



EMPLOYMENT TRIBUNALS

Appellant: Ms N Vincukova

Respondent: Gangmasters and Labour Abuse Authority

Heard at: Nottingham

On: Friday 11 January 2019

Before: Employment Judge P Britton (sitting alone)

Representatives

Appellant: In Person

Respondent: Ms L Gilligan, Solicitor (Freeths)

JUDGMENT

The appeal against the refusal of the GLAA to grant the Appellant a Gangmasters Licence is dismissed. However I make observations as set out hereinafter.

REASONS

Introduction and principal findings

1. The appeal before me concerns the refusal of the application made by the Appellant for what is in common parlance known as a gang masters licence. The refusal to grant the licence was made by Ryan Hooper who is a licensing officer for the GLAA. He issued his decision to the Appellant by letter dated 15 June 2018 (Bp¹ 1-4). Essentially he decided that she was not fit and proper to hold a licence.

2. At the heart of as to why is that the Appellant was as one of two appellants, the other being her husband who appealed against the revocation of their respective Gangmasters Licences in October 2014. The third appellant was NV Gangwork Ltd of which the Appellant before me was one of the shareholders. Its application for a Gang Masters licence was refused in November 2014. I heard those appeals under lead case number 181/E/RV between 15 and 17 March 2016. I dismissed all the appeals. I published my reasons on 4 April 2016. They were extensive and they run in the bundle before me between Bp130 and 142. I don't intend to rehearse that judgment. Suffice it to

¹ Bp = bundle page in the bundle before me. Mr Hooper gave sworn evidence before me. Evidence in chief was by written statement.

say that I was highly critical of inter alia the Appellant in the case before me today and I made major findings as to her lack of credibility.

3. On 28 March 2018, so within 2 years of my judgment, the Claimant made an application for a licence to the GLAA. She was applying to be the principal authority for a labour supply business she had set up but which was yet to trade, namely NV Professional Staff Services. The application which she wrote herself is at Bp21-23. I cannot but note that a substantial part of what she said was seeking to go back on my Judgment dated 4th April 2016, and in particular the role of Mr Mezals and the provenance of a substantial loan to the Appellant and her husband. This was all the subject of findings of fact by this Judge in the extensive hearing to which I have already referred and which furthermore echoed the findings of a Judge sitting at Southwark Crown Court and to whom I referred and who in fact sentenced Mr Mezals to a sentence of immediate imprisonment.

4. Also in the 28 March 2018 application she made criticisms of her solicitors in respect of the conduct of the appeal Hearing. But I had made findings on that issue in my Judgment and dismissed her accusations for reasons which are plain.

5. I then observe that my judgment was never the subject of any form of appeal albeit the scope is limited; but the Claimant if she was dissatisfied and thought my judgment was in some way or another perverse she could have applied for Judicial Review. She did not.

6. The relevance to the appeal before me today is that when Ryan Hooper considered and refused her application he had to consider it in accordance with the Licencing Standards (Bp 72-104) and the current Licence Decision Policy (Bp 105-110). What concerned him and in terms of consideration of the cardinal first fundamental which is as to whether the appellant was fit and proper to hold a licence, was this lack of ownership in terms of the findings of this Judge. And he was entitled to take account of the previous finding because of inter alia point 5.8 of the Licencing Standards:

"Please be aware that the GLAA will usually automatically refuse applications where it is proportionate to do so in the following circumstances:

- If an applicant, proposed Principal Authority or any person named or specified in the application has been found not to be fit and proper. This applies for at least 2 years from the date of that decision.*

..."

7. Also in particular 5.11:

" The above will apply unless exceptional circumstances can be demonstrated to justify why the application should be considered on its own merit."

8. Obviously the onus is on the Appellant to demonstrate such exceptional circumstances.

9. Mr Hooper concluded that there was nothing that was an exceptional circumstance in this application so as to rebut the "at least" two years rule. In

fact as I have already said the application showed an unwillingness to accept core findings as to wrong doing apropos my April 2016 judgement. Thus he was entitled to conclude the Claimant was not fit and proper and thus reject the licence application. He first made that plain in his provisional decision sent to the Claimant on 10 May 2018 (Bp 14-15).

