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ORIGINAL

Decision No. 48840

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ALMA McCLELLAND,

Plaintiff,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 5341

Guinness and Graves, by Joseph L. Graves, for complainant. Pillsbury, Madison & Sutro by John A. Sutro, and Lawler, Felix & Hall by L. B. Conant, for defendant.

O P I N I O N

The complaint alleges that Alma McClelland is the operator of a cafe at 3247 San Gabriel Boulevard, San Gabriel, California, that on or about the 9th day of July, 1951, complainant's telephone, number Atlantic 0-5312, was disconnected by defendant telephone company and that the defendant telephone company advised complainant the reason for removal of the telephone was that it had been used for bookmaking purposes. The complaint further alleges that the telephone company has refused to reconnect this telephone service, that this service is necessary in the conduct of plaintiff's business, and that complainant has not used the telephone facilities for any illegal purpose and does not intend to do so in the future.

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Subsequently, on November 23, 1951, this Commission, by Decision No. 46453 in Case No. 5341, issued an order granting temporary interim relief, directing the respondent telephone company to restore telephone service to complainant pending a hearing on the complaint.

On November 29, 1951, the respondent telephone company filed an answer, the principal allegation of which was that it had reasonable cause to believe that on or about July 13, 1951, the use made or to be made of said telephone service was prohibited by law and, as a result of such reasonable cause, respondent telephone company did disconnect telephone facilities pursuant to the order of this Commission in Decision No. 41415, dated April 6, 1948, in Case No. 4930 (47 Cal. P.U.C. 853).

A public hearing was held in Los Angeles on February 7, 1952, before Examiner Syphers, at which time evidence was adduced and the matter submitted.

At the hearing the complainant testified that in the operation of her restaurant at 3247 South San Gabriel Boulevard, the telephone ATLantic 0-5312 was used primarily to place orders for supplies for the restaurant. Prior to the disconnection, the telephone service consisted of a private telephone located in the kitchen of the restaurant, with an extension in another room adjoining the kitchen. Complainant, prior to and during the period when the telephone service was disconnected, came to work about 4:00 P.M., and remained at the restaurant until about 6:00 A.M. In addition, she had an employee who worked from 10:00 A.M. until 4:00 P.M. This employee still works at

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the restaurant from 10:00 A.M. to 4:00 P.M., but the complainant has changed her hours to the period from 12 noon to closing time. Complainant further testified that the present telephone facilities consist of a pay telephone under number Atlantic 9-6866 which is located at the front of the restaurant. She stated that she had not used the telephone for any unlawful purpose and had no knowledge of any such use by her employee.

A deputy sheriff of Los Angeles County testified that on or about July 5, 1951, he went to complainant's cafe and there observed complainant's employee, one Revel Wilford Krug, in the rear room of the cafe, with a telephone and a radio which was tuned to a station over which race results were received. The deputy sheriff entered the rear room and answered the telephone as it rang on several occasions. On these occasions the deputy sheriff recorded wagers on horse races. Likewise, Krug told the deputy sheriff that he had received bets over the telephone and then had called them to a bookmaker. Krug was in possession of a scratch sheet on which were penciled notations in his handwriting.

The position of the telephone company was that it had acted upon reasonable cause in removing the telephone. After consideration of this record, we now find that the telephone company exercised due care in taking the action it did and that this action was based upon reasonable cause, as such term is used in Decision No. 41415, supra. We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law.

It should be noted that the original telephone facilities of complainant, under number ATLantic 0-5312, were restored by the respondent company after the Commission issued its order granting temporary interim relief by Decision No. 46453, supra. However, about ten days after this reinstallation, complainant had the pay telephone, previously referred to herein, installed and the others taken out.

Accordingly, in this decision we are faced with a situation wherein complainant apparently did not know of any illegal use of the telephone, but nevertheless the telephone was so used by one of her employees, and also we are faced with a situation where the present telephone facility is different from the facilities complainant had prior to the complaint herein.

As to the problem of complainant's lack of knowledge of unlawful activities being conducted over her telephone, it is clear that the order in Decision No. 41415, supra, permits the telephone company to disconnect and remove facilities upon reasonable cause, and one form of reasonable cause was therein held to consist of a written notice from any official charged with the enforcement of the law. Such a written notice was provided to respondent telephone company by the Sheriff of Los Angeles County under date of July 5, 1951, and was received in evidence in this case as Exhibit No. 1. Whether or not the complainant had knowledge of the unlawful activities of her employee, with respect to the use of the telephone, is not material to that issue. As to a determination of complainant's future right to telephone facilities, it is important to note

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that the same employee who used the prior facilities for book-making purposes is still employed by the complainant and still has access to the telephone facilities which are now there. As to the situation wherein complainant now has a different telephone facility than the facility originally removed, we observe that this has no fundamental bearing upon the determination of this case. Complainant changed the type of facility at her own request, after it was reinstalled pursuant to the temporary interim order of this Commission in Decision No. 46453, supra.

O R D E R

The complaint of Alma McClelland against The Pacific Telephone and Telegraph Company having been filed, public hearing having been held thereon, the matter now being ready for decision, and the Commission being fully advised in the premises and basing its decision upon the evidence of record in this case 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. 46453, dated November 23, 1951, in Case No. 5341, 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 similar new subscriber.

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

Dated at San Francisco, California, this 11th day of March, 1952.

R. J. [Signature]
President
Justice J. [Signature]
Harold P. [Signature]
[Signature]
Commissioners