

THE GANGMASTERS (APPEALS) REGULATIONS 2006

**In the matter of an appeal against a decision made by the
Gangmasters Licensing Authority (Ref 66/E/RV)**

**CARTWRIGHT EMPLOYMENT
(Appellant)**

V

**THE GANGMASTERS LICENSING AUTHORITY
(Respondent)**

APPOINTED PERSON

MISS C GRUNDY

WRITTEN DETERMINATION

DECISION AND STATEMENT OF REASONS OF APPOINTED PERSON IN RELATION TO THE ABOVE MATTER

DECISION

Upon consideration of the appeal documents, it is the decision of the Appointed Person that the Appeal of Cartwright Employment be dismissed.

REASONS

1. This is an appeal against the decision of the Gangmasters' Licensing Authority (GLA) on 2nd December 2008 to revoke the Licence of Cartwright Employment without immediate effect.
2. The parties have agreed that the appeal will be dealt with without an oral hearing pursuant to regulation 15 of the Appeals Regulations. The parties have supplied all documents they wish to rely upon and these have been considered by me in accordance with regulation 15(3) of the Appeals Regulations. The Appellant has provided Copy VAT return quarter ended 31/10/08, blank staff contract with Cartwright Employment added as the only hand written detail, Front sheet of Employer Payslip Booklet for tax year 07/08 and copy driving licence and passport of Andrew Anthony Robinson.

THE LAW

3. The Gangmasters (Licensing) Act 2004 aims to curb exploitation of labour in agriculture and other particular industries. The GLA has established standards to assess compliance. The GLA assesses on inspections to consider compliance/ non-compliance.
4. Regulation 12(1) of the Gangmasters (Licensing Authority) Regulations 2005 states that, "the Authority shall have regard to the principle that a

person should be authorised to act as a gangmaster only if and in so far as his conduct complies with the requirements of paragraph (2), namely, " (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 enactments in so far as they relate to or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities."

5. Persons acting as gangmasters must be a fit person Regulation 12(4).
6. Regulation 5(1) (d) of the Gangmaster (Appeals) Regulations 2006 allows Cartwright Employment to bring an appeal against a decision of the Authority to "revoke his licence ".

BACKGROUND

7. The history is as follows and I so find, Cartwright Employment made a telephone application for a licence on 29th March 2007. On 19th April the formal application process began. On 24th May 2007, a Licence was issued with "new business" status. On 6th February 2008 the "new business" tag was removed as the Labour Provider indicated to the GLA that they were trading. On 30th May 2008 the Licence was renewed.

8. A Compliance inspection took place on 18th November 2008. At the inspection the Inspector found that key documents were not available. A deadline was set for them to be provided. When the deadline expired no documents had been produced. On 25th November 2008, a Compliance Inspection report was submitted, Cartwright Employment did not sufficiently conform to the Licensing Standards in particular Standards 2, 5, 6, 7 and 9.

9. In the circumstances the Licence was revoked, and subsequently Cartwright Employment sought to appeal by notice dated 7th December 2008.

FINDINGS IN RELATION TO BREACHES OF LICENSING STANDARDS

10. STANDARD 2.

PAYMENT OF WAGES, TAX, NATIONAL INSURANCE, VAT, IMPROPER DEDUCTIONS AND ALLIED MATTERS

Proper systems are in place for the collection of tax/ national insurance /VAT.

2.2 Deductions from workers' pay of income tax and national insurance are accurate and appropriate and paid to HMRC

The Labour provider was asked to provide evidence that income tax and National Insurance had been paid to HMRC at the request of the Compliance Inspector. The deadline given was 21st November 2008. The deadline was missed and no documents were provided to the GLA. All that has been provided to date are those set out in paragraph 2 above. Cartwright Employment were in breach of

Standard 2.2 and have not demonstrated full compliance to date. This was a major non-compliance correctly scored as 8.

11. Wage Slips Provided

2.10 There is evidence that workers have been provided with itemised accurate payslips for each pay period showing at least their income tax, national insurance payments and other authorised deductions.

No evidence was provided to show that workers were provided with payslips. Cartwright Employment were in breach of Standard 2.10 and have not demonstrated full compliance to date, despite the deadline given by the Inspector. This was a major non-compliance correctly scored as 8.

