

Appeal number: 152/E/RV



THE GANGMASTERS (APPEALS) REGULATIONS 2006

United Recruitment Services Ltd
Appellant

Gangmasters Licensing Authority ("GLA")
Respondent

Representation

For the Appellant:

Mr C Guru, Principal Authority (PA)

For the Respondent:

Ms L Gilligan, Solicitor

Appointed Person:

Employment Judge Britton

Date:

11 & 12 November 2013

DECISION

The appeal is dismissed and the Appellant's licence is revoked with effect from midnight Friday 13 December 2013.

Background

1. The Appellant's Gangmaster's licence was granted by the Gangmasters' Licensing Authority (the GLA) in June 2006. There were then two additional conditions to it known as ALCs. Both then and throughout thereafter, the principal authority ("PA") was a Mr Chander Guru. The license was revoked by the GLA on 11 February 2013.

2. This resulted from a series of inspections which commenced with field inspections on 12 and 20 September 2011. There was then a compliance inspection at the premises of the Appellant, United Recruitment Services Ltd (URSL), in Derby on 31 October. Various documents were taken away following a discussion with Mr Guru. I will come back to that, but suffice it to say that the officers involved took full notes of their involvement.

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3. There was then a resumed compliance visit to URSL on 10 November, at which additional documentation was provided and to which I will refer; and prior thereto (on 8 November) the GLA inspectors had paid a visit to the Appellant's accountant, namely Mr Younus, at his firm, Paragon Accountants, in Derby. I will again be referring to that.

4. Further documentation was provided by URSL circa the 19 February 2012. There were then ongoing investigations. These ultimately resulted in a multi agency involvement on 17 May 2012. First at 6.15 am a 14 seater minibus was stopped between Grantham and Boston on the A52. In the vehicle there were 15 passengers plus the driver. Subsequently there was a field inspection and further conversations held with members of the work force of URSL (and again to which I will briefly refer); finally there was a further visit to the URSL premises in Derby and thus a further interview with Mr Guru.

5. On 11 October 2012, the principal GLA inspector engaged in this operation (which had the name Safe Haven), Mary Gaskin, prepared a very detailed report making out the case for revocation of the licence on the basis of many-fold breaches. Her report was then considered by Mrs Serena Barton (who is an appeals officer in the GLA) who, as a consequence, decided to issue a revocation of the licence: hence her detailed letter to that effect to URSL of 11 February 2013.

6. As a consequence URSL appealed as is its entitlement. I was appointed to hear the appeal and duly made directions. These included for the provision of further and better particulars of the Appeal; the preparation of a Hearing bundle; and finally the exchange of witness statements.

7. As the burden of proof is upon the Respondent to establish on a balance of probabilities that it had good reason to revoke the licence and by reference to breaches of the statutory criteria for holding a licence, I heard prior to the Appellant's case the following witnesses, all of them under oath, for the GLA: first David Stockdale, who took part in some of the inspections and in particular for my purposes those of 12 and 20 September 2011. I then heard from Paul Kenneally who was particularly involved in events on 17 May 2012. Then from Susan White who worked alongside Mary Gaskin and so was involved on 31 October, 8 and 10 November and then on 17 May.

8. All of those witnesses made contemporaneous notes, all of which were in the bundles before me and corroborate inspectors who were not before me such as Mary Gaskin. It has been suggested on occasion by Mr Guru that I should be sceptical of the accuracy of these notes, or indeed of the integrity of the makers. I have had the opportunity to observe all of those witnesses and cross-reference what they had to say against the core bundle and thence the additional ring binders containing copies of the worker files that were taken away during the inspections and which were produced before me by the Respondent. Suffice it to say that I am wholly satisfied that all of them were honest witnesses and of professional integrity.

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The same applies to Charlotte Wilson who gave late evidence in relation to the copy worker files. I had required that these be placed before me in the supplementary bundles in order to deal with Mr Guru's strong suggestion that the contents taken away during the inspections may have been tampered with by the GLA.