10. At that stage the Claimant engaged the services of LC Consultancy. It submitted a detailed response with appendices (Bp149-168)² asking that Mr Hooper reconsider his provisional decision and grant the application. The problem is that this lack of ownership and the issue relating to Mr Mezals was still something pleaded at some length by the Claimant, as to which see main paragraph, second hole punch at Bp 149. It is correct that the Claimant otherwise was able to point out various endeavours of hers to the good such as the obtaining of certificates in spoken English and book-keeping for small businesses and that she had joined the Association of Labour Providers in April 2018. But of course this didn't detract from this continued focus on the past case all of which had gone on against her. In other words she needed to move on and in doing so demonstrate she had learnt from what had happened and mended her ways so to speak and could demonstrate a genuine realisation to that effect to the GLAA and thus demonstrate something exceptional to outweigh the presumption against granting the licence.

11. Also not all the cited endeavours had been to the good. She was or had been the proprietor of 2 shops in Boston. In respect of one of them she had fallen foul of Boston Borough Council (BC) over the sale of beer contrary to her liquor licence and several instances of out of date food sales. On the 17 October 2016 (Bp152-5) BC suspended her licence to sell alcohol for 21 days. I will however accept that subsequently over the next 2 years until she shut the shop down, she had no further problems with the BC and was in fact commended for refusing to sell an underage person tobacco. Mr Hooper himself accepts that this episode is not central to the reasons why he refused the licence because of course competency was not actually really an issue before me in the main hearing in terms of the previous appeal, but nevertheless it did demonstrate a somewhat cavalier approach to compliance with licensing standards.

12. But the core issue remains this unwillingness to take ownership viz my 2016 judgement. In itself it of course fatally undermines reliance on exceptional circumstances because inter alia it demonstrates a lack of remorse and redemption.

Conclusion

13. I must determine the issue of the refusal to grant the licence on the basis of what was the position at the time of the refusal not some later date ie now.³ Thus for the reasons I have now given I am quite satisfied that Mr Hooper was correct to refuse the Claimant's application. Accordingly the appeal is dismissed.

Observations

14. However I want to make the following observations. Although the Claimant's English is competent she is more comfortable expressing herself in

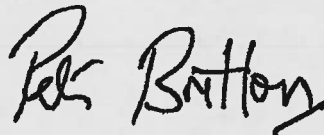
² There is an earlier one dated 18 May 2018 at Bp17-19. They appear to be identical. The version at Bp149 is the one that was date stamped as having been received by the GLAA.

³ For a recitation of the jurisprudence for this proposition see paragraphs 51-55 of my April 2016 judgment at Bp139-140.

Russian and I am very grateful for the efforts of the interpreter today. The more I heard from her via the interpreter the more certain things began to become clear to me. First, she emotionally conveyed to me that she does now accept the 2016 judgement. Second, I was also impressed by her commitment to her family. She brought along with her for instance her twin 19 year old daughters who are both either at or going to be shortly attending universities in London to study law. I was impressed that she has been approved as guardian of a young boy, Daniel, both by the Latvian authorities and British Social Services and whom she cares for in this country. She is clearly devoted to him. Finally, she has a fourth child who is 24 and the Claimant obviously spends a lot of time assisting that daughter who is a young mum. Also, she is remarkably resourceful. She works currently as an office manager for a labour agency in Boston but she multi tasks and does other jobs as well. She tried last year to run a cleaning business but then had to stop because of the competition and the fact that she had injured her leg. So there are these plus signs. On the other hand the Claimant has got to appreciate that she must accept the findings of the Court and therefore accept the judgment that she was found seriously wanting in particular in her dealings with Mezals and thus show convincingly that she has learnt to the good from that experience.

15. So, what it means is I am pointing out that there is a possible light in the tunnel for the Claimant here. Maybe she will therefore submit a further application highlighting all the good things that she has been doing; accepting ownership of the judgments of the Court on the Mezals issue and making plain that she has learnt from these issues and that she will therefore adhere scrupulously to the licensing standards. Now of course if she makes such application and it is refused, then she can appeal in the usual way. It is likely it would be heard before me unless by then I have retired.

16. So I make those observations. They are only obiter and I cannot of course dictate what the GLAA will do.



Employment Judge P Britton

Date: 18 February 2019

JUDGMENT SENT TO THE PARTIES ON

19 February 2019



FOR THE TRIBUNAL OFFICE