



Judge rules for injured worker

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By Karen Lee Ziner

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Edgar Velásquez, center, is congratulated by his lawyer, Stephen J. Dennis, right, in Workers' Compensation Court yesterday morning. At left is Dr. Antonio Barajas, who was acting as a translator for Velásquez.

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PROVIDENCE — In a nearly unprecedented case, a judge yesterday issued a preliminary order awarding workers' compensation to Edgar Velásquez, a Mexican illegal immigrant who slashed his face to the bone with a chainsaw last year while working for a Warwick tree company.

Velásquez, 22, was deported last year before he could pursue his case. By rare exception, the U.S. government granted him a humanitarian visa to return to Rhode Island to have his day in court. Pressure brought by the Mexican consulate in Boston, the Mexican-American Association of Rhode Island and Sen. Jack Reed secured the visa.

Workers' Compensation Judge Bruce Q. Morin ordered that William J. Gorman Jr., owner of Billy G's Tree Care, pay Velásquez \$800 for two weeks' salary and medical costs that so far approach \$17,000.

Velásquez's lawyer, Stephen J. Dennis, called the preliminary findings a victory.

"We won. This is huge," said Dennis. He said he knew of no other jurisdiction where an injured undocumented worker has been allowed to return to the country to face an employer in court. Turning to

Velásquez, Dennis said, “We did it. It took a lot of work, and I thank you for your courage.”

But Dennis said he will pursue a trial to seek more money for Velásquez, based on revised medical assessments.

Judge Morin said depending on the evidence, he could award more benefits, affirm his original order, or reverse it. The lawyers have five days to file for a trial, otherwise his order becomes final, he said last night.

Michael A. St. Pierre, who represents Gorman, could not be reached for comment.

St. Pierre has acknowledged that Gorman has no workers’ compensation. In a separate case brought by the Rhode Island Department of Labor is pursuing penalties of \$1,000 a day against Gorman for not having workers’ compensation insurance when Velásquez worked for him.

Dennis alleges that Gorman tried to avoid responsibility last year by alerting immigration authorities, who seized Velásquez outside the J. Joseph Garrahy Judicial Complex, just prior to a scheduled hearing.

Velásquez said Gorman was standing near the agents with a smile on his face, and told him, “Edgar, adios.” A month later, Velásquez was returned to Mexico.

Said Dennis, “I think it’s a message that goes out, that if you’re going to hire undocumented workers, you are not going to be able to use the government services of [Immigration and Customs Enforcement] and have a worker deported without having them come back. It’s tough to do, but it can be done, and I encourage all employees’ attorneys to do this, to seek some compensation for undocumented workers.”

Cathleen Caron, executive director of the Global Workers’ Alliance, called the judge’s decision “groundbreaking.”

“The groundbreaking part of this case is that [Velásquez] was thrown out of the country” and then allowed to return on a humanitarian visa, said Caron. She said she knows of only one other such case — in Texas in 2000.

“First, it’s really hard to get a humanitarian visa. Just that alone,” Caron said. “The Department of Homeland Security issues them and they are very specific; typically they are used for medical reasons.”

Those factors “make it a very important case. It makes a statement to the employer that if they [workers] get injured on the job — anyone on your job site, whether they are undocumented or not — you are legally obliged to pay workers’ compensation.”

Caron said her organization works on “precisely these issues” of what she calls “portable justice.”

“These are kind of disposable workers right? [Velásquez’s] pushing for his rights is going to make a big difference for other workers. He really stood up to his employer and the law is really working on his side.”

Velásquez overcame tremendous bureaucratic hurdles for his return journey from a remote village in Chiapas to Rhode Island, through the help of the Mexican-American community here. Lawyer Roberto Gonzalez has also succeeded in getting extensions on Velásquez’s original five-day visa. The last one was for 60 days.

“I am so pleased,” Velásquez said through an interpreter. “The attorneys have made a terrific job, and the judge has done a great job.”

He added that he received “a lot of help and inspiration” from those who made his return possible. Asked if he has spoken with his family in Mexico, Velásquez said his mother traveled five hours by bus to call him on the telephone on Sunday. “I told her not to worry,” he said, and informed her that “the case continues, and there have been a lot of positive results.”

Judge Morin found that it was clear “that a horrific incident occurred” on March 31, 2006, when a chainsaw Velásquez was using glanced off a fence, sliced through Velásquez’s nose and eyelid, and laid his forehead open to the bone. A plastic surgeon repaired his face, but Velasquez cannot fully close his right eye.

Judge Morin discounted lawyer St. Pierre’s argument that Gorman is “an arborist” — despite not having an arborist’s license — and is thereby excluded from the workers’ compensation statute. The statute says that an arborist is exempt unless they employ 25 or more employees.

Morin said an unlicensed arborist who claims to be an arborist “is like a person who calls himself a lawyer but practices without a license.”

The judge also found that there was an employer-employee relationship in this case, which makes Gorman liable.

St. Pierre had argued that Velásquez was “an independent contractor” and therefore not responsible for paying Velásquez for his injuries.

Dennis said of the judge’s order, “The main thing I’m really excited about is that the judge established [Velásquez] was an employee, and that there was an injury and he is going to get medical care. At trial, I hope to prevail on all the issues.”

Dennis said he is seeking a \$75,000 settlement, but so far “we haven’t been presented with an offer.”

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