9. Finally I heard from Serena Barton, the appeals officer to whom I have already referred.

10. Mr Guru has represented URSL throughout the proceedings before me. He has given sworn evidence. He has also called before me 4 witnesses as follows: Mr Shiv Singh Khera who was an employee of URSL to 31 December 2012; Mr I Younus, the accountant to whom I have already referred; Mr A Singh Sandhu, who was an employee of URSL between 30 March 2012 and 20 November 2012. He gave his evidence under affirmation via an approved court interpreter, Mr Pavitar Singh, as he speaks very little English. Thence I read the statement of Mrs Balbir Kaur who had attended on the first day of the proceedings but who could not give evidence because there was no interpreter available. I was told she speaks no English. She was too unwell to give her evidence on the second day so I have taken into account her written witness statement. I would however note that it is in English and I do not know if she can read the same. I heard at length from Mr Guru, whose witness statement again was before me, and he was cross-examined - as indeed he had cross-examined the GLA witnesses.

11. Mr Guru has also put before me amongst other additional documents signed letters from Anthony Knight of Field Supplies Ltd, and Mrs G Houghton of Houghton Produce Ltd. I have considered them.

The Law

12. The purpose of the Gangmasters Licensing Act 2004 (the Act) and the Regulations thereto is to impose a regulatory regime on gang masters, in other words those in the business of supplying workers in particular for my purposes in agriculture, and thereby lay down requirements including as to conduct.

13. In particular Regulation 12(1) of the Gangmasters Licensing Authority Regulations 2005 (the Regs) so provides. As to the aim it is set out at Regulation 12(2):

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

(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 or persons authorised to undertake certain activities.

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14. The Act established the Gangmaster Licensing Authority. Section 6(i) provides that a person shall not act as a gangmaster except under authority of a licence. Section 7 provides that the Respondent may grant a licence if it thinks fit and subject to such conditions as it thinks fit. Section 8 provides that the Respondent may make such rules as it thinks fit in connection with the licensing of gangmasters.

15. Section 9 of the Act provides that the Respondent may revoke any licence. Regulation 12 of the Gangmasters Licensing Authority Regulations 2005 provides that for the purpose of the exercise of its functions under Sections 7, 8 and 9 of the Act and making rules under Section 8 in determining i) the criteria for the assessing the fitness of an application for a licence, and ii) the conditions of a licence and any modification of these conditions, the Respondent shall have regard to a) the avoidance of any exploitation of workers as respects their recruitment and b) compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conditions of the licence holder

16. The Respondent has published licensing standards. Before me in the bundle are first the licensing standards published October 2006 (tab 1). Those of course would have been the standards in play when URSL was granted its licence in June 2006. Replacement standards were issued in May 2012 and are at tab2. They apply because they were in force when the decision was taken to revoke the licence. The key criteria are in effect the same.

17. That brings me back to the notice of the licence revocation dated 11 February 2013 (tab 8). This was due to non-compliance with a number of licensing standards. I will focus mainly on the **Critical** standards failed. Under the regime, each such failure attracts 30 points. This is the threshold for revoking a licence.

18. First failed was **Licensing Standard 1.1 - Critical: Fit and Proper**. Included in the breaches was using a 14 seater minibus (in fact illegally carrying 15 passengers) without the required PSV licensing and appropriate insurance on 17 May 2012. I regard this as a key issue given the safety and insurance lack of protection implications.

19. Second, **Licensing Standard 1.2 - Critical: Principal Authority Competency Test**. This standard requires that URSL, via the Principal Authority Mr Guru, demonstrate knowledge of the various regulatory or statutory regimes which would affect workers or employees; such as national minimum wage; Working Time Regulations and such as holiday entitlement and rest breaks.

20. Third, **Licensing Standard 2.1 Critical; PAYE, NI and VAT**. Inter alia this requires keeping correct wage records and properly accounting to HMRC. A key issue is why was the Appellant keeping two sets of detailed pay slips for a Mr Khera at least between 17/7/11 and 31/7/11? Each set are full pay slips (see TAB 13). Detailed per week are the carry forward earnings and then details of gross pay and

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PAYE deduction if the threshold has been met. Why have two significantly different sets for the same period? I again see this is a key issue for reasons which I shall come to.

21. Fourth: **Licensing Standard 2.2 critical: Restricting a Worker's Movement, Debt bondage and Retaining ID Documents.** That in many ways dovetails across to some of the other failures, but the key issue under the conditions of the licence is that there were clear breaches of the requirement that any loans made by the gangmaster to workers or employees must be recorded in writing.

22. Fifth: **Licensing Standard 2.2 Critical: Minimum Wage.** The key issue is that workers employed were being paid only for piece work .i.e. £2.50 per box of spring onions picked. It is centred on a piece work record (Tab 15) taken away from the first inspection at the premises of URSL and that at that time Mr Guru admitted that if one of his workers picked only one such box in five hours, then he would be only paid £2.50. Obviously if that were correct, then the worker cannot have been paid at the prevailing hourly rate of the national minimum wage (the NMW).

