

IN THE METTER OF AN APPEAL PURSUANT
TO REGULATION 6 OF THE GANGMASTERS
(APPEALS) REGULATIONS 2006

BETWEEN:

NEW HORIZON PERSONNEL LIMITED

Appellant

and

THE GANGMASTERS LICENSING AUTHORITY

Respondent

Heard at: **Birmingham**

On: **5 November 2008**
13 January 2009
14 January 2009
15 January 2009
22 January 2009
9 February 2009

Appointed person: **John Sherratt**

Representation:

Appellant: **Mr Kevin Leigh – Counsel**
Respondent: **Mr Richard Bradley – Counsel**

RESERVED DECISION

The appeal is dismissed.

This decision will take effect at 17:00 on Tuesday 31 March 2009.

SUMMARY REASONS

Statutory background

1. The Gangmasters Licensing Authority (GLA) was set up to end the exploitation of workers in the agriculture, horticulture, shellfish gathering and associated processing and packaging industries under the Gangmasters (Licensing) Act 2004.

2. Statutory instruments made under the Act include the Gangmasters (Licensing Authority) Regulations 2005, the Gangmasters (Appeals) Regulations 2006 and the Gangmasters (Licensing Conditions) Rules 2006.
3. Under the Act a Gangmaster is a person who supplies workers to do work to which the Act applies to another person. A Gangmaster shall be licensed by the GLA which may grant a licence if it thinks fit. A licence authorises activities by the holder of the licence and by the persons employed or engaged by the holder of the licence who are named in it. Where the licence is held by a limited company then the licence authorises activities carried on by the body through such persons representing or acting on behalf of the body as are named or are otherwise specified in the licence.
4. The Gangmasters (Licensing Conditions) Rules 2006 define the "principal authority" as the person with control of the business and in the case of a limited company this is a director of the company who has control of it (Rule 2). The principal authority (PA) is responsible for completing the information submitted in the application for a licence made on behalf of the business (Rule 3 (2)) and he must be a fit and proper person (Rule 3(3)).
5. When assessing whether a business is fit and proper to hold a gangmaster's licence the GLA shall have regard to these Rules and to the obligations contained in Regulation 12(2) of the Gangmasters (Licensing Authority) Regulations 2005 which states that the conduct of the licence holder and of the specified person (presumably the principal authority) shall avoid any exploitation of workers as respects their recruitment, use or supply and ensure compliance with any obligations imposed by or under any enactment 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.
6. The GLA produces a set of licensing standards and in that guidance: *Persons acting as a Gangmaster must act in a fit and proper manner. The GLA considers a "fit and proper person" to be any individual or organisation operating in the licensable sectors that complies with the licence standards. In addition, individuals or organisations must not have been the subject of relevant convictions for offences connected to the activities covered by the licensing standards, particularly where those offences related to victimisation, harassment and violence towards workers. These offences may be a bar to receiving a licence. The GLA may also consider other information where this is brought to its attention along with any independent investigation by the GLA which identifies activities that result in the individual or organisation being considered unfit to hold a licence.*

Background to this appeal

7. On 6 June 2006 Newtex Limited and New Horizon Personnel Limited (then called Newtex (UK) Limited each applied to the GLA for a licence. Both Licences were grant on 23 June 2006.
8. On 11 May 2007 the licence granted by the GLA to Newtex Limited was revoked without immediate effect for failure to comply with certain licence standards. Newtex Limited appealed against the decision to revoke the licence which resulted in the licence being re-issued with additional conditions.

9. On 20 December 2007 Newtex's Licence was revoked with effect from 21 January 2008. Newtex Limited appealed on 24 December 2007 and this appeal was eventually determined on paper by refusal on 18 June 2008.
10. The GLA wrote to this appellant, New Horizon Personnel Limited, on 3 June 2008 giving notice of an intention to revoke the licence with effect from 30 June 2008 unless an appeal was submitted within the next 20 working days. The letter stated:

This decision has been made because you are not considered fit and proper to hold a GLA licence.

