

sjg/jmd

ORIGINAL

Decision No. 79325

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PAUL S. KASPRZYCKI, dba
INDEPENDENT SHIPWRIGHT,

Complainant,

vs.

PACIFIC TELEPHONE COMPANY,
a corporation,

Defendant.

Case No. 9220
(Filed May 5, 1971)
(1st Amendment Filed June 9, 1971)
(2nd Amendment Filed
September 20, 1971)

ORDER OF DISMISSAL

Insofar as material, in his original complaint, the complainant alleges:

"I charge Pacific Telephone Company of Costa Mesa, California, with wilful and knowledgeable negligence, the result of which negligence proved to be directly responsible for considerable financial loss to my business. The facts in support of this charge are as follows:

"Over a period of several months, my telephone did not operate properly. In particular, two malfunctions periodically prevailed, i.e., (1) The phone failed to ring on my end, (the caller got a ring but the unit did not), and (2) the caller would receive a recording saying that my phone was no longer in service. Since I still received some incoming calls, this did not happen every time; however, the enclosed list of persons are witness to the frequency of the problem. These troubles began in early September

and to the best of my knowledge remained with the phone until I moved to a new unit in January. I was made aware of these problems only through friends and business associates with whom I had everyday dealings. Beginning in early September, I made Pacific Telephone Company aware of the problem. As it continued to prevail, I became increasingly concerned until my move to a new shop and the resulting circumstances prompted my protest.

"Since this is a business phone, the results of these malfunctions are obvious: my advertising costs for my products, (small sailboats and accessories and marine carpentry) was a total loss since an interested buyer would be unable to contact my shop. The resulting profit denial from unsold merchandise logically followed.

"Enclosed is a list of persons (here omitted) throughout the state who, over a period of five (5) months, tried to reach my number. Each on a later occasion informed me of phone difficulties. If this number of calls never reached me, and many had problems on 10 or more separate occasions, I am wondering how many calls in response to my ads, to printed flyers, business cards, etc., also failed to reach me.

"The awareness of these facts compounds the anger produced in me when I think of the manner in which the phone company handled my complaints, keeping in mind the fact that during this period of time I made numerous complaints, only to be told that the problem was remedied or that none existed. Still, it persisted and again I was told none existed. During much of this time, I advertised in vain.

"After moving to a new unit in the same building, I was prompted to an informal complaint in protest by a seemingly high and unnecessary charge for a long cord (See letter #1). This together with an awareness of my past losses, compelled me to demand an apology and token adjustment. I then requested a conference with a phone company representative.

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"After no satisfactory settlement was attained, I filed what I thought was a formal suit with the Public Utilities Commission. The results of this action are evident in my letters, so I shall not be redundant. However, at this point, I formally charge Pacific Telephone Company with supplying the staff of the Public Utilities Commission with false information regarding my complaint. In the letter to me from the Public Utilities Commission, dated April 5th, it clearly indicates that the phone company misled the Public Utilities Commission by stating that I had complained only three times. I shall swear before any court of law that at the very least I called six times. And too, where are the complaints filed by two of the other people listed herein?

"In the fourth paragraph of that same letter lies additional proof of false information. I made a point in my first letter to the Public Utilities Commission that at the close of the first visit from the representative, I was told that he would return on the following Tuesday in the afternoon. The representative never returned and I was never informed that there was an cancellation of our meeting. In reference to this incident, the phone company told the inquiring Public Utilities Commission staff that I was 'contacted and advised' of that change in plans. I was not.

"Enclosed with this formal complaint is a check for \$100.00, payable to your commission. This, I trust, will keep my unit operative until these matters are settled. If any additional deposits are required for further service, I will expect to be contacted by your staff.

"WHEREFORE, complainant requests an order

1. For general damages in the total amount of \$3100.00; consisting of \$100.00 for advertising costs; \$1000.00 for loss of sales, and \$2000.00 for time lost from September, 1970 to date, in negotiations with agents of defendant corporation."