23. Sixth: **License Standard 3.3 Critical: Withholding Wages.** A key issue is failure to provide workers with their correct entitlement to paid holiday in accordance with the WTR Working Time Regulations 1998 (the WTR).

24. Seventh: **Licensing Standard 6.4 – Critical: Transport.** This is again focussed on the PSV and insurance issues.

25. So seven critical breaches meaning 210 points.

26. Then there were four breaches of standards classed as non critical but each of which attracts 8 points; so a further 32 points. One of these was **Licensing Standard 7.4 - Labour User: Agreements and Records.** The key point is that absent from any of the three agreements with the end user, i.e. Houghton Produce Ltd, was the requirement that there should be inter alia in the agreement or appended thereto, details of any fee structure payable by the end user to the licence holder, "including the amount and method of calculating the fee, the circumstances in which a refund or rebate will be payable to the labour user ... the procedure to be followed if a worker introduced or supplied to the labour user proves unsatisfactory." This is the openness issue: the requirement to so record is so that the modus operandi of the usage of the labour gang can be clearly identified so that inter alia identifiable is whether payment is on a piece work or hourly paid basis.

27. Another breach was of **Licensing Standard 7.2 Right to Work.** Suffice it to say that stemming from the inspections on the 31 October 2011 and the analysis of the worker files in conjunction with the UKBA, of the 78 current workers only 15 were legally entitled to work in the UK without any restrictions. Twenty four of the workers had false passports from such as Belgium. The vast majority of the workers were from the Punjab.

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28. The other breaches included of health and safety such as no first aid kit on site when the inspection took place in the fields of Houghton Produce at Pinchbeck near Spalding on the on the 20 September 2011.

29. So the total tally for the unfortunate Appellant was 242 points. Therefore what is said by the GLA is that this demonstrates a wholesale disregard for the licence: hence why the decision to revoke the licence should be uphold by me.

Mitigation

30. Mr Guru has in many ways in his appeal submissions and before me sought to say that subsequent to the revocation he has taken steps to regularise the position. So he has now got a PSV licence and insurance which does cover fully the transport element of his operation. He has ensured that more staff have had first aid training. He says that he has tightened up in terms of any breach of the immigration regime. To that end he has produced before me a document in relation to a recent adjudication by UKBA in February 2013. However, I have to determine whether or not the Appellant was in breach when the GLA revoked the licence. If it was, then mitigation is irrelevant.

Findings of Fact - Key Failures

31. URSL is on the face of it a substantial labour supply organisation. As at 31 October 2011 it had on its books some 78 workers (tab 35). It had held its GLA licence since June 2006. I note that not only does the GLA set out in detail its requirements in the guidance booklets to which I have already referred, but it also publishes for particularly its licence holders a newsletter which inter alia updates or reminds them of the licence requirements; and so there is the spring 2008 edition before me at tab 32.

32. So, and doubtless because many gangmasters may not be necessarily otherwise be well versed legally in matters to do with the employment of gang workers, it is set out very clearly in these guidelines (and indeed in this update of information newsletter) the do's and don'ts of being a gangmaster. It is not written in obscure fashion; precisely the opposite: and where something is required to be done which is mandatory, I note (and this relates in particular to the PSV issue to which I am going to come) that that which must be done is put in bold as are the words "**immediate effect**".

33. So it follows that I am wholly unpersuaded by the submissions of Mr Guru that the Appellant was reasonably and justifiably ignorant of the key requirements that it needed to fulfil. This of course goes to credibility

34. And as to credibility, what particularly to me shines forth is transportation. When first interviewed on 31 October 2011 (Tab 18), and when discussing working

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hours, he told the GLA inspectors that his workers never leave Derby before 7am. He maintained this stance when quizzed as the implausibility of that answer when it was pointed out that his workers were observed at work in the fields (of Houghton Produce) near Pinchbeck Spalding back on the 12 September. Then on 17 May 2012 when the van was stopped overloaded with workers midway Grantham to Boston on the A52 at 6.15am, it had come from Derby. That is not a surprise as the Appellant is based and operates from Derby.

