

Case Number: 25/E/R

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant

Brody Recruitment Solutions
Limited

and

Respondent

Gangmasters Licensing
Authority

DECISION

The appeal by Brody Recruitment Limited against the refusal of a licence under the Gangmasters (Licensing) Act 2004 is dismissed.

REASONS

1. I am the person appointed to deal with this appeal pursuant to regulation 3 of The Gangmasters (Appeals) Regulations 2006.
2. The appeal was determined without an oral hearing.
3. In determining this appeal I had regard to:-
 1. The Notice of Appeal from the appellant dated 22 April 2009;
 2. The respondent's Response to Appeal dated 22 May 2009 and attachments;
 3. An undated letter from the Principal Authority together with its enclosures; and
 4. The Gangmasters (Licensing) Act 2004 ("the Act"), The Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations") and The Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations").
4. The parties have agreed to this appeal being determined without an oral hearing.
5. The purpose of the Act is to protect workers in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority and section 6(1) provides that a person shall not act as a gangmaster except under authority of a licence. Section 7 provides that the respondent may

grant a licence if it thinks fit and that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its functions under sections 7, 8 and 9 of the Act and making rules made under section 8 in determining:

- (a) the criteria for assessing the fitness of an applicant for a licence;
and
- (b) the conditions of a licence and any modifications of those conditions

the respondent shall have regard to:

- (a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and
- (b) compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conduct of the licence holder.

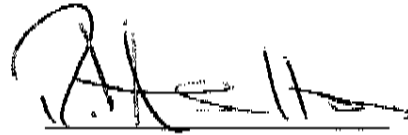
6. The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being those issued in October 2006.
7. By an application dated 27 October 2008 the appellant applied for a licence under the Act to operate as a labour provider. Following an inspection of the appellant's business in accordance with Rule 4(9) of the 2006 Regulations and which was carried out against the GLA Licensing Standards, a decision was taken to refuse the appellant a license, that decision being communicated to the appellant on 8 January 2009.
8. The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances.
9. Compliance with the Licensing Standards is assessed through inspections. For the purpose of inspections there are four categories of Licensing Standards, each with an associated score. The categories and associated scores are:
 - Critical(C): most serious category (30 points)
 - Major(M): major non-compliances but less than critical (8 points)
 - Reportable(R): significant non-compliances which may be reported to other government departments or agencies (4 points)
 - Correctable(Co) less severe non-compliances than above (2 points)
10. For licensing purposes, only Critical and Major non-compliances count towards the score. If a company scores 30 or more, the license is refused or

revoked. The 2006 Regulations provide for the right of appeal against any decision by the respondent to refuse or revoke a licence.

11. The appellant was inspected on 12 March 2009, a copy of the inspector's report being included in the respondent's Response to this Appeal. The inspector found that the appellant had failed to demonstrate an ability to comply with the Licensing Standards or run a labour providing business. In particular paragraph 27 of the Licensing Standards states that "A new business will be expected to show systems in place that demonstrate the ability to conform to each section". The appellant had been unable to satisfy the respondent of its ability to comply with sections 2, 3, 6 and 7 of the Licensing Standards. In addition the Principal Authority, Mr Imran Riaz, had failed to disclose that he had been disqualified from driving. Further details of the appellant's inability to satisfy the respondent of its ability to satisfy those requirements are set out in the respondent's Response to Appeal.
12. While the inspector's report does not give a score, it is apparent from the respondent's Response to Appeal that the score was a minimum of 88. That is a significant failure score and, accordingly, the application was refused. It is against that refusal that the appellant now appeals.
13. The Notice of Appeal does not give any cogent grounds on which the appeal could be upheld. The undated letter from the Principal Authority indicates that some work has been done to ensure compliance but it is far from clear whether the appellant would even now meet the required standards.
14. The question of whether the appellant was compliant with the Licensing Standards has to be determined as at the date of the inspection and not some later date. While it is noted that the Notice of Appeal states that the appellant "will be rectifying the situation" and "will be complying with all which is required of me as and when I am trading, that in itself appears to constitute an admission that as at the date of inspection the appellant was not compliant. It is though at the date of inspection that the applicant must be able to demonstrate compliance with the Licensing Standards. The conclusion may be drawn that the appellant was not sufficiently advanced in its preparations at the time of the inspector's visit. Having regard though to what Mr Riaz has said and the further documents that have been received, it may be that a fresh application made now would have some greater prospects of success.
15. The Act and the Regulations were introduced in order to prevent the exploitation of workers and to save lives that have been tragically lost on other occasions. A licence can only be issued to and maintained by "a fit and proper person". A high level of compliance is required with which the appellant has a duty to be familiar and to be able to show compliance. The respondent's inspector found two Critical and four Major issues of non-compliance. The appellant has accepted that at the time of the inspection there were a number of areas of non-compliance which he has

subsequently sought to rectify. I conclude that the scoring system set out in the Licensing Standards was properly applied and the respondent acted appropriately in rejecting the Licence Application.

16. It follows that, in accordance with my findings, the decision by the respondent to refuse the appellant a licence was correct and the appellant's appeal against that decision is therefore dismissed.



R F ASHTON

Appointed Person

4 August 2009