

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

BETWEEN:-

RAI N DHANDA LIMITED

Appellant

-and-

THE GANGMASTERS LICENSING AUTHORITY

Respondent

DECISION

The appeal is dismissed and the appellant's licence revoked with immediate effect.

BACKGROUND

1. The appellant's licence was granted on 18 March 2009. AT that time, the Principal Authority ("PA") was Mr Dhanda. The PA was changed to Mr Sohan Singh Rai ("Mr Singh") on 4 November 2009. The Licence was renewed on 23 March 2010.
2. A compliance inspection was carried out by the respondent on 7 October 2010 and, as a consequence of that inspection, the appellant's Licence was revoked without immediate effect by letter dated 10 January 2011.
3. The appellant appealed against the revocation by Notice of Appeal dated 24 January 2011 and submitted Grounds of Appeal on 26 January 2011.
4. The respondent responded to the appeal on 1 March 2011 and amended that response on 20 April 2011.

5. The appeal was set down for oral hearing on 8 and 9 August 2011 and the parties were notified in May 2011. An interpreter was arranged (at significant cost). On 1 August 2011, the appellant's solicitors applied for a postponement of the hearing because Mr Singh was to undergo knee surgery. No evidence of an appointment was provided and I refused the application.
6. On 2 August 2011, the appellant's solicitors again applied for a postponement due to Mr Singh suffering "serious pain in his knee". Once more, no medical evidence was provided and I refused the application.
7. By this time, there were serious doubts as to whether the appellant's witnesses would attend the hearing and I issued a further direction requiring all parties to confirm their attendance by 1pm on 5 August 2011 or the hearing would be cancelled and the appeal determined by written submissions already forwarded to me. Mr Singh's solicitors confirmed they were without instructions and no confirmation was received from the appellant that any of its witnesses would attend. Indeed, the respondent reported that they had spoken to Mr Singh who confirmed he would not be attending.
8. Consequently, in accordance with the overriding objective, I have determined this appeal by reference to written submissions only. I have had regard to the witness statements supplied, skeleton arguments and a bundle of 460 documents.

REASONS

9. The purpose of the Gangmasters Licensing Act 2004 ("the Act") is, inter alia, to protect workers in agriculture and certain other industries from exploitation and to ensure they work within a responsible health and safety regime with proper compensation and under fair terms and conditions of employment. The Act established the Gangmasters Licensing Authority. Section 6 (i) provides that a person shall not act as a gangmaster except under authority of a Licence. Section 7 provides that the respondent may grant a licence if it thinks fit and subject to such conditions as it thinks fit. Section 8 provides that the respondent may make such rules as it thinks fit in connection with the licensing of gangmasters.

10. Section 9 of the Act provides that the respondent may revoke any licence. Regulation 12 of the Gangmasters (Licensing Authority) Regulations 2005 provides that for the purpose of the exercise of its functions under section 7, 8 and 9 of the Act and making rules under section 8 in determining:

(i) the criteria for assessing the fitness of an application for a licence; and

(ii) the conditions of a licence and any modifications of these conditions,

the respondent shall have regard to;

(a) the avoidance of any exploitation of workers as respects their recruitment; and

(b) compliance with any obligations imposed by or under any enactment insofar as they relate to or affect the conduct of the licence holder.

11. The respondent has published Licensing Standards, the applicable version being those issued in 2009.

12. By its letter of 10 January 2011, the respondent revoked the appellant's licence without immediate effect due to non-compliance with a number of Licensing Standards. Briefly, the details of non-compliance (with points accumulated in brackets) were;

Licensing Standard 1.2, Principal Authority Competency Test (30 points): the PA was determined as not fit and proper to hold a licence because:

(i) he had insufficient knowledge of health and safety;

(ii) there were no regular payroll services in place;

(iii) vehicles used to transport workers did not appear to have valid paperwork;

(iv) he could not demonstrate knowledge of what a complete worker file should include; and

(v) it was unclear whether he understood the procedure for checking a worker's entitlement to work in the UK as no checks had been carried out.

Licensing Standard 2.2, Minimum Wage (30 points): the PA was unable to demonstrate that workers were paid the National Minimum Wage ("NMW") or the appropriate Agricultural Minimum Wage ("AMW"). The PA had not maintained any records and could supply no evidence of hours worked or breaks taken by the workers.

Licensing Standard 2.3, Wages and Benefits (8 points): there was no system in place to record holiday entitlement or holiday pay.

Licensing Standard 6.1, Assigning Responsibility and Assessing Risks (8 points): there was no evidence of co-operation with the labour users to ensure responsibility for health and safety of workers and no risk assessments. The PA did not appear to know where his workers were each day, had not made any effort to assess risk, had assigned no responsibility for health and safety and had no agreements with labour users to ensure the safety of workers.

Licensing Standard 6.3, Safety at Work (8 points): this standard was not complied with because there was no first aid trained member of staff, no toilet facilities, no drinking water and no Personal Protective Equipment for workers.

Licensing Standard 6.4, Transport (30 points): the PA gave conflicting accounts of what vehicles were used to transport workers and could show no documentation in relation to them or even the driving licence of the alleged driver.

Licensing Standard 7.3, Contractual Arrangements and Records (8 points): there was an almost complete failure to provide worker records.

Licensing Standard 7.4, Agreements and Records (8 points): the PA was not aware of the content of the appellant's labour user agreement and did not know where his workers were working.