The Principal Authority Mr Kashmir Singh has attempted to mislead GLA inspectors on more than one occasion. Mr Singh failed to declare to inspectors that he rented a property. The property in question was 87 Warley Road, Oldbury. When questioned, Mr Singh admitted that he did rent out the property. Mr Singh also stated that he had applied for three more vehicle badges for his PSV operators licence on 7 April 2008. VOSA have since confirmed that this is not the case as they have no record of any application to vary the PSV licence. Mr Singh also claimed to be rounding up the pennies owed to workers. However, he was clearly rounding down in his favour.

11. Using the appropriate form New Horizon Personnel Limited appealed against the decision on the basis of grounds of appeal that were attached. These grounds were settled by counsel, Mr Simon Williams, on 20th June 2008 but before me the appellant was represented by Mr Kevin Leigh who did not adopt the grounds of appeal settled by Mr Williams.

The nature of the appeal

12. The Gangmasters (Appeals) Regulations 2006 provide at Regulation 21 that the appointed person shall allow or dismiss the appeal without giving any indication as to the nature of the appeal hearing in terms of whether it is for me to take the decision afresh or whether it is for me to review the decision made by the GLA. A concession made on the part of the GLA was to the effect that I am to take a fresh decision having heard the matters raised in the appeal. Counsel for the appellant submitted that it was for me to take a fresh decision rather than for me to review the GLA's decision to revoke and such an approach had been adopted previously by other appointed persons and was supported by authority. I shall therefore take a fresh decision based upon the matters presented to me.
13. When this matter first came before me on 5 November 2008 there was an application by the appellant for an adjournment on the basis that Mr Kashmir Singh was not able to attend the hearing as he was in India and unwell. I made an order for directions including the following paragraph:

It is agreed between both counsel and the appointed person that the sole issue for determination in this appeal is whether Mr Kashmir Singh is a fit and proper person to be the appellant's principal authority in the light of the respondent's reasons given in a letter dated 3 June 2008 and in the light of the reasons surrounding his absence from today's hearing.
14. The respondent subsequently accepted that Mr Kashmir Singh had been in India and unwell on 5 November but in complying with my directions by

supplying a copy of Mr Kashmir Singh's passport other issues were raised which were dealt with by way of evidence at the hearing of the appeal.

The evidence

15. The respondent called live evidence from Angila Holden, Aileen Leszkowska and Ian Wilkinson. Mary Gaskin was due to give live evidence but become unwell during the first day of the hearing and thereafter was not medically fit for work. I received her written statement.
16. On behalf of the appellant I heard from Kashmir Singh, Tadeusz Trzonkowski and Rakesh Kumar.

Findings of fact

17. Mr Kashmir Singh has signed 3 GLA licence application forms. Two were signed on 6 June 2006 and the third on 13 February 2008. On each form Mr Kashmir Singh was stated as the applicant's principal authority and his place of birth was stated as Oldbury, England. This statement was incorrect although this only became apparent when Mr Singh's passport was disclosed as a part of the exercise undertaken by him to prove his absence in India on the date of the November hearing. It was apparent from the passport that Mr Singh had been born in India but he was a British citizen.
18. The first two forms at section F asked questions relating to the organisation which were to be completed by the principal authority and at F7 in answer to the question "are your workers provided with accommodation?" the response was "no". By 13 February 2008 the question was numbered F8 but it was the same and the answer was the same.
19. At the end of each application form Mr Kashmir Singh signed underneath a declaration that information given on the application and any supporting material was correct to the best of his knowledge and belief and that he had not deliberately omitted any necessary material or made an incorrect statement.
20. During the course of an inspection in respect of Newtex Limited by GLA inspectors on 9 April 2008 Mr Singh said to Angila Holden that he owned no property other than his home address and that no accommodation was provided for workers but when pressed admitted that he used to rent a property at 87 Warley Road, Oldbury to two workers during the previous year. He said that there were no workers living there at the time of the interview but later he admitted that it was at that time rented out to a worker. Mr Singh and his family had moved from Warley Road to Reeves Close by 13 February 2008 when the third GLA application form was completed.
21. Mr Singh was interviewed under caution on 19 May 2008 in the presence of a representative from a firm of solicitors. During the interview Mr Singh said that he filled in the GLA application form and sent it off although the majority of this kind of thing was left to his accountant. He agreed that he had ticked "no" to the box concerning the provision of accommodation and then went on to explain that it had been rented to one of the workers for about 2-3 years and that it was owned by him and his wife but it had nothing to do with the company it was his previous matrimonial home and they retained it when they moved to their current address. By way of explanation Mr Singh said that he

