

Individual Take Home Assignment / Project #1 for FCHR 2019
Due: Latest February 20th, 2019. Facilitator: Dr. Captain Vaman Bajnath.

Total: 5% of Coursework

Pizza Pain: "Disabled" Worker Sues Company ... Hurt While Moving Pizza Dough and Toppings.

Story and Names Amended for Class Deliberation. *Source:*

<http://www.trinidadexpress.com/20170207/news/pizza-pain-disabled-worker-sues-company>.

A pizzeria employee has filed action against her company for negligence. Crusty, from Pepperoni Village, claims she suffered permanent partial disability from moving heavy containers with pizza dough and toppings. Crusty has been left with her hand in a sling and unable to find work. Crusty employed two career hungry lawyers and took the company to court for negligence in taking steps to reduce her risk of injury and to maintain a safe and proper working system. Additionally, the company's failure to provide equipment to employees was an improper and unlawful practice which was contrary to the Occupational Safety and Health Act (OSHA). This Mozzarella Branch located in the sub-urban district of Sugarwanas, one of 15, employs 20 persons, out of a total nationwide staff of 250. The Mozzarella Company Headquarters and its Human Resource (HR) department are in the Capital City Centre.

Crusty was employed as a customer service team member from 2006 to 2017. The position required her to climb onto containers stacked ten feet high and retrieve with her bare hand's containers with approximately 35 balls of raw pizza dough weighing approximately 70 pounds. She also had to lift boxes of cheese and containers of sweet peppers weighing approximately 50 pounds. Crusty said she had to bend and drag and transfer boxes and containers across ten feet from the freezer to the chiller room at the Mozzarella Sugarwanas branch of the fast food outlet. No ladders or mechanical lifts or trolleys were provided, the affidavit stated.

On December 23, 2013, while dragging a container, Crusty felt a sharp, intense pain from her right shoulder down to the wrist. She told the branch manager of the events that led to the pain and was advised to seek immediate medical attention at the Sugarwanas District Health Facility. A magnetic resonance imaging (MRI) scan was done on her hand. X-rays showed she suffered degenerative changes in her shoulder. Crusty underwent approximately 15 physiotherapy sessions and took 445 days sick leave. When she was declared fit to work, it was recommended by doctors that she perform light duties only.

Despite this, after returning to work, Crusty was placed back into the same position, performed the same duties which also included pressing dough with her bare hands, spreading sauces, topping and cheese. Additionally, Crusty had to mop, sweep and clean which involved extensive use of her right arm muscles. In February 2017 she was declared unsuitable to work due to a

permanent partial disability of 80 percent in the right arm. Her lawyers informed the court she suffered soft tissue damage and the injuries to her right shoulder are not amenable to corrective surgery. Even the slightest movement in her right arm has become impossible to perform duties without severe pain. Crusty right hand is now in a sling.

Crusty who is right handed has been unable to write, cook, wash clothing sweep or mop. She is also deprived of sleep because of the pain and must use muscle relaxers and pain medications. Crusty has been unable to work or find suitable employment. She is claiming from the company general damages and special damages including loss of earning of over \$75,000 from February 2017 to present. She is also claiming medical expenses of \$3,000. A pre-action protocol letter was sent to the company in June 2017, but there was no response from the defendant.

- (A) List three (3) major problems you have identified in this case. **(20 marks)**
- (B) From your list of the problems you have selected in (a) above: What do you think is the central problem in this case? Give a brief explanation of your choice. **(30 marks)**
- (C) You are the Human Resource (HR) Manager at Mozzarella. Suggest ways to management on the HRM policies, procedures and strategies you would put in place to deal with the current problems. **(50 marks)**

CASE STUDY

TOPIC: *“DISABLED” WORKER SUES COMPANY... HURT WHILE MOVING PIZZA
DOUGH AND TOPPINGS.*

WITH PERMISSION GRANTED FROM STUDENT **KAZIM FLEURY** FOR PUBLICATION

EDITED BY FACILITATOR / LECTURER DR. CAPTAIN VAMAN BAJNATH

DATE DUE: 20TH FEBRUARY, 2019

Table of Contents

<i>Essay</i>	1
<i>References</i>	4

Essay

(A). In the case presented, there seems to be several problems, one of which involves an HR concern. The first problem and perhaps the case's central problem is compliance with the Occupational Health and Safety Act (OSHA). This is evident in instances throughout the case; such as the necessary equipment that is needed in accordance to the OSHA law, as well as the status of the company's health and safety policies, which will be evaluated later on.

Secondly, the company faces an HR issue of poor job analysis. Questions I have raised on the company's part, such as, why was Crusty performing those tasks? Did she have the necessary physical competence to perform those tasks? How efficient is the company's HR processes in response to the previous questions? The job analysis serves to determine the individuals' job title, their duties, reporting relationships and performance standards (job description) as well as the knowledge skill and abilities of the individual (Job specifications). Thus, why did the organization not realize this issue earlier? Also, why did Crusty not report the issue through the reporting structures? Or was it that she was not aware of the formal reporting structure, and if not, why was she not informed or seek out this information? These questions stem from the HR shortfalls in the job description and orientation.

