IN THE MATTER OF AN APPEAL AGAINST A DECISION MADE BY THE GANGMASTERS LICENSING AUTHORITY (GLA)

Case No: 9/E/R

DEL LABOUR SERVICES Ltd

Appellant

-v-

THE GANGMASTERS LICSNSING AUTHORITY

Respondent

DECISION and STATEMENT OF REASONS of the APPOINTED PERSON in relation to the above matter

Decision

Upon reading the appeal and the accompanying papers lodged by the Appellant and upon reading the reply and the accompanying papers lodged in response by the Respondent, it is the decision of the appointed person that:

The Appeal is dismissed.

Statement of Reasons

1. The Appellant is a Gangmaster within the meaning of the Gangmasters Licensing Act 2004 and upon applying for a licence, a process commenced by an on line application on the 14th June 2006 and perfected by the paying of the appropriate fee on the 23rd August 2006, was the subject of an inspection by an inspector appointed by the Respondent which took place on the 26th September 2006.

2. The result of the inspection was a refusal of a Licence and the Appellant was notified of the decision on the 27th October. The decision letter identified six areas of concern, finding that the Appellant had failed to meet the Respondent's standards (amongst others) 2.8 and 2.9 . Having regard to the system of awarding penalty points for failures in meeting the Respondent's standards, explained at paragraph 24 of its publication Licensing Standards (March 2006), the application failed in that a total number of penalty points of 70 was awarded, the maximum number above which an application be failed being 30.

3. It is relevant to mention that the initial inspection yielded 186 point, but upon an internal review of the initial inspection and report the total score was reduced

to 70. A summary of the inspector's findings and reasoning is given at paragraph 4 of the Respondent's submission in this appeal.

4. The Appellant made an appeal against the refusal, and its submissions on appeal are before me in the documents submitted by the parties. The appeal prompted a pre appeal inspection which took pace on the 12 December 2006 and the result of that process was that the penalty score was reduced to 54.The decision in upon this review was reported to the Appellant on the 14th December 2006.

5. The Notice of Appeal is accompanied by a letter setting out the grounds of appeal, and first of all there is a challenge to the findings under Standards 2.8 and 2.9:

> '..we failed due to the contract held being covered by the agricultural minimum wage, since then on the pre-appeal we were told that the GLA could only accept facts that were known on the day of initial inspection. This forms the basis of our argument because it was three days later that DEFRA finally made a decision on the contracts status.'

6. Standard 2.8 carries 30 penalty points for non compliance. It states:

> ' The worker is not paid at least thee national or agricultural minimum wage, taking into account the rules on accommodation charges'

Standard 2.9, carrying 8 points, requires:

> ' There is evidence that all workers receive paid annual leave entitlement, ad 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 the workers' (sic) files.'

7. The Appellant's position in regard to 2.8 s that it did not know that the workers were covered by the Agricultural Wages Order until three days after the first inspection when DEFRA 'finally made a decision', I quote from the letter of appeal. This suggests some delay o the part of DEFRA which, had it not occurred, would have meant that the appropriate Order would have been applied. The letter from DEFRA suggests however that its letter of the 28th September was written in response to an e-mail from the Appellant of the 27th September, the day after the inspection. In the absence of other evidence I can only conclude that the Appellant's initial inquiry was the e-mail of the 27th September. In any event a supplier of labour is under an obligation to check out such matters before embarking into business. The fact is that the wrong Order was being applied at the time of the inspection. Nothing in the appeal from the Appellant's side suggests that the arithmetic is wrong, and I therefore dismiss the Appellant's appeal against the penalty awarded upon failure to meet standard 2.8.

8. Record keeping is more than bureaucratic. As I understand the case the Appellant does not deny breach of Standard 2.9, but seeks to excuse the breach. So far as there is a free standing appeal against the penalty awarded for breach of Standard 2.9 I concerned, the Standard emphasises the importance of record keeping which is not only for the benefit of the worker (as well as the employer) but also to maintain an audit trail to help to avoid fraudulent benefit claims. Breach of Standard 2.9 is not so serious as breach of Standard 2.8 but is nevertheless a matter which a careful employer should address and I find the Inspector properly assessed the situation in this ground of appeal.

9. The remaining issue is one relating to fair dealing, the Appellant suggesting that the Respondent is not even handed in granting and refusing applications ;

> 'We ... suggest that an agency has passed their inspection without conforming to the agricultural minimum wage supplying staff on an identical basis. ... both Aviagen and the external agency are still employing people on a non agricultural wage scheme.....It appears unfair to pass one company and fail another when the circumstances are identical.'

10. This is a serious matter, confidence in the system is destroyed if it is even felt that there is inconsistency on the part of the Respondent in exercising its Statutory functions. A party asserting such a serious matter must support the allegation with strong evidence. The Appellant has failed to do this, relying solely upon the assertions in the Notice of Appeal. That is not enough, the Appellant cannot as if in a criminal trial advance a defence and look to the Respondent to destroy it. I also give weight to the fact that the Appellant had a right to an oral hearing when evidence could have been lead and tested but has chosen not to exercise that right.

11. Other than the assertion in the Notice of Appeal there is nothing before me to assist me in coming to a conclusion in this matter of consistency. There seems to have been a careful and fair review and assessment of the matter within the procedures that have been followed and I take particular note of the fact tat the penalties have been reduced internally following the initial inspection from 186 to 70 and then to54 as a result of the pre-appeal review. That without anything to doubt it points to a fair approach. The Appellant, asserting inconsistency, has not discharged the burden of proof upon it.

12. For those reasons I dismiss the ground of appeal alleging inconsistency.

SGNED .....David R Crome

(David Robert Crome)
A Chairman of the Employment Tribunals
A person appointed by the Secretary of State to determine appeals under The Gangmasters (Appeals) Regulations 2006.

The 26th day of March 2007.