

CD

Decision No. 82812

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

WILLIAM J. GARBETT,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH
COMPANY, a corporation,

Defendant.

Case No. 9674

ORDER OF DISMISSAL

Complainant alleges that defendant's practice of monitoring conversations of defendant's own employees exceeds the requirements of "training purposes only", and results in a loss of service to the public. He further alleges that monitoring of employees has resulted in "intimidation, abuses, and infringement upon the constitutional rights of employees and customers..." Complainant seeks an order eliminating all but accidental monitoring and monitoring needed to restore customer service. He also prays that defendant be ordered to rehire all past employees whose employment was terminated in the last twelve months as a result of performance standards based on information obtained from monitoring.

Defendant, pursuant to Rule 12 of the Commission's Rules of Practice and Procedure, stated that "administrative" and "supervisory" monitoring is permitted by Commission Decision No. 73146 (67 CPUC 530 (1967)) and Decision No. 78442 (72 CPUC 78 (1971)). Defendant asserts that the complaint is general in terms, not setting forth specific violations of these decisions

and not setting forth sufficient grounds to eliminate administrative or supervisory monitoring. Defendant further states that the Commission has no jurisdiction over an employment dispute.

In response to a letter from the Secretary of the Commission, complainant declined to amend his complaint. His stated reasons were the failure of the Commission to require an amendment and statement that on visiting the Commission prior to filing the complaint he was not "afforded the opportunity to observe the provisions of law or any order or rule of the Commission except for 'Procedure for Filing Formal Complaints.'"

Rule 12 of the Commission's Rules of Practice and Procedure provides, in part:

"12. (Rule 12) Procedure Upon Filing of Complaint. When a complaint is filed, the Commission shall mail a copy to each defendant. A defendant shall be allowed ten days from the date of such mailing within which to point out in writing such jurisdictional or other defects in the complaint as, in defendant's opinion, may require amendment. If it appears to the Commission that defects brought to its attention are so vital that the complaint should be amended, complainant may be required to amend the complaint. The Commission, without argument and without hearing, may dismiss a complaint for failure to state a cause of action, or strike irrelevant allegations therefrom." (Emphasis supplied.)

It must be noted that the portion of Rule 12 to which complainant refers is permissive--not mandatory. (Public Utilities Code Section 14.) The Commission is under no affirmative duty to alert litigants to possible defects in their pleadings.

The Commission is not aware of the circumstances surrounding a denial of opportunity to complainant to review Commission decisions pertaining to monitoring. Assuming that some misunderstanding occurred, this still would provide no reason for complainant to claim ignorance of such decisions. In its letter of March 18, 1974, defendant cited past Commission

decisions on this subject. A copy of this letter was addressed to complainant and the letter of March 20, 1974, from the Secretary of the Commission referred to defendant's letter of March 18, 1974. The reports of the Public Utilities Commission are available in county law libraries, and copies of individual decisions may be obtained from the Commission on payment of the fees prescribed in Section 1903(a) of the Public Utilities Code.

Based on the pleadings in this proceeding the Commission agrees with defendant that the complaint fails to sufficiently state facts which form the basis of this action. The complaint implies the use of tape recordings of conversations by defendant, but does not indicate the date or location of such practice or the use to which any recordings were put. Complainant has declined to amend this complaint.

To the extent that the complaint asks for rehiring of certain employees because of the management practices of defendant it presents an issue over which the Commission has no jurisdiction. (PT&T v. PUC, 34 C.2d 822 (1950).)

IT IS ORDERED that the complaint herein is dismissed without prejudice.

The effective date of this order is the date hereof.

Dated at San Francisco, California, this 30th day of APRIL, 1974.

President
William J. Sturgeon, Jr.

J. H. Sturgeon

J. H. Sturgeon

J. H. Sturgeon
Commissioners

3.

Commissioner Vernon L. Sturgeon, being necessarily absent, did not participate in the disposition of this proceeding.