12. STANDARD 5

HOURS WORKED, WORKING TIME REGULATIONS ETC

5.3 Accurate records are kept of days and hours worked for all workers

The Labour Provider stated to the Inspector that he had records of the times and days worked but no records were produced at any point. Cartwright Employment were in breach of Standard 5 and have not demonstrated full compliance to date. This was a major non-compliance correctly scored as 8.

13. STANDARD 6

BREACHES IN HEALTH AND SAFETY INCLUDING TRAINING

6.1 The Gangmaster has co-operated with the labour user to ensure that;- responsibility for managing the health and safety of workers has been agreed and assigned and that the health and safety risks to which they may be exposed at work are properly controlled.

The Labour Provider asserts he had a verbal agreement in place with the labour user regarding the health and safety of workers. The Guidance to Standard 6 provides the agreement must be in writing, no written agreement has been produced. Cartwright Employment were in breach of Standard 6.1 and have not demonstrated full compliance to date. This was a major non-compliance correctly scored as 8.

14. STANDARD 7

RECRUITMENT AND CONTRACTUAL ARRANGEMENTS TERMS AND CONDITIONS

7.3 There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences.

The terms that must be agreed include

- Whether the worker is or will be supplied by the licence holder under a contract of employment, or for services, and the terms and conditions that will apply
- An undertaking to pay the worker for any work carried out regardless of whether the gangmaster has been paid by the labour user
- The length of termination the worker is required to give and entitled to receive, if any
- Either the worker's pay rate, or the minimum rate to be expected
- The intervals at which the earnings will be paid; and details of any entitlement to paid holidays, SSP and other benefits

Both the labour provider and the workers state that there were contracts in place but none were able to provide a copy of a contract. The blank copy provided is plainly insufficient to show any of the terms listed above.

The Labour Provider was given time to show compliance but as contracts were not produced at any point. Cartwright Employment were in breach of Standard 7 and have not demonstrated full compliance to date. This was a major non-compliance correctly scored as 8.

15. LICENSING STANDARD 9

IDENTITY ISSUES AND UNDERAGE WORKING

9.1 Records on worker's files include their name, date of birth, address, National Insurance number, and documentation showing their entitlement to work in the UK

The labour provider did not provide any evidence to show that there were worker files in existence. He stated he had never checked the worker's identities.

Workers indicated that they had passports but have never provided copies to the Labour Provider. Despite the deadline being given for receipt of the information it was not received by the GLA.

Cartwright Employment were in breach of Standard 9 and have not demonstrated full compliance to date. This was a major non-compliance correctly scored as 8.

Conclusions

16. Cartwright Employment were at the time of the compliance inspection visit failing to show that they could comply with the Licensing standards identified above.

17. The GLA were correct in identifying that there were numerous concerns relating to the Licence here. Cartwright Employment through the Principal Authority Steven Cartwright, intimate that they have taken steps to comply with the standards in some aspects however they did not give the Appointed person any sufficient documentation to show that this was indeed the case.

18. The GLA Inspector in fact gave a list to Mr Cartwright on 18th November the list was as follows:-

- Copy of record of times of work
- Copy of payslips
- Photocopy of front page of yellow HMRC PAYE booklet
- Copy of written contract with farmer
- Copy of written contract with worker
- Copies of workers passports
- Copy of worker's driving licence
- Copy of last VAT return

19. Although some of this documentation has been made available, no sufficient revised documentation was submitted regarding the appeal to give any reassurance that as a matter of fact any areas of non-compliance had been addressed, save that the driving licence and passport of 1 individual was shown to identify him and the rest of the documentation supplied is far wide of the mark in reaching compliance standards in my view.

20. The extent of the failure to show future compliance is a matter to which I have regard in determining that the revocation was on the evidence available entirely appropriate. I conclude that the GLA acted proportionately in all the circumstances in line with GLA policy, standards and procedure. The appeal against the revocation of the Licence is therefore dismissed.

21. The revocation will take effect on service of this decision on the Appellant.

Signed 

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

Dated...23rd.....February 2009..... 23 2 09