

THE GANGMASTERS (APPEALS) REGULATIONS 2006

**IN THE MATTER OF AN APPEAL AGAINST A DECISION MADE BY THE GANGMASTERS
LICENSING AUTHORITY (REF 33/E/RV)**

ZUBER MOHAMMED TRADING AS MIDLAND RECRUITMENT AGENCY

Appellant

-v-

THE GANGMASTERS LICENSING AUTHORITY

Respondent

Appointed Person: Mr D. A. Perry

DECISION

Upon consideration of the appeal documents and the accompanying papers lodged by the Appellant and the response to the appeal and accompanying papers lodged by the Respondent and upon consideration of the additional documentation supplied by the Respondent on 25 February 2008 it is the decision of the Appointed Person that :-

- (1) the appeal of the Appellant is dismissed
- (2) this decision shall take effect 7 days after its service on the parties.

SUMMARY STATEMENT OF REASONS

- 1 This is an appeal against the decision of the Gangmasters Licensing Authority ("GLA") on the 3 December 2007 to revoke the Gangmaster's licence ("the Licence") granted to Zuber Mohammed trading as Midland Recruitment Agency ("Mr Mohammed"). The letter of 3 December 2007 ("the Revocation Letter") made clear the decision was not to have immediate effect.
- 2 On the 25 February 2008 the GLA made a request to rely upon additional documentation ("the GLA's Application"). On the 28 February 2008 I gave a direction that I intended to treat the GLA's Application as an application pursuant to reg. 12(2) of the Gangmasters (Appeals) Regulations 2006 ("the Appeals Regulations") and gave Mr Mohammed until 12 March 2008 to forward all further evidence he wished to rely upon, and to lodge all further applications and/or submissions he wished to make.
- 3 No response to my direction of 28 February 2008 was received by the secretariat within the period provided and on the 19 March I issued a second direction granting consent to the GLA's Application and that I had decided it was appropriate to determine this appeal without an oral hearing.
- 4 By a letter of 27 February 2008 the GLA revoked the Licence granted to Mr Mohammed. That decision was stated to take effect immediately ("the Revocation with Immediate Effect"). Mr Mohammed did not appeal the Revocation with Immediate Effect.

- 5 The parties have agreed this appeal will be dealt with without an oral hearing pursuant to reg. 15 of the Appeals Regulations.
- 6 The parties have supplied all documents they wish to rely upon and I have considered these in accordance with reg. 15(3) of the Appeals Regulations.

The Licensing Standards

- 7 The Licensing Standards published by the GLA summarise how the legal requirements that relate will be applied and assessed, and derive from the Gangmasters (Licensing Conditions) (no.2) Rules 2006. The Licensing Standards are known to all concerned and are clear. They adopt a points scoring method which categorises infringements according to the seriousness of the same. "Critical" non-compliances score 30 points and "major" non-compliances score 8 points.
- 8 Only where the total score exceeds 30 points, that is, 4 or more major non-compliances, or one critical non-compliance can the licence be revoked. A licence holder will be permitted to retain his/her licence with up to three "major" non-compliances, subject to additional licence conditions being imposed.
- 9 Thus, the scoring system has provisions built in excluding isolated non-compliances unless they are "critical".

