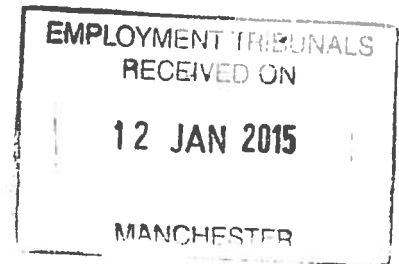


**IN THE MATTER OF AN APPEAL PURSUANT
TO REGULATION 6 OF THE GANGMASTERS
(APPEALS) REGULATIONS 2006**



BETWEEN:

AN RECRUITMENT LIMITED

Appellant

-and-

THE GANGMASTERS LICENSING AUTHORITY

Respondent

HELD AT Birmingham ON 9 January 2015

APPOINTED PERSON: V.C. DEAN

DECISION

The appeal by AN Recruitment Limited pursuant to Regulation 6 of the Gangmasters (Appeals) Regulations 2006 against the decision of the Gangmasters Licensing Authority to revoke the Gangmaster License without immediate effect is dismissed.

The date from which the decision is to take effect is 30 January 2015.

REASONS

1. The appellant's license was revoked (without immediate effect) by notice given on 21 May 2014 to take effect from 20 June 2014. The appellant appeals to the appointed person against the revocation decision of the respondent by way of an appeal dated 17 June 2014. I am the appointed person to consider this appeal pursuant to Regulation 3 of the Gangmaster (Appeals) Regulations 2006 (s/2006 No.662) ("the Gangmaster Appeal Regulations"). This document records the summary reasons pursuant to Regulation 22 of those Regulations.

The Law

2. Section 1 of the Gangmasters (Licensing) Act 2004 ("2004 Act") establishes the Gangmasters Licensing Authority (GLA).

3. Section 4 provides that a person acts as a Gangmaster if he supplies a worker to do work, to which the 2004 Act applies, for another person.

4. Section 3 of the 2004 Act applies to agricultural work, gathering shell fish and processing and packaging any produce derived from agricultural work or shell fish, fish or products derived from shell fish or fish.

5. Section 6 provides:

"A person shall not act as a Gangmaster except under the authority of a license and to act as a Gangmaster without the authority of a license is an offence under Section 12."

6. Section 7 provides:

"The GLA may grant a license if it thinks fit. A license granted to a body corporate authorises activities carried on by the body through such persons representing or acting on behalf of the body as a named or otherwise specified in the license. The License Authority authorises activities by the holder of the license and by persons employed or engaged by the holder of the license from a named or otherwise specified in the license."

7. Section 9 of the Act provides:

"The GLA may revoke any license "where it appears that a condition of the license or any requirement of this Act has not been complied with".

8. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulation 2005 confirms that for the purposes of exercising its functions under the 2004 Act and rules made under Section 8:

"In determining the criteria for assessing the fitness of an applicant for a license must specify the person and the conditions of the license and any modification of these conditions. The authority shall have regard to the principal that a person must comply with the requirements of paragraph (2)".

9. Regulation 12(2) confirms:

"The requirements" referred to in paragraph 12(1) are:-

1. For the avoidance of any exploitation of workers as in respect their recruitment, use or supply; and
2. A compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conduct of a license holder or a specified person or persons who are authorised to undertake certain activities."

10. To determine within this regulatory regime whether a Gangmaster qualifies for the grant or continuous with the license, or whether a license should be issued subject to conditions, refused, modified or revoked the GLA has introduced licensing standards. These standards reflect industry relevant legal requirements to establish compliance conditions to obtain and retain a license. Part 1 of the Licensing Standard (May 2012) gives background and guidance and Part 2 sets out the Licensing Standards in detail. To the extent that the licensing Standards are relevant in this Appeal I have set out the details of the standards in the evidence to which I have been referred.

Evidence

11. In considering the appeal raised by AN Recruitment Ltd, I have considered the documents contained within the documents submitted by the Appellant and the Respondent to the Secretariat. Both parties in this Appeal have invited me to consider the merits of the Appeal on the basis of papers alone and, having regard to the nature of the appeal I consider it appropriate to determine the Appeal on the papers having regard to the submissions made to me by the parties. I have considered the submissions made by both parties and the documentary evidence before me.