35. Also I am well aware of the modus operandi of the agricultural industry in the East. Taking the 17 May, weather permitting the sun is well up by 7 am and vegetable crops in particular need to be picked whilst they are fresh. Therefore it is not surprising that the vehicle would have been stopped at 6.15 am. As a Judge long experienced sitting in the East Midlands but also sitting in such as Boston and thus a user of the A52, I agree with the calculations of the GLA that it is inconceivable that a loaded minibus could get from Derby to Pinchbeck in under an hour to be ready to deposit workers in the fields at say 7 am. I am far more persuaded that it is much more likely that those workers would have been collected circa 5 am.

36. I bear in mind that the entire workforce found in the van (or apparent from the inspection of the worker files post 31 October) was based in the Derby locale and with one or two possible exceptions from the Punjab, and if those before me were anything to go by poorly educated and in the case of two of them unable to speak English without an interpreter: Finally from the very low earnings declared for PAYE purposes by URSL, earning very small wages, even possible only for piece work. So people most unlikely to be able to transport themselves from Derby to the fields of Eastern Lincolnshire to be ready to start working circa 7 am, and thus dependent on transport provided by the Respondent operated in the early hours of the morning to get them from Derby to the fields of East Lincolnshire to be ready to work at first light.

37. This therefore engages one of the core critical reasons for the revocation of the licence. Back when the licence was granted, it is clear from the documentation before me that URSL was operating at least a 9 seater vehicle. The then Licensing Standards (Tab 1) required at 6.11 that : *"There is documentary evidence that vehicles with 9 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"*.

38. Reverting back to the spring 2008 newsletter (tab 32), this was specifically issued to deal with *"Use of vehicles to transport workers"*. In terms of the aforesaid standard 6.11 it said the following:

"GLA licensing standard 6.11 requires "documentary evidence that vehicles with nine or more passengers seats used for hire or reward are registered as

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Public Service Vehicles (PSV) and that the drivers have Passenger Carrying Vehicle (PCV) entitlement." Please note:

- *Where workers are being transported as part of the business of the labour provider or user "hire and reward" does apply. The driver of the vehicle **must** have the current licence.*

...

Licensing standard 6.9 requires "documentary evidence of all vehicles used by the labour provider for transporting workers are appropriately registered with the DVLA or the country of origin, have a valid vehicle licence (tax disc) MOT certificate (if required) and insurance".

*Vehicles classified as "for hire and reward" **must** have valid insurance. We have identified a number of cases where the insurance specifically excludes use for hire and reward. In such cases, workers cannot be transported as there will be no valid insurance cover".*

39. I therefore have no doubt whatsoever that these core PSV insurance requirements would have been very clear indeed to any reputable gangmaster licensee. Even more critical in terms of the credibility of URSL is the following.

40. On 25 June 2007, the GLA made an inspection and was concerned that this critical Standard was not being complied with doubtless because there were vehicles being used with 9 or more passenger seats. So, it added an additional licensing condition (ALC) requiring that a PSV licence should be forthwith obtained.

41. On 17 September (tab 5) (followed up by an email to that effect) Mr Guru stated to the GLA:

"As you know that our licence has been renewal on 20th June 2007. In the licence the standards condition was 6.11.

Further to my conversation with Mr. Malcolm regarding the above licensing standards. So I am confirming that we no longer using the 16 and 17 seated Minibuses and going to buy 9 seated minibuses (8 + Driver). This information Mr Malcolm requested for licence record.

..."

42. As a consequence of that clear statement, the GLA removed this ALC.

43. This brings me to tab 31 and the additional documents supplied in the run up to the Hearing and by Mr Guru at its commencement. ASK57 NNG is a 14 seater. It was seen at the inspection at Houghton Produce's field on 12 September 2011. It

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was the vehicle which was stopped on 17 May 2012 with 15 workers on board plus the driver. There is no doubt from the documentation before me that this vehicle had been used by URSL from latest 22 September 1999 when it was insured and up to and including 17 May 2012. So I have a period of nearly 3 years of usage, in blatant breach of a Critical Condition that the Appellant self evidently knew about at latest on 25 June 2007.

44. As to the 2012 standards (at tab 2) 6.4 is headed "Critical - Transport" and makes again the point clear; a licence holder who operates vehicles with 9 or more passenger seats used for hire or reward must have a public service vehicles operators licence.

