

ORIGINAL

Decision No. 47520

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

VIRGIL DURHAM,

Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY, a corporation,

Defendant.

Case No. 5372

Virgil Durham, in propria persona. Pillsbury,
Madison & Sutro, by John A. Sutro, and Lawler, Felix
& Hall, by L. B. Conant, for The Pacific Telephone
and Telegraph Company, defendant.

O P I N I O N

The complaint alleges that Virgil Durham,
at 6047 East Olympic Boulevard, Los Angeles, California, prior
to April 18, 1952, was a subscriber and user of telephone
service furnished by the defendant company under number
Union 1-1234. On or about April 18, 1952, these telephone
facilities were disconnected by the defendant company upon
information from the Los Angeles Vice Squad to the effect
that alleged bookmaking activities were being conducted
through these telephone facilities. The complainant further
alleges that he did not use and does not now intend to use
the telephone facilities as an instrumentality to violate
the law nor in aiding or abetting such violation; that he

has made demand upon defendant telephone company to have the said facilities restored, but defendant has refused such demand.

Under date of May 8, 1952, an order granting temporary interim relief was issued by Decision No. 47126, in Case No. 5372, whereby defendant company was directed to restore the telephone service herein concerned pending a hearing in this matter.

Under date of May 14, 1952, the defendant telephone company filed an answer alleging that on or about April 18, 1952, it had reasonable cause to believe that the use made or to be made of the telephone service furnished to complainant, under number Union 1-1234, at 6047 East Olympic Boulevard, Los Angeles, was being used as an instrumentality to violate the law, and that the disconnection was made 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 July 18, 1952, before Examiner Syphers. At the hearing it developed that the premises at 6047 East Olympic Boulevard are used for a bar and restaurant operated under the name of Phil's Pasta House. The complainant, Virgil Durham, is a partner and half owner of this business.

At about 3:30 P.M. on March 1, 1952, according to the testimony of a deputy sheriff of Los Angeles County, another deputy sheriff entered the above-mentioned premises and observed one William Rink, standing at the bar, engaged in receiving

and recording bets on horse races. There was a portable radio on the bar tuned to a station broadcasting race results. About an hour later the witness stated that he entered the premises, and while he was there he and the other officer discovered a hand telephone on a shelf in the kitchen which was at the rear of the premises. The telephone, which bore number Union 1-1234, rang several times while the officers were there, and each time they answered it and the party would ask for "Bill." On two occasions one of the deputies recorded bets on horse races to be run at Santa Anita Race Track.

The complainant testified that he was not in the premises during the time the police officers were there, but he learned of the situation when he came to work that evening. He further testified that he was not aware that the telephones had been used for bookmaking purposes, and that at no time had he used them for that purpose. He further stated that the telephone facilities consisted of a dial telephone in the kitchen and an extension which was located on the bar. The only telephone from which an outgoing call could be made was the dial telephone in the kitchen.

The deputy sheriffs disconnected the kitchen telephone, but left the extension on the bar. Subsequently all telephone service was disconnected by the telephone company. The supervising special agent of the defendant telephone company introduced in evidence Exhibit No. 1, a copy of a letter from the Sheriff of Los Angeles County, advising that the telephone facilities herein concerned were used for bookmaking purposes.

The position of the telephone company was that it had acted upon reasonable cause in disconnecting the telephone facilities, and after consideration of this record we 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, dated April 6, 1948 in Case No. 4930 (47 Cal. P.U.C. 853). We further find that the telephone facilities here in question were used as an instrumentality to aid and abet the violation of the law.

Although complainant testified that he did not use the telephone facilities for bookmaking purposes and had no intention to do so, yet it is apparent that they were being used for such purposes. Complainant testified that it was the practice to keep a lock on the telephone in the kitchen. However, this did not prevent the receiving of bets, as indicated by this record, since incoming calls could be received in spite of the lock.

In a proceeding such as this our concern is with the use of the telephone facilities. Since there is no question that these facilities were used for an unlawful purpose, we find that the complaint should be dismissed.

O R D E R

The complaint of Virgil Durham 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 the restoration of telephone service be denied, and that said complaint be and it hereby is dismissed. The temporary interim relief granted by Decision No. 47126, dated May 8, 1952, on Case No. 5372, is hereby set aside and vacated.

IT IS FURTHER ORDERED that, upon the expiration of thirty (30) 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 after the date hereof.

Dated at San Francisco, California, this 28th day of July, 1952.

[Signature]
President
Justus J. Casner
Harold A. Hula
Herbert L. Patten
John E. Mitchell
Commissioners