairs, she had time to get dressed. I also find that Ms Holden and Mr Ajeet were served with coffee by one of Mr Singh’s daughters and that Mr Singh offered them some lunch, although none was taken. The opportunity for a break or breaks to be taken was present but not requested;

17.3 In the course of the inspection, as Ms Gill acknowledges, Ms Holden asked to see the workers files. Both Mr Singh and Ms Gill state that the room in their house that is used as an office was also being used by Ms Gill to revise for her exams and, in the words of Mr Singh, “her papers were all over the room”. As a consequence the workers files could not be located. That suggests that the room was in a very considerable state of disarray and that the workers contracts were not kept in a lockable cabinet as Ms Holden had recommended on the occasion of her prior visit;

17.4 Mr Singh then told Ms Holden that the workers files were kept at his accountants’ offices and that “with hindsight” this was “clearly a mistake”. I find that this was not a mistake merely in “hindsight” but a deliberate attempt on the part of Mr Singh to mislead Ms Holden. I also find that it is implausible that, as she says in her statement, Ms Gill was not aware of her father saying this to Ms

Holden. That is confirmed by the appellant's submissions stating that "Ms Gill concluded in good faith (but wrongly as it later transpired) that the files were held by the company's accountants";

17.5 Ms Holden then asked to see a draft of the workers contract but was told none was available. Various excuses have been offered. It is implausible that any properly managed business would not be able to produce these;

17.6 In the course of the inspection Ms Holden was told that the appellant used two vehicles to transport workers but was unable to produce a current MOT certificate for one. The explanation given by Mr Singh was that the vehicle was not in use as it required repair. The vehicle was though parked on the public road and as such should have had a current MOT. The last MOT had expired some three months previously which is an extraordinary period for a vehicle to be parked on the road awaiting repair. The explanation offered by Mr Singh for it having no MOT is not credible;

17.7 It was accepted that the appellant had received the respondent's letter of 13 February 2009, Mr Singh saying that he had given that to his daughter to read for him but that she had not done so because of the pressure of her exams. It is quite unacceptable that such an important letter, as must have been apparent from even the most cursory examination, should be ignored for a period of some three months. The fact is that the appellant failed to inform the respondent that it had begun to supply labour into the regulated sector despite having been told to do so in the respondent's letter of 7 July 2008, the letter of 13 February emphasising the necessity of that, that this was "Critical" and that failure to do so might result in their licence being revoked. Whether due to oversight or a deliberate act of non-compliance, it is unacceptable;

17.8 It is also apparent from Ms Holden's statement and her workbook that, when asked, neither Mr Singh nor Ms Gill understood the concept of risk assessments being carried out prior to workers commencing work on a site. Also, Ms Holden was told that "older" workers on the site would carry out inductions for new workers but that no records were kept, as Ms Holden had advised should be done;

17.9 In relation to holiday pay, Mr Singh again said that the necessary records were maintained by the appellant's accountants; and

17.10 It is unclear whether Ms Holden said that she would make a return visit when the appellant would be able to show compliance.

The fact is though that the appellant did not make any attempt to show compliance until very much later.

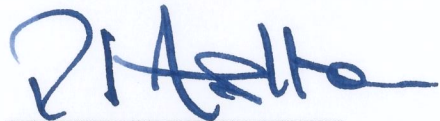
- 18 Following the conclusion of the inspection visit, Ms Holden went to the appellant's accountants where she was informed that they neither had the workers contracts nor did they keep records of the workers holiday pay entitlement.
- 19 Subsequent visits to the sites of the two labour users confirmed the concerns that had been raised in relation to the issue of health and safety and that there was no evidence of workers being properly inducted on the sites.
- 20 As a consequence the appellant received a fail score of 160 against the 2009 Standards, a fail score of 30 generally being sufficient to cause a licence to be revoked.
- 21 I accept that on 11 November 2009, following the adjournment of the initial hearing date due to Mr Singh being ill, Ms Holden visited one of the appellant's labour users where she was told that Mr Singh had driven the workers to work and that Mr Singh was working in the field which she observed. The evidence in this respect of Ms Gill and Mr Manjit Singh appears implausible.

Conclusions

- 22 I do not accept the contention put forward on behalf of the appellant that it is the criminal burden of proof that applies. Instead I find that both the respondent and now myself have to be satisfied on the balance of probabilities that the appellant was in breach of the 2009 Rules and the 2009 Standards.
- 23 The argument put forward on behalf of the appellant that none of the workers have suffered any injury as a result of any breaches there may have is akin to a person who has been arrested for driving with excess alcohol saying that it does not matter because nobody was injured and in the morning he will be sober. In both cases they are completely unacceptable and irrelevant. What matters is what was the situation at the time, in this case of the inspection.
- 24 It has also been argued on behalf of the appellant that there has been some element of double counting or that Ms Holden was unduly harsh in her application of the Standards. While that argument is not accepted as valid, the totality of the inspection demonstrates a wholesale failure on the part of the Principal Authority to understand and comply with Rules and the Standards. The failure to be able to demonstrate compliance was lamentable and the inspection and subsequent enquiries revealed a chaotic situation with the Principal Authority showing little or no knowledge or understanding of his obligations under the law. The evidence does not

in any way support the assertion made on its behalf that "A2 Recruitment takes its responsibilities in respect of its licence extremely seriously and understands the standards they are required to satisfy". To the contrary, at the time of the inspection the evidence was entirely to the opposite effect.

- 25 Leaving aside the other matters dealt with in the inspection report, I am entirely satisfied that there has been a breach of Licensing Standards 1.21, 1.2 and 1.3. Those matters alone would result in the appellant having a fail score of 90.
- 26 The Act was introduced in order to prevent the exploitation of workers and to save lives that had been tragically lost on other occasions. A licence can only be issued to and maintained by "a fit and proper person". A high level of compliance is required with which the Principal Authority is required to be and should be familiar. The respondent was correct in identifying a significant number of instances of non-compliance in relation to which it would be normal to expect the licence to be revoked.
- 27 I am entirely satisfied that the respondent acted appropriately and proportionally in giving notice of revocation of the appellant's licence.
- 28 On the basis of the statements I have read, the evidence I have seen and the submissions that have been made, I am equally satisfied that the appellant's licence should be revoked and, further, that Mr Amrik Singh is not a fit and proper person to be granted such a licence.
- 29 In accordance with regulation 22(3) of the 2006 Regulations, this decision, and in consequence the revocation of the appellant's licence, will take effect from 16 July 2010.



R F ASHTON
Appointed Person
13 June 2010