Background

- 10 Mr Mohammed applied for the Licence in October 2006. An application inspection took place on 2 November 2006 and the licence was granted with 3 conditions relating to standards 5.2, 7.3 and 10.1 with which Mr Mohammed was required to comply within 3 months.
- 11 On 6 November 2007 the GLA wrote to Mr Mohammed to notify him of a compliance inspection that was to take place on the 12 November ("the Compliance Inspection"). He was told to ensure all records were made available.
- 12 The GLA allege that Mr Mohammed did not supply all records at the compliance inspection and that further time was given for him to do this. The GLA allege this was not complied with. Mr Mohammed in his appeal lodged by RUS, a firm of chartered accountants on his behalf, alleges that records were made available at the inspection and also asserted that they provided further copies of these.
- 13 As a result of the Inspection the GLA assessed Mr Mohammed against the Licensing Standards and a licensing standard score was generated. Mr Mohammed scored 86 made up of 1 critical non-compliance in relation to standard 8.1 and 7 major non-compliances in relation to standards 2.9, 3.3, 5.2, 5.3, 6.1, 7.3 and 9.1.
- 14 Following the Compliance Inspection Mr Mohammed was interviewed by the GLA on 23 November 2007. After that interview the Revocation Letter was forwarded to Mr Mohammed. The statement taken from Mr Mohammed in the course of the interview of the 23 November 2007 and a number of other documents were the subject of the GLA's Application.
- 15 In Mr Mohammed's statement of 23 November 2007 he admitted that he had been contacted in April 2007 by Mr Kuldip Singh who was based in Hull and had contracts to supply worker to 2 labour users; K Fresh and Glen Avon Growers. As Mr Singh was unable to obtain a gangmaster's licence Mr Mohammed confirmed it was agreed between them that he would take over Mr Singh's contracts with the labour users and that Mr Singh would

act as Mr Mohammed's "representative" in Hull.

- 16 Mr Mohammed was unable at the interview to provide information relating to the workers in Hull that one would expect a labour provider to be aware of, including if the workers were provided with accommodation and charged for transport to the labour user's premises.
- 17 The GLA subsequently issued the Revocation with Immediate effect.

My findings in relation to the alleged breach of the Licensing Standards

- 18 In relation to the breaches of the Licensing Standards on the balance of probabilities and from the information before me I make the following findings of primary facts:-

Standard 2.9 (major non-compliance) - Annual Leave entitlement – rolled up holiday pay

- 19 I find that Mr Mohammed admitted that rolled up holiday pay had been a requirement of at least one labour user but that had subsequently been remedied. The standards are clear that this is not permissible. I find there was a breach of this licensing standard.

Standard 3.3 (major non-compliance) – Debts/recoveries in writing

- 20 Whilst the inspector refers to Mr Mohammed having admitted to making loans to workers there is no reference to this is Mr Mohammed's statement of the 23rd November 2007. Nor is there any evidence before me in the form of witness statements from the workers concerned or the inspector, or documentary evidence to show that loans had been made to the workers that were not evidenced in writing. As a result I find there was no breach of this licensing standard.

Standard 5.2 (major non-compliance) - Working time opt out

- 21 There is no evidence before me in the form of witness statements from the workers concerned or the inspector, or time sheets to show that any worker who exceeded the 48 hour per week limit had not freely signed an opt out.
- 22 As to the failure to provide records this is a duplication of the allegation in relation to standard 5.3 and in my view this should not be treated as a stand alone breach. As a result I find there was no breach of this licensing standard.

Standard 5.3 (major non-compliance) - Availability of records

- 23 It is the obligation of the labour provider to make available for inspection by the GLA an accurate record of hours worked by workers. Despite Mr Mohammed having been given just short of a week's notice that records needed to be provided at the compliance inspection it is alleged by the GLA that Mr Mohammed failed to do this in relation to two of the labour users at the Compliance Inspection nor (having been given another two weeks to do so) in the following fortnight. Mr Mohammed in his appeal states that the information was made available and that it was attached to the appeal. That information was not attached to the appeal by Mr Mohammed. Despite the GLA having raised the omission of this information in its response to the appeal, Mr Mohammed has not taken any further steps to pursue this point or to provide the information. The GLA point out that had that information been subsequently provided they would have revisited this matter afresh.
- 24 I find that had the information been made available to the inspector it would have been a simple matter to provide that again as part of the appeal. I accept the GLA's assertion that this information was not provided at the time or as part of this appeal. I find that there was a breach of this licensing standard.