45. The argument Mr Guru was seeking to maintain before me was that the activity was not one which constituted hire or reward. I have of course now referred to the GLA newsletter of spring 2008. Suffice it to say that a necessary part of this business would be the ability (for the reasons I have already given) to transport its labour force from Derby to the Fens in particular for the purposes of them being able to undertake their work. If it could not do so, then it was likely be doomed to failure. Therefore it is an intrinsic part of the business to be able to convey the workers.

46. Thus, it must surely follow that it is for the purposes of the business and so insurance is needed to that effect. If Mr Guru really did not think he needed insurance for that reason, then why is it that in the years from 22 September 2009 through until the expiry of the insurance certificate on 21 September 2011 that the insurance coverage was: *"Use for hire and reward purposes in connection with the carriage of passengers and the contract carriage arrangements"*. In other words, business use.

47. It therefore follows that I find proven that the Appellant was in breach of this critical standard 6.4. There has been confusion before me as to the status of the certificate of insurance operating between September 2011 and September 2012; that is to say the operative period. It is in tab 31. Its limitations as to use make clear that cover only extends to social, domestic and pleasure purposes. For the reasons I have therefore now given, it would mean that when the vehicle was being used on 17 May 2012 it was uninsured use. It might be that the Appellant's broker was confused in terms of the proposal as against the insurance issued, but I caused there to be obtained confirmation from the actual insurer (which was AXA formerly known as Norwich Union). As I suspected, it confirmed in the email before me that the vehicle would not have been insured in those circumstances. It is ultimately for the insured person to check that the certificate of insurance they receive is what they wanted and meets their requirements.

48. If that was all I might just have been able to put this oversight down to negligence, but I have it in the context of the PSV requirement deliberate concealment of the vehicle being used without a PSV licence. Therefore I do not conclude that the failure to check the insurance cover was a mere oversight. I

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observe in that context that Mr Guru has put before me no other evidence such as the difference in premium paid or any preceding claims or whether there was a yearly declaration that the vehicle was being used to transport workers for the purposes of the business.

49. It follows that the vehicle being used without a PSV licence and insurance is extremely serious. Had there been an accident then those in that vehicle would have had no recourse in terms of insurance. It follows that even in itself, the breach of this critical condition would have persuaded me that the revocation of the licence should be upheld.

50. **Licensing Standard 1.1 - Critical: Fit and Proper.** The following are the other key findings that I make in this respect. Firstly, coming out of the inspections at the fields there was clear cut evidence that some workers at least were not being paid on the basis of an hourly rate but by way of piece work and at rates well below the national minimum equivalent given the number of hours that they were working. In this respect, Mr Guru when first seen on 31 October admitted to Mrs Gaskin and Mrs White that piece work was indeed how his workers were paid and thus if a worker only filled one box of spring onions at £2.50 per box in the course of say 5 hours work, he would only get £2.50 (TAB 6). Having heard from Ms White and given the other findings that I have so far made, I repeat that I have no reason to doubt the integrity of those contemporaneous notes made by them.

51. At that stage, Mr Guru produced only two documents as to his records for the work done by his workers. The first is at tab15. It is a running tally for each day of the week starting 15 August 2011 of the number of boxes picked by each of the workers named on the left hand side. There is a total tally at the bottom. Otherwise he produced an employer's summary for week 28 ending 16 October 2011 (tab 24). The vast majority of those listed are from the Punjab. What it listed was the total payments made, any tax and national insurance deducted and the net pay made. It did not say how the payment had been calculated. There was no listing of the hours worked during the week by each worker and so that the calculation of the wage paid could be cross referenced to ensure that it was NMW compliant. All of that is course in breach of the GSA Licensing Standards to which I have now referred. Finally 79 workers were listed. The total gross pay was recorded as £7692.01. This is only £99.84 average per worker. The highest paid was only £152 for the week. Total PAYE deductions were only £9.68. The GLA inspectors were suspicious. There was the possibility that either earnings were being understated or there was underpayment of wages in accordance with the NMW.

52. The workers files were accordingly taken away for closer inspection. In the file of Mr Khera, Inspector Gaskill, corroborated by Susan White, found two sets of payslips for the same three week period (tabs 13 and 14). All of them purport to be printout payslips from such as a Sage software system and they state that the method of payment is BACS. But all the workers who were interviewed during the various site inspections said that they were paid by cash. If the first set of three

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payslips at tab 13 were to be correct, then for weeks 15 - 17 of the 2011 tax year, each week Mr Khera only worked 19 hours, was paid the national minimum wage and therefore received £112.67 as no stoppages were made. These BACS payslips have a carry forward each week thus meaning that there must have been preceding payroll entries on the system, otherwise how would there be a carry forward figure for the first payslip of £1,301.65?

