



IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant

Grand Labour Agency Ltd

and

Respondent

Gangmasters and Labour Abuse
Authority ("GLAA")

Held on: 13th May 2019

At: Nottingham

Appointed Person: Employment Judge Heap

Representation: For the Appellant: Mr. Ian Tebbs - Director

For the GLAA: Ms. Lisa Gilligan – Counsel

JUDGMENT

The appeal against the decision to refuse the Appellant a Licence as taken by the Respondent on 21st September 2018 is dismissed.

REASONS

Background

1. The Appellant, Grand Labour Agency Ltd, by way of a Notice of Appeal dated 21st October 2018, appeals against the decision of the GLAA (hereinafter "The Respondent") to refuse to grant it a Licence. That decision was communicated to the Appellant by way of a letter from the Respondent of 21st September 2018 ("The Decision") and followed on from an interim licence decision on 16th May 2018 and, thereafter, an application inspection on 11th July 2018.
2. The Decision recorded that the Appellant could not satisfy critical Licensing Standards 1.1 or 1.2.

3. The Appellant's Notice of Appeal prepared by Mr. Ian Tebbs, a Director of the Appellant Company and the proposed Principal Authority, set out that all findings of the application inspector were disagreed with. The Appellant has since provided further detail about those disagreements by way of a letter dated 16th November 2018 and further representations on 2nd May 2019. However, as I shall come to further below, there was very little challenge to the evidence of either the application inspector or the decision maker at the appeal hearing before me.

The hearing and the evidence

4. The appeal was listed for hearing over a two day period commencing on Monday, 13th May 2019. As it was, the hearing concluded shortly after lunch on the first day. That was largely on the basis that Mr. Tebbs had very limited cross examination to put to either of the Respondent's witnesses. That was despite being invited to consider that position more than once given the indication, as referred to above, in the Notice of Appeal that all findings were disagreed with on behalf of the Appellant.
5. One preliminary issue arose in that Ms. Gilligan referred to my Judgment in the appeal of **Go Solutions Ltd v GLAA 198/E/RV** which appears in the hearing bundle at pages 111 to 128. That Judgment made clear findings in respect of the involvement of Mr. Tebbs in Go Solutions Ltd and was relevant to the Decision in this appeal with regard to the alleged failure to meet Licensing Standard 1.1. Ms. Gilligan sought confirmation that this present appeal would not seek to reopen those findings.
6. I discussed with the parties that I was conscious that Mr. Tebbs felt strongly about the fact that he had not had the opportunity to challenge those findings (and, indeed the findings of the decision maker who revoked the licence of Go Solutions Ltd which led to that appeal under reference 198/E/RV) but that I would only revisit the issue if there were cogent and compelling reasons to do so. Matters were therefore left that Ms. Gilligan would cross examine Mr. Tebbs without reference to the issues which resulted in an alleged failed to meet Licensing Standard 1.1, but that if Mr. Tebbs' cross examination of the Respondent's witnesses led to my determination that I should revisit those findings, I would have Mr. Tebbs recalled. As it was, there was no cross examination by Mr. Tebbs in respect of those issues and so I have not and do not revisit my findings and conclusions in **Go Solutions Ltd v GLAA 198/E/RV**.
7. That also meant that it was not necessary to hear evidence from Mr. Gavin Overton, the Principal Authority of Go Solutions Ltd at the time that I determined that appeal. I have, however, considered his brief statement supplied for the purposes of this present appeal and the witness statement and documentation supplied by Mr. Tebbs on behalf of the Appellant. I have also heard live evidence from Mr. Tebbs.
8. I have also considered the witness statements of each of the Respondent's witnesses – and indeed I have heard live evidence from each of them in turn – and the documentation submitted by the parties which is included in a single hearing bundle running to 428 pages. I have also heard and considered very helpful submissions from Ms. Gilligan on behalf of the Respondent and from Mr. Tebbs on behalf of the Appellant and I am grateful to them both for their assistance.
9. At the outset of the hearing Mr. Tebbs submitted some further documentation in support of his position in regard to certain aspects of the appeal. Those were provided

to Ms. Gilligan who did not object to them being admitted as evidence and I have also therefore considered that documentation.

