

Decision 84 05 010

MAY 2 1984

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Leonardo Andre Binns, VP, C.W.A.
9416, Linda McCollum, President,
CWA 9416,

Complainants,

vs.

Pacific Telephone and Telegraph
Company,

Defendant.

ORIGINAL

Case 83-08-03
(Filed August 8, 1983)

ORDER DENYING COMPLAINT

Complainants Binns and McCollum are, respectively, the Vice President and the President of Communications Workers of America Local 9416, in Bakersfield. Defendant is a public utility telephone corporation subject to our jurisdiction.

The complaint states that defendant engaged in supervisory monitoring of a telephone operator named Lawrence Littler in violation of our previously established orders on the subject, and then wrongfully used the information from such monitoring to support disciplinary action against Littler. The complaint prays that defendant be fined and that the Commission order defendant not to discipline Littler.

Attached to the complaint is a photocopy of a performance review dated March 11, 1983 signed by a group manager named Helen Harp. This two page handwritten document sets forth with particulars the action of Littler in dealing with a telephone customer on an operator-assisted call. According to the document, Littler used a discourteous tone of voice and after some discussion the customer said he would forget the call. According to the document, Littler then did not release the call but placed the customer on permanent

hold, and when the customer, about two minutes later, picked up the phone to call again, he got Littler for an operator, and Littler again used the discourteous tone with the customer. The review further states that after the second contact between Littler and the customer, Littler completed the call and then stayed on the line and listened to it. The review concludes by the statement that Littler was interviewed, told that disciplinary action would be taken against him, and that he was being suspended without pay pending investigation. The outcome of the subsequent investigation (if any) is not included in the material forwarded with the complaint.

In most of the performance review, the comment of either the customer or the operator are paraphrased. There are, however, two quotations, one attributing remarks to the operator and the other quoting the customer.

Complainants claim that the actions of defendant violate our previous orders on the subject. They cite Pacific Tel. & Tel. Co. (1971) 72 CPUC 78 as holding that telephone companies may not use information derived from supervisory monitoring to support disciplinary action. They also point out that we require a checklist form for supervisory monitoring and have ruled that direct quotations should not be taken down at the time of supervisory monitoring.

Defendant's answer moves to dismiss the complaint. Defendant admits that group manager Harp prepared the handwritten summary referred to above, but that this was not done at the time of the monitoring, when a standard checklist form was used.

In its answer the defendant states that in its opinion, Littler's conduct was extreme and that he should not escape discipline even assuming a technical violation of our rules.

After reviewing the complaint and the answer, the administrative law judge (ALJ) wrote to the parties requesting the actual record or records of the supervisory monitoring (the checklist form attached to the answer was a blank exemplar and not the checklist form actually used). In response to the letter, defendant sent the ALJ and complainants a declaration under penalty of perjury

of Helen J. Harp which, in summary, states that she performed the supervisory monitoring in question on March 11, 1983, that she used the standard checklist form but then destroyed it as required by defendant's rules. The declaration further states that Harp prepared the narrative summary subsequent to the observation and to her discussion with Littler, in anticipation that he would file a grievance (although the summary does not indicate that Littler made any comment that he intended to do so.)

Discussion

The documentation shows that Pacific has very narrowly stayed within our rules, and for this and other reasons which will be discussed this case should be dismissed. However, because of the particular actions of the group manager and our past rulings, some comment is necessary.

In Pacific Tel. & Tel. Co. (1977) 83 CPUC 149, 155-181, the subject of defendant's supervisory and administrative monitoring was exhaustively considered. As a result of the evidence we allowed defendant and other telephone corporations to continue to monitor operator-customer (not customer-customer) conversations without an audible warning signal, but required a printed notice in telephone directories. We commented (pp. 178-179):

"We believe that supervisory and administrative monitoring are valuable tools in maintaining quality of service, and the elimination of the practice (or rules that would make monitoring valueless) would work a reduction in service quality. Pacific, being a very large corporation, must hire employees for its traffic department in large numbers. Even the best preliminary screening procedures will not eliminate all those who do not have the skills or the temperament to be good operators. Hearing only one side of the conversation (the operator's) does not furnish a supervisor with adequate evaluative information.

