

Appeal number: 87/E/RV



THE GANGMASTERS (APPEALS) REGULATIONS 2006

Powerstaff Recruitment Ltd
("Powerstaff")
Appellant

Gangmasters Licensing Authority
("GLA")
Respondent

Decision

The appeal by Powerstaff Recruitment Ltd against the revocation on 22 December 2009 of their licence number POWE0002 dated 25 January 2009 fails and is dismissed.

SUMMARY REASONS

Introduction

1. On 22 December 2009, the GLA revoked with immediate effect Powerstaff's Gangmasters' Licence dated 25 January 2009 for which Mr David Quinn was by then the Principal Authority, i.e. the "live" gangmaster, because

1.1 he was not a fit and proper person in the sense of competence and capability to hold a licence, and

1.2 he was not acting in a fit and proper manner as he was influenced by a third party who had had a licence revoked.

2. On 5 January 2010, Mr Quinn appealed against that decision with grounds prepared on his behalf by Mr Terrence Godfrey of Boston Commercial Centre Ltd who regularly assists gangmasters with all matters pertaining to the GLA, including appeals, and provides support services and training to gangmasters.

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3. Both parties agreed that the appeal should be dealt with without an oral hearing. The expedited procedure applied and I issued directions on 9 January 2010, which have been complied with.

Evidence Considered

4. I was supplied with two bundles of documents (B1 and B2) to which the tab numbers refer and some later documents. I had general regard to all those documents and in particular to the following:-

22 December 2009	Letter of revocation	B1 tab 2
5/7 January 2010	Appeal	B1 tab 16
16 January 2010	Final statement by Appellant	
21 January 2010	GLA response to appeal	B1
28 January 2010	Additional documents	B2
4 February 2010	Response by GLA to final statement by Appellant	
5 February 2010	Response by the Appellant to that response by GLA	

5. B2 helpfully contained a number of witness statements taken in accordance with the statutory provisions submitted by the GLA:-

15 January 2010	James Walkors (B2 tab 50)
21 January 2010	Katrina Widdows (B2 tab 56)
27 January 2010	James F S Hosking (B2 tab 56)
26 January 2010	Linda Boyle (B2 tab 57)
27 January 2010	Mark Heath (B2 tab 58)
28 January 2010	Ian Wilkinson (B2 tab 59)

6. The evidence in those witness statements formed the basis of the conclusions of the GLA. I accept that evidence. No witness statements were submitted by or on behalf of Powerstaff or Mr Quinn. However, the grounds of appeal and the responses submitted by Mr Godfrey are cogent and I accept what he says as if it were witness-stated evidence.

7. On the basis of all of that material, I find the following facts.

The Facts

8. Mrs Godfrey incorporated Powerstaff in 2006 and submitted an application for a Gangmasters' Licence with an employee, Miss Jurate Riukaite, as the Principal Authority. The licence was issued on 25 January 2007. This was for "a new business licence granted before Powerstaff began to act as a gangmaster and have any workers and so a full test of the licensing standards was not possible. That licence was renewed on 24 January 2008 and 25 January 2009.

9. In the meantime, Mr Quinn wished to move into the gangmaster business and acquired Powerstaff. He was accepted by the GLA as the new Principal Authority and a licence was issued on 25 January 2009. The acceptance of Mr Quinn was perhaps

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rather surprising despite Mr Quinn having some unexpired convictions set out in a letter from the GLA to him dated 25 February 2009 (B2 tab 13). That was described by the GLA in their response to the appeal as a "proportionate view".

10. On 11 September 2009, Mr Quinn, on Powerstaff notepaper, wrote to the GLA saying that he was still "a new business" but "currently actively seeking contracts" and would notify them as soon as he obtained a contract to supply labour and workers.

11. On 29 September 2009, the GLA received a copy of terms and conditions of employment between Powerstaff and Jonathan Beckson which indicated that Mr Beckson was employed as a part-time salesman responsible to Mr Quinn to include telephoning from various lists supplied by Powerstaff to introduce their services and where appropriate, arrange an appointment for a director. If required, he was to seek Powerstaff's pre-printed brochure and price list, but not negotiate on behalf of Powerstaff. Mr Beckson was known to the GLA as he had in the past been a gangmaster who had had his licence revoked.

12. As a result of this information indicating imminent activity by Powerstaff, an unannounced compliance inspection took place by Linda Boyle accompanied by Maureen Heath, the head of operations for her area.

13. She submitted her inspection report on 13 November 2009 B1 tab 14. The contents are confirmed by their witness statements.