Legislative background

10. The provisions of the Gangmasters (Licensing) Act 2004 (“The Act”) provides for the requirement of those acting as a Gangmaster in the fields of agriculture and other certain sectors to hold a licence issued by the Respondent and that those who do not hold such a licence are prohibited from acting as a Gangmaster (see Section 6 of the Act).

11. Regulation 12 of the Gangmasters (Licensing Authority) Regulations 2005 provide that for the purposes of the exercise of the Respondent’s functions under Sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining—

(a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and

(b) the conditions of a licence and any modification of those conditions,

the Respondent 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, and the conduct of a specified person, comply with the requirements for

(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 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.

12. The Gangmasters (Licensing Conditions) Rules 2009 (“The Rules”) set out the procedure for licensing gangmasters covered by the provisions of the Gangmasters (Licensing) Act 2004 and the conditions that will apply to the licenses. Particularly, Rule 4 and the Schedule to the Rules specify the licence conditions that apply to licence holders.

13. The Respondent has published Licensing Standards and the version relevant to the Appellant’s appeal are those which were issued in June 2017 and which appear within the appeal bundle at pages 34 to 66.

14. There are eight Licensing Standards set out in the July 2017 version issued by the Respondent which are as follows:

- Licensing Standard One: Fit and proper test;
- Licensing Standard Two: Pay and tax matters;
- Licensing Standard Three: Forced Labour and mistreatment of workers;
- Licensing Standard Four: Accommodation;
- Licensing Standard Five: Working Conditions;
- Licensing Standard Six: Health and safety;
- Licensing Standard Seven: Recruiting Workers and contractual arrangements; and
- Licensing Standard Eight: Sub contracting and using other labour providers

15. The Respondent considers the suitability of proposed licence holders against the eight relevant standards set out above. Each standard has an associated score and those which are deemed to be “critical” attract a score of 30 points in the event of a breach. If a proposed licence holder accrues a score of 30 or above, the licence will usually be refused.
16. The purpose of the Act and the role of the Respondent is to protect workers in agriculture, shellfish gathering and associated processing and packaging sectors from potential exploitation; to ensure that they are able to work within a safe environment and that they are appropriately remunerated and engaged under fair terms and conditions. The Licensing conditions applied and enforced by the Respondent are designed to achieve that end and to protect against exploitation or the potential for exploitation within the aforementioned sectors.
17. Section 10 of the Act and the provisions of the Gangmasters (Appeal) Regulations 2006 govern the process by which an affected applicant may seek to challenge the decision of the Respondent to refuse to issue a licence.

The Decision

18. By a letter dated 21st September 2018 the Respondent notified the Appellant that the application of Grand Labour Agency Limited for a licence had been refused. That decision was taken by Mr. Ryan Hooper who is a Licensing Officer employed by the Respondent.
19. The grounds for that decision with reference to the applicable Licensing Standards can be found at pages 1 to 11 of the Appeal bundle. In brief terms, those were as follows:

Licensing Standard 1.1: Fit and proper test

20. The Respondent set out in the Decision that it found the following:

“You are an employee of Go Solutions Limited (“Go Solutions”) and are shown as a named individual on their GLAA licence (GOSO003). Go Solutions had its licence revoked without immediate effect on 21 December 2017 for serious failings of the Licensing Standards. Amongst the Standards failed, the GLAA determined that you played a key role in the management of the business and in factual fact were acting as the Principal Authority (PA) despite not being authorised to do so. You were found not to be fit and proper to hold this position.

Paragraph 5.8 of the Licensing Standards state:

Please be aware that the GLAA will automatically refuse applications where it is proportionate to do so in the following circumstances: If an applicant, proposed Principal Authority or any named person or specified in the application has been found to be not fit and proper. This applies for at least two years from the date of that decision.”

21. An interim license decision had been issued to the Appellant on 16th May 2018 following which, after representations by Mr. Tebbs as the proposed Principal Authority for the Appellant, the Respondent arranged an application inspection. That application dealt both with the extent of the involvement that Mr. Tebbs had had in Go Solutions Limited and also his competency as a proposed Principal Authority for this Appellant in his own right.

