

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant
Novair Limited

and

Respondent
Gangmasters Licensing
Authority

DECISION

The appeal of Novair Limited against the refusal of a licence under the Gangmasters (Licensing) Act is dismissed.

REASONS

1. I am the person appointed to deal with the appeal pursuant to Regulation 3 of the Gangmasters (Appeals) Regulations 2006.
2. The appeal was determined without an oral Hearing at the request of both parties.
3. In determining this appeal I had regard to:-
 - (1) The Notice of Appeal dated 22 September 2010
 - (2) The Response to the Appeal dated 19 October 2010
 - (3) The letter from Mr Kevin, Reed, Director of the Appellant dated 27 October 2010
 - (4) The Inspection Reported submitted on 16 August 2010
 - (5) The Statement of Terms and Conditions of Employment given to the Gangmasters Licensing Authority ("GLA") Inspectors on 12 August 2010
 - (6) The letter from the GLA refusing the application for a Licence dated 17 September 2010
 - (7) The amended Statement of Terms and Conditions of Employment which accompanied the Notice of Appeal

Background

4. The Appellant company trades as Nationwide Services and National Recruitment Services. It applied for a licence on 8 June 2010 and designated Sarah Allison as the Principal Authority for this purpose.

5. An application inspection was conducted by Moira Cheyne and Malcolm Lightowler of the GLA on 12 August. Ms Allison was aware of this visit, the date of which had been rescheduled because of her holiday commitments. During this Inspection Ms Allison showed the inspectors the Statement of Terms and Conditions intended to be used for the workers ("the Statement – Version A").
6. Subsequently the GLA noticed that the Statement in Section 11 contravened Licensing Standard 3.2 and wrote to Ms Allison refusing her application for a licence since Standard 3.2 is a Critical Standard and breach of this Standard carries a score of 30 points. A licence can only be granted if an application scores less than 30 points.

Grounds of Appeal

7. With her Notice of Appeal Ms Allison has submitted an amended Statement ("Version B") in which Section 11 has had the non-compliant subsections removed. For this reason she says that the Appellant is now fully compliant.
8. In his letter of 27 October, Mr Reed states that during the inspection on 12 August Ms Allison was nervous and gave the GLA inspectors a Statement intended for the Appellant's business of employing security officers instead of the Statement which had been drawn up by their HR Department for employees "falling under the GLA". He mentions the wording in one of the offending subsections which refers to a "replacement officer".
9. The Response referred to the purpose of an application inspection being to ensure that labour providers are compliant with GLA Licensing Standards before they start to supply workers into regulated sectors. The main goal of the GLA is to ensure that workers are not exploited or made to suffer any detriment. The document submitted by the Appellant clearly demonstrated that the workers would be penalised if they wished to leave the employment of the Appellant. Ms Allison as the Principal Authority should have familiarised herself with the Licensing Standards and been aware that subsections 11(iv) and (v) would not comply with a Critical Standard.
10. The Respondent does not accept that the subsequent amendment of the Statement changes the fact that the Appellant was not compliant at the time of the inspection.

Conclusion

11. The Appellant does not dispute that subsections 11(iv) and (v) contravene Licensing Standard 3.2 which requires that a Licence holder must not...

"subject or threaten to subject a worker to any detriment because the worker has terminated or given notice to terminate any contract between the worker and the licence holder or the worker has taken up or proposes to take up employment elsewhere."

Subsection 11(iv) gave the Employer the right to deduct 48 hours' pay if the employee failed to give the required notice of termination. Subsection 11(v) applied if the employee left within 13 weeks of commencement when the employer would have the right to charge £50.00 "to offset the cost of vetting, induction training and uniform supply".

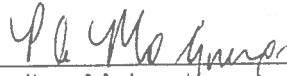
12. The current Licensing Standards (dated April 2009) provide that the GLA was set up to protect workers from abuse in specified sectors. The GLA Licensing Standards set out the conditions to be complied with in order to qualify for licence. Section 4.2 states that compliance with the Standards is assessed through inspections. An application inspection will be conducted for all new applicants. 4.4 provides that the inspection will test the relevant Licensing Standards which will result in an overall score. The fail score for inspection is 30 points. Section 5.2 indicates that during an inspection an applicant may be asked:-

"to provide documentary evidence (such as written terms and conditions with workers) to demonstrate compliance with the Licensing Standards".
13. Therefore, Ms Allison, as the Principal Authority, should have been aware that the Inspectors would ask to check the workers' Statements of Terms and Conditions of Employment; she should have ensured that those she produced were compliant with the Licensing Standards, including Standard 3.2.
14. Ms Allison failed to do this and consequently the Appellant's application received a score of 30 for the breach of the Critical Standard thereby causing the application to be refused.
15. Although the Appellant has subsequently produced Statements that appear to be compliant that does not alter the finding of the GLA that as at the date of the inspection the Appellant was not able to demonstrate compliance with a Critical Standard. Despite the information available about the Standards, the Compliance Inspection and its purpose, Ms Allison failed to ensure that the Statements were in place for workers that were complaint with the GLA Licensing Standards. The operative date has to be the date of the inspection which is conducted to ensure that the applicant can demonstrate compliance.
16. Mr Reed has put forward a different argument. He says that the Appellant was compliant since the Statements (Version B) were in existence and that Ms Allison made a mistake and gave the wrong version to the Inspectors. He argues therefore that the Appellant was compliant.
17. That argument is rejected. If the compliant version was in existence in August 2010 why did Ms Allison not produce it at some earlier stage? Why in her Notice of Appeal did she state:-

"In order to become fully compliant we have amended the contract to fall in line with Section 3.2 of the GLA Standard, which has included the removal of clauses (iv) and (v) of Section 11 of the Statement of Terms and Conditions of Employment"? [my emphasis]

Such wording is not consistent with a compliant Statement being in existence on 12 August 2010 but suggests action having been taken only after the receipt of the GLA's letter of 17 September giving the reasons for the refusal of the licence.

18. Accordingly I am satisfied that there are no grounds for revoking the GLA decision that the Appellant has failed to demonstrate compliance with Critical Standard 3.2 at the date of the inspection on 12 August 2010. The GLA in those circumstances acted correctly in refusing the Appellant a Licence.



Pauline Molyneux

23. 10 2010

(Person appointed by the Secretary of State to determine appeals under the Gangmasters (Appeal) Regulations 2006)

DATED

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