

ORIGINAL

Decision No. 45568

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

MILO BARRY,

Complainant,

vs.

Case No. 5249

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Milo Barry, complainant.

Leslie C. Tupper and L. B. Conant for Pillsbury, Madison & Sutro
and Lawler, Felix and Hall.

George W. Irving, Assistant City Attorney of Burbank, for Elmer H.
Adams, Chief of Police and Archie L. Walters, City Attorney of
the City of Burbank.

Elmer H. Adams, Chief of Police, interested party.

O P I N I O N

The complaint herein alleges that complainant's telephone service at 441-1/2 North San Fernando Boulevard, Burbank, California, under number Charleston O-2635, has been disconnected by the respondent telephone company, and that the telephone company has refused, and does now refuse, to re-connect the telephone facilities involved. The complaint further alleges that the telephone facilities were not used in violation of the law, and that the complainant would suffer irreparable injury and great damages unless the telephone service is restored.

An order granting temporary interim relief was issued on December 19, 1950, in Decision No. 45176, directing respondent telephone company to restore the facilities in question pending a hearing on the complaint. This restoration was effected, and subsequently the telephone company filed an

answer to the complaint, the principal allegation of which was that the respondent telephone company had reasonable cause to believe that the use made, and to be made, of the telephone facilities concerned was prohibited by law, and that, accordingly, it was required to discontinue service to the subscriber under the provisions of this Commission's order contained in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

Public hearings were held before Examiner Syphers in Los Angeles on January 29, March 12, and March 26, 1951. On these dates evidence was adduced, and on the last-named date the matter was submitted.

At the hearing the complainant presented testimony to the effect that he owned and operated a paint store at 441-1/2 North San Fernando Boulevard, Burbank, California. During the latter part of November, 1950, he, according to his testimony, permitted one Raymond Psuja to use the telephone in this store in order to take calls regarding possible employment for Psuja. The telephone was located in a small office in the back of the store, and Psuja set up a card table just outside of this office and placed a telephone thereon. Both Psuja and Barry testified that the telephone had not been used for any unlawful purpose whatsoever.

According to further testimony presented, two police officers of the City of Burbank came into the paint store on November 28, 1950, and there found Psuja sitting at the card table with a so-called scratch sheet and some alleged betting

markers on the table and on his person. Exhibit No. 3 is a copy of the National Scratch Sheet dated November 28, 1950. Exhibits Nos. 4 to 7, inclusive, are copies of the alleged betting markers. The scratch sheet is a publication which sets out the races at various race tracks throughout the country, the horses running, the probable odds, the jockeys, and other pertinent information.

On Exhibit No. 3 there are pencil notations, those under Hollywood Park, a race track in Los Angeles, California, being designated by the letter "A", those under Bowie, a race track in Maryland, being designated by the letter "B", and those under Fair Grounds, a race track in New Orleans, Louisiana, being designated by the letter "C". According to the testimony of the two police officers, these pencil notations were admittedly placed on this scratch sheet by Raymond Psuja.

The alleged betting slips, Exhibits Nos. 4 to 7, inclusive, allegedly show bets placed on various races which were running at the three tracks heretofore mentioned, the letters "A", "B" and "C" being used to designate these tracks on the betting slips. Likewise, there are columns on these betting slips showing the amounts of money bet and the type of bet involved.

Exhibits Nos. 4 and 6 have the number 1410 at the top, and Exhibits Nos. 5 and 7 have the number 1440. It was the opinion of the police officers that these numbers designated the parties who had telephoned in the bets listed on the slips.

On November 28, 1950, the two police officers arrested Psuja. Subsequently he was charged with having possession of betting markers and other memoranda of bets and wagers in violation of Ordinance No. 1012 of the City of Burbank. On March 1, 1951, Psuja plead guilty to these charges. The two police officers who presented testimony both stated that Psuja had voluntarily admitted to them that he was engaged in the business of taking bets on horse races at the time of his arrest. However, Psuja and Barry denied this, and contended that they were not taking bets and that the telephone had not been used for any unlawful purposes. Their explanation of the scratch sheet and betting markers was that it was merely a means of passing the time of day. In other words, Psuja and Barry had a system of imaginary bets and they recorded them on these slips.

The record also shows that the defendant telephone company disconnected the telephone facilities of petitioner as a result of a letter received from the Chief of Police of the City of Burbank. Since this letter constitutes "a written notice to such utility" from an "official charged with the enforcement of the law stating that such service is being used, or will be used, as an instrumentality to violate ... the law", we hereby find that the telephone company acted with reasonable cause, as such term is used in Decision No. 44415, supra.

Our specific problem now, therefore, is whether or not there is sufficient evidence of unlawful activities to justify the termination of the order granting temporary interim relief

issued by Decision No. 45176, on December 19, 1950, or whether there is insufficient evidence on this point, and, accordingly, that the aforesaid temporary order should be made permanent.

A careful review of this record impels the conclusion that the complaint should be dismissed. The evidence indicates that bookmaking activities were being carried on at complainant's premises. While there is no specific evidence showing that the telephone was actually used, nevertheless we find that it is reasonable to infer that the telephone of complainant was used in these bookmaking transactions. A similar finding was made in the case of Millstone vs. The Pacific Telephone and Telegraph Company, Decision No. 43458, dated October 25, 1949, on Case No. 5023 and Case No. 5024 (49 Cal. P.U.C. 178).

O R D E R

The complaint of Milo Barry vs. The Pacific Telephone and Telegraph Company having been filed, public hearings having been held thereon, the case now being ready for decision, the Commission being fully advised in the premises and basing its decision upon the evidence of record and the findings herein,

IT IS ORDERED that the complainant's request for restoration of telephone service be denied, and that the said complaint be, and it hereby is, dismissed. The temporary interim relief granted by Decision No. 45176, dated December 19, 1950, on Case No. 5249, is hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of sixty (60) days after the effective date of this order, The Pacific Telephone and Telegraph Company may consider an application for telephone service from the complainant herein on the same basis as the application of any new subscriber.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 10th day of April, 1951.

R. F. Zimmerman

Harold P. Kula

Francis H. Potter
John E. McNeill

COMMISSIONERS