22. Insofar as the former issue was concerned, the Respondent did not accept the explanations of Mr. Tebbs that his role for Go Solutions Limited was essentially an administrative one only. The Respondent set out the reasons for that position at paragraphs 10 to 14 of the Decision and the Respondent concluded in respect of that matter the following:

“The GLAA has considered all of the above factors and remains of the view that, as explained in the revocation licence decision letter dated 21st December 2017¹, you were the PA of Go Solutions and not Mr. Overton. You were not authorised to undertake the PA role at Go Solutions. You have not therefore been candid and truthful with the GLAA, nor have you shown the required readiness and willingness to comply with the requirements and standards of the regulatory system.”

23. The Respondent further set out another finding arising from the application inspection which led them to conclude that the Appellant had not been, as they referred to it, candid and truthful with the GLAA. That matter related to the fact that the Enforcement Officer appointed to undertake the application inspection, Stephen Lea, had required the Appellant to provide documentation to evidence the source of funds that had been used to pay the Licence application fee.

24. Mr. Tebbs has today brought with him the first page of a bank statement dated October to November 2018 which shows a Halifax Bank account in joint names with his wife and which bears the sort code and account number referred to as being the one from which funds were transferred to defray the cost of the Licence application fee. However, he candidly accepted in cross examination that that was not provided at the time of the application inspection nor before the Decision was reached and that, even today, the first page of that bank statement does not show the transaction into the Barclays account and, crucially, does not show the source of funds into the Halifax account so that the Respondent is still unable to ascertain properly where the funds to pay the Licence application fee had originated from.

25. The Respondent set out the following by way of conclusion in respect of Licensing Standard 1.1:

“In conclusion, the GLAA considers that you have not been candid and truthful in all of your dealings with the GLAA, nor have you shown the required readiness and willingness to comply with the requirements and standards of the regulatory system and you have not acted in a fit and proper manner.

Therefore, Licensing Standard 1.1 is failed. This is a critical standard with a score of 30 points.”

¹ That being the decision relating to Go Solutions Limited.

Licensing Standard 1.2: Principal Authority Competency Test

26. As set out above, following the representations made by Mr. Tebbs after the interim licensing decision, the Respondent deployed Mr. Lea to undertake an application inspection. That inspection took place on 11th July 2018.
27. Mr. Lea wrote to Mr. Tebbs by email before that inspection. That email was sent on the morning of 2nd July 2018 and as such gave Mr. Tebbs more than sufficient time to prepare. The email made it crystal clear that the inspection was “*intended to test your full understanding of the Licensing Standards*” (see page 309 of the hearing bundle). The same email made reference to the documentation that the Enforcement Officer would expect to be made available and with specific reference to the Licensing Standards that those would need to be compliant with. Mr. Lea invited Mr. Tebbs to contact him ahead of the inspection if any further information was required. Mr. Tebbs therefore had ample opportunity ahead of the application inspection to make any necessary enquiries as to any aspect that he was unsure of in order to assist in his preparation.
28. Mr. Tebbs, contrary to the indication in the Notice of Appeal, did not challenge any of the findings made by Mr. Lea in his inspection report during this hearing. His only challenge to the evidence of Mr. Lea was that he considered the length of time of the inspection, some seven and a half hours, to have been disproportionate and that he had understood that three hours or so would be more usual. I accept the evidence of Mr. Lea, however, that the length of time that an inspection would take could vary between three hours or so to anything up to entering into a second day. That was explained by Mr. Lea as depending on whether the applicant had all of their paperwork in good order and was able to address all of the inspection questions fully and swiftly. Such inspections would invariably take much less time. As I shall come to later, there were clear problems with Mr. Tebbs’ understanding of the Licensing Standards such that I accept that the application inspection for the Appellant would have been rather more time consuming than a very run of the mill inspection.
29. Mr. Lea’s inspection report was subsequently considered by Mr. Ryan Hooper who determined that the Appellant did not meet the requirements of Licensing Standard 1.2. He recorded in the Decision in that regard the following:

