

22 OCT 2007

**THE GANGMASTERS (APPEALS) REGULATIONS 2006**

In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 12/E/R)

RECEIVED  
CHIEF EXECUTIVE'S OFFICE

**CRB RECRUITMENT  
(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 and the letter dated 12.9.07 from their accountants; it is the decision of the Appointed Person that the Appeal of CRB Recruitment be dismissed.

**REASONS**

1. This is an appeal against the decision of the Gangmasters Licensing Authority (GLA) on 2.8.07 to refuse to renew the Licence granted to CRB Recruitment. (CRB). The expiration would have therefore taken effect on 30.8.07.
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)(a) of the Gangmaster (Appeals) Regulations 2006 allows CRB to bring an appeal against a decision of the Authority to "refuse his application for a licence".

#### BACKGROUND

7. The history is as follows and I so find, CRB had applied for a licence on 5.6.06, with payment on 14.6.06. They had undergone an audit with the Temporary Labour Working Group, (TLWG) on 8.2.06 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 6.11.
8. On 31.7.06 a GLA licence was issued on the condition that CRB comply with standards 6.2 and 6.11 within 3 months. There was no appeal against the imposition of those conditions.
9. A compliance inspection was carried out on 20.6.07, by Graham Cross, having been notified to CRB on 11.6.07. At the inspection the Inspector found that CRB were in breach of Licence Standard 2.9, 5.2, 6.1, 6.6, and 6.11. The score against the Licensing standards was 48 points.

#### FINDINGS IN RELATION TO BREACHES OF LICENSING STANDARDS

##### STANDARD 2.9

10. **"Benefits Paid (eg Sick Pay, Paid Annual Leave Entitlement)**  
There is evidence that all workers receive paid annual leave entitlement and any of the other benefits they are entitled to. Records of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files."
11. CRB did not show the inspector evidence to show that workers who were entitled, were paid 31 days annual leave entitlement, under the AMW. No record of payment of SSP for Freddy Jose Lina was shown for a 15 day period of absence due to an accident.
12. In a letter dated 6.8.07 CRB say, "it was understood that 28 days was the entitlement, however it was pointed out that 31 days was the

- correct entitlement and this has now been incorporated in current working practice. Evidence of payment of holidays is enclosed." In fact 2 payslips (copies) showing "Advance pay £428" have been provided. There is no reference to proof of payment of the SSP.
13. CRB were in breach of Standard 2.9 and have not demonstrated full compliance to date. Their letter as quoted accepts non-compliance. This was a major non-compliance correctly scored as 8.

#### **STANDARD 5.2**

14. **"Hours Worked, Working Time Regulations, etc.**  
There is evidence that any workers working in excess of 48 hours per week have freely signed an opt-out."
15. CRB failed to show the Inspector any evidence that any workers had signed an opt-out form despite regularly working in excess of 48 hours. The workers indicated they wanted to work the hours, but had not been asked to sign anything.  
CRB have submitted with a letter dated 6.8.07, copies of selected employees opt-out forms. 2 forms appear, each dated 28.6.07 with a declaration "I... don't mind to work more than 39 hours weekly under my responsibility." CRB have indicated all employees are given the opportunity to sign an opt-out form.
16. CRB were in breach of Standard 5.2 and remain so. The opt-out forms in their current form do not demonstrate full compliance. This was a major non-compliance correctly scored as 8.

#### **STANDARD 6.1**

17. **"Breaches in Health and Safety, Including Training**  
The gangmaster has co-operated with the labour user to ensure that;- Responsibility for managing the health and safety of workers has been agreed and assigned and that  
The health and safety risks to which they may be exposed at work are properly controlled."
18. CRB failed to show evidence to the Inspector of service level agreements with ALL of his customers who were regulated to show arrangements for managing workers health and safety.
19. In a letter dated 6.8.07 CRB submitted documentation purporting to be "service agreements". The documents consisted of an unattributed document entitled "Agency Induction Training Notes"; Extracts from CJ Sephton "Risk Reduction And Emergency Plan covering duties done by casual agency staff 2006-7"; Lovania Nurseries, Induction and Health and Hygiene guide for greenhouse staff; CRB recruitment Hearing protection use; Huntapac Produce Limited, Field Packing Rigs Procedures and Work Instructions including health and safety procedures and personal hygiene rules.
20. I am satisfied that these documents show in respect of the regulated customers that health and safety risks to which workers are exposed

- are controlled by virtue of the risk assessments but there are no service agreements as between CRB and the labour users submitted.
21. CRB were in breach of Standard 6.1 and remain in partial breach of the standard. This was a major non-compliance correctly scored as 8 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 a Mr Freddy Lina had cut his hand at a farm, needing stitches and 15 days off, leaving a visible scar. He did not receive any sick pay. There was no report to health and safety executive and no written record in an accident book. It was determined that the labour user where the accident occurred did not have an accident book.
24. In a letter dated 6.8.07 CRB say, “We enclose copies of extracts taken from the accident book now available as and when required.” The copy purports to record an accident on 15.10.06 when Mr Lina cut his finger. I am unable to conclude when that record came into existence but doubt whether it was at the time. I find it most unlikely Mr Lina would have signed it and dated it 16.10.06 when it is common ground he had a lacerated finger for which he was absent from work for 2 weeks.
25. CRB were in breach of the standard when the accident occurred. The reporting of the accident was at the time inadequate. 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. CRB failed to comply with the condition to obtain the appropriate documentary evidence of registration for the vehicles and drivers. This condition was imposed on the grant of the licence on 31.7.06. Compliance was required in 3 months i.e. by 31.10.06. This had not been complied with by 20.6.07.
28. CRB in a letter dated 6.8.07 contend, “Subsequent to the visit by the Inspector the offending buses were reduced to 9 seater vehicles and

an application for a Licence had already been made and a copy of the on-going application letter is enclosed. The letter dated 13.7.07, from the Office of the Traffic Commissioner refers to an application having been made on 5.7.07. The licence was granted on 7.9.07 subject to the fee being paid by 27.9.07. as shown in the document attached to correspondence dated 12.9.07.

29. CRB were in breach of the standard at the time of the inspection and had been so for 9 months. It appears that they have taken steps to remedy the vehicle position. This was a major non-compliance scoring 8 points.

#### Conclusions

30. CRB 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 5 breaches of a major kind at the date the decision was taken. There had been a failure to achieve compliance from the outset in reference to a condition attached at that time, regarding standard 6.11.
31. CRB have taken steps to comply with the standards in some aspects however there are still actions to be taken to achieve full compliance.
32. The extent of the breaches is a matter to which I have regard in determining that the refusal to renew were on the evidence available entirely appropriate.
33. I conclude that the scoring system was properly applied and the GLA acted proportionately in all the circumstances.
34. CRB 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. I have highlighted how and where the gaps remain which require to be plugged.
35. This decision requires application for a new licence before CRB can continue to trade. The decision takes effect on service of it on the parties but that does not affect the fact that the previous licence expired on 30/8/07.

Signed .....  .....

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

Dated..... 17.10.07 .....