Gangmasters Licensing Appeals Secretariat

Decision and Statement of Reasons

given on appeal in accordance with

the Gangmasters (Appeals) Regulations 2006

Staff2Work Limited

Appellant

-v-

Gangmasters Licensing Authority

Respondent

Appeal heard by
J.McMahon – Appointed Person

1. Nature of appeal

Staff2Work Limited ("the Company") made application to the Gangmasters Licensing Authority ("GLA") to operate as a Labour Provider under the provisions of The Gangmasters (Licensing) Act 2004. The application was refused and the Company has appealed against that refusal.

2. Manner of dealing with the Appeal

The Gangmasters (Appeals) Regulations 2006 provide (at Regulation 15) that if both parties to an appeal agree then the appeal shall be dealt with without an oral hearing. In this appeal both parties have agreed that the appeal should be determined without an oral hearing.

3. Summary of Respondent's case

3.1 The GLA has established Licensing Standards that are used to assess the suitability of a potential Labour Provider. There is a scoring system to reflect the

extent to which a potential Labour Provider is perceived to fall short of meeting licensing standards. There are 10 main licensing standards and each of those has secondary standards. Any failure to meet a secondary standard will be classified as either critical or major. A points system is applied. A single critical failure will carry 30 points and any major failure will carry 8 points. Points for individual failures are aggregated. A total point count of 30 or more will lead to refusal of a licence application.

3.2 The GLA assessed Staff2Work as having a total points score of 40 comprised of 5 major failures each carrying 8 points. The major failures were seen to be, in summary, failure to:

(i) ensure that workers were paid in accordance with the Agricultural Minimum Wage
(ii) cooperate with a Labour user to agree and assign responsibility for health and safety of workers
(iii) cooperate with a Labour user to ensure the provision of necessary information and health and safety training to workers
(iv) ensure working conditions complied with health and safety legislation
(v) ensure adequate personal protective equipment and provide adequate washing, rest and other facilities in the workplace.

4. Summary of Appellant's Case

Staff2Work were unaware that their workers were entitled to payment in accordance with the Agricultural Minimum Wage. The Company would provide basic health and safety training but further training would be provided by the operators of individual sites so as to meet the unique needs of those individual sites. Separate written risk assessment documents were held by individual site operators. A defective guard on a potato grader was replaced on the day of the inspection. The Company believed that the standards and facilities provided to its workers were superior to those provided by other agencies.

5. Findings of fact

5.1 On 15th August 2006 the Company made application for a licence. At the time Staff2Work was providing workers for up to 9 sites. On 15th September 2006, Mr Cross, a Compliance Officer with GLA, wrote to the Company to say that he would carry out an inspection on 20th September 2006. I have taken into account the written statement dated 6th December 2006 made by Mr Cross. It would be helpful, for the purposes of referring to particular entries in the statement, if such a statement were to have numbered paragraphs. On the first page of the statement Mr Cross says that when he made the inspection appointment he asked to have an interview with at least 5 Polish workers. He did not in fact make that clear in his letter dated 15th September where he simply said "Please note that I will need to speak with 5 of your employees at your labour user address. I will provide a Polish interpreter".

5.2 Mr Kempster has dealt with the appeal on behalf of the Company. I have taken into account everything that has been said by Mr Kempster in the various documents submitted including his letter dated 12 December 2006. It is clear that Mr Kempster feels aggrieved about some of the actions and statements of Mr Cross. For example that he was not provided with a copy of the licensing standards, that Mr Cross was unable to give a clear assurance as to whether the workers qualified for the Agricultural Minimum Wage and that Mr Cross had failed properly to inspect documentation available at the Company's offices. I have not seen it as necessary for the purposes of this appeal to resolve all of those differences between the parties because they do not seem to me to be of direct relevance to the reasons for refusing the license. However I would say that in Mr Cross' letter dated 15th September 2006 Mr Kempster was told that the licensing standards were available on the GLA web site or on request. There did not seem to be a subsequent written request made by Mr Kempster and I do not find as convincing his account that it was not feasible to access the web site because the Company had only a single telephone line.

5.3 I have considered the specific grounds for refusal as those were set out in a letter dated 18th October 2006 from GLA to Mr Kempster and as those are summarised in paragraph 3.2 above. I have made my findings in that respect on the balance of probabilities.

