

ORIGINAL

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Decision No. _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA .

WILLIAM J. BREWER,
Times L. A. Circulation Dealer,

Complainant,

vs.

GENERAL TELEPHONE COMPANY,
8613 East Firestone Boulevard
P. O. Box 151
Downey, California 90241,

Defendant,

Case No. 7938

(Filed July 8, 1964)

William J. Brewer, in propria persona.
A. M. Hart and H. Ralph Snyder, Jr.,
by H. Ralph Snyder, Jr., for
defendant.

O P I N I O N

William J. Brewer alleges that he is a Los Angeles Times circulation dealer, with an office in Downey, California; that he receives telephone service furnished by General Telephone Company (defendant); that on June 22, 1964, he received a telephone bill of \$367.82 for his business telephone, number 861-0213; and that the calls in that amount were not authorized by him. He further alleges that he previously paid a bill for \$34 for unauthorized telephone calls. He requests an order refunding to him the amount of \$401.82.

On August 3, 1964, defendant filed a motion to strike and an answer to the complaint. The motion was to strike various evidentiary and immaterial matter pleaded in the complaint. At the hearing held before Examiner Rogers on September 25, 1964, in Downey, the motion to strike was denied. We concur in this ruling.

As an affirmative defense, defendant alleges that the disputed calls were made over complainant's telephone; that they were made by a man who was an employee of complainant and who was given access to complainant's telephone by complainant and that, therefore, complainant is the responsible party.

At the hearing, complainant testified that he had been a Los Angeles Times distributor for a number of years at different addresses, the last of which was 9126 East Firestone Boulevard, Downey, California; that during all of said time he had a telephone furnished by defendant under the same telephone number; that his March, 1964, bill contained \$34 in charges for long distance calls; that he paid this bill and told defendant he would not be responsible for long distance calls; that when he received his April telephone bill for approximately \$425, there were \$367.32 in long distance calls not authorized by him; that he called defendant and requested an itemization of the bill; that on May 7, 1964, he was given an itemization of said bill (Exhibit No. 1); that the telephone bill for the \$34 and the March calls were for a former telephone solicitor of his; that this man worked for him for about two weeks; that he discharged this man and during non-office hours, either drivers of Times newspaper trucks, who are authorized to enter his office, admitted this man to complainant's place of business, or he had secured an unauthorized key and made the telephone calls; that he is not responsible for said bills; that he paid said bills and feels he is entitled to a refund therefor.

On behalf of defendant, there was evidence that in March, 1964, complainant noted telephone calls on his bill which were made by the former employee; that on March 17, 1964, complainant asked for an investigation of these calls; that defendant checked and determined that these calls were made by an employee of complainant; that these calls amounted to \$34 and complainant paid the bills; that the employee was discharged; that the April, 1964, telephone bill included \$331.25 in toll charges (Exhibit No. 1) made by complainant's said former employee who incurred the \$34 prior toll charge bill; that complainant asked help in locating this former employee; that defendant gave what assistance it could to complainant; and complainant paid the bill to prevent discontinuance of service. The service manager of defendant's Downey Division testified that complainant never denied responsibility for the bill. Defendant introduced in evidence as Exhibit No. 2 its tariff sheet, Revised Cal. P.U.C. Sheet No. 10282-T, Definition 22 which read as follows during the period involved:

"22. Subscriber

The person in whose name service is furnished as evidenced by the signature on the application or contract for that service, or in the absence of a filed instrument, by the receipt and payment of bills regularly issued in his name regardless of the identity of the actual user of the service."

The Commission finds that:

1. During the months of March, April, and May, 1964, and prior thereto, complainant was a Los Angeles Times circulation dealer receiving telephone service furnished by the defendant at 9126 East Firestone Boulevard, Downey, California.

2. For a period during the months of February and March, 1964, complainant had an employee who was authorized to solicit newspaper subscriptions over complainant's telephone.

3. In the month of February, 1964, this employee made long distance telephone calls in the amount of \$34; complainant paid defendant such sum in March, 1964.

4. Early in March, 1964, complainant discharged said employee; after his discharge, said employee was admitted to complainant's place of business on occasion by persons authorized by complainant to enter his premises; between March 10, 1964 and March 26, 1964, said discharged employee made long distance telephone calls on complainant's telephone, which telephone calls totaled \$331.25; defendant had no knowledge that said telephone calls were unauthorized.

5. During all of the periods referred to herein, complainant was the subscriber to the service as subscriber was defined in defendant's then applicable tariffs.

The Commission concludes that complainant is responsible for the telephone calls referred to above and made over his telephone; that defendant is entitled to the charges stated above; and that the complaint should be dismissed.

O R D E R

IT IS ORDERED that the above-entitled complaint be, and it hereby is, dismissed.

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

Dated at San Francisco, California, this 24th day of November, 1964.

Fredrick B. Halchuff President
Robert E. [unclear]
Walter [unclear]
George T. Trover
William L. Bennett Commissioners