"We agree with Pacific's witness Morse [a district manager] that monitoring such persons 'on notice' (however effective it may be in the business office sector where there are more experienced employees) is unsuitable as the sole tool for measuring operator performance in the traffic

sector. Nor do we accept TURN's argument that it is basically new employees that need to be weeded out and that the experienced employees usually perform satisfactorily. Pacific logically points out that while some people are slow starters and improve gradually, others come to a new job highly motivated and then, over the course of years, get bored and restless and become a problem."

As a result of the evidence we required defendant to change from a supervisory monitoring form which allowed narrative comments to a form consisting of checklists only. Our discussion leading to this action on our part (83 CPUC 179-180) is as follows:

"As previously mentioned, our rules which exempt supervisory monitoring from requirement of notice to all parties to a communication that monitoring is taking place, also require that the monitoring be conducted 'without the making of any written notation or any record of the contents, substance, purport, effect of meaning of any conversation which may have been heard during said supervisory monitoring'. We agree with TURN that some violations have taken place, and at least some of the time, the specific quotations have turned up subsequently as testimony, or a summary thereof, at a grievance hearing requested by the employee. For example, in Exhibit 100, the notation made at the time of the observance was that the operator 'called the customer a name'. Later, at the hearing, it was stipulated that the word used was 'stupid'.

"The direct purpose of our rule was to govern notations made at the time of the observance. However, we do not believe that the above quoted rule means (1) that no record whatsoever of an operator's conduct may be made, or (2) that if an operator filed a grievance and raises the issue of his or her conduct, that the operator's improper language, if remembered by the supervisor, may not be quoted at a subsequent grievance hearing. (We see no reason to quote the customer, as was done in Exhibit 103.)

"We interpret our rule to mean that at the time of the observance, there may be no quotations, and descriptions of the conversation must be as general as possible. This apparently imposes no hardship on supervisory personnel. Pacific's witness Eich [a supervisor] when she was asked

how she would handle such language, indicated that she would merely place on her review sheet that she heard the operator use improper language or address a customer rudely, or words to that effect. Certainly there are not so many operators swearing at customers that it would be impossible for a supervisor to recall later with adequate accuracy what the operator said if a supervisor made a general notation to the effect that an operator used vulgar or profane language with a customer. While a strong argument may be made that the quotation of a brief expletive or vulgar language on the part of the operator ought to be considered outside the rule, we believe that once it is decided that something may be quoted at the time of the observance, there will be difficulty in deciding what may be quoted and what may not, and the rule will break down."

A footnote (pp. 179-180) amplified the discussion as follows:

"We must distinguish between what protection is appropriate for the operator and for the customer. If an operator initiates a grievance, the language used by the operator is placed in issue. It would be unjust to interpret our rule as a 'gag order' forbidding a supervisor from stating at a grievance hearing what the operator said, when the operator has placed the propriety of his or her conduct in issue. Furthermore, to quote the operator's improper language at such a hearing does not necessitate a quotation or close paraphrase of the customer."

Turning to the allegations of the complaint, and the assertions in Harp's declaration, since the notations of Littler's remarks were not made at the time of the observation, they are not technically the notations that come within our rule. However, we consider it poor practice and violative of the spirit of the rule to make two pages of detailed narrative notes of the conversations on the very day that the observation took place in anticipation of a grievance. The simple and straightforward reading of the discussion and footnote on this subject is that, first, such action may not be taken until the operator places his or her conduct in issue by initiating a grievance, and, second, even in that event there shall be no quotation or close paraphrase of the customer.

We note in this connection Harp's claim in her declaration that the remarks in quotations are actually paraphrases. This is difficult to accept since so much else in the performance report is paraphrase without quotation remarks. It is also hard to understand how the vulgar laconism attributed to the frustrated customer could possibly be a paraphrase of any other language. In any event, close paraphrase of the customer, as well as quotation, is proscribed.

We conclude that conduct of the defendant was, as to Littler, within our rules (although narrowly so) and therefore complainants are not entitled to the relief requested.