“The PA’s understanding of the Licensing Standards is relevant because Rule 2 of the Gangmasters (Licensing Conditions) Rules 2009 states that a PA is “the individual responsible for the day-to-day management of a business”. When assessing compliance with Licensing Standard 1.2 the GLAA considers whether a PA has the required competence and capability to fulfil this responsibility. Further, paragraph 4.6 of the Licensing Standards states that ‘A new business will be expected to show that it has systems in place that demonstrate its ability to comply with the Standards’. You are expected to be sufficiently advanced in your business preparations that you can demonstrate the ability of Grand to be compliant at the date of the inspection and not some later date.

The GLAA has concluded that at the time of the inspection you did not demonstrate the required level of competence and capability.”

30. The basis upon which the Respondent concluded that the Appellant had not met Licensing Standard 1.2 was on the basis of nine separate responses given by Mr. Tebbs at the inspection which had demonstrated a lack of knowledge or understanding about Licensing Standards 1.3; 1.4; 2.2; 2.3; 4.1; 4.2; 5.1; 5.4 and 6.3.

31. In summary, those matters were as follows:

- Licensing Standard 1.3 – Mr. Tebbs did not understand what an Additional Licensing Condition was until it was explained to him by Mr. Lea;
- Licensing Standard 1.4 – Mr. Tebbs was not able to name three out of the six instances when a License holder would need to notify the Respondent of a change in details. He was only able to name one instance correctly;
- Licensing Standard 2.2 – Mr. Tebbs had not been aware of the Agricultural Wages Order (“AWO”). Mr. Tebbs had also incorrectly represented that the costs of fuel associated with transport could be deducted from the wages of a worker without that affecting the level of the Minimum Wage;
- Licensing Standard 2.3 – Mr. Tebbs was not able to correctly state when a worker would be entitled to receive Statutory Sick Pay (“SSP”) without reference to contractual documentation;
- Licensing Standard 4.1 – Mr. Tebbs did not know at the time of the inspection what the term “effectively providing accommodation” meant;
- Licensing Standard 5.1 – Mr. Tebbs had incorrectly set out the legal requirements as to rest breaks and daily rest for workers under the Working Time Regulations 1998;
- Licensing Standard 5.4 – Mr. Tebbs did not understand the requirements around the supply of workers during a strike or other industrial action and stated that he could supply a worker to replace someone taking part in such action which was contrary to the requirements of Licensing Standard 5.4; and
- Licensing Standard 6.3 – the oral responses of Mr. Tebbs did not demonstrate that he was aware of the requirement for the Appellant to provide Personal Protective Equipment (“PPE”) to workers without charge and documentation provided by him to Mr. Lea after the application inspection had taken place provided that workers agreed to pay for PPE given to them. The Respondent was therefore not satisfied that the Appellant would comply with this Licensing Standard at all times.

32. Mr. Tebbs did not dispute in cross examination by Ms. Gilligan that at the time of the application inspection he had not been able to demonstrate understanding in respect of each of the nine separate Licensing Standards above. He contended that he was now aware of those matters but that that was largely only after matters had been explained to him by Mr. Lea during the application inspection. He did, however, make the following points in respect of some of those Standards:

- (a) That with regard to the issue of knowledge of all Licensing Standards, the evidence of Mr. Tebbs was that on a different inspection relating to a previous company that he had worked for when a Standard or part of it was deemed not to be relevant to that business, questioning by the Enforcement Officer had moved on and he had not been asked about it further. Parts of the Licensing

Standards that Mr. Tebbs did not consider would apply to the Appellant had therefore not been looked at in any detail before the application inspection with Mr. Lea as if Mr. Tebbs did not consider them relevant he had not concentrated on those particular sections. However, as Ms. Gilligan points out, the requirement is for applicants to be conversant with **all** of the Licensing Standards and not just certain parts of them and, furthermore, she points to the fact that the application inspection in respect of the earlier company was also refused and so following the model adopted on that occasion may well not have been the most appropriate way forward for a competent Principal Authority to take;