12. The basis of the revocation of the appellant's license was the decision taken to revoke the license not with immediate effect communicated to the appellant in a letter dated 21 May 2014 based upon the investigation report compiled by Linda Boyle submitted on 20 October 2013 referring to an inspection date 17 September 2013 and subsequent interviews and investigation. The investigation report was received by the Gangmasters Licensing Authority ("GLA") on 28 April 2014 and a decision to revoke the licence, not with immediate effect, was taken by Ms L Barton on 21 May 2014. As a result of the non-compliance the appellant accrued a score of 122 points.

13. With particular regard to this appeal the details of the standards in respect of which there has been non-compliance, with points accumulated at the tariff of 30 points for critical failures and 8 points for non-critical failures, are set out below:

13.1 Licensing Standard 1.2 Critical: Principal Authority Competency Test

The GLA will consider the Principal Authority's competence and capability to hold a GLA licence in deciding whether the Principal Authority is "fit and proper". In making this decision regard will be given to matters including, but not limited to whether the Principal Authority has an understanding of the GLA licensing standards and / or has sufficient management processes.

13.2 Licensing Standard 2.2 Critical: Paying Wages

- A worker must be paid at least the National Minimum Wage (NMW) or, if applicable, in accordance with appropriate Agricultural Wages Order (AWO).
- Sufficient records must be kept to prove payment of NMW or in accordance with the appropriate AWO.

13.3 Licensing Standard 3.3 Critical: Withholding Wages

A licence holder must not withhold or threaten to withhold the whole or part of any payment due to a worker in respect of any work they have done on any of the following grounds:

- the licence holder has not received payment from the labour user,
- the worker has failed to prove that they have worked during a particular period of time (but this does not prevent the licence holder from satisfying itself by other means that the worker worked for the particular period in question),
- the worker has not worked during any period other than that to which the payment relates, or
- any matter within the control of the licence holder.

13.4 Licensing Standard 6.1 Assigning Responsibility and Assessing Risk

A licence holder must co-operate with the labour user to ensure that:

- responsibility for managing the day to day health and safety of the workers has been agreed and assigned,
- a suitable and sufficient health and safety risk assessment has been completed (and recorded where required) before work commences, and
- any risks identified are properly controlled.

13.5 Licensing Standard 6.2 Instruction and Training

A licence holder must co-operate with the labour user to ensure responsibility for:

- any health and safety training, including induction training, deemed necessary to carry out the work safely has been agreed and assigned,
- making sure that the workers provided have received any necessary health and safety training, including induction training, appropriate to the site(s) at which they are working and the work they have been employed to do, and

- making sure all information and training is comprehensible.
- No charge may be made for providing health and safety training. Any time spent training should be treated as an extension of time at work.

13.6 Licensing Standard 6.3 Safety at Work

A licence holder must co-operate with the labour user to make sure that:

- adequate and appropriate Personal Protective Equipment (PPE) is provided. Employees and workers who would be legally regarded as employees for health and safety purposes must be provided with PPE without charge,
- adequate arrangements have been made to provide welfare facilities (sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and consuming food and drink) where it is reasonably practicable to do so or if it is legally required, and
- adequate arrangements have been made for first aid and the recording and reporting of reportable incidents at work.

Please note

- A licence holder must not ask for payment for PPE from employees and workers who would be legally regarded as employees for health and safety purposes. This includes seeking refundable or non-refundable deposits.
- If a worker fails to return the PPE, as long as the requirement to do so has been made clear in writing, the licence holder may deduct the cost of the replacement from any wages owed.
- Accidents must be properly investigated so that lessons can be learned and changes can be made to ways of working, equipment or supervision if necessary.