thought he only had to declare what the company owned and he only became aware of the wider implications of the question at the time of the inspection by Angila Holden. He said he did not give a full explanation when she initially asked because the property was private but then when further explanation was given he did tell her. He accepted that he did not tell her initially that he had a worker in there but he did later on. He agreed that he had told Angila Holden that the property was at the time empty and that that was not true.

22. There was then some question as to the need for an interpreter and the interview was concluded with a view to it being continued with an interpreter at a later date which turned out to be 29 August 2008 when the interviewer was Mary Gaskin from the GLA and Mr Singh was accompanied by a solicitor. An interpreter was present. When Mr Singh was asked if he declared to the GLA that he supplied accommodation he said he did not because he asked his accountant who told him that if it was not a company property then he would not need to declare it. Mr Singh did not call any evidence from his accountant nor was there any written letter or statement from the account to this effect.
23. In this interview under caution and in the appeal hearing the question Mr Singh's proficiency with the English language was raised. He has lived in England for 35 years. The majority of this education was in this country. He speaks and reads English but does not read Punjabi. In my judgment he has a reasonable understanding and grasp of the English language in both written and spoken form.
24. In connection with the VOSA licences it was put to Mr Singh by Angila Holden at the inspection that there was an irregularity concerning the licences of the vehicles used by the business to transport workers. Mr Singh at the inspection said that he had made an application to VOSA to vary his licence. Angila Holden made checks with VOSA who said that no such application had been made. At the interview under caution on 29 August 2008 in the presence of the interpreter the question of licensing was discussed. Mr Singh said he applied for the appropriate licences but when he was on holiday VOSA asked for more information but it was not sent by his workers. He then said that VOSA wrote to him because he forgot to sign a cheque. He said when he came back from his holiday no one told him about it.
25. In his witness statement for the scheduled November hearing Mr Singh said that after the inspection was over he spoke to his assistant who then remembered a letter had come from VOSA which stated the application could not be processed because the cheque was not signed. Mr Singh decided not to sign the cheque but await the out come of the GLA audit and then he gave the letter to previous solicitors, Soho Law, who suffered an intervention by the Law Society and the papers could not be found.
26. The assistant referred to by Mr Singh was Rakesh Kumar and in his initial statement for the November hearing Mr Kumar said that when a letter from VOSA with a cheque came he put it on one side with the intention of telling Mr Singh that it had come but he did not do so over the telephone. He forgot about it. After the audit Mr Singh told him about the VOSA licence, he then remembered the letter had come and told him about it.
27. In a further statement prepared for the January hearing Mr Kumar did not make any further mention of the VOSA issue but he returned to it when giving

live evidence with the benefit of an interpreter. In supplementary questions he confirmed the evidence in his witness statement in connection with the VOSA letter but in cross examination he said that when Mr Singh was away he dealt with the mail. Mr Singh asked him on the day of the GLA inspection if a VOSA letter had been received and he eventually remembered that although he normally put letters on Mr Singh's table he put the VOSA letter, and only the VOSA letter, in a cupboard in the sitting area and forgot about it until asked.