Last but not least, another problem is that the company's legal issues resulting from, according to Crusty and her lawyers, "negligence" and "unlawful practices". This is a grave issue because thus far the company has not responded to the pre-action protocol letter. If this issue were to get into the public domain, no action by the company is perceived as acceptance of guilt. Why is the company not getting ahead of this and trying to resolve it internally? There are 15 branches nationwide, is this occurring in those branches and the public just does not know about it? These questions are some of few that the public will be demanding answers for from the company. Additionally, the company needs to ask themselves, is going to trial really worth it? What are the consequences of a trial being judged before a public court of law?

(B). Stated previously, the central problem I believe in this case, is the company's' non-compliance with the Occupational Safety and Health Act (OSHA). The facts are that Crusty suffered "degenerative change" (line seventeen in the case), "permeant partial disability...and soft tissue damage" (lines twenty-four to twenty-five in the case) occurred resulting in her hand being in a sling, from lifting and dragging heavy supplies over a fair distance. Was the job description aligned to the OSHA regulations? However, questions need to be asked as to why she was performing this job in the first place. When Crusty was hired, did she not know that this would be her job function? Was she not physically tested to ascertain if she can perform the job, if not, why? Assuming that there was a change in the job description, did the organization evaluate Crusty abilities with the new requirements, and in accordance with section 37 of the OSH Act? All the facts, questions and assumptions stem out of the company's health and safety policies and ensuing problems.

Furthermore, safety concerns can be seen in the fact that Crusty's "doctors recommended that she perform light duties... but was placed back into the same position" performing additional tasks as well. Why was this so? What caused this decision, and why is there no health and safety procedure, and if there is one, why was it not used by the individuals who assigned Crusty's duties in post sick leave? If there was the implementation of safety policies, Crusty's job description would have never entail lifting 70 pounds of pizza dough and dragging heavy boxes over ten feet. If there was this need, the organization should have provided the necessary equipment. Hence questions such as; why was it not provided, and if it was, why was it not used? Was the lack of equipment a way for the company to cut cost? Is it that adhering to health and safety procedures is too expensive for the Mozzarella organization?

Additionally, the justification of the central problem is that the case shows the consequences of safety negligence. It is important; to note that safety responsibility is not only that of the organization, but the employees as well. For instance, one can assume that the organization had safety procedures, but Crusty did not follow them. Thus, although the central problem is Health and Safety, the fault must not be placed on either party before holistically understanding the situation.

(C). In the literature, we ask some question and stated some facts, but in understanding the scope of this case more questions need to be asked. The case presents Crusty as the victim and Mozzarella solely at fault. However, this cannot be taken at face value. Here, as the HR manager I will ask further questions, assessing the alternative causes of action and their consequences. Hence, in evaluating the scenario, I will draw a resulting conclusion and make recommendations on the facts, questions, and assumptions.

With the legal issues at hand the company has basically two options; one of non-action or the other of addressing the situation. The non-action approach was disused earlier in part (a), however, the action approach needs a different perspective. The company needs to evaluate what went wrong. The HR manager and the Board of Directors have to get involved, as a lawsuit is a major threat to the company. The case stated that the firm was unlawful in not complying with the OSHA regulation.

Mozzarella has to look internally, ask questions, what were their safety regulations? Or respond by providing evidence to say the company had been acting in accordance with the OSHA regulations, and if it is possible, even use their other branches as examples. Mozzarella has to be curious, about the circumstances surrounding the case as well. Should the company provide evidence that they were not responsible because of their existing policies, they can then question the legitimacy of the lawsuit. For instance, assuming that there were safety regulations such as formal reporting structures to address concerns like this, why did Crusty not report the difficulties of her task earlier; pre-injury it was a non-issue, but post-injury it became an issue?

She worked at Mozzarella for more than ten years, why did she not ask for assistance sooner? Also, assuming that the company can provide evidence that they have safety meetings or

consultations with employees every six months, in the eleven years that Crusty was employed there, how much of those meetings did she attend? Were her actions on the job in violation of the company's safety policy, and not the other way around? These questions are to ensure that the company had performed due diligence in making the work environment safe. The case only shows the situation from one side, but, the company side needs to be considered, hence, assumptions need to be made and questions asked.

Besides a line of questioning and analysis of the situation, the company must come to an understanding of whether they would put up a fight. They believe they are not at fault or will try to settle the issue realizing that there may be some responsibility on their part. If the latter is decided, as the HR manager I would recommend that the organization do this outside of court to avoid the negative consequences as mention previously. Moreover, when all is considered, I cannot conclude that the company was at fault or not at fault, however, I can make recommendations based on the assumptions above.

- Implement or revise safety policies, in accordance with the OSH Act.
- Ensure that there is proper reporting procedure, if there already exists, evaluate its effectiveness.
- Ensure that the company conducts physical examination before the commencement of employee's duties at the post-recruitment and selection stage.
- Ensure that the job analysis (description and specification) are in accordance with the OSH Act.
- Ensuring that the company conducts regular safety procedure checks to guarantee employees conformance.
- Evaluate the health and safety in its other branches.
- Investment in new technology, such as mechanical lifts or trolleys.
- The development of a Code of Conduct/ disability procedures, to guide managers in their decisions.
- Development of a procedure to deal with employees returning from leave be it due to injuries, infectious or non-infectious diseases and maternity.
- Responding to the pre-action protocol letter.

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