

Decision No. 5624?

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

STANLEY W. TAYLOR, dba)
 TAYLOR FOUNDRY & MFG. CO.,)
) Complainant,)
) vs.)
 PACIFIC GAS AND ELECTRIC)
 COMPANY, a corporation,)
) Defendant.)

Case No. 5959

Stanley W. Taylor, in propria persona,
 complainant.
Malcolm A. MacKillop, for Pacific Gas
 and Electric Company, defendant.

O P I N I O N

On July 25, 1957, complainant Stanley W. Taylor, hereinafter called Taylor, filed his complaint against defendant Pacific Gas and Electric Company, hereinafter called Pacific, seeking reparation in the sum of \$2,300 and such other relief as to the Commission may seem proper. Pacific filed its answer on August 16, 1957, requesting the Commission to issue its order dismissing the complaint. Among its defenses Pacific alleges that, as appears on the face of the complaint, this same action, based upon the same alleged facts and alleged in the same language, was litigated in the Municipal Court of the City and County of San Francisco; that on November 16, 1956, said court rendered judgment "that plaintiff take nothing by this action" which said judgment was entered in

Minute Book, Vol. 126, p. 346, on November 19, 1956, and that on appeal to the Appellate Department of the Superior Court of the State of California in and for the City and County of San Francisco the judgment of the Municipal Court was affirmed.

Public hearing was held before Examiner Wilson E. Cline at San Francisco on November 18, 1957. Copies of the judgments of the Municipal Court of the City and County of San Francisco and of the Appellate Department of the Superior Court in and for the City and County of San Francisco and certain other documents pertaining to such proceedings were received in evidence. Counsel for Pacific moved for dismissal of the complaint on the ground that it is barred by res judicata. The motion was taken under submission upon the filing of Pacific's reply brief on December 5, 1957.

A review of the complaint filed by Taylor shows on its face that it is a restatement of his action in the Municipal Court of the City and County of San Francisco. Exhibit No. 2 is a certified copy of the judgment of the Municipal Court in said action and Exhibit No. 9 is a certified copy of the judgment on appeal to the Appellate Department of the Superior Court of the State of California in and for the City and County of San Francisco. Said judgments are final.

In cases of excessive charges or discrimination requiring the exercise of administrative functions, jurisdiction to award reparation rests exclusively with this Commission. The courts have concurrent jurisdiction in other reparation cases. Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission, 212 C 370 (1931).

A review of the record in this proceeding discloses that Taylor is not complaining of the reasonableness of the rates, rules or regulations in any of Pacific's tariff schedules. Instead he is alleging that the charges for services furnished him were determined pursuant to the provisions of certain gas and electric rate schedules when he should have been advised that he could avail himself of lower rates in other gas and electric schedules. This is the type of reparation proceeding in which the courts as well as the Commission have jurisdiction.

We hereby find and conclude that the final judgments against Taylor issued by the Municipal Court as set forth in Exhibit No. 2 and by the Appellate Department of the Superior Court as set forth in Exhibit No. 9 are res judicata as to the matters therein determined and constitute a bar to the complaint on the same cause in this proceeding before the Commission. The authorities cited in Pacific's Memorandum on Res Judicata which is a part of Pacific's reply brief herein fully support such conclusion. The motion of Pacific that the complaint be dismissed will be granted.

O R D E R

The above-entitled complaint having been considered, a public hearing having been held, the motion of defendant for dismissal having been submitted, and the matter now being ready for decision,

IT IS HEREBY ORDERED that the complaint herein be dismissed.

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

Dated at San Francisco, California, this 18th day of December, 1958.

[Signature]
President
[Signature]
[Signature]
[Signature]
Commissioners