

IN THE MATTER OF

THE GANGMASTERS (APPEALS) REGULATIONS 2006

BETWEEN

Appellant
Turbostaff Agency SRO

and

Respondent
Gangmasters Licensing
Authority

DECISION

The appeal by Turbostaff Agency SRO against the refusal of a licence under the Gangmasters (Licensing) Act 2004 is dismissed.

REASONS

1. I am the person appointed to deal with this appeal pursuant to regulation 3 of The Gangmasters (Appeals) Regulations 2006.
2. At the request of the appellant this appeal was determined without an oral hearing.
3. In determining the appeal I had regard to:-
 1. The Notice of Appeal from the appellant dated 3 December 2010;
 2. The respondent's Response to Appeal dated 25 January 2011 and attachments; and
 3. The Gangmasters (Licensing) Act 2004 ("the Act"), The Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations") and The Gangmasters (Licensing Conditions) Regulations 2006 ("the 2006 Regulations").
4. The purpose of the Act is to protect workers in agriculture and certain other industries. The Act established the Gangmasters Licensing Authority and section 6(1) 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 that it shall be granted subject to such conditions as the respondent thinks fit. Section 8 provides that the respondent may make such rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Section 9 provides that the respondent may revoke any licence. Regulation 12 of the 2005 Regulations provides that for the purpose of the exercise of its functions under sections 7, 8 and 9 of the Act and making rules made under section 8 in determining:

- (a) the criteria for assessing the fitness of an applicant for a licence;
and
- (b) the conditions of a licence and any modifications of those conditions

the respondent shall have regard to:

- (a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; 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.
5. The respondent has published Licensing Standards, the version applicable for the purposes of this appeal being those issued in April 2009.
 6. On 5 August 2010 the appellant applied for a licence under the Act. An application assessment or inspection was conducted by GLA Inspector M Heyes with the principal authority, Patrik Turbak, on 11 October 2010. In the course of their discussions Mr Turbak said that once a worker had signed a contract with an employer, the worker was required to pay the appellant the sum of Euro 250, although it was said that had recently been reduced to Euro 195, a copy of the agreement requiring that payment to be made being included in the respondent's Response to Appeal. As such payment constitutes a breach of Licensing Standard 7.1, a decision was taken to refuse the application, that decision being communicated to the appellant in a letter dated 2 November 2010.
 7. On 9 November the appellant advised the respondent that its procedures had been changed such that a payment by the worker was no longer required and provided the respondent with a new form of agreement. This was treated by the respondent as an interim appeal. It was noted though that this new agreement required the worker to pay a penalty of Euro 300 if he refused an offer of employment and a further penalty of Euro 700 if his behaviour "harms good renown" of the appellant. By letter dated 9 November the respondent advised that its original decision to refuse the application would stand.
 8. By letter dated 3 December 2010 solicitors acting on behalf of the appellant formerly appealed against the refusal of the appellant's licence application, stating that the agreement that the appellant had with the workers had been further amended to provide that the worker had the right to withdraw from the agreement at any time on giving five days notice without any penalty being incurred. A copy of the agreement as further amended was also provided and it is noted that the potential penalty of Euro 700 in respect of the loss of the appellant's "renown" has also been removed.

9. The Licensing Standards state that the respondent adopts a proportionate approach and is concerned with identifying the more persistent and systemic exploitation of workers rather than concentrating on isolated non-compliances.
10. Compliance with the Licensing Standards is assessed through inspections. Standards designated as "critical" are worth 30 points. All other standards are worth 8 points, except Licensing Standard 1.4 which is worth 16 points. Applicants must score less than 30 points to be granted a licence.
11. Licensing Standard 7.1 states that:

"A licence holder must not charge a fee to a worker for any work finding services" and further

"A worker must be able to cancel or withdraw from any services provided at any time without incurring any penalty, subject to the worker giving 5 working days notice....".
12. Licensing Standard 7 is designated as being "critical".
13. The respondent's letter of 2 November makes it clear that it was as a result of the appellant's breach of Licensing Standard 7.1, and the consequent score of 30, that the application was refused. The respondent's letter of 9 November states that it had not found any factual error in relation to its assessment of the application and that its original decision would stand, the letter further noting that the appellant's terms as amended also constituted a breach of Licensing Standard 7.1 in relation to the required penalty in the event of a refusal to accept an offer of work.
14. The question of whether the appellant was compliant with the Licensing Standards has to be determined as at the date of the inspection and not some later date. While it is noted that steps that have subsequently been taken to ensure compliance, although it is noted that even at the second attempt it was still in breach of Licensing Standard 7.1, that misses the point that it is at the date of inspection that the applicant must be able to demonstrate compliance with the Licensing Standards. The conclusion may be drawn that the appellant and/or the principal authority had failed to obtain any proper understanding of the Regulations prior to the application being made or even at the stage of the interim appeal. Having regard though to the letter from the appellant's solicitor of 3 December, assuming that the appellant is able to demonstrate compliance, it may be that an application made now would have some greater prospects of success.
15. The Act and the Regulations were introduced in order to prevent the exploitation of workers and to save lives that have been tragically lost on

other occasions. A licence can only be issued to and maintained by "a fit and proper person". A high level of compliance is required with which the appellant has a duty to be familiar and to be able to show compliance. The appellant has accepted that at the time of the inspection there was a "critical" issue of non-compliance which it has subsequently sought to rectify. I conclude that the scoring system set out in the Licensing Standards was properly applied and the respondent acted proportionately in rejecting the application for a licence.

14. It follows that, in accordance with my findings, the decision by the respondent to refuse the appellant a licence was correct and the appellant's appeal against that decision is therefore dismissed.



R F ASHTON
Appointed Person
19 February 2011