

20 NOV 2007

THE GANGMASTERS (APPEALS) REGULATIONS 2004

In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 25/E/RV)

RECEIVED  
CHIEF EXECUTIVE'S OFFICE

MJ Hague (Extrastaff) Ltd  
(Appellant)

V

THE GANGMASTERS LICENSING AUTHORITY  
(Respondent)

APPOINTED PERSON

MISS C GRUNDY

WRITTEN DETERMINATION

DECISION AND STATEMENT OF REASONS OF APPOINTED  
PERSON IN RELATION TO THE ABOVE MATTER

DECISION

Upon consideration of the appeal documents, the reply and the accompanying papers lodged by the Appellant, it is the decision of the Appointed Person that the Appeal of M J Hague (Extrastaff) Ltd be dismissed.

REASONS

1. This is an appeal against the decision of the Gangmasters Licensing Authority (GLA) on 18.7.07 to revoke the Licence granted to MJ Hague (Extrastaff) Ltd, (MJH) without immediate effect.
2. The parties have agreed that the appeal will be dealt with without an oral hearing pursuant to regulation 15 of the Appeals Regulations. The parties have supplied all documents they wish to rely upon and these have been considered by me in accordance with reg 15(3) of the Appeals Regulations.

THE LAW

3. The Gangmasters (Licensing) Act 2004 aims to curb exploitation of labour in agriculture and other particular industries. The GLA has established standards to assess compliance. The GLA assesses on inspections to consider compliance/ non-compliance.
4. For the purposes of assessing non-compliance, a scoring system is used which categorises infringements according to their level of seriousness. The "fail- score" of non-compliance is 30. Each non-compliance can be characterised as Correctable 2 ; Reportable 4; Major 8; and Critical 30.

5. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulations 2005 states that, "the Authority shall have regard to the principle that a person should be authorised to act as a gangmaster only if and in so far as his conduct complies with the requirements of paragraph (2), namely "compliance with any obligations imposed by or under any enactments in so far as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities."
6. Regulation 5(1)(d) of the Gangmaster (Appeals) Regulations 2006 allows MJH to bring an appeal against a decision of the Authority to "revoke a licence granted to that person".

## BACKGROUND

7. The history is as follows and I so find, MJH had applied for a licence on 10.4.06, with payment on 28.4.06. They had undergone an audit with the Temporary Labour Working Group, (TLWG) on 10.11.05 in preparation for the licensing application and had been deemed "TLWG successful". No application inspection was therefore required by the GLA. The TLWG audit established that there were 2 areas of concern regarding licensing standards 6.2 and 10.1.
8. On 31.5.06 a GLA licence was issued on the condition that MJH comply with standards 6.2 and 10.1 within 3 months. There was no appeal against the imposition of those conditions.
9. A letter from the Compliance Team was sent to MJH on 23.3.07, requesting they confirm action had been taken to rectify the previous non-compliances. On 1.6.07, the Compliance Team confirmed that the conditions could be removed. On the same date the Licence was renewed without conditions.
10. A compliance inspection was carried out, having been notified to MJH on 13.6.07. At the inspection the Inspector found that MJH were in breach of Licence Standard 2.5, 2.8, 6.6, and 6.11 and 7.3. The score against the Licensing standards was 62 points.

## FINDINGS IN RELATION TO BREACHES OF LICENSING STANDARDS

### STANDARD 2.5

#### 11. "Improper Deductions/ Withholding of Wages"

Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers written consent to those deductions.

12. At the time of the Inspection, MJH did not have signed authority for £20 administration charges for all workers. There was a consent form for Worker Registration Scheme, (WRS) and Personal Protective Equipment (PPE).

13. MJH failed to declare a £20 administrative fee charged to each worker without any reason given to the compliance officer as to why it should

be paid. The workers had no choice about such a sum being deducted from their first weeks' salary.

14. Three workers pay £50 (cash) for accommodation but there is no written confirmation to confirm agreement to such deductions. There is no deduction on the worker's payslip.

15. PPE deductions occurred prior to October 2006 without consent, but none in 2007. Eight workers expressed the same concerns.

16. In the letter from MHJ in support of the appeal there are 4 "written consents" stating "I agree to MJH deducting a £20 Admin Fee from my net wages as a one-off."

17.

I am unclear as to the purpose of this deduction and in any event it does not seem written agreement has been obtained from all the workers. MJH were in breach of 2.5 and have failed to demonstrate full compliance. This was a major non-compliance correctly scored as 8.

### **STANDARD 2.8**

#### **18. "Minimum Wage in Payment"**

The worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges.

19. MJH accepted that Agricultural Minimum Wage, (AMW) applied to a number of agricultural contracts which were being paid at national minimum wage rates. (NMW). Agricultural Wages Board overtime payment has been due in some cases but has not been paid. Four workers at grade 2 of £5.74 have not had increased overtime pay.

20. In the letter from MHJ it says, "I have also been told about not paying agricultural wages I know at the time I was not paying the proper overtime rate, I have now changed this and am now paying the appropriate wages to staff. I have added this on to my appeal as no other labour provider in this area is paying overtime for agricultural work done."

21.

MJH were in breach of Standard 2.8. Their letter as quoted accepts non-compliance. It appears they are complying now and this is to be welcomed, however at the relevant time the non-compliance to this standard was correctly viewed as critical 30 points.