13. In his Grounds of Appeal, the PA largely refuted all allegations of non-compliance with Licensing Standards. Further, he submitted some documents by way of evidence of compliance. These included:
- (i) documents in relation to the vehicle used to transport workers but which showed that the vehicle could not be used for hire or reward;
 - (ii) CITB test results for the PA as evidence of his health and safety knowledge, but with no explanation as to how this was relevant to agriculture;
 - (iii) contracts of employment for workers, all of which were undated;
 - (iv) evidence that there was now a payroll system in place;
 - (v) a first aid certificate for a manager dated 22 October 2010 which was obtained after the inspection;
 - (vi) a receipt showing toilet facilities were provided for workers on assignment from 27 November 2010 to 31 December 2010, again, after the inspection;
 - (vii) pay records for various workers, compiled after the inspection visit; and
 - (viii) several copy passports and P46's together with contracts which were different to the ones shown to the respondent in October 2010.
14. I have reviewed the statement of Mr Singh. It is particularly short on information and vague in relation to the issues before me. He refers to his CITB test results but does not say why the health and safety element of that test is relevant to agriculture. Further, he does not answer the criticism of the respondent in that there was no one with first aid skills in the field with his workers.
15. In relation to the vehicle used to transport workers, he does not even address the point that the vehicle in question was not insured for the purpose.
16. In relation to payroll, Mr Singh's evidence is completely at odds with the comments of Mr Mirza, his accountant, when Mr Mirza was interviewed by the respondent.

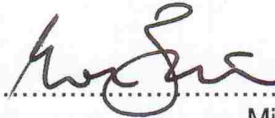
17. The reference to contracts of employment for the appellant's workers does not, in my view, address the issue that there were no contracts available for inspection when the respondent carried out its compliance inspection. It does seem rather clear to me that the contracts subsequently produced by the appellant all seem to be dated a few days prior to the date of the inspection. If they were indeed in existence at that time, I do not understand why they were not available for the respondent to inspect.
18. I have reviewed Mr Mirza's statement and note it seems to be totally at odds with the comments he made to the respondent when contacted after the compliance inspection.
19. I have considered the skeleton arguments of the parties. I regret that I do not consider the appellant's arguments have any merit given the matters referred to above. Most surprisingly, in relation to Licensing Standards 6.3, one paragraph states: "The appellant had taken action after the inspection and this renders the decision to fail this standard as incorrect". I have addressed this particular point below.
20. Having considered in some detail the bundle of documents, the statements, appeal documents and skeleton arguments before me, I see nothing to persuade me that the decision to revoke the appellant's licence was incorrect.
21. It does seem apparent that the contracts of employment within the bundle were largely created after the respondent's inspection on 7 October 2010. A first aid certificate was also produced after this date. It is also clear that Mr Singh had little knowledge of the running of his business, his excuse being that he had delegated responsibility for first aid, health and safety and general management of the workers to someone else. I have before me conflicting evidence in relation to the payroll which also suggests to me that there was no adequate payroll in existence at the time of the inspection by the respondent.
22. I am also concerned that Licensing Standard 6.4 continues not to be complied with and it is assumed that the workers are still being transported in a vehicle which is not insured for the purpose. As the respondent's solicitors point out, there is authority for the proposition that a vehicle not insured for hire and

reward purposes is not insured for the purpose of transporting workers to their place of work. Consequently, those workers transported in that vehicle, owned, apparently, by an employee of the appellant, did not have the benefit of insurance cover, in the event, for example, of an accident causing injury to them as a result of the negligence of the driver. To allow workers to be transported in an uninsured vehicle is clearly sufficient to breach Licensing Standard 6.4 and is also evidence of the PA not being a fit and proper person to hold the licence.

23. On the evidence before me, I find that three critical standards have not been complied with. Since these attract 30 points each it is apparent that the appeal should not be allowed. I do not believe the evidence of the appellant's witnesses to be at all credible and I am of the view that documents to support its appeal have been created after the event.
24. I am greatly concerned that the PA of the appellant seemed to have little knowledge of his business when questioned by the respondent. Delegating responsibility to a manager does not obviate the requirement to understand the Licensing Standards and ensure they are complied with. As well as a lack of adequate employment documentation, poor health and safety measures and an almost total lack of records, the appellant failed to provide the basic but essential requirements of water and toilet facilities for its workers.
25. As I have already recorded, this is a case where at least part of the case of the appellant is that the Licensing Standards which were not complied with at the time of the inspection on 7 October 2010 have subsequently been complied with therefore the relevant standards were not breached. I find this to be an unsustainable argument. It must be the case that a gangmaster should be compliant with Licensing Standards at all times and be prepared to face the consequences if he/she/it is not compliant on the date of an inspection. It cannot have been the intention of Parliament that a failure to comply with any Licensing Standard can be remedied some time later by the simple expedient of putting into effect those matters which were not in effect at the time of a compliance inspection. This would make a mockery of the licensing regime and put agricultural and other workers at serious risk of exploitation by unscrupulous gangmasters. In my view, the failure to comply with a Licensing Standard should be acted upon immediately and cannot and

should not be brushed under the carpet at a later date. This is particularly so in relation to critical standards where a failure to act on any non-compliance would constitute a serious dereliction of duty by the respondent.

26. For these reasons, the appeal is dismissed and the applicant's licence is revoked with effect from the date of this decision.



.....
Michael Butler
Appointed Person
10 August 2011