Standard 6.1 (major non-compliance) – Co-operation with Labour user – health and safety

- 25 The preamble to standard 6 makes clear that the labour user and labour provider should set down in writing which of the two should be responsible for the health and safety of the workers. The existence of a written agreement between the two is also a requirement of standard 7. No evidence of this has been provided by Mr Mohammed either within the appeal or otherwise. Mr Mohammed's defence to this allegation relies on the provision of a health and safety manual to workers (a copy of which is before me). For the reasons stated above that cannot satisfy this standard. I find that Mr Mohammed was in breach of this standard.

Standard 7.3 (major non-compliance) – Written statements

- 26 Mr Mohammed also disputes the GLA's assertion that he failed to provide at the Compliance Inspection written statements for all workers who had been employed for more than a month or who were engaged pursuant to contracts for services. Whilst a specimen contract has been provided, again no evidence has been provided that all workers had written statements as required. I note this was one of the failures identified at the application inspection and thus this was a matter that had been highlighted previously to Mr Mohammed.
- 27 I find that had these statements existed it would have been a simple matter for these to be provided at the Compliance Inspection or as part of this appeal. Mr Mohammed not having done so, I accept the GLA's assertion that this information was not provided at the Compliance Inspection or subsequently and I therefore find that there was a breach of this licensing standard

Standard 8.1 (Critical non-compliance) – Sub Contracting

- 28 Mr Mohammed suggests in his appeal that as Mr Singh was not paid by him, Mr Singh was a manager and not a sub-contractor. With regards to the aspects of the business supervised by Mr Singh the absence of any records relating to the workers, Mr Mohammed's admission within his statement that the workers continued to remain on Mr Singh's payroll and were paid by him (albeit with monies received from Mr Mohammed for that purpose) and that Mr Mohammed had little or no control over or knowledge of Mr Singh's activities all point to Mr Singh being a sub contractor. As to the wider picture apart from Mr Mohammed having agreed to be the labour provider and having invoiced labour users there is little that points to him having fulfilled the role of labour provider. I therefore find that the GLA were entitled to treat Mr Singh as a sub contractor.
- 29 Mr Mohammed admits Mr Singh was not added as a named person on the Licence. I therefore find that Mr Mohammed was in breach of this standard.

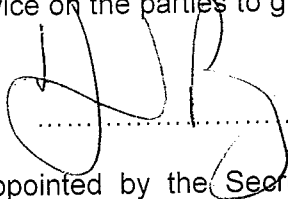
Standard 9.1 (major non-compliance) – Identity Issues

- 30 Mr Mohammed further disputes the GLA's allegation that he failed to provide identity evidence for all workers at the Compliance Inspection. Whilst a single example has been subsequently provided as part of the appeal, this information has not been provided for all workers. I find that for the same reasons as my findings as to standards 5.3 & 7.3, had these records existed it would have been a simple matter for these to be provided. Mr Mohammed not having done so, again I am minded to accept the GLA's assertion that this information was not provided at the time or subsequently and as a result I find that there was a breach of this licensing standard

Conclusions

- 31 I have found the GLA were right to hold that there were 1 critical and 5 major non compliances by Mr Mohammed at the date of the inspection. The critical non compliance alone justified the revocation of the Licence. Taking into account the published points scoring criteria adopted by the GLA, Mr Mohammed's score is more than double the permitted level.
- 32 Based on my findings and the factors in the preceding the paragraph I conclude that the GLA were entitled to revoke the Licence as at the 3 December 2007 and I therefore dismiss this appeal.
- 33 There are no submissions before me from either party on the issue of when this decision shall take effect. Taking into account the extent of the breaches and the Revocation with Immediate Effect in my view the date this decision takes effect should be one week after its service on the parties to give Mr Mohammed a short period to notify all persons effected.

Signed:



Dated : 9 April 2008

(Person appointed by the Secretary of State to determine appeals under The Gangmasters (Appeals) Regulations 2006.