In response to an objection by the defendant on June 9, 1971, the complainant filed what purports to be an amended complaint wherein he reiterates the allegations of his original complaint and states his basic complaint in the following manner: "I wish to emphasize once more, the long cord incident is not even near the same level of importance as eight (8) months of negligence, resulting in considerable financial losses to my company." The complainant did not amend his complaint.

Thereafter, on June 21, 1971, the defendant filed its answer. In addition to a general denial, the defendant pleads that the complaint is defective in that it fails to state a cause of action as required by Section 1702 of the Public Utilities Code, and that the complaint should be dismissed since the relief requested is beyond the jurisdiction of the Commission.

By letter dated September 3, 1971, the Commission advised the complainant as follows:

"The Commission has for consideration your complaint against The Pacific Telephone and Telegraph Company. The Commission's jurisdiction relative to reimbursement of all or a portion of charges for service is limited to the sums collected by the utility from customers pursuant to the utility's filed tariffs or rates; in other words, reparation for poor, faulty, or inadequate service rendered. It may not award damages.

"The Commission suggests that if you believe you are entitled to reparation from the telephone company, you amend your complaint so that your claim may be set for hearing.

"Please reply at your earliest convenience."

After being so advised by the Commission the complainant filed an amendment on September 20, 1971. This amendment adds nothing to the petition. It does not contain any material in response to the Commission's request of September 3, 1971. Complainant simply reiterates his request for damages and increases the amount.

The Commission has great power relative to the entities whose rates, services and facilities it controls but it is limited in its jurisdiction to hear and determine only such complaints as are germane to regulation and control of public utilities (Motor Transit Company v. Railroad Commission of the State of California, et al, 189 Cal. 573. Pacific Telephone and Telegraph Company v. John E. Eshleman, et al, 166 Cal. 640).

Legally we do not have jurisdiction with respect to monetary damages which may have accrued to complainant because of billing (Postal Telegraph-Cable Company v. Railroad Commission of the State of California, 197 Cal. 426 at 437). The Commission has repeatedly held that it has no jurisdiction to award damages for tortious conduct by public utilities toward its customers (W. M. Glynn v. Pacific Telephone Company, 62 Cal. P.U.C. 511; Postal Telegraph-Cable Company v. Railroad Commission of the State of California, supra; Joe Vila v. Tahoe Southside Water Utility, 233 Cal. App. 2d 469 at 479; Isabelle A. Goodspeed v. Great Western Power Company of California, 33 Cal. App. 2d, 245 at 264).

If the complainant does not get adequate service from the telephone facilities furnished to him by defendant, the Commission only has jurisdiction to order reparation of some or all of the charges paid by complainant. If complainant is entitled to any damages his remedy is in the courts (Public Utilities Code Section 2104, Vila v. Tahoe Southside Water Utility, supra).

In the Vila case, supra, the court states at page 479: "By statute, the Commission is empowered to enforce its orders by suit (Sec. 2102),^{1/} by mandamus or injunction (Sec. 2102); it also has power to impose fines (Sec. 2100) and recover them by an action (Sec. 2104). It may also punish for contempt (Sec. 2112). But Section 2106 is the only statutory authority for the recovery, by a person injured, of damages, compensatory and exemplary. The Commission has no authority to award damages."

The court further stated, at page 480:

"We attribute to the legislature an intent in enacting section 2106 to provide the prospective user wrongfully deprived of service to which he is entitled with a speedy and adequate remedy in the (superior) Court."

This language is pertinent to the case herein considered. If complainant is entitled to damages, he has access to the courts. We have advised the complainant that we cannot award general damages. Our jurisdiction is supreme within our sphere of authority. We cannot assume jurisdiction above that granted by the legislature.

^{1/} References to Code Sections are to California Public Utilities Code Sections.

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Inasmuch as the relief sought is beyond the jurisdiction of this Commission and complainant has refused to amend his complaint to state matters within our jurisdiction,

IT IS ORDERED that the complaint is dismissed.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 16th day of NOVEMBER, 1971.

William J. ...
Chairman
William J. ...
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Commissioners