

ORIGINAL

Decision No. 69606

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

BEATRICE WILLIAMS,
Complainant,

vs.

THE PACIFIC TELEPHONE AND
TELEGRAPH COMPANY,
Defendant.

Case No. 8036
(Filed October 9, 1964)

Mrs. W. F. Williams, in propria persona, complainant.

Pillsbury, Madison & Sutro and Richard W. Odgers, by
Richard W. Odgers, for The Pacific Telephone and
Telegraph Company, defendant.

O P I N I O N

The issue in this matter is simple. Mrs. Williams claims that on June 11, 1964 she made a payment of \$22 on account of a telephone bill. The Pacific Telephone and Telegraph Company (hereinafter called PT&T) claims that the alleged payment was not made.

The matter was called and, for good cause, continued on January 14 and February 18, 1965. A duly noticed public hearing was held before Examiner Jarvis at San Francisco on March 24, 1965, and the matter was submitted on that date.

PT&T first contends that the proceeding should be dismissed because Mrs. Williams is not a proper party complainant. PT&T argues that the telephone service at the number in question is shown, in its records, to be in the name of Mrs. Williams' husband, and that Mr. Williams is the only person who can maintain the complaint. No authority is cited for this proposition. It has no merit.

Mrs. Williams testified unequivocally that on June 11, 1964 she went to PT&T's San Mateo office and paid \$22 on account of the telephone bill dated June 3, 1964, and that the money was paid to a cashier named Joan Carlson. Mrs. Williams does not have a regular receipt for the alleged payment. She claims that PT&T failed to give her such a receipt and that certain notations were made by Joan Carlson on the June 3rd bill on June 11th and are evidence of the alleged payment.

Mrs. Joan Carlson was subpoenaed and called as an adverse witness by Mrs. Williams. She testified that she was an employee of PT&T who was, at the time of the hearing, on a leave of absence; that during the events here under consideration she was employed by PT&T as a teller in the San Mateo office; that she had no recollection of any transactions with Mrs. Williams and that the handwritten notations on the June 3rd bill are in her handwriting, but she does not remember when they were made. Mrs. Carlson testified that, after a customer has made a partial payment on a bill, a teller will, at the request of the customer, subtract on the face of the bill the amount of the payment and compute the balance still owing. This is what was done on the June 3rd bill, which was received in evidence as Exhibit 1.

PT&T did not give credit for the alleged payment on June 11th. Therefore, the July bill showed a balance due of \$40.52. PT&T threatened to disconnect the telephone service unless some payment was made. On July 17, 1964 Mrs. Williams went to PT&T's San Mateo office and made a payment of \$22 for which a customer's receipt was issued. The receipt is stamped with Mrs. Carlson's teller's number but the handwriting on the receipt is not Mrs. Carlson's and the "prepared by" box on the receipt contains another person's initials.

PT&T contends that Mrs. Williams did not make the alleged payment on June 11, 1964. It asserts that the June 3rd bill was not mailed until June 12, 1964, and that the alleged transaction could not have occurred on June 11th. PT&T also contends that Mrs. Carlson's notations on the June 3rd bill were made on July 17, 1964; that Mrs. Williams has become confused about the matter and that only one \$22 payment was made. PT&T argues that partial payments would not be made in the amount of \$22 in two consecutive months. We look to see what evidentiary support may be found in the record for the contentions advanced by PT&T.

The manager of PT&T's San Mateo exchange testified that the billing period for the prefix of the number here involved included the 3rd day of the month in which it was mailed. Thus, the June 3rd bill here under consideration included charges through June 3, 1964. The manager testified that it was the usual practice at the San Mateo office to place bills in the mail six working days after the billing date. If this practice had been followed the June 3rd bill would have been mailed on June 12th. However, the manager was unable to produce any record which would indicate the actual date of mailing the bill in question.