13.7 Licensing Standard 7.3 Workers: Contractual Arrangements and Records **Agreeing Terms with Workers**

Before supplying a worker to a labour user, a licence holder must agree the terms which will apply between the licence holder and the worker. The terms must include:

- the type of work the licence holder will find or seek to find for the worker,
- whether the worker is or will be supplied by the licence holder under a contract of service (i.e. a contract of employment) or a contract for services, and in either case, the terms and conditions which will apply,

- an undertaking to pay the worker for any work carried out regardless of whether the licence holder has been paid by the labour user,
- the length of notice the worker is required to give and entitled to receive to terminate any particular assignment,
- the pay rate or the minimum rate to be expected,
- details of the intervals at which remuneration will be paid, and
- details of any entitlement to annual holidays and to payment in respect of such holidays.
- A licence holder must record all the terms, where possible in one document, and give the worker the written terms before the licence holder provides any services to the worker. This does not apply if the worker has been given a written statement of employment particulars in accordance with Part I of the Employment Rights Act 1996.
- Terms may be varied only by written agreement from the worker. A copy of this agreement must be provided to the worker as soon as possible and no later than the end of the fifth working day following the date the variation was agreed.

Notifying Details of Fees and Services

- A worker must be informed in writing of any fees relating to services which they have taken up. This should include:
 - the amount or method of calculation of the fee,
 - the identity of the person to whom the fee is or will be payable,
 - a description of the services or goods to which the fee relates as well as explaining the worker's right to cancel or withdraw from the service and the length or notice period required, and
 - the circumstances, if any, in which refunds or rebates are payable to the worker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect.
- A licence holder may not make the continued provision of any services by them to a worker conditional on the worker agreeing to any variation.

Worker Records

A licence holder must record as soon as reasonably practicable:

- the date terms are agreed between the licence holder and the worker,
- the worker's name, address and, if under 22, date of birth,
- any terms which apply or will apply between the licence holder and the worker, and any document recording any variation,

- any relevant details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any relevant documentary evidence obtained by the licence holder),
- details of any requirements specified by the worker in relation to taking up employment,
- the names of labour users or sub-contractors / other labour providers to whom the worker is supplied,
- details of any resulting engagement and the date from which it takes effect,
- the date any contract was terminated, where applicable, and
- where payments are made by a worker, other than those legally required, there is evidence of the worker's written consent.

Please note

- A licence holder must record all terms in writing, where practicable in one document, and give the worker the written terms before they provide services to the worker.
- Records must be kept for at least one year. Records may be kept either in written or electronic form.
- A licence holder may keep records either at the premises where they trade, or elsewhere, provided they are readily accessible and capable of being delivered to the licence holder's premises in the UK or to the Authority within two working days.

14. Having identified to the appellant the licensing standards in respect of which there had been critical and non-critical failures to comply with the standards, notice of the revocation of licence was sent to the appellant on 21 May 2014. I have considered the Appellant's notice of appeal and the grounds on which the appeal is raised as detailed within it together with the additional submission that was sent on 25 August 2014 and on 6 January 2015. I have considered also the response in resistance to the appeal which was submitted by the GLA on 8 August 2014 together with their reply to the further information provided by the appellants presented to the Gangmasters Appeal Secretariat on 5 September 2014 and on 6 January 2015.

Non-compliance with Licensing Standard 1.2

15. The appellant in the grounds for appeal suggests that the fact that a licence had been granted to the appellant and that the PA was considered to be sufficiently competent and capable at the time of the grant was a matter that gave lie to the suggestion by the inspector that the PA, only some four

months later, had become incompetent and not capable to fulfil the responsibilities of the PA at that time. Objective evidence was presented in the inspection report to identify the reasons why Mrs Razwan, the Principal Authority ("PA") was not considered to be sufficiently responsible.

16. The appellant in the further information provided to support the appeal remains unable to satisfy either the Authority or indeed me on reviewing the case at this Appeal that she was at the time of the inspection and remains fully capable to act as the PA of the appellant business. The appellant refers to a timing error referred to in the revocation suggesting that the inspection had taken place in June 2014 rather than in September 2013. I consider that the error is, in the context of the compliance or lack of it clearly, merely a slip.

17. Although the appellant provides an explanation for the difficulties that Inspector Boyle had contacting the appellant by voicemail on 17 September 2013 because of a problem with network coverage that explanation was not provided to at the relevant time, the time at which I am required to consider the reasonableness of the decision to conclude that appellant and its PA were not compliant with the Licensing Standards.

18. I conclude that in respect of the non-compliance with the Licensing Standard 1.2 the appellant was a non-compliant with a critical standard and the decision of the GLA was a well founded one. The tariff of 30 points remains in place.

