

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant
Newtex Limited

and

Respondent
The Gangmasters
Licensing Authority

DECISION

The appeal by Newtex Limited against the revocation of its licence is dismissed.

REASONS

1. I am the person appointed to deal with this appeal pursuant to regulation 3 of The Gangmasters (Appeals) Regulations 2006.
2. On 23 May 2008 an Order was made that the appeal be determined without an oral hearing.
3. In determining this appeal I had regard to:-
 1. The bundle of documents prepared by the respondent which included the revocation letter of 20 December 2007 and the appellant's appeal letter dated 24 December 2007 and second appeal letter dated 10 January 2008;
 2. The respondent's Response to Appeal;
 3. The witness statements of Ian Wilkinson, Helen Miller and Aileen Leszbowska submitted on behalf of the respondent;
 4. The letter from the appellant's solicitors dated 10 June 2008 and attached submissions; and
 4. The Gangmasters (Licensing) Act 2004 ("the Act"), The Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations") and The Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations").
4. The purpose of the Act is to protect workers in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority and section 6(1) 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 that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its functions under sections 7, 8 and 9 of the Act and making rules made under section 8 in determining:

- (a) the criteria for assessing the fitness of an applicant for a licence; and
- (b) the conditions of a licence and any modifications of those conditions

the respondent shall have regard to:

- (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 insofar as they relate to or affect the conduct of the licence holder.

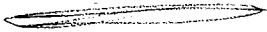
5. The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being those issued in October 2006.
6. The appellant's licence was issued on 23 June 2006 and was conditional on the appellant continuing to comply with the respondent's Licensing Conditions and applicable Licensing Standards and the appellant continuing to be classed as "fit and proper" to hold a licence.
7. The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances.
8. Compliance with the Licensing Standards is assessed through inspections. For the purpose of inspections there are four categories of Licensing Standards, each with an associated score. The categories and associated scores are:
 - Critical(C): most serious category (30 points)
 - Major(M): major non-compliances but less than critical (8 points)
 - Reportable(R): significant non-compliances which may be reported to other government departments or agencies (4 points)
 - Correctable(Co) less severe non-compliances than above (2 points)
9. For a licence holder whose non-compliances are found to be critical, or which in total exceed the permitted score (30 points), the Standards provide that the licence will be revoked immediately or from a given date. The 2006

Regulations provide for the right of appeal against any decision by the respondent to revoke a licence.

10. The appellant was inspected on 12 December 2007, a copy of the inspector's report appearing at page 83 in the bundle. The inspector found a number of areas of non-compliance, namely a failure to account to HMRC for tax and national insurance contributions deducted from workers' pay; failure to pay wages in accordance with the Agricultural Wages Order; failure to pay holiday pay and failure to ensure that workers are legally entitled to work in the UK. As a result the appellant received a fail score of 54.
11. By letter dated 20 December 2007, a copy of which appears at page 85 in the bundle, the respondent gave notice of intention to revoke the appellant's licence with effect from 21 January 2007 (sic). The letter advised the appellant of its right of appeal against that decision.
12. By letters dated 24 December 2007 and 10 January 2008 the appellant appealed against the decision to revoke its licence. The effect of that appeal was to suspend the revocation of the appellant's licence.
13. The question of whether the appellant was compliant with the Licensing Standards has to be determined as at the date of the inspection and not some later date.
14. In relation to the various issues of non-compliances that were noted on the inspection both in the appeal letter and submissions the appellant said as follows:
 - 14.1 some workers were not paid overtime. It is suggested that this was attributable to a systems error which has subsequently been corrected;
 - 14.2 it was admitted that sums deducted in respect of income tax and national insurance contributions had not been paid to HMRC. This was attributed to the appellant being "impecunious". The appellant said that it is now up to date in respect of these payments.
 - 14.3 it was maintained that holiday pay was paid. However, it is noted that the appellant refers to workers having to complete a full year's service, which is not the case, and that the inspector noted that holidays and holiday pay were not in accordance with the Agricultural Workers Order.
 - 14.4 in relation to the use of forged passports the appellant stated that it had never occurred to it to look for forged documents as they "are not experts in that field". It is noted though that the inspector stated that "the passports had clearly been manipulated", for example the same signature on a number of passports, Indian workers presenting Spanish and Italian passports and signatures on the passports not

matching those on the application forms. These discrepancies are readily identifiable from the documents included in the bundle and should have been observed by anybody who was giving these documents more than scant attention.

15. It is noted that as a result of these areas of non-compliance the appellant received a fail score of 54 points, nearly more than double the 30 points required to fail. In total there were significant failings by the appellant, a majority of which have largely been admitted.
16. The Act and the Regulations were introduced in order to prevent the exploitation of workers and to save lives that had been tragically lost on other occasions. A licence can only be issued to and maintained by "a fit and proper person". A high level of compliance is required with which the appellant should have been familiar. The respondent was correct in identifying one critical and three major issues of non-compliance. I conclude that the scoring system set out in the Licensing Standards was properly applied and the respondent acted appropriately in all the circumstances.
17. It follows that in accordance with my findings, the decision by the respondent to revoke the appellant's licence was correct and the appellant's appeal against that decision is therefore dismissed.
18. In accordance with regulation 22(3) of the 2006 Regulations, this decision, and in consequence the revocation of the appellant's licence, will take effect from 31 July 2008.





R F ASHTON
Appointed Person
18 June 2008