

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the Gangmasters Licensing Authority (Ref 7/E/C)

Miles Recruitment Ltd
(Appellant)

V

The Gangmasters Licensing Authority
(Respondent)

Appointed Person

MJR Griffiths

Representing the Appellant

Miss A Miles (Principal Authority)

Representing the Respondent

Mr A Russell (solicitor)

Witnesses

Mr M Cowley
Mr P Artwell

Mr I Wilkinson
Mr P Warbrick

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

Decision

That the appeal be allowed and that the condition under Licensing Standard 6.6 to the licence dated 17th October 2006 (MILE0001) be modified.

Summary Statement of Reasons

1. The appellant provides workers in circumstances protected by the Gangmasters (Licensing) Act 2004 ("the Act") and regulations made thereunder.
2. The definition of "worker" in the Act does not differentiate between employee, self employed person or other category of worker.
3. European Directive 89/391/EEC ("the Directive") provides by regulation 4.6 that

Personal protective equipment shall be provided free of charge by the employer.....

However, Member States may provide, in accordance with national practice, that the worker be asked to contribute toward the cost of certain protective equipment in circumstances where use of the equipment is not exclusive to the workplace.

4. The Directive has been reduced into domestic law by the Personal Protective Equipment at Work Regulations 1992 ("the Regulations"). The Regulations provide that

Every employer shall ensure that suitable protective equipment is provided to his employees..... and

Every self employed person shall ensure that he is provided with suitable protective equipment.....

5. It is significant that the Regulations are silent on the issue of who bears the cost of the PPE.
6. The purpose of the Act is to ensure that workers (as defined) are protected in the workplace in the same way as employees and self employed persons.
7. The Directive envisages circumstances in which it would be inappropriate for workers to bear the cost of PPE, namely where there is a national practice and the use of the PPE is not exclusive to the workplace.

FINDINGS IN RELATION TO THE ALLEGED BREACH OF LICENSING STANDARDS

8. Common sense and national practice indicates that a worker will provide PPE the use of which is not exclusive to the workplace.
9. In the interests of justice and fairness, the condition imposed against Licensing Standard 6.6 be accordingly modified.

CONCLUSIONS

That the condition imposed against licensing standard 6.6 be modified as follows, namely:-

"The Labour Provider may seek a contribution from the worker for the cost of PPE the use of which is not exclusive to the workplace, limited to the cost to the Labour Provider of that PPE."

Signed:.....

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

Dated : May 2007