53. The set at tab 14 cover the same period, so how is it that these now record that the Claimant worked 44 hours in the first week; 43.5 hours in the second and 44 hours in the third? The earnings are of course much greater: week 1 is £239.96; week 2 £237.70; week 3 £239.96. The carry forward figure is similarly higher starting with £3,370.25 on the first pay slip. Finally PAYE deductions are now totalised for the tax year by the end of the third payslip (week 17) as £298.60 income tax; £239.16 employee NIC and £280.80

54. Then there is a letter that Mr Guru wrote for his employee Mrs Kaur on 18 February 2011 (Tab 10) stating that "*regular working hours are 30 hours per week (plus over time if required) at the rate of £5.93. Her employment is full time.*" But the HMRC confirmed to the GLA (tab 12) that for "*Year 10/11 Pay £2,894.50. No tax or NI deductions. Year 11/12 Pay £5,362.65. No tax or NI deductions.*" Simple arithmetic means that 30 hours per week x £5.93 x 52 weeks (as of course Mrs Kaur would be entitled to paid statutory holiday entitlement) is £9250.80. Also the HMRC recorded (Tab 23) that for the entire workforce, and I bear in mind that as at 31 October 2011 there were 79 on the books, for the tax year 2010/2011 only £368.40 was paid in PAYE and a total of £2215.15 in NIC; and for the following tax year 2011/2012 nothing in tax and £340 for NIC. But of course if the Mrs Kaur letter was correct and also the higher second set of Mr Khera payslips, then these alone would mean that there would have been a payment for tax due to HMRC.

55. The explanation given on 10 November 2011 by Mr Guru and repeated under oath before me by him, his accountant Mr Younus and Mr Khera, is that the higher payslips were given to Mr Khera in order to illustrate to him what he could earn if he did those kind of hours as opposed to the meagre hours that he was being given. A similar reason was given it seems for Mrs Kaur, but she of course eventually did not give evidence before me. I found this combined explanation entirely unconvincing. If what was intended by way of in particular Mr Khera was to give him an illustration, then why publish it through a BACS payroll system and in a scenario where there would have to have been payslips before and after in order to provide the carry forward totals? I put it to Mr Younus why not just write dummy on the top? I found his explanation that this could not be done because of the software completely incredible. I then asked him why he could not simply write it down as an illustration for Mr Khera on a piece of paper. The answer was no answer. Thirdly when I asked him how he was able to calculate this carry forward and indeed actual earnings information, he told me that in fact all the information was supplied to him by Mr Guru. But the latter had informed the GLA inspectors that he was very much dependent on his accountant who kept most of his records for him; hence why the

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GLA inspectors paid a fruitless visit to Mr Younis on 8 November 2011 only to be told that he did not hold the information or that he had no authorisation to divulge it. He then phoned Mr Guru speaking in Punjabi which the inspectors could not understand.

56. When they went back on 10 November, Mr Guru now produced them the timesheets at tab 17. The inspectors were not surprisingly suspicious as Mr Guru had led them to believe that the records were with his accountant and told them previously that he could not see them for a further interview post the 31 October and before the 10 November as we would be away on holiday. Yet he was seen to be working in his office when the inspectors drove by on the evening of the 8th November. Mr Guru has produced before me evidence that he was in Blackpool for a short break during this period and then at a religious event in Glasgow between the 5-7th November inclusive. So I will accept that. But it would of course not have prevented him being back in Derby by the evening of the 8th.

57. More important is that the timesheets which were now produced, and which show hours worked and wages paid, were in a totally different format from that at tab 15: Why only produce this document so prejudicial to himself and his business on the 31 October if he had these compliant timesheets? Surely he would want to clear up any confusion and show that he was complying with the licensing standards at the earliest opportunity? I can therefore understand why the GLA inspectors believed that they were being hoodwinked and that in fact these were false and had been written post their inspection on 31 October 2011, probably on the evening of the 8th November. The inference taken by the inspectors was that he was fabricating these latest documents.

58. I then cross-reference to all the copy files that were taken away. In every one at the front is a spreadsheet clearly intended to record hours worked for each employee per week and the hourly rate. Yet every one is blank.

