

The Gangmasters (Appeal) Regulations 2006

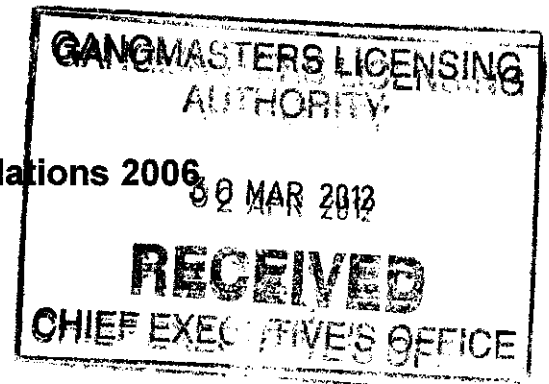
Case no 117/E/RV

**MWB Recruitment Limited
13 Alexander Stephen House
Holmfauld Road
Glasgow
G51 4RY**

Appellant

**The Gangmasters Licensing Authority
PO Box 8538
Nottingham
NG8 9AF**

Respondents



Determination of application for costs.

The application by the appellants for a costs order to be made against the respondents is refused.

Reasons

- 1. In this case an appeal against the revocation of their licence by the respondents was intimated by the appellants and in the course of time a hearing of the appeal was fixed for 5 to 9 December 2011.**
- 2. By intimation of 23 November 2011 the respondents advised that they no longer considered there was a breach of one of the licensing conditions affecting the appellants and were thus withdrawing the revocation of the appellants licence. In those circumstances the appeal hearing was cancelled and a determination dated 9 December 2012 was issued which allowed the appeal.**
- 3. The reason given by the respondents for their consideration that a licensing condition was no longer breached was that they were**

supplied by documents by the appellants on or around 21 November 2011 which persuaded them that the breach should not be pursued.

4. The appellants dispute the circumstances in which the respondents withdrew revocation and maintain that a costs order should be made against the respondents because their behaviour offended the overriding objective that such appeals should be dealt with “justly” and “expeditiously and fairly” – Regulation 2 (2)(c) of the Gangmasters (Appeal) Regulations 2006 (“ the Regulations”). The grounds upon which they make that representation are set out in their letter of 9 December 2011.
5. The respondents in their letter of 23 December 2011 responding to the application for costs dispute the circumstances set out by the appellants and in any event point out that there is no power for an appointed person to make a costs order within the Regulations.
6. The dispute on the factual circumstances surrounding withdrawal of revocation of the licence could not be resolved without a hearing but I consider that the short answer to the application for a costs order is that I have no power to make such an order.
7. The Regulations provide for an appeals procedure against decisions of the respondents as Gangmaster Licensing Authority under the Gangmasters (Licensing) Act 2004. While there are provisions regarding the procedure up to and at an appeal hearing including the withdrawal of appeals within the Regulations there is no specific power given to make any award of costs either for or against either party to an appeal.
8. The appellants, being aware of the lack of specific power, place reliance on the overriding objective and state that if the appeal process has not been “expeditious or fair” on account of the actions of the respondents then the “appointed person has the power to award costs in a manner similar to an Employment Judge pursuant to the Employment Tribunal Rules of Procedure” I do not agree.
9. The Regulations state at regulation 3(1) that appointed persons shall be appointed from the panel of Employment Judges to hear and determine appeals brought under the Regulations but there is

nothing to incorporate into the appeals procedure any of the powers available to an Employment Judge in terms of the Employment Tribunal Rules of Procedure. I consider that the overriding objective relates to the manner in which the appeal process should be conducted but cannot be construed to provide a power to make a costs order in the absence of specific regulation. The entire process is a creature of statute and must be limited and governed by the specific statutory regulation and general powers under an “overriding objective” would not allow an appointed person to borrow powers from a separate jurisdiction.

10. For these reasons the application is refused. I would wish to apologise to the parties for the delay in issuing this determination which has taken longer than it should.

Dated 14 March 2012

J D Young

Appointed Person