The manager's testimony as to how Mrs. Carlson's handwriting appears on the June 3rd bill is mere conjecture. As indicated, Mrs. Carlson admitted that the calculations on the bill are in her handwriting. She also testified that such calculations would be done only after a partial payment had been made. Also, it is admitted that the receipt dated July 17, 1964 was not prepared by Mrs. Carlson, although it bears her teller's number. The manager testified that Mrs. Williams probably dealt with a service representative on July 17th; that the service representative probably took the receipt

and the \$22 given her by Mrs. Williams to Mrs. Carlson while Mrs. Williams remained at the representative's desk; that Mrs. Carlson probably made the calculation on the June 3rd bill at that time and that the service representative probably returned the July 17th receipt and June 3rd bill to Mrs. Williams.

The manager's conjectures as to how Mrs. Carlson's calculations appear on the June 3rd receipt are of little probative value. He did not personally observe the July 17th transaction. Mrs. Carlson does not remember any transaction involving Mrs. Williams, and this is understandable because of the large number of transactions handled by tellers. There is no evidence which would indicate that Mrs. Carlson was present at work on July 17, 1964. The alleged service representative was not produced as a witness. If the service representative prepared the receipt, why did not she also make the calculations on the June 3rd bill? Mrs. Carlson testified that she would only make such calculations on a bill after a request by a customer. Even under the manager's own conjecture, Mrs. Williams did not accompany the service representative to the teller. Therefore, Mrs. Carlson would not have been asked by Mrs. Williams to make the calculations on July 17th. In addition, when Mrs. Williams went to the PT&T San Mateo office on July 17th, the number involved had already been billed for telephone service through July 3rd. If any calculations were made on July 17th it is difficult to perceive why the balance shown as owing to PT&T would not include the amount of the July bill. PT&T had ample opportunity to produce witnesses or other evidence to refute the positive evidence adduced by Mrs. Williams, but did not do so. The Commission finds that Mrs. Williams made a payment of \$22 to PT&T on June 11, 1964, as alleged. Detailed findings and conclusions will be hereinafter set forth.

After the proceeding was submitted, Mrs. Williams sent to the Commission and served upon PT&T a document called a brief which,

in addition to discussing some of the facts, makes certain allegations and requests additional relief. The brief alleges that at the hearing counsel for PT&T advised witness Carlson to collect witness fees from Mrs. Williams. (See Public Utilities Code §1791.) In addition to the \$22 here in dispute, Mrs. Williams requests a "judgment" in the sum of \$2.50 for the costs of serving the subpoena on Mrs. Carlson and \$100 to compensate her for the aforesaid witness fees and for the "personal inconvenience and suffering" caused her by this proceeding.

Even if it be assumed that the matters in the so-called brief are properly before the Commission and could be considered on the ex parte filing and without further hearing, the Commission could not grant the requested relief. There is no statutory authority authorizing the Commission to award costs and it has been repeatedly held that the Commission has no jurisdiction to award damages for tortious conduct. (W. M. Glynn, 62 Cal. P.U.C. 511; Postal Tel.-Cable Co. v. Railroad Com. 197 Cal. 425, 437; Villa v. Tahoe Southside Water Utility, 233 Adv. Cal. App. 566, 576; Goodspeed v. Great Western Power Co., 33 Cal. App. 2d 245, 264.) If Mrs. Williams is entitled to any damages, her remedy is in the courts. (Public Utilities Code §2106; Villa v. Tahoe Southside Water Utility, supra.)

No other points require discussion. The Commission makes the following findings and conclusions.

Findings of Fact

1. PT&T is a public utility telephone corporation, subject to the jurisdiction of the Commission, which furnishes telephone service under telephone number 343-1108 at 20 South Norfolk Street, San Mateo, California. PT&T's records list the subscriber for such telephone service to be W. F. Williams. Complainant, Beatrice Williams, is the wife of W. F. Williams and resides in the premises to which said telephone service is furnished.