### **STANDARD 6.6**

#### **22. "Safe place of Work"**

The gangmaster has co-operated with the labour user to ensure that:- Adequate and appropriate personal protective equipment has been provided to the workers they supply and that

Adequate arrangements have been made with regard to the provision of sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and the consumption of food and drink,

- for first aid and the recording and reporting of reportable accidents and cases of ill health at work.”
23. The inspection interviews revealed that agricultural field workers had not been provided with any ppe. In 2006, workers were charged £9.99 for wellingtons and £5.99 for waterproof jackets. They indicated they now have to provide their own. At “Ferndale Produce” the labour user visited, their health and safety policy with the labour provider indicated that ppe was required. Workers complained they have become wet working on crop rigs, especially their feet. Most of the workers at Ferndale had no suitable footwear or clothing.
  24. In their letter MJH say, “All my workers are provided with ppe for the work they do, I enclose copies of receipts showing that I have purchased this equipment.” The receipts enclosed show purchase of clothing effectively 5 sets in May 2006, waterproof clothing in July 2006, 5 sets in November 2006, 5 sets in March 2007, although the date on this copy invoice has been altered, and up to a dozen in May 2007.
  25. I am satisfied that MJH have attempted to comply with this standard and I welcome their clear attempts to provide ppe for some workers. This is to be viewed positively, however I accept the evidence of the visit to Ferndale where clearly MJH were in breach of the standard when the inspection took place. This was a major non-compliance scoring 8 points.

#### **STANDARD 6.11**

26. **“Transport arrangements”**  
There is documentary evidence that vehicles with nine or more passenger seats used for hire or reward are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement.
27. MJH failed to comply with the standard applicable relating to PSVs. I am unsure as to why no such condition to obtain the appropriate documentary evidence of registration for the vehicles and drivers was imposed on the grant of the licence to secure compliance. However compliance is still required and there is no evidence it has been considered by MJH.
28. Drivers of minibuses with 9 or more passenger seats are required to have PCV entitlement on their licence. The drivers of the MJH vehicles did not and MJH had not registered with VOSA as a PSV operator.
29. There is no explanation for non-compliance in this regard in the letter from MRH. MRH were in breach of the standard at the time of the inspection and have effectively been so for the currency of the licence. This was a major non-compliance scoring 8 points.

### **STANDARD 7.3**

#### **Terms and Conditions**

There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences.

The terms that must be agreed include:-

- Whether the worker is or will be supplied by the licence holder under a contract of employment, or for services and the terms and conditions that will apply
- An undertaking to pay the worker for any work carried out regardless of whether the gang master has been paid by the labour user
- The length of termination the worker is required to give and entitled to receive, if any
- Either the worker's pay rate or the minimum rate to be expected
- The intervals at which the earnings will be paid and details of any entitlement to paid holidays, SSP and other benefits.

30. The contracts issued to workers did not show the appropriate rates of pay or benefits workers were legally entitled to. All workers require new contracts to show AMW rates and benefits.

31. There is no explanation for non-compliance in this regard in the letter from MRH. MRH were in breach of the standard at the time of the inspection and appear to have been so for the currency of the licence. This was a major non-compliance scoring 8 points.

#### **Conclusions**

32. MHJ were at the time of the inspection visit failing to comply with the standards identified above meriting a significant non-compliance score. The GLA were correct in identifying that there were 4 breaches of a major kind at the date the decision was taken and 1 critical in relation to AMW.

33. MHJ have taken steps to comply with the standards in some aspects however there are still fundamental actions to be taken to achieve full compliance. In particular although it is asserted AMW compliance is forthcoming there is some resistance to this because it is said others in the area have escaped such liability. I cannot conclude compliance with any standard relied upon at the time of the inspection.

34. The extent of the breaches is a matter to which I have regard in determining that the revocation was on the evidence available entirely appropriate. I conclude that the scoring system was properly applied and the GLA acted proportionately in all the circumstances.

35. MHJ will have to apply for a new licence with inspection to demonstrate that the retrospective action they have taken will with further action reach an appropriate level of compliance.

36. This decision takes effect on service on the parties. Thereafter, this decision requires application for a new licence before MHJ can continue to trade.

Signed .....

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

Dated.....

Gangmasters Licensing Appeals Secretariat  
Room 109  
Defra Building  
Electra Way  
Crewe, Cheshire  
CW1 6GJ



**Telephone** 01270 754231  
**Website** [www.defra.gov.uk](http://www.defra.gov.uk)

Gangmasters Licensing Authority  
PO Box 8538  
Nottingham  
NG8 9AF

**Date: 15 November 2007**

Dear Sirs,

**RE: THE GANGMASTERS (APPEALS) REGULATIONS 2006.**  
Case 25/E/RV – Extrastaff Ltd

Please find enclosed a copy of the determination made by the Appointed Person, Miss C Grundy, in the matter of an appeal against a decision made by the Gangmasters Licensing Authority. I would be grateful if you could complete and return the enclosed slip to confirm receipt. A pre-paid envelope is enclosed for your use.

Should you have any queries regarding this matter, please contact the Secretariat on 01270 754231.

Yours faithfully

A handwritten signature in black ink, appearing to read "J Clay", with a long horizontal flourish extending to the right.

Jacqui Clay  
Gangmasters Licensing Appeals Secretariat



LETTER ELEVEN (07/06/2006)

