

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the Gangmasters Licensing Authority (Ref 1/E/RV)

MRC International Ltd V The Gangmasters Licensing Authority

Appointed Person

Mr John Walker

Representing the Appellant

Mr Rehan Pasha, Solicitor

Representing the Respondent

Mr John Hodgson, Solicitor

Witnesses

Ms Claire Johnson, GLA Compliance Officer

Mr Ian Wilkinson, Head of Licensing, GLA

Mr David Carroll, GLA Compliance Officer

Mr Ian Halliwell, Finance Director, MRC International Ltd

Mr J Harris, Manager, MRC International Ltd

Mr David Ward, Director, MRC International Ltd

Ms Ronnie Michaelson Yeates, Branch Manager, MRC International Ltd

Mr Shaun Nicholson, Accounts Manager, MRC International Ltd

Decision and Summary Statement of Reasons of the Appointed Person, in relation to the above matter:

Decision

Upon consideration of the appeal documents and accompanying papers lodged by the Appellant and the reply to the appeal and accompanying papers lodged in response and upon consideration of the verbal and written evidence of the witnesses called, it is the decision of the Appointed Person that:-

1. The Appeal of MRC International Ltd is **dismissed**.
2. The decision to revoke their licence is effective from **8th June 2007**

Summary Statement of Reasons

1. MRC International Ltd (MRC) is a licensed Gangmaster, part of the business was to employ and supply 22 workers to Fresco Foods. On the afternoon of 20 July 2006 that contract was lost, being obtained by another Gangmaster, 118 Recruitment (118).
2. Thirteen MRC workers continued to work at Fresco Foods and thus became employees of 118, ceasing to be employed by MRC. Eight workers remained as MRC employees and were placed elsewhere.
3. 118 was a rival Gangmaster to MRC. The primary figure in that organisation was Mr Rowe, who previously had connections with MRC, Mr Halliwell and Mr Ward. It was Mr Rowe who provided "intelligence" to the GLA on the 20 and 24 July 2006, suggesting that MRC had not been complying with GLA licensing standards. Civil litigation between MRC, Mr Rowe and 118 is ongoing. I am not concerned with whether Mr Rowe acted in good faith or bad

faith or with the relationship between the parties involved so I make no findings of fact which might bind the Court dealing with that litigation.

4. The core of this case is that the thirteen MRC employees placed at Fresco Foods who transferred to 118 on 20 July 2006, were not paid until October 2006 for their work for MRC for the week ending 20 July 2006 on the instructions of Mr Halliwell.

5. I acknowledge that MRC had been placed in a difficult position. Mr Halliwell wrote to the workers involved on 28 July 2006 to clarify the situation. That letter, issued with the benefit of some legal advice, was not appropriately worded and Mr Halliwell accepted this. At this time, none of the workers had done anything to terminate their contracts with MRC other than transfer allegiance to 118. All had failed to give the required two weeks notice. Theoretically, the appropriate remedy for those breaches of contract would have been to claim for damages in the County Court rather than interrupting the flow of timesheets from Fresco Foods into the MRC office and not paying them. That non-payment amounted to an unauthorised deduction of wages contrary to section 13 of the Employment Rights Act 1996. Those time sheets would have been picked up in the pay run on 25 July which would have resulted in BACS payments being made on 27 July. As a result of the letter, one of the original fourteen workers who transferred to 118 came back to MRC. The other 13 remained with 118.

6. As a result of the intelligence supplied by Mr Rowe, Miss Johnson made an inspection visit to Fresco Foods on 26 July 2006. This resulted in a report to the GLA. Miss Johnson and Mr Carroll were then instructed to carry out a compliance inspection at MRC. This inspection took place on 23 October 2006. In my opinion, there was no sinister reason behind the apparent delay.

7. GLA managers held an internal meeting on 31 October 2006 which led to the revocation of the licence held by MRC. This was done by letter on 2 November 2006. I am only concerned with the reasons for the revocation as set out in that letter and not with any other matters contained in Miss Johnson's report.

