

THE GANGMASTERS (APPEALS) REGULATIONS 2006

DETERMINATION OF APPLICATION UNDER REGULATION 13 FOR AN EXTENSION OF TIME FOR APPEALING

LICENSEE/APPELLANT: BESTWAY RECRUITMENT, MR MAKWAN NADER

APPOINTED PERSON: Mr D W Skinner

DATE OF DECISION: 3 December 2006

DECISION

The Licensee's application for an extension of time for appealing against additional licence condition "Licensing Standard 6.11" attached to Licence Number BEST0001 issued 22 September 2006 is refused. The appeal is therefore invalid and is dismissed.

REASONS

Introduction

1. The Gangmasters (Licensing) Act 2004 established the Gangmasters Licensing Authority ("GLA") to operate a licensing system for labour providers (gangmasters) in specified areas of work in the United Kingdom. From October 2006 it is an offence to operate as a gangmaster in those areas without a licence or in breach of licence conditions.

2. The GLA has introduced Licensing Standards ("LS") as a measure of compliance for the purpose of determining whether or not a gangmaster qualifies for the grant of a licence and if so whether the licence should be issued subject to particular conditions. LS 6.11 reads:

There is documentary evidence that vehicles with nine 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.

3. The Secretary of State for Environment, Food and Rural Affairs has made regulations under the Act governing the operation of the licensing system, including The Gangmasters (Appeals) Regulations 2006 ("the Regulations") to provide for appeals against the decisions of the GLA. Pursuant to Regulation 3, Employment Tribunal Chairmen are appointed to hear and determine such appeals. Pursuant to Regulation 4, a Secretariat is provided by the Department of State for Environment, Food and Rural Affairs ("Defra") to administer the appeals process.

4. Relevant extracts from the Regulations are:

2(1) The overriding objective of these Regulations is to enable the appointed person to deal with appeals justly.

(2) Dealing with an appeal justly includes, so far as practicable

(a) ensuring that the parties are on an equal footing;

(b) dealing with the appeal in ways which are proportionate to the complexity or importance of the issues; and

(c) ensuring it is dealt with expeditiously and fairly.

(3) The appointed person shall seek to give effect to the overriding objective when he

(a) exercises powers given to him by these Regulations; and

(b) interprets any provision.

(4) The parties shall assist the appointed person to further the overriding objective.

5(1)(b) An appeal may be brought by a person against a decision of the [GLA] as to the conditions to which the grant of the licence is subject.

6(1)(a) In order for an appeal to be valid, a notice of appeal must be received... not later than 20 working days after the date of the decision document.

13(1) An appointed person may... extend the time for doing any act appointed by or under these Regulations where he considers there are reasonable grounds to do so...

Facts

5. I give a summary of relevant facts from the case papers provided to me by the Secretariat with its letter dated 18 November 2006.

6. The date of issue of this Licence Certificate is 22 September 2006. It includes the statement:

The Licence is granted subject to the Additional Licence Conditions specified in the table below being met as indicated. Failure to meet these conditions may result in revocation of the Licence.

The conditions specified in the table referred to include LS 6.11, with a condition deadline of 22 December 2006.

7. By letter dated 22 September 2006, the GLA informed the Licensee of the licence decision. It advised him of the licence conditions by reciting LS 6.11 in these terms:

There is documentary evidence that vehicles with eight (sic) 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.

The letter continues:

Evidence shows that there are vehicles with more than 9 (sic) passenger seats without PSV registration.

The Conditions are to be met by the timescales indicated on the Licence certificate, and evidence of your subsequent compliance will be required by the GLA in order to remove the Conditions from the Licence. Failure to meet any of the attached Conditions may result in the revocation of your Licence...

If you do not agree with any conditions attached to the Licence this decision (sic) you have the right of appeal. You have 20 working days from the date of this letter in which to submit your appeal.

The letter also advises the Licensee how to obtain more information about appeals and where to send an appeal, giving full details of the Appeals Secretariat at Defra.

8. On or around 1 November 2006 the Secretariat received the Licensee's undated Application Notice of Appeal on Annex 2 FORM Gmappeal 1. Paragraph 3 gives the grounds upon which the Appeal is based:

According to VOSA [Vehicle and Operator Services Agency], we're not eligible to PSV on our vehicles since we're not hiring them. We're not charging the people for the use of the vehicles.

9. The Secretariat responded to the Notice of Appeal by a letter to the Licensee dated 1 November 2006 which explained that the appeal was out of time, but provided a form for the Licensee's use if he wished to apply for an extension of time. The Licensee so applied on that form (Annex 3 FORM Gmappeal 2) dated 3 November 2006, confirming the nature of the appeal and application, but giving no explanation of why the appeal was not submitted within the original 20 day time limit, thereby necessitating the application to extend. However, in a letter to the Secretariat of 15 November 2006, the Licensee gave this reason why he needed to extend time:

We need to extend this date in order to appeal against the decision over the standard 6.11. We've been all over to try and get the PCV license on the vehicles and we didn't manage. At the end we found out we don't need one as we [are] not hiring the vehicles. But meantime our time to appeal has run out.

