

The Gangmasters (Appeal) Regulations 2006

**In the matter of an appeal against a decision made by the
Gangmasters Licensing Authority (GLA)**

108/E/RV

Agencja Posrednictwa Pracy Matt-Job ("Matt-Job") (*Appellant*)

v

**The Gangmasters Licensing Authority ("GLA")
(*Respondent*)**

Appointed Person J S Walker

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

Decision

The appeal by the Appellant against the revocation by the GLA on 20 October 2010 of the Appellant's Gangmasters Licence dated 16 April 2009 is dismissed. The revocation of that Licence will take effect on 25 February 2011.

Summary Statement of Reasons

Introduction

1. Matt-Job were first granted a Gangmasters' Licence on 23 April 2007. That was renewed on 17 April 2008 and again on 16 April 2009. The Principal Authority of Matt-Job is Wieslaw Rak (Mr Rak).
2. On 30 March 2010 an inspection was conducted with Mr Rak by GLA Inspector, Linda Boyle.
3. As a result, the GLA decided to revoke Matt-Job's Gangmasters' License by letter dated 22 September 2010 with effect from 20 October 2010.
4. Matt-Job gave Notice of Appeal against that decision on 20 October 2010, to which the GLA responded on 29 November 2010. On 14 December 2010, Matt Job submitted additional explanations.
5. In addition to those documents, I had a bundle of documents to which I have referred.
6. Both parties consented to the Appeal being determined without an oral hearing.

Regulatory Framework and Law

7. The regulatory framework is now well established and I do not propose to rehearse it here. It was set out for example in an earlier appeal without an oral hearing by another Appointed Person on 26 April 2009 – 59/E/RV (PTR Ltd –v- GLA) – and which I happily adopt. No doubt a copy can be obtained if desired from the Secretariat.

8. The burden of proof of each alleged Licensing Standard breach is on the GLA on the balance or probabilities.

9. It should be noted that the Licensing Standards said by the GLA to have been breached by Matt-Job are the 2009 Licensing Standards.

10. My task is to decide whether or not on the balance of probabilities the GLA have proved that Matt-Job were in breach of both or either of the Licensing Standards alleged and, if so, whether or not revocation of their licence was a proportionate and appropriate decision to make. I set out each of the Standards alleged to have been breached, my findings of fact in relation to them and my conclusions.

11. I refer to documents in the bundle by reference to their respective tab numbers.

Licensing Standard 8.1

This reads: *"A licence holder must only use a sub-contractor and/or other labour provider who holds a current GLA Licence.*

12. Employers in the United Kingdom, typically in agriculture, require workers. They are recruited in this case in Poland by an organisation called Bruro Turystyczne "Inter Europe" who are "represented" by Mrs Wanda Maziarz. Matt-Job act as an intermediary between Inter Europe and those employers. The agreement between Matt-Job and Inter Europe is set out in a Civil Law Agreement made on 27 February 2008 (tab 6). In summary, the GLA regard Inter Europe as another labour provider. They did not at the time hold a GLA Licence.

13. Matt-Job however say that Mrs Maziarz was an employee of Matt-Job by virtue of a General Commercial Power of Attorney from Matt-Job to her dated 27 February 2008 (tab 8). However, that document refers to her as being "self employed as Inter Europe".

14. It is not apparent to me what the legal status of Inter Europe is in Poland. It is however clear to me that it is a business recruiting Polish workers for United Kingdom employers through Matt-Job. In English terms, an accurate description of the "Co-ordinator" party to that Civil Law Agreement is "Mrs Wanda Maziarz trading as Inter Europe". She was not an employee of Matt-Job but a legal business in her own right under that description.

15. Accordingly, Matt-Job fail Licensing Standard 8.1 which carries with it a penalty of 30 points as a failure of a critical Standard.

Licensing Standard 7.1

This reads that: "A license holder must not charge a fee to a worker for any work-finding services. A license holder must not make providing work-finding services conditional on the worker using other services or hiring or purchasing goods provided by the license holder or any person connected to them. A worker must be able to cancel or withdraw from any services provided at any time without incurring any detriment or penalty ... "

16. Mr Rak is correct in saying that according to their standard "Referral for Overseas Employment Agreement" (tab 11) the provision of services in relation to transport and document translation by Matt-Job to workers who are recruited are in effect on an "opt in" basis, for example paragraph 5 "The Annexe to this Agreement contains detailed information for people who decide to use any services relating to travel for work" and there is further provision in the Annexe for the costs of transport and translation.

17. Accordingly, in my view, the GLA are wrong to rely upon paragraph 24 of their Response "This agreement does not make clear that the services on offer are optional .. There is no provision of an opt out clause in the agreement".

18. However, what is important is what actually happened whatever the Agreement might say. It is clear from the Inspection Report and interviews with workers and Mr Rak himself that workers paid sums of money to Matt-Job for transport and what they believed was for administration and translation.

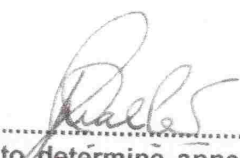
19. Mr Rak explained that in Poland they are not allowed to charge for agency services and therefore the only way to make a profit was to charge for transport and translation costs. He confirmed that a worker would not be offered a position if they did not take up the option of transport. Worker interviews confirmed that they had been charged for transport to the UK. During the inspection, Mr Rak stated that they did charge workers for various services, including transport to the UK, and that the offer of work was conditional on the worker's agreement to use the transport provided and workers confirmed they did not have a choice in whether they used the transport provided or not. In other words, if a worker "opted out" of Matt-Job's services, they did not get the work.

20. In my judgement, that clearly contravenes this Licensing Standard because it does make providing work-finding services conditional on the worker using other services. That breach also attracts a critical penalty of 30 points.

Proportionality

21. Under the Licensing Standards regime, if an Inspection results in 30 points or above, the licence will be evoked. In this case, I find that a score of 60 points was properly attracted by the Inspection, double the Critical "fail" score.

22. I have carefully considered whether or not revocation of Matt-Job's licence is a proportionate response to those breaches bearing in mind the seriousness of doing so and its effect upon their business and workers. I bear in mind that the purpose of the Licensing Standards regime is to prevent the exploitation of workers and improve standards in the industry. Having regard to the nature and seriousness of those breaches and the scores resulting from them, I have come to the conclusion that revocation is a proportionate and appropriate response. Accordingly, I dismiss the Appeal and the Revocation of the licence will stand. It will take effect on 25 February 2011.

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

Dated: 29 January 2011