Non-compliance with Licensing Standard 2.2

19. The appellants has provided further information in relation to the non-compliance with the licensing standard 2.2. The GLA concede that the assessment with regard to three of the four workers in respect of whom payments were assessed to be below the national wage were as confirmed by the Appellant correctly paid National Minimum Wage. However in respect of one worker the documentation upon which the GLA relied in respect of timesheets the week commencing 20 July 2013 show on their face that one of their worker's wages had not been made up to the national minimum wage and they did not achieve that rate on piece work. The appellant remains in breach of the standard and did not maintain sufficient records to prove payment of a national minimum wage to its workers. The appellant remains non-compliant in respect of a critical licensing standard which attracts an additional 30 tariff points.

Non-compliance Licensing Standard 3.3

20. In respect of non-compliance with licensing standard 3.3 a critical standard in respect of which the PA appellant was allocated 30 points in respect of withholding wages the appellant does not appear to dispute that wages were indeed owed to workers in respect of outstanding holiday pay. The PA for the appellant has suggested that the GLA inspector gave advice

that a letter should be written to her workers to inform them that they were entitled to payment of holiday pay. The appellant would appear to accept that holiday pay had not been paid and suggests that, but for the advice given by the inspector, a different letter would have been written to the workers. The respondent do not accept that that the GLA gave the appellant "advice" and moreover point out that the appellant was under an obligation to make the payment. The PA seems not to fully understand that the failure to pay had already arisen at the date of inspection and that any letters written to workers departed on not sought to rectify a situation that was already in breach of the standard. The appellant in further representations asserts that the workers were invited to come forward with claims for their outstanding holiday pay, not all workers have come forward (their whereabouts seems unknown) and when cheques have since been sent to the workers not all of them have been cashed.

21. I concluded that at the time of inspection the PA had taken no steps to pay the outstanding holiday pay to workers and that is a breach of the licensing standard. The appellants appeal in this respect does not succeed and the 30 tariff points for critical non-compliance in this regard remain.

22. Aside from the appellants failures in respect of three critical licensing standards a further four non-critical standards were found to have been broken and 8 tariff points are attributable to each failure.

Non-compliance Licensing Standard 6.1

23. The Appellant was assessed to be non-compliant with licensing standard 6.1 assigning responsibility and assessing risk. At the inspection the appellants indicated that a risk assessments had not been undertaken in the sprout field in which her the workers were working and that there was no procedure in place for the use and control of knives. The appellant states that the P A had read the WR Haines health and safety manual that was some 500 pages long and that a copy had not been taken. The appellant would seem to assert that it is possible to rely upon their customers health and safety documentation and not to have documentation of their own. The PA was considered by the inspector to have a lack of knowledge of risk assessments having been undertaken. The PA has shown ignorance to the inspector of how to implement health and safety processes and confirmed that she had not undertaken any risk assessments of the field at Owlets Farm.

24. The appellant has not satisfied me in their Grounds of Appeal that the eight point tariff issued in respect of the health and safety failures was inappropriately issued. The appeal does not succeed on this point.

Non-compliance with licensing standard 6.2

25. The appellants PA during the inspection informed the inspector that workers had received health and safety training when they had begun work at

WR Haynes and that training documentation had been provided in English, despite a number of the workers not speaking English, a fact that rendered the training incomprehensible to them. Having conducted interviews with the workers the inspector was satisfied they were given no training other than how to do the job and such training was in any event not understandable by people for whom English was not at their first language. The appellant has suggested that the only workers who did not speak comprehensible English were of a Bengali origin who also understood and speak Urdu, and that was the language of communication by the P A and the supervisor Mr Nasir. In the response to the appeal the GLA have confirmed that regardless of the appellants claim that those workers who did not speak English were Bengali and spoke Urdu it was the experience of Inspector Boyle that he spoke to 3 Hungarian workers supplied by the appellant who did not speak English.

26. In the further response submitted by the appellant to provide further information on the appeal the appellant has suggested that if the workers questioned could not speak English, how could the same workers confirm to the inspector that they had not received their contract of employment. The appellants argument is disingenuous and I accept the account given by the inspector that one of the Hungarian workers was able to speak English and interpreted for other colleagues who could not. In the absence of evidence to dispute the account of the inspector I uphold the decision to issue a finding of non-compliance with licensing standard 6.2 and the tariff eight points remains in place.

