

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision of the Gangmasters Licensing Authority Ref: 101/E/RV

HANS PERSONNEL LIMITED

Appellant

and

THE GANGMASTERS LICENSING AUTHORITY

Respondent

Appointed Person

Mr H Parker

Decision

The appeal is allowed and the decision of the respondent dated 9 April 2010 is revoked.

Summary statement of reasons

1. The appellant operated under a licence granted by the respondent. That licence was granted on 26 March 2007 and subsequently renewed, most recently on 26 March 2010. The licence was revoked on 9 April 2010, such revocation being suspended pending this appeal.

2. The parties have agreed that this appeal should be dealt with on written submissions.

3. Revocation was made under Licensing Standard 6.4 which is categorised as critical and attracts 30 points. This provides as follows:

“A vehicle used by the licence holder to transport workers must:

- (a) have a valid vehicle licence (tax disc), applicable MOT certificate if required) and insurance;
- (b) be in a roadworthy condition and have no obvious or identifiable defects; and
- (c) carry workers in a safe manner.

A licence holder who operates vehicles with 9 or more passenger seats used for hire and reward must:

- (a) have a Public Service Vehicles (PSV) Operator's licence; and
- (b) have documentary evidence that the vehicles are registered and maintained as PSVs and have a Certificate of Initial Fitness.

A driver used to transport workers must:

- (a) hold a valid driving licence;
- (b) have Passenger Carrying Vehicle (PCV) entitlement and driver Certificate of Professional Competence if driving a vehicle with 9 or more passenger seats used for hire or reward; and
- (c) comply with rules covering drivers' hours and tachographs.

4. The facts as I find them are as follows. This case concerns two minibuses owned by the appellant and used for transporting workers. An initial inspection of the appellant's premises was carried out prior to the original grant of the licence. It is common ground that, on that occasion Ms Angela Holder of the respondent advised the Principal Authority of the appellant (Mr Hans) that he would either need to obtain a PSV licence for the vehicles or reduce the number of seats in them. Mr Hans in his evidence does not challenge the respondent's assertion that, in response to Ms Holden's advice, he said that he would take some of the seats out of the vehicles, presumably to reduce them below the number referred to in the Licensing Condition set out above.

5. Mr Hans says that he then contacted the Vehicle and Operators Services Agency (VOSA) for advice. He says that, on a number of occasions, he was advised by a representative of VOSA, by telephone, that provided that his workers were not charged for being transported, then the vehicles were not being used for hire or reward and that, accordingly, he did not need a PSV licence. Crucially, he did not speak to the respondent about the apparent discrepancy between what he was told by Ms Holden and what he says he was told by VOSA. He neither applied for a PSV licence at that stage nor did he remove seats from the vehicles.

6. A further inspection was carried out on 3 December 2009. On that occasion it was noted that the vehicles did not have PSV licences and that Mr Singh, the only person apart from Mr Hans who was said to drive the vehicles, did not hold PCV entitlement with his driving licence. This was pointed out to Mr Hans who said what VOSA had told him about the need for a PSV licence. He was asked to provide documentary support for this and was unable to do so.

7. At the same inspection it was noted that neither vehicle was insured for PSV use and that one did not appear to be insured for business use. It seems to be accepted that the latter point was due to an error on the part of the appellant's insurers and that business cover was in fact in place. Neither vehicle was insured for use for hire or reward.

8. The appellant applied promptly for a PSV operator's licence which was eventually granted on 15 March 2010 and the respondent was notified of this on 19 March, prior to the decision to revoke the licence.

9. By an e-mail sent on 16 December 2009 to the respondent the VOSA has stated that, in its view, where a labour provider uses a bus to transport workers to a client's place of business, a PSV licence will be required. That accords with the advice provided by the respondent to the appellant at the outset but differs from the advice said by the appellant to have been received by him in the intervening period. However, I have in

evidence a statement from Mr Donegan, a trainee solicitor with the appellant's solicitors' firm, which shows that he spoke to a Mr Hill of VOSA who apparently agreed that he had advised Mr Hans in the terms alleged by him, i.e. that a PSV licence would not be required.

10. I accept the evidence of Mr Hans to the effect that he approached VOSA and was told that he did not need a PSV licence. I accept that he sought and received such advice following the initial inspection in 2007 and again shortly after the inspection in December 2009. There is no evidence to suggest that Mr Hans acted other than in good faith. I also note that the respondent appears to have had no serious concerns about Mr Hans' activities apart from the matter which is before me.

11. I am bound to express the view that Mr Hans was unwise not to speak to the respondent after first receiving the advice from Mr Hill to the effect that he did not need a PSV licence. That advice ran directly contrary to what he had been told by Ms Holden. However, as I have said, I find that he acted in good faith in relying upon the advice received from VOSA which is, on the face of things, a body which must be expected to hold an authoritative view on vehicle licensing requirements. I also take the view that, whilst the respondent is of course entitled to take a view as to what is meant by using a vehicle "for hire or reward", the respondent's view is not necessarily correct nor does the respondent have any power to issue a binding legal interpretation of the phrase. I have not been referred to any authority on the point; it is not necessary, for the purposes of this decision, for me to decide the point and I do not do so.

12. I cannot find other than that, on VOSA's latest view of the need for the appellant to hold a PSV licence, he was in breach of Licensing Condition 6.4 for a considerable period of time. I do not overlook the consequences that that might have had in the event that his insurers had been called upon to indemnify him in the event of an accident to one of his workers.

13. I must nevertheless consider and determine whether the respondent's decision to revoke the appellant's licence was proportionate to the facts as presented. I am entitled to include in those facts the evidence that I have about Mr Hans' conversations with Mr Hill. I take into account the likely effect upon the appellant's business of the revocation of his licence. In the circumstances I take the view that the respondent has just failed to persuade me that this licence should have been revoked.

Signed.....  19.10.10.

Hugh Parker – Appointed Person