

# Driver wins disabilities-act suit USA Waste to pay estimated \$256,000

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*By Howard Pankratz Denver Post Legal Affairs Writer February 22, 2000 Publication: The Denver Post Page: B-01 Word Count: 718*

Early on Sunday Dec. 7, 1997, Jose Francisco "Poncho" Almada learned that his niece had died in Basuchil, Mexico, after a long illness.

Almada, a \$43,000-a-year garbage truck driver for USA Waste Inc., immediately left Denver with his nephew, Tito Hernandez, for Basuchil, 1,000 miles away.

When he returned to USA Waste the following Wednesday, he was fired for what his bosses said was "job abandonment." They said he hadn't notified a supervisor that he was going to the funeral.

Almada, now 41, was stunned.

Last week, a jury agreed he was fired wrongly and granted him an award that will total \$256,000. He had sued under the Americans with Disabilities Act.

Almada said his supervisors and co-workers had known for months that his niece was in poor health, had nearly died once, and was likely to die soon. Almada claimed that his wife, son and friends had notified USA Waste immediately that he was going to Mexico.

"I thought it was the right thing for me (to go to the funeral)," Almada said Monday. "I never thought it was going to hurt the company. I was surprised they'd fire me. I was a lot of help to

them. I translated for them. I knew the routes better than anyone."

Lawyers for USA Waste didn't return phone calls Monday. However, in court filings they denied that USA Waste did anything wrong. They claim that Almada was terminated for various reasons, including his alleged failure to call his supervisor, his "poor work attitude, and financial concerns." The lawyers also claimed that Almada wasn't disabled under the meaning of the ADA.

Almada, who came to Denver when he was 15 and had worked as a waiter, cook, maintenance man, bus boy and truck driver to support his wife and four children, turned to the Colorado Civil Rights Division and the state courts for help.

1997 back injury

Almada claimed that the real reason he was terminated was that on Aug. 21, 1997, while on his trash route lifting heavy trash cans, he suffered a back injury. As a result, he said that while he could still work as a driver he was limited in what he could lift, pull and push.

Almada noted that his nephew Hernandez, who also worked for USA Waste, was gone a full week and was not fired on his return.

On Nov. 16, 1998, Jack Lang y Marquez, the director of the Colorado Civil Rights Division, ruled that USA Waste had violated the law that prohibits discriminatory or unfair employment practices.

Marquez said that USA Waste's contention that Almada was fired for failing to personally contact a supervisor was "spurious."

USA Waste's written policy clearly didn't indicate that personal notification is necessary, said the ruling. Further, Marquez said that although USA Waste policy stated that an employee who was absent for three consecutive days and failed to contact a manager was considered to have resigned, Almada reported to work the third day.

Disability a factor

"The available evidence supports (Almada's) claim that he was terminated because of his disability," Marquez concluded.

Subsequently, Almada filed a lawsuit against USA Waste in Denver District Court, alleging violation of the ADA. The suit said the firm's bereavement leave policy expressly allowed Almada "one day of leave with pay" for his niece's funeral.

Broken down, the jury award was \$140,000 for USA Waste's violation of the Americans with Disabilities Act, including \$70,000 in back pay, \$30,000 for emotional pain and suffering, and \$40,000 in punitive damages.

James E. Gigax, Almada's lawyer, said Monday that with interest, attorney's fees - which under the ADA must be awarded to the prevailing party - and costs, the total award to Almada will be about \$256,000.

Gigax said that Almada should get his job back.

Model ADA case

"The jury's verdict shows that they agreed that Mr. Almada is a hardworking family man who was terminated because of a disability," said Gigax. "It is this kind of case the ADA is written for. This was a disability that could readily have been accommodated by a mid-size employer and even more by a multibillion dollar corporation."

Gigax presented evidence that in 1997, USA Waste Inc., had gross operating revenues of \$2.6 billion and \$267 million in net income.

PHOTOS: The Denver Post/Lyn Alweis Jose F. Almada talks about his case against USA Waste Inc. as his attorney, James Gigax, listens. Almada was injured at work in 1997.

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**The Denver Post**

**Date:** February 22, 2000

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