14. That led to the revocation of Mr Quinn's licence on 22 December 2009 (B1 tab 2) because he was found to be non-compliant in respect of two licensing standards:

14.1 Licensing Standard 1.2, April 2009 edition, page 17, provides that the GLA will consider the Principal Authority's competence and capability to hold a GLA licence in deciding whether he is "fit and proper". The GLA decided that Mr Quinn was not "fit and proper" to hold a licence for reasons set out in the revocation letter arising from that inspection;

(a) The workers were to be provided by a Christopher Wiley who was described as a recruiter. Mr Quinn could give no details about Mr Wiley who was to be one of his employees.

(b) Mr Quinn had no knowledge of the Agricultural Wages Order.

(c) Mr Quinn could not show the inspectors any paperwork for the business other than bank details and Mr Beckson's personal file. He had no knowledge of what documents Mr Godfrey had prepared.

(d) There were none of the brochures and price lists referred to in Mr Beckson's contract. It is apparent that Mr Beckson was going to "sell" Powerstaff to contacts that he himself had from his days as a gangmaster before his licence had been revoked. The evidence of the non-GLA witnesses is that this was limited to telephone contact, but included attendance at sites with Mr Quinn.

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my judgement that "selling" to his previous business contacts as a gangmaster did amount to influencing the business of Powerstaff.

(e) Mr Quinn admitted he had little knowledge of the business and expected to gain knowledge as the business progressed and that Mr Godfrey did the majority of the work. However, Mr Quinn could not demonstrate any knowledge of the pay system used by Mr Godfrey. Whilst professional help is entirely appropriate, it is necessary for the gangmaster himself to show sufficient knowledge to demonstrate competence and capability.

(f) The failure to comply with Licensing Standard 1.2 carried with it 30 points at the critical level which brings with it revocation of the licence.

14.2 Licensing Standard 1.1 page 15, provides that the Principal Authority must at all times act in a fit and proper manner and not have been influenced by a third party who the GLA considers not fit and proper, in this case Mr Beckson. I have described above what in my judgement was his influence upon Mr Quinn. Mr Beckson had run a business holding a GLA licence called Timberland Homes Ltd. That licence was revoked with immediate effect on 6 May 2006. Mr Quinn described how Mr Beckson arranged for Mr Quinn to attend meetings with labour users and a person called Magda, who was to be one of Mr Beckson's supervisors. However, she too had been deemed to be unfit by the GLA. Accordingly, the GLA considered that Mr Quinn was also in breach of Licensing Standard 1.1, also carrying a critical 30 points and the consequence of revocation of licence.

15. It is fair to say that Mr Godfrey appears to have taken a realistic attitude. It is true that he seeks reversal of the revocation on account of Mr Quinn being a recipient of support services from Boston Commercial Centre Ltd and future training. However, in his grounds of appeal page 4 Mr Godfrey says on behalf of Mr Quinn *"It is correct that Mr Quinn did not have an acceptable knowledge of the GLA standard, but he was no different to most PAs prior to training. The situation is unusual in that the licence of a non-trading company has been transferred and, unlike a conventional licence, there was no prearranged application inspection"*.

16. He says later *"Mr Quinn made two mistakes which do not warrant a revocation of the Company's licence"*. Here he thought the arrangement with Mr Beckson was acceptable to the GLA, although it is clear that it was not, and Mr Quinn had not undertaken a training programme at the time of the visit, although it had clearly been arranged.

17. In support of their response, the GLA quote a decision of another Appointed Person on 20 May 2009 in the case of the Appeal of Solid Gold Services Ltd. I am not bound by any decision of another Appointed Person. However, I do agree entirely with what that he said in that case and quoted by the GLA:-

"The question whether the Appellant was compliant with the licensing standards has to be determined at the date of the inspection and not some

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later date ... A number of steps have since been or will be taken to ensure compliance ... misses the point that it is at the date of inspection that the Appellant must be able to demonstrate compliance with the Licensing Standards. The conclusion may be drawn that the Appellant was not sufficiently advanced in its preparation at the time of the inspector's visit."

That is precisely the position in the case of Powerstaff and Mr Quinn.

Conclusions

18. I have no hesitation in agreeing with the GLA that at the date of the inspection Mr Quinn had failed to comply with Licensing Standards 1.2 and 1.1. Accordingly the decision to revoke his licence was entirely correct. Although it appears that at that point no workers had been actually supplied by Mr Quinn they could imminently be so pursuant to his licence, I concur with the GLA that his licence should be revoked with immediate effect to prevent that happening.

19. Powerstaff's appeal therefore fails and is dismissed.



Appointed Person *

Date: 12 Feb 2010