8. It is important to remember that although the GLA regime is, like other enforcement agencies, regulatory, it is unlike them primarily pre-emptive, aiming to prevent problems arising between gangmasters and workers. The Gangmasters (Licensing Authority) Regulations 2005 Regulation 12 sets out the requirements of avoiding exploitation of workers and compliance with existing legal obligations where the GLA can act in advance and more quickly than other regulatory bodies using specific enforcement powers after infringements have occurred.

9. Regard also has to be had to The Gangmasters (Licensing Conditions) Rules 2006 from which the licensing conditions, expressed by the GLA as standards, derive. The licensing standards, as published by the GLA are a translation of the legal requirements for practical use.

10. MRC relied on the booklet issued by the GLA in October 2006 entitled "Licensing Standards" which indicates that the GLA adopts a proportionate approach when applying the licensing standards. They argued that the exception reporting system, which focussed only on infringements and did not take an overall view of MRC and weigh in the balance favourable factors, was

contrary to that proportionate approach and unfair to MRC. I reject that argument as that statement of implementation policy was part of the introduction to Licensing Standards and was not part of the Licensing Standards themselves. Serious breaches of the standards cannot in my view be compensated for and disregarded by virtue of other good practice by the gangmaster. Moreover, I regard the GLA system of grading infringements by a points system according to seriousness as constituting a proportionate approach.

Findings in relation to the Licensing Standards held by GLA to be breached

Standard 2.5 – Deductions From Wages

I find that the MRC contract of employment did not authorise the non-payment of wages which occurred in this case. The existing contract is not specific enough and too widely worded. This was a breach of licence condition and had been accepted as such by MRC

Standard 2.7 – Withholding Payments

I find that wages had been withheld within the control of the gangmaster. I consider that the intent of the employer was not a relevant issue nor the civil litigation to which I have referred. MRC accepted that the workers in question did not receive pay due for 3 months and acknowledged that this was an error. A breach of this licence condition occurred.

Standard 2.8 – Payment of National Minimum Wage

A consequence of the non-payment of 13 workers for 3 months was that the national minimum wage was not paid in that period. The actual rate of pay which workers received when they were paid was in accordance with the national minimum wage. I consider that this was a technical breach of this licence condition and a duplication of the breach of condition 2.7. It should not have been included in the compliance overall score or count towards revocation of the licence.

Standard 2.9 – Annual Leave Entitlements

I find that there was no evidence that workers were prevented from taking their annual leave entitlement. It was the compensation payment for outstanding annual leave not taken payable on termination of employment which they did not receive. That was a breach of Regulation 14 of the Working Time Regulations but not of this licence condition which was therefore not breached

Standard 3.6 – Freely Chosen Employment

I find that the 13 workers had been penalised by the non receipt of wages due and not receiving their holiday compensation payments, and that two workers had not received their accommodation deposit refund to which they were entitled as no substantiated reason for withholding them was given. A breach of this licence condition occurred.


Standard 4.2 – Alternative Accommodation

I find that the contracts of employment provided for the summary eviction from accommodation or property provided by MRC. A breach of this licence condition occurred.

Conclusion

I do not seek to apportion the GLA's points to each of these matters. There were a number of breaches of licence conditions of varying degrees of seriousness, some of which had been accepted by MRC and others are subject to remedial action which is on going. Accordingly, in the absence of any power granted to Appointed Persons to allow an Appeal with the imposition of conditions to secure remedial action in appropriate cases e.g. where revocation with immediate effect is not required, the proper course is to dismiss the Appeal and set a date by which the revocation will become effective but giving sufficient time for a new application to be made albeit that fresh application and inspection fees will have to be paid. I am told that MRC will need some 2 weeks to complete the establishment of policies, instructions, contracts and other documentation to prevent such breaches happening again to enable them to apply for a new licence (as was envisaged in the revocation letter of 2 November 2006) and that the GLA will require 30 days to carry out a licence application inspection. Accordingly, I allow a little extra time for slippage and set the revocation date 10 weeks ahead on 8 June 2007 to give time for all that to be done.

Signed:.......... (Person appointed by the Secretary of State to determine appeals under The Gangmasters (Appeals) Regulations 2006.

Dated : 
2007