5.4 Mr Cross conducted his inspection on 20th September 2006. His inspection report was submitted on 18th October 2006. That identified the 5 "major failures" referred to above. On the same day the Company was advised by GLA that it was proposing to refuse the license and it gave the Company 10 working days to correct any factual errors in the inspection process. On 26 October 2006 Mr Kempster made a written response in respect of the failure findings. But he did not provide copies of health and safety protocols or risk assessments operated by either the Company or individual site operators. He seemed to accept that a particular potato grader was without an effective guard on the day of inspection and that no personal protective equipment was provided to workers. He also accepted that hand washing and drinking water facilities were not available on the day of inspection. He said that the hand washing facility problem had been subsequently corrected but gave no date or further detail. On 6th November 2006 the GLA, having considered Mr Kempster's further representations, made the decision to refuse the licence.

5.5 Looking at the specific "major failures" I make the following findings:

(i) The Company's workers were entitled to be paid in accordance with the Agricultural Minimum Wages Order but were not. This seems, in retrospect, to have been accepted by Mr Kempster who says that the Company has since changed its arrangements. Thus there was, at the time of the decision appealed against, failure to ensure that all workers were paid their statutory entitlement. I

recognise that Mr Kempster says that the Company has subsequently changed its practice but he provided no documentary confirmation. I know that within the appeal papers there are wage records relating to workers at A J Kings Farm but there is no clear indication on those records that the Agricultural Minimum Wages Order requirement is met. The GLA decision in this respect was correct.

(ii) There is no adequate evidence to show that the Company cooperated with all of its labour users to agree and assign responsibility for the health and safety of workers. At the time of the inspection the Company was placing workers at 4 sites. In his report Mr Cross has accepted that there was adequate documentary confirmation regarding health and safety arrangements at one of the sites, namely, M/S Kings. But the Company has not provided adequate documentary confirmation covering any arrangements at other sites. In his letter dated 13th November 2006 Mr Kempster says there is clear assignment between the Company and clients as to health and safety arrangements but the document submitted and signed by Mr Earl exactly confirms a failure to show who, explicitly, does what in making arrangements for health and safety. It is all put in general terms. There seems to be no documentation in respect of the site at Westmere House Farm. The GLA decision in this respect was correct.

(iii) The asserted failure to cooperate with a labour user to ensure the provision of necessary information and health and safety training to workers very much mirrors the circumstances above. The Company has not been able to produce reliable documentary evidence to confirm the necessary information and training was given either by the site operator or the Company. The document seemingly signed by Mr Earl does not do that. The GLA decision in this respect was correct.

(iv) It was said by the GLA that the Company failed to ensure working conditions complied with health and safety legislation. On the day of the inspection Mr Cross found there was no adequate guard on a potato grader at the F.Earl & Son site. That has been confirmed by a letter from Mr Gray who is the farm manager on the site. I appreciate that Mr Gray says that the guard was replaced immediately but the fact remains that the guard was defective at the time of inspection. I recognise that Mr Cross also referred to a worker on site sustaining an injury on the day of inspection. But Mr Cross did not assert that the injury was in anyway connected to the lack of an adequate guard on the potato grader. He made that comment in the context of there seeming to be no adequate system of recording workplace accidents. The GLA decision in this respect was correct.

(v) The GLA has maintained that the Company failed to ensure adequate personal protective equipment and provide adequate washing, rest and other facilities in the workplace. In his report Mr Cross refers to the F.Earl & Son site and says that the site had not been risk assessed for personal protective equipment. Further, workers had no drinking water provided at the site and

washing facilities in a portable toilet were not working. In addition, workers had to eat their lunch in the barn in which they were working. The barn had no heating. The opinion of Mr Cross was that the nature of the work required the provision to workers of gloves, dust masks and safety shoes free of charge. He says "They work alongside heavy pallets, forklift trucks, tractors and trailers and have to separate crop residues and rubble from potatoes in the grading machine". In his letter dated 26th October 2006 Mr Kempster accepted the matter of personal protective equipment was not covered by any risk assessments. He continued by saying "If operatives wish to wear gloves, dust masks, steel toe capped boots, overalls that is the operative's choice". I find that the evidence shows the decision of the GLA to be correct in this respect.

6. I am satisfied that the GLA, after issuing its refusal decision, remained open to the prospect of the Company providing adequate documentation to satisfy the concerns. In my view if the Company had submitted adequate documentary confirmation that, for example, the problem with the payment in accordance with the Agricultural Minimum Wages Order had been resolved, that proper arrangements for the assessments and allocation of responsibility in respect of health and safety had been put in place and the individual facilities provided for workers had been improved then the GLA may well have changed its finding in some of the areas of concern so as to reduce the score to an acceptable level of less than 30.

7. Decision

7.1 The decision of the GLA to refuse a licence was made on valid grounds.

7.2 This appeal is dismissed.

7.3 In accordance with Regulation 22(1)(b) 6th November 2006 remains as the effective date of refusal of the licence.

Signed J. McMahon 4th January 2007

J.McMahon
Appointed Person