Non-compliance with licensing standard 6.3

27. The licensing standard in respect of safety at work is clear. The license holder had identified the need for workers to wear high visibility jackets, and to wear wet weather clothing when the weather required it. The license holder this case suggested to the inspector that high visibility jackets were made available and issued by Mr Khan who kept the jackets in his car as the workers were not trusted to return the jackets if they were issued to them individually.

28. Wet weather gear was not provided to workers despite the fact that they work outside on fields. The license holder had suggested that that gear was not provided by the farmer and it was understood that the workers would turn up with suitable clothing and if they did not they would not be permitted to work. In the appeal the license holder suggested that if required the high visibility jackets would have been provided by an employee of WR Haines, the explanation provided for the lack of access to high visibility jackets on the day of inspection that is provided in the appeal was not provided the time of the inspection. Workers in the fields did not have their high visibility jackets and on the day of inspection the explanation provided in the appeal was not given to the inspector.

29. In the appeal Mrs Rizwan, the PA suggests that it was not necessary to provide winter PPE however it does not address the point that wet weather

clothing was not provided. The appeal does not disclose any evidence to suggest that the findings of the GLA inspection were in error..

30. In addition to protective clothing concern was raised in the inspection that first aid equipment was not provided. The explanation given at the time of inspection was that Mr Haines and also Mr Khan, were first aid trained neither were present at that time in the field and assistance from Owletts Farm that was a considerable distance away.

31. There are no grounds to consider that the issue of eight tariff points in respect of the non-compliance with licensing standard 6.3 was not reasonably issued.

Non-compliance Licensing Standard 7.3

32. At the inspection, workers at Owletts Farm confirmed that they had not received contracts from the license holder and subsequently two further workers confirm that they could not read the contracts they had been given, English not being their first language, they have been told to sign their contracts without its content being explained. In the appeal the license holder has suggested that the two workers spoken to on 24 September had indeed been told an explanation of the contents of contract.

33. In extraordinary terms the license holder suggested that the inspector had informed the workers that;

" if they were to provide evidence against ANRL, they would receive enough money to be able to leave the council house in which they were living and be able to buy five houses of their own."

The allegation is given no foundation and taints and adversely affects the credibility of the license holder in my assessment of the appeal.

34. I conclude that in respect of non-compliance with licensing standard 7.3 hours with all other areas of non-compliance at the assessment of the GLA Inspector was objective and reasonable that and in light of the accumulated tariff points against the license holder, a total sum of 122 points the decision to rescind the license was a reasonable one.

Conclusions


35. I remind myself however that in considering the decision taken by the GLA, I am to consider whether or not the decision taken by the GLA was a reasonable decision when the revocation decision was taken.

36. Having considered all of the evidence and the submissions made by the parties to me, I do not consider that the appellant's argument has sufficient merit to persuade me that the revocation notice issue by the GLA was incorrect.

37. From the evidence before me I find that three critical standards have not been complied with and these each attract 30 points each, a total of 90 points. In addition the Appellant has failed to comply with 4 non critical standards each of which attract 8 points amounting to a further 32 points.

38. Whilst the appellant has sought to assert that she has taken steps to rectify those aspects of at least some of the Licensing Standards with which she was not compliant at the time of inspection on 17 September 2013, I do not accept that it is a sustainable argument. A Gangmaster the Principal Authority must remain compliant with the Licensing Standards at all times and is required and should be prepared to face the consequences if she is not compliant on the date of inspection. To allow a failure to comply with a Licensing Standard to be remedied sometime later by an expedient of putting in place remedial action which was not in effect at the time of the compliance inspection makes a mockery of the licensing regime. The appellant's failures particularly in relation to the critical standards are a serious dereliction of duty by the appellant and to allow her simply to rectify those matters would undermine entirely the ethos of the legislation and the Licensing Standards. The decision of the GLA shall stand.

39. The appeal does not succeed.

Signed by  on 19 January 2015.
Appointed Person

Judgment sent to Parties on
19 JANUARY 2015