Conclusion

10. I approach this matter firstly on the factual basis, as appears from the evidence available to me, that no later than shortly after 22 September 2006 the Licensee knew (or at least that any reasonably informed licensee in these circumstances should have

known, and there is no evidence that this one did not) the issue in dispute under condition LS 6.11 (notwithstanding the evident but immaterial confusion in GLA's letter of 22 September 2006 as to the applicable number of passenger seats), was informed of the right of appeal, how to appeal and the deadline for appealing, and that it was reasonably practicable (in the sense of feasible) for the Licensee to submit an appeal within 20 working days from 22 September 2006 – that is to say by 20 October 2006.

11. Secondly, I proceed on the basis that, in order to justify an extension of time, the “reasonable grounds” of Regulation 13(1) require more than ignorance or confusion on the part of the appellant, unless (arguably) he can show ignorance or confusion about crucial facts either induced by the GLA or which the appellant could not reasonably be expected to have known or found out. Regulation 6(1)(a) is given no weight if time may be extended because of misunderstanding, delay or oversight by the appellant. In my judgment, some unusual or particular feature is required which permits the conclusion that this Licensee in these circumstances was reasonably prevented for reasons beyond his reasonable control from submitting his appeal no later than 20 October 2006. I am unable to find any evidence in this case which supports such a view and do not consider there are reasonable grounds to extend the time for appealing.

12. In reaching this decision, I interpret the purpose and intent of Regulation 13 in the light of the overriding objective in Regulation 2. I have noted within that broader context that the question which exercises the Licensee in his appeal under Regulation 5 is whether his vehicles and drivers require licensing at all under the substantive law regulating such matters. The new gangmasters licensing regime is intended to complement and re-enforce existing legislation and in this case the GLA imposed condition LS 6.11 on the basis of evidence that there were vehicles and drivers who should be licensed, but in the absence of evidence that they were licensed.

13. The onus must be upon the Licensee to present compelling evidence to upset the GLA's findings when granting the licence. I have not seen any cogent evidence to that effect. Nonetheless, without prejudging the merits of that or any other secondary issue, it seems to me that there may be cause for re-consideration if in fact - whether through a misunderstanding at the time the licence conditions were determined, or a change in circumstances since - the Licensee does not have vehicles with 9 or more passenger seats used for hire or reward, such that, on a correct application of the relevant regulatory provisions, there is no requirement to register vehicles as PSV and/or for drivers to have PCV entitlement. In that event, it might be said that there is no failure to meet condition LS 6.11 by not being able to produce documentary evidence that vehicles with nine 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.

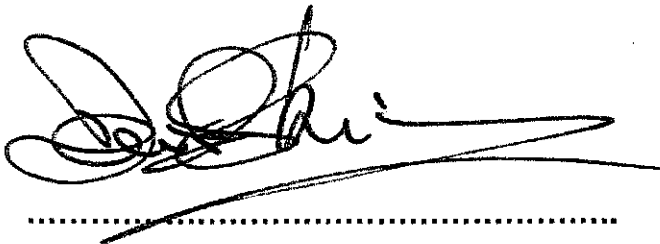
14. Put plainly, it is not clear to me that the Licensee would be in breach of condition LS 6.11 if he fails to produce documentary evidence of vehicle/driver PSV/PCV compliance, *if in fact* the substantive law requires no such thing. He cannot be expected to produce documentary evidence of a state of affairs which cannot exist.

15. In that situation, the Licensee is certainly to be expected to produce credible if not conclusive evidence to displace the factual basis which caused the GLA to impose this condition in the first place. However, observing that Regulation 5(1)(d) provides for appeal against a decision to modify or revoke a licence, it appears that it would be

open to the GLA, if satisfied on further evidence that the facts no longer required LS 6.11 to be a condition of the licence, to modify the licence accordingly. Similarly, the GLA is not compelled to revoke the licence if satisfied that LS 6.11 no longer applies, and the Licensee would have the opportunity to appeal against any decision to modify or revoke. I also understand that it is open to a licensee in changed circumstances to apply for a fresh licence.

16. In short, it appears that more appropriate and proportionate means may be available to resolve the question of whether LS 6.11 continues to be applicable, if the Licensee wishes to pursue that matter on further application, or should the GLA decide to revisit it of its own initiative. I presume nothing as to the merits of that question and it must be emphasised that nothing in this decision affects the terms and status of this licence as it stands, as issued on 22 September 2006. It remains the case that failure to meet any condition may result in the licence being revoked, and operating in breach of licence conditions is prima facie a criminal offence.

17. Finally, these other considerations support but are not determinative of my decision to refuse an extension of time. On the application before me, I find no grounds on which it is reasonable to extend time and for this reason I refuse the application and dismiss the appeal.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end. Below the signature is a dotted line.

**Appointed Person
(Employment Tribunal Chairman)**