28. With regard to the rounding of payments due to the workers the evidence of Angela Holden was to the effect that 7 out of 9 workers who had been interviewed at a GLA inspection prior to the meeting with Mr Singh said that when they received their pay packets the amount inside differed from the amount on the pay slip with it being rounded down to the exact pound. Her example was a worker with a payslip showing £200.39 would be paid in cash £200.00. There were produced to me payslips and pay packets for a Mr K Kuchna. On 14 March the payslip showed a net pay of £221.38 whereas the pay packet showed a net pay of £220.00. For the week ending 21 March 2008 the figures were £171.45 and £171.00 respectively.
29. Mr Trzonkowski an employee of New Horizon Personnel Limited gave oral evidence to the effect that when he was paid his wages were rounded up and in his example if he was going to be paid £147.67 according the wage slip he would find £148 in the envelope. He did however confirm that more recently he was paid the exact pounds and pence shown on the payslip. In cross examination through the interpreter, Mr Trzonkowski confirmed that he got a pay slip which always included pence but on the envelope it was the full amount without the pence. He then however went on to say that it was rounded up rather than down. In answer to questions from me he said that the pay was never rounded down and in respect of his first answer concerning payment of pounds without the pence maybe he did not understand the question.
30. In his statement for the November hearing Mr Singh said that at Newtex Limited the wages were rounded up to the next pound. In his statement prepared for the January he confirmed that the money was rounded up so that he "would not need to carry pennies round with me as I always felt that this was inconvenient and I wanted to look after my workers so they would stay with this company and not join any one of my competitors" He dealt with the pay of Mr K Kuchna in March of 2008 by stating that these were prepared whilst he was out of the country and a mistake was made in his absence. Mr Kumar had been instructed to deal with the payroll and this instruction included rounding up to the next pound. Mr Kumar had failed to comply with his instructions.
31. Mr Kumar's statement for the November hearing did not mention his role as a payer of wages in the absence of Mr Singh but he did confirm he was paid in cash with a wage slip and he never had any problems with benefits or wages. For the January hearing Mr Kumar's statement told of instructions given by Mr Singh to pay the wages in his absence on holiday with instructions to round up wages to the next pound but he must have misunderstood this and his belief was that the wages were to be rounded to the nearer pound, up or down, such that a worker with a payslip of £147.45 would be given in cash £147.00 whereas a worker due £147.55 would be paid £148.00.

32. Having heard all of the evidence we resumed on 9 February 2009 to allow counsel to make their submissions. Both counsel submitted written submissions which they amplified orally.
33. For the appellant Mr Leigh submitted that the criticism of Mr Singh as the principal authority was not that his business fell below the standards expected by the GLA but that GLA had been deliberately misled by him in respect of the three matters set out in their letter. Mr Singh was poorly educated in formal terms having been educated in England from 7 to 16 but failed his exams due to his poor English. As a business man he was not as competent as some people but he was not dishonest. In his submission the real test was whether Mr Singh has sought to run his business to the best of his ability without exploiting his employees or whether the business he was running was so likely to jeopardise the health, safety or economic wellbeing of his employees that he should be prevented from operating it. He submitted that there was no harm to the employees arising out of the matter which had come out in the hearing. The accounting system was sloppy. There had been no harm caused to the tenant of the accommodation nor had any difficulties arisen out of the use of company vehicles without the appropriate licences.
34. The GLA was appearing to conflate a set of mistakes by a poor business man into wilful attempts to mislead.
35. In his submission my approach to the decision should be proportionate having reference to the GLA's publication entitled "Licensing Standards", October 2006, looking in particular at paragraph 14 dealing with assessing compliance with the licensing standards:

The GLA adopts a proportionate approach when applying the licensing standards. The GLA is concerned with identify the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances.
36. Mr Leigh commented on the written submissions of Mr Bradley looking in particular at Mr Bradley's submission that the incorrect information given by MR Singh might have been provided deliberately, recklessly or negligently. He suggested that there was a fourth possibility which was that of genuine mistake. He agreed that if I found that Mr Singh had deliberately misled the GLA knowing full well what was required of him then he was bound to accept that Mr Singh was not a fit and proper person to be a principal authority.
37. Having provided a cast list and a chronology Mr Bradley described the regulatory framework and how the principal authority fits in to the framework. He then covered the legal status of the appeal and then went on to the facts.
38. In respect of the accommodation he thought it was for me to decide:-
 - a. Where the forms were filled out incorrectly?
 - b. Where the inspectors told incorrect information?
 - c. If the answer to either or both of these questions is yes then was the incorrect information provided:-
 - i. Deliberately