2. On June 11, 1964, Beatrice Williams paid PT&T the sum of \$22 on account of the outstanding bill for telephone service under number 343-1108. PT&T did not credit the \$22 to said account. Thereafter, PT&T demanded, under threat of discontinuance of telephone service, payment of said account in an amount encompassing the \$22 which had already been paid. In the light of the threat of discontinuance of telephone service, Beatrice Williams made additional payments in connection with said account which included an amount of \$22 to cover the aforesaid payment of \$22 made on June 11, 1964, which was not credited to the account.

Conclusions of Law

1. Beatrice Williams is a proper party complainant and has standing to prosecute this complaint.

2. PT&T, by not crediting the account for telephone service rendered to number 343-1108 with the payment of \$22 made on June 11, 1964, collected twice for telephone service rendered. The collection of the additional \$22, under threat of telephone discontinuance, was a violation of PT&T's tariffs, and Sections 454 and 491 of the Public Utilities Code.

3. Beatrice Williams should be awarded the sum of \$22 as reparations with interest at the rate of 7 percent per annum from June 11, 1964 to the date of payment.

O R D E R

IT IS ORDERED that The Pacific Telephone and Telegraph Company shall, within ten days after the effective date hereof, pay

to the complainant, Beatrice Williams, as reparations the sum of \$22, with interest at the rate of 7 percent per annum from June 11, 1964, until the date of payment.

The Secretary of the Commission is directed to cause personal service of this order to be made upon defendant. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 24th day of August, 1965.

Frederick B. Haloloff
President

John E. Ditch
Attorney

William W. Stevens
Commissioners

COMMISSIONER GEORGE G. GROVER, Concurring and Dissenting Opinion:

I concur in the order granting reparation to Mrs. Williams, but I dissent from the determination that we have no jurisdiction to award damages.

It is true that many statements to the effect that we have no jurisdiction over damages have been made by the commission and the courts, but these generalizations have been made in other situations and are much too broad; they are not controlling here. Although we do not ordinarily have such jurisdiction, this is not an ordinary case.

The last paragraph of Section 737 of the Public Utilities Code provides:

"If suit for the collection of the lawful tariff charges or any portion thereof of a public utility is filed in any court in accordance with the terms of this section, or if such collection is made by the public utility without filing suit, the person against whom such suit is filed or from whom such collection is made may, within 90 days from the date of service of summons in the suit, or the date of the collection, file with the commission, or with any court of competent jurisdiction, a complaint for damages resulting from the violation of any of the provisions of this part with respect to the transaction to which the suit of the public utility relates, or for which such collection has been made."

The complaint herein was filed October 9, 1964, less than 90 days after the July 17 payment which was collected under the threat that utility service would otherwise be discontinued. By its express terms, Section 737 gives jurisdiction to this commission to decide Mrs. Williams' request for "damages" in connection with the "transaction" associated with that payment.

The suggestion that the request for damages (as opposed to the demand for return of the \$22) was not made in the proper manner or at the proper time raises a secondary question of procedure, not of jurisdiction; and in any event it need not prevent us from rendering complete justice under the circumstances shown. Rule 78 of our Rules of Procedure declares:

"These rules shall be liberally construed to secure just, speedy, and inexpensive determination of the issues presented. In special cases and for good cause shown, the Commission may permit deviations from the rules. Rules may be amended at any time by the Commission."

Whatever the informality of Mrs. Williams' request for additional relief, the commission is empowered to entertain it - and clearly should.

The time and effort Mrs. Williams has expended to regain her \$22, the legal cost to which she has been subjected, and the uneven odds she has faced in opposing one of the largest utilities - and one of the largest law firms - in California fully vindicates the wisdom of the Legislature in authorizing the entire transaction to be determined in a single proceeding. Today's order, although finding that Mrs. Williams is right, denies her more than it grants. It frustrates the high ideals which underly our Public Utilities Act and constitutes a retreat in the battle for equal justice.

Henry J. Hoover

Commissioner