59. It follows that on the balance of probabilities the GLA satisfies me that there was a wholesale failure to keep the required records; a failure to account to HMRC; and a failure to pay wages due in accordance with the NMW. Therefore the failing by the GLA of URSL under both the fit and proper critical standard and now under Licensing Standard 2, also attracting 30 points, is upheld.

60. **Licensing Standard 3: and 3.2 Critical: Debt Bondage** in particular. The reason why there is a requirement that workers supplied with loans by a licensed gang master have the same documented is because of the overarching concerns behind the Gangmasters Act, namely to prevent exploitation. This rationale is clearly explained in the Licensing Standards. I will accept the evidence I have heard from Mr Guru's worker witnesses that this was not usury and that he charged no interest and that the workers could repay as and when: I have no evidence to the contrary. But it is equally clear that none of these loans were ever reduced into writing. It

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follows that the GLA correctly found there to be a breach of this standard and thus the penalty of a further 30 points.

61. **Licensing Standard 3.3: Critical: Withholding Wages.** This is an important breach. The Working Time Regulations require that not only should workers get currently 28 days leave per annum, but that there should be records kept of when leave is taken and showing a) that the allowance complies with the WTR, and b) that the correct holiday pay has been made and for instance that it is not rolled up in the otherwise weekly wage and which at law is not permissible.. All of this is again made very clear in the GLA Standards. None of the worker files taken away by the GLA had any such record. Furthermore when the inspectors were on site, they got a mixed picture. Some of those they interviewed did not realise that they were entitled to any holiday leave; or had been given paid leave far below the minimum requirement.

62. I appreciate that Mr Guru says that back in 2007 Mr Kenneally assisted him on one of his inspections to try and get his employee contractual paperwork in order, but again there is a mixed bag shown from the worker files. Many of the employment contracts therein are not compliant with current employment law requirements or have contradictory passages within them as to annual leave entitlement. If this was the only breach, I might put it down to incompetence and trying to struggle with the complexities of keeping up to speed with employment law. But, reverting to Standard 3.3 it fits in with the totality of the evidence which I have now sufficiently rehearsed such as to demonstrate a wholesale disregard of the Licensing Standards. So I uphold the decision of the GLA to uphold a further 30 points.

63. There are other breaches demonstrated in the Notice of Licence Revocation of 11 February 2013 report but, apart from 7.2, I see no need to rehearse them given my findings so far and that I have already upheld the imposition of 120 points.

64. **Licensing Standard 7.2 - Right to Work** - is not a critical standard (it carries 8 points) but, in the compass of matters, it shows some extremely serious breaches of the immigration requirements which again are set out clearly in the Licensing Standards and are in any event absolute offences at criminal law.

65. Suffice it to say that tab 35 shows that of the 79 workers who were on the books as at 31 October 2011, only 15 were legally allowed to be working and to turn it around another way a great many of them were illegal immigrants. This cross-references in fact to the worker files taken away. A good example is at tab 19. Mr Sukhwinder Singh has an entry clearance visa to work which only allowed him to do so until 19 May 2010, yet he is listed as working (see tab 15) as at circa 31 October 2011. Cross-reference to tab 35 and there are a large number of entries for workers of URSL (all of them from the Punjab) found by the UKBA to be in the UK on forged passports mainly from Belgium. To plagiarise Oscar Wilde to have one illegal immigrant on the books with a forged passport might be regarded as a misfortune;

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but to have this many looks at best like carelessness. But that is being charitable. On the face of it what it shows to me, and I say no more, is that URSL was in the business of employing wholesale illegal immigrants. That the UKBA, unfortunately not known for its efficiency in these matters and with its well publicised large backlog of cases to deal with, may have taken no action is neither here nor there. Thus I uphold the GLA decision of Mrs Barton to impose a further 8 penalty points for this breach.

Conclusion

66. It follows that I agree with paragraph 91 of the witness statement of Mrs Barton. What this all shows is a wholesale disregard for the GLA licensing standards. It follows that URSL, and indeed Mr Guru, are not fit and proper to hold a GLA licence and therefore that the same was properly revoked.

67. For these reasons the appeal is dismissed. I hereby order that therefore the licence will be revoked from midnight Friday 14 December 2013.

Peter Barton

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Employment Judge appointed to hear GLA appeals

Date: 12/12/13.

JUDGMENT SENT TO THE PARTIES ON

16th December 2013

.....
AND ENTERED IN THE REGISTER

M. P. Pallen

.....
FOR SECRETARY OF THE TRIBUNALS