- ii. Recklessly
- iii. Negligently

39. If the information was incorrect and provided deliberately then Mr Singh cannot be a fit and proper person to act as a principal authority but if the finding is that it was incorrect and provided recklessly or negligently then it would be a question of balance and judgment but in his view someone who acts recklessly and/or negligently would not be a fit and proper person.
40. He went on to deal with the VOSA and the rounding issues and then summarised the explanations that had been given throughout the course of the hearing in respect of the matters in dispute.
41. In his submission Mr Singh deliberately misled the GLA in respect of the three matters and it is for me to decide whether or not I accept his evidence.

Conclusions

42. Given that my obligation is to provide a statement of the reasons for my decision in summary form I have not made mention of many of the matters that were in evidence before me. I have made findings in respect of what I considered to be the main points from the evidence.
43. With regard to the accommodation issue I find that the forms were deliberately filled in and signed by Mr Singh indicating that no accommodation was provided to his workers. I have noted that the accommodation question is stated to relate to the organisation although the answers are to be completed by the principal authority. Mr Singh divorced his personal or family property from that of the company and answered the questions accordingly. I do not therefore find that the answer was given with an intention to deceive but that he, and/or any advice that he might have received from his accountant, was mistaken. I do not however find that he was mistaken when in answering questions from Angila Holden on 9 April 2008 he said that he owned no property other than his home address (by this time Reeves Close) and, having admitted that he used to rent the property at 87 Warley Road the previous year, that there were no workers there at that time. I find that these answers were deliberate attempts to mislead her.
44. With regard to the VOSA issue I find myself unable to accept the explanation given by Mr Kumar about placing only the letter from VOSA in a separate cupboard in a different room from where all other mail for Mr Singh was placed. If Mr Singh had been told about the existence of this letter following the conclusion of the GLA inspection then I find it implausible the Mr Singh did not produce to the GLA a copy of the letter received from VOSA and/or deal with the letter from VOSA by signing the allegedly returned cheque and having his application processed. In these circumstances I conclude that Mr Singh deliberately misled the GLA inspector on this issue.
45. With regard to the rounding of wages it is my finding that the practice of Newtex Limited was to round down to the lower pound the pence in the wages rather than round up and that this was a deliberate policy.
46. I find it too much of a coincidence that the errors only happened when Mr Singh was on holiday when the wages were dealt with by Mr Kumar coupled

with the failure on the part of the appellant company to put forward this explanation, however implausible, in the statements prepared for the November hearing.

Decision

47. It follows from my conclusions set out above that in my judgment Newtex Limited, directed by Mr Singh as its principal authority, has exploited workers by depriving them of the pennies in their wages and that he has caused that company to fail to comply with its obligations to VOSA. There was no direct evidence of any exploitation of the tenant of Warley Road but there had been no inspection of this property. The wages issue was in my judgment a persistent and systematic exploitation of the workers.
48. I therefore find that Mr Singh is not a fit and proper person to be a principal authority and so having regard to Regulation 12(1) of The Gangmasters (Licensing Authority) Regulations 2005 which provides that the conduct of a specified person (principal authority) must comply with Regulation 12 (2) the appeal of New Horizon Personnel Limited is dismissed.
49. To allow the appellant company time to take steps to wind down its business and to terminate the employment of the workers in an orderly fashion and in compliance with the Employment Rights Act 1996 this decision will take effect at 17:00 on Tuesday 31 March 2009 after which time the appellant company must cease trading within the sectors regulated by the GLA.

Signed:


Appointed person

Date: 2 March 2009