- (b) With regard to the issue of the AWO, the evidence of Mr. Tebbs at the hearing before me was that he did not intend to supply workers outside of Lincolnshire and therefore the AWO issue would not have applied to the Appellant's business operations. However, I accept the representations of the Respondent that if he was unaware of what the AWO said, he could not be sure that the Appellant did not need to comply with it;
- (c) With regard to the issue of accommodation, Mr. Tebbs evidence was that he did not intend to provide accommodation and would only direct workers to an estate agent. However, again I accept that if he was not conversant with the terms of all Licensing Standards as is required, the Appellant ran the risk of being inadvertently in breach;
- (d) That documentation supplied had been provided to Mr. Tebbs by a Chris Moses who frequently dealt with the Respondent and who had told him that the documentation was compliant with what was legally required. However, that overlooks the point that as a proposed Principal Authority it was for Mr. Tebbs to check and ensure that the documentation was in fact compliant. Insofar as PPE at the very least was concerned, it was not; and
- (e) In respect of the issue of entitlement to rest breaks, the evidence of Mr. Tebbs was that although his answers at the application inspection were incorrect they did in fact give a more generous entitlement to his workers. However, he sensibly accepted in cross examination that that was perhaps rather more by luck than judgment and his lack of knowledge of the precise legal requirements meant that he had not known that he might be offering more generous entitlements because he did not know what the law was. That was the point of considerable and understandable concern to the Respondent.

33. The Respondent concluded the following in respect of Licensing Standard 1.2:

“Taking all of the above matters into consideration, the GLAA is not satisfied that you have the level of competence and capability required to ensure that you have an understanding of all the GLAA Licensing Standards.

Therefore, Standard 1.2 is failed. This is a critical Standard with a score of 30 points”.

34. The Respondent therefore, having found breaches of critical Standards 1.1 and 1.2 and the Appellant having accumulated some 60 points, refused the Licence application. The Decision summarised refusal of the licence application as follows:

“Applicants must score less than 30 points to be granted a licence. As Grand has scored 60 points, the application is refused.

The GLAA also considers that the criteria at paragraph 5.8 of the Licensing Standards applies and this is a further reason why your application has been refused.”

Conclusions on the evidence

35. I have considered all witness and documentary evidence and also the helpful representations of Ms. Gilligan on behalf of the Respondent and Mr. Tebbs on behalf of the Appellant before reaching my conclusions.

36. I deal with the issue of each Licensing Standard separately below.

37. I should note here that the only challenge to the evidence of Mr. Hooper as decision maker by Mr. Tebbs in cross examination was with regard to the inclusion in the inspection report of Mr. Lea to his previous employment history. As Mr. Tebbs perhaps not unreasonably points out, the circumstances of the failure of those previous businesses were not of his making nor had he had any control over the same. I am satisfied, however, from both the evidence of Mr. Hooper and from the content of the Decision itself that those were not matters which were taken into account when making the decision to refuse to grant the Appellant a licence. Those matters were solely the breaches of Licensing Standards 1.1 and 1.2.

Licensing Standard 1.1

38. Turning then to the first of those Standards, it is clear from the Licensing Standards that one of the non-exhaustive factors that the Respondent will apply when considering the critical fit and proper test is whether the Principal Authority or any person named or otherwise specified in a licence has:

“Not been candid and truthful in all their dealings with any regulatory body and they have not demonstrated a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards” (see page 10 of the Licensing Standards at page 44 of the hearing bundle).

39. In considering that particular issue I can perhaps do little better here than to remind myself of the conclusions that I reached in the appeal of **Go Solutions Ltd v GLAA 198/E/RV** (see pages 111 to 128 of the hearing bundle). The conclusions reached in the Decision of Mr. Hooper with regard to the involvement of Mr. Tebbs in Go Solutions Ltd were not challenged in cross examination on behalf of Grand Labour Agency Ltd and as such I have no cause or reason to revisit the conclusions that I reached in that earlier appeal. Those conclusions were that the available evidence in that appeal pointed squarely to Mr. Tebbs and his colleague, Mr. Ricky Gutterson, having de facto control over the business of Go Solutions Ltd rather than the then Principal Authority,

Mr. Gavin Overton, and that the reality of the situation was that Messrs. Gutterson and Tebbs were the de facto Principal (see paragraphs 31 to 33 inclusive of the Judgment at pages 119 and 120 of the hearing bundle).

