



Injured tree worker wins \$30,000 compensation claim

01:00 AM EST on Tuesday, January 15, 2008

By Karen Lee Ziner

Journal Staff Writer



Velásquez

PROVIDENCE — Edgar Velásquez, an illegal Mexican immigrant who accidentally slashed his face open with a chainsaw in 2006, yesterday won a \$30,000 settlement in a groundbreaking case against the owner of a Warwick tree service company.

Velásquez was working for William J. Gorman Jr., owner of Billy G's Tree Care, who hired the 22-year-old and then turned his back after Velásquez sustained severe injury.

Velásquez alleged that Gorman tipped off immigration authorities, who arrested and deported him before he could pursue his rightful claim under state law. Last fall, one year after his deportation, the U.S. Department of Homeland Security granted Velásquez a rare humanitarian visa that allowed him back into the country to face Gorman in court.

Chief Workers' Compensation Judge George E. Healey Jr. said the settlement should put employers on notice.

"I think that it's important that employers realize they cannot employ undocumented workers without consequence," Healey said.

"My concern in this whole process is that unscrupulous employers will assume that they don't have to provide a safe workplace and don't have to be answerable for injuries which occur in the workplace," he said. "And the resolution of a case like this demonstrates otherwise."

Velásquez was not in court to hear the news. He returned to Mexico last month, after a three-month stay on his humanitarian visa.

But before he left, Velásquez said he hoped that a preliminary ruling issued in October by Workers' Compensation Judge Bruce Q. Morin would lead to a full settlement. He said, "I leave it in the hands of God; he will decide what's going to happen."

Public pressure brought by Velásquez's lawyers, Stephen J. Dennis and Maureen Gemma; the Mexican-American Association of Rhode Island; the Mexican Consulate in Boston; and Sen. Jack Reed's office, brought about Velásquez's day in court.

Yesterday, Dennis said that he and physicians who treated Velasquez are waiving their fees "so that all the money can go to Edgar."

Dennis had hailed Judge Morin's initial October ruling in his client's favor as "huge." He said he knew of no other jurisdiction where an injured undocumented worker has been allowed to return to the United States to face an employer in court.

But Dennis said he was not entirely happy with the settlement that he worked out with Gorman's lawyer, Michael A. St. Pierre. Dennis had originally sought in excess of \$70,000 for his client. The agreement requires Gorman to pay Velásquez \$300 a month, for 10 months a year, for 10 years or until he pays all \$30,000. The two-month exclusion reflects the weather-dependent nature of Gorman's business.

"It's as good as we can get, under the circumstances," said Dennis. He expressed concern, however, that no provisions exist "to keep [Gorman] from going bankrupt."

St. Pierre said his client has few assets. Gorman declared bankruptcy five years ago, according to court records; however state law prohibits him from declaring bankruptcy again for another two years. St. Pierre could not be reached for comment yesterday.

Dennis also said that Rhode Island's current lack of an uninsured employers fund for workers' compensation — that would have assured payment to Velásquez — was a stumbling block. Such a fund is slated to become effective in January 2009, but it will not be retroactive.

As Judge Morin noted, however, the agreement provides "a strong incentive" for Gorman to pay up.

If Gorman fails to do so, the state will step in and fine Gorman for \$150,000 for not having workers' compensation at the time Velásquez worked for him. For now, the state has withdrawn its claim — brought separately from Velásquez's claim — without prejudice.

"Basically, Mr. Gorman has two options. He can either pay the \$30,000 [to Velásquez], or he can pay the state \$150,000," said Bernard P. Healey, lawyer for the state Department of Labor's workers' compensation division.

Logistical matters remain.

Unless Velásquez is granted another humanitarian visa, the lawyers will send paperwork translated into Spanish, for Velásquez to sign in Mexico. Judge Morin said he will hold a hearing as soon as the paperwork is returned from Mexico, or, less likely, as soon as Velásquez could return to the country.

The accident occurred on March 31, 2006, as Velásquez was chopping tree branches. The saw blade struck a chain-link fence, kicked back and sliced through his nose, left eyelid and forehead. A plastic surgeon repaired his face, but Velásquez still apparently has difficulty closing his left eye.

Velásquez told The Journal in phone interviews from Mexico — and later testified — that Gorman knew Velasquez was an illegal immigrant when he hired him. After the accident, “he denied that I was working for him. He denied knowing me,” Velasquez said.

He also testified that Gorman was abusive toward him, provided little or no training or protective gear, and did not allow him to leave a job until Gorman declared the work day was over.

On Aug. 2, 2006, the day of a scheduled court hearing, immigration agents arrested Velásquez outside the J. Joseph Garrahy Judicial Complex in Providence. Velásquez said as immigration agents moved in to arrest him, Gorman stood nearby with a smile on his face, and called out “Now Edgar, I’m sending you back to Mexico ... I have no use for you now,” and “Edgar, Adios!”

Cathleen Caron, executive director of the Global Workers’ Alliance, said Velásquez’s efforts will make “a big difference for other workers.”

Dr. Stephen G. McCloy, an occupational health physician who treated Velasquez for his injuries, said, “What I’m most delighted with is that [Velásquez] persisted, and his attorney persisted, and a lot of people came together to help him out.”

Velásquez returned to his remote mountain village in Chiapas shortly before Christmas. The day before he left, he said it is his dream to buy a Toyota four-wheel-drive truck so he can raise and sell more coffee beans to support his mother and brothers.

kziner@projo.com