40. Mr. Tebbs was not named as the Principal Authority nor was he authorised to undertake that role at Go Solutions Ltd. Given that I have already found that, along with Mr. Gutterson, Mr. Tebbs nevertheless did undertake that function I am satisfied that it was perfectly reasonable for the Respondent to have concluded that representations made by Mr. Tebbs to the contrary as part of his dealings with Go Solutions Ltd meant that he had not been candid and truthful with the Respondent nor had he shown the required readiness and willingness to comply with the requirements and standards of the regulatory system.
41. Moreover, Mr. Tebbs accepts that even today he has still failed to provide the evidence as to the whereabouts of the funds which paid for the Licensing Application despite it being made clear by Mr. Lea what was required in that regard. That, I am satisfied, is also demonstrative of the Appellant not having shown the required readiness and willingness to comply with the standards of the regulatory system.
42. It follows that for all of those reasons I accept that the Respondent was entitled to conclude following the application inspection a breach of this Standard and to impose a point score of 30.
43. On a breach of this standard alone the Respondent was entitled to refuse the Appellant a licence.
44. However, I have nevertheless gone on to consider the position in respect of Licensing Standard 1.2 in the event that I had reached a contrary conclusion with regard to Standard 1.1.

Licensing Standard 1.2: Principal Authority Competency Test

45. By his own admission, Mr. Tebbs had not been able to demonstrate understanding in respect of each of the nine separate Licensing Standards set out at paragraph 31 above. It is no answer for Mr. Tebbs to say that he now understands what is required in that regard as the requirement is for a Principal Authority or proposed Principal Authority to be compliant with Licensing Standards at all times and at the date of the inspection and not some later point in time (see paragraph 25 of the decision in **Rai N Dhandra Limited v the Ganmasters Licensing Authority** (as it then was) **113/E/RV** at pages 91 and 92 of the hearing bundle).
46. It is equally no argument, for the reasons that I have already set out at paragraph 32 above, for the Appellant to say that Mr. Tebbs' lack of knowledge of some areas of the Licensing Standards would not have had any material effects as either they would not be applicable to the Appellant's business operations or would have resulted, albeit inadvertently, in more generous entitlements to breaks being afforded to workers. As I have outlined above, that was more by luck than judgment and the fact that Mr. Tebbs was not fully conversant with all of the Licensing Standards (and despite him being given prior warning by Mr. Lea on 2nd July 2018 that that was what was expected

of him) had the result that the Appellant could have easily found itself in breach of those critical standards if a Licence had been granted.

47. Moreover, even if I had accepted the arguments advanced by Mr. Tebbs in that regard (and I make it plain that I do not) that provides no answer to his lack of understanding at the point of the inspection – that, not now, being the critical time – of Licensing Standards 1.3; 1.4; 2.2 with regard to minimum wage legislation; 2.3; 5.4 or 6.3. I find it particularly concerning for a prospective Principal Authority not to have a full and accurate understanding of the requirement to provide PPE; of minimum wage legislation and of basic statutory entitlements to things such as SSP and rest breaks.
48. Such a lack of understanding leaves workers open to potential exploitation and a real risk that they would not be receiving the remuneration, benefits and basic levels of health and safety to which they are legitimately entitled and which the Licensing Standards are designed to ensure.
49. The Respondent was therefore perfectly entitled to conclude that the Appellant had breached Licensing Standard 1.2 and to impose a point score of 30.
50. Again, on a breach of this standard alone the Respondent was entitled to refuse the Appellant a licence.

Overall conclusions

51. For all of those reasons, the Respondent was entitled to find the breaches that it did. The Appellant scored well in excess of the 30 points that would justify the refusal of a Licence and it follows that the appeal is dismissed with effect from the date set out below.



Employment Judge Heap
Appointed Person
Midlands (East) Employment Tribunal
5th June 2019