We should also point out that our 1977 decision commented upon our disinclination to entertain "grievance" complaints based upon a violation of our orders but directed at the relationship between one supervisor and a subordinate (83 COUC at 177). Here, the complaint concerns one operator, one manager, and one incident. That sort of dispute should be handled by the available grievance process.

However, to prevent the type of circumvention practiced by the group manager on the occasion in issue, we will emphasize that we consider the practice of completing narrative reports with such detail in anticipation of a grievance to be contrary to the

discussion and footnote quoted above from pages 197-180 of our 1977 decision. Such a practice, if widely followed, would lead to the simple substitution of one form for another (the performance review for the checklist). This is not a statement on our part that a supervisor or manager cannot complete a performance review in anticipation of a grievance, or for any other reason, but that a customer should never be quoted or closely paraphrased in such a document, and that the operator should not be quoted or closely paraphrased when no grievance is actually pending.

We will order defendant to interpret our previous ruling in this manner, and to notify managerial and supervisory personnel of this interpretation.

Findings of Fact

1. Complainants are union officials; defendant is a public utility telephone corporation under our jurisdiction; one Lawrence Littler, is the real party in interest.

2. On March 11, 1983, defendant's group manager Harp monitored two conversations between Littler, an operator, and a customer, as well as certain other conduct on Littler's part. She properly used the checklist form provided for the purpose, but then, later the same day and after interviewing Littler, she completed a handwritten narrative performance review two pages in length containing paraphrases and quotations of remarks by Littler and the telephone customer.

3. At the time of the interview, Harp told Littler he was suspended without pay pending investigation.

Conclusions of Law

1. Our discussion of monitoring practices in Pacific Tel. & Tel. Co. (1977) 83 CPUC 149, 155-181 proscribes written quotation or close paraphrase of a monitored telephone customer, either at the time of monitoring, or afterward on a performance review or other document.

2. That discussion also proscribes written quotation or close paraphrase of the monitored operator at the time of the conversation, or thereafter on a performance review or other document, unless the operator first places his or her conduct in issue by commencing a grievance.

3. Defendant should be ordered to notify its supervisory and managerial personnel of the ruling in this decision as set forth in the order.

4. Other relief should be denied, and this complaint should be denied.

O R D E R

IT IS ORDERED that:

1. Defendant shall interpret our holdings on monitoring practices set forth in Pacific Tel. & Tel. Co. (1977) 83 CPUC 149 consistent with our discussion in this opinion.

2. Defendant shall notify managerial and supervisory personnel of the interpretation in this decision within 30 days of its effective date, through the medium or media of defendant's choice.

3. Except as set forth above, other relief is denied,
and this complaint is denied.

This order becomes effective 30 days from today.

Dated May 2, 1984, at San Francisco, California.

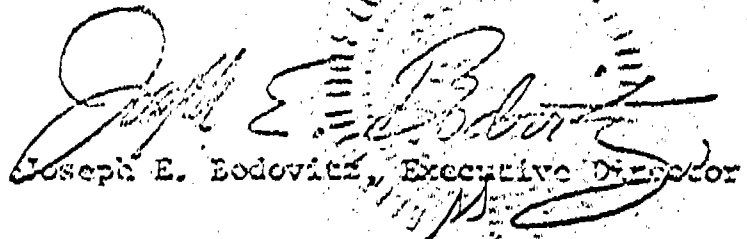
I will file a concurring opinion
later.

/s/ LEONARD M. GRIMES, JR.
Commissioner

LEONARD M. GRIMES, JR.
President

VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
WILLIAM T. BAGLEY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director

LEONARD M. GRIMES, JR., Commissioner, Concurring:

In this decision, the Commission denies the complaint but directs Pacific Telephone to comply with our rules on telephone monitoring. Several months ago, I expressed my disagreement with these rules and I am still convinced that they are unnecessary, cumbersome and unenforceable. Nonetheless, I agree with today's decision; as long as the rules are "on the books" the telephone companies should be required to adhere to them.



LEONARD M. GRIMES JR. Commissioner

May 2, 1984
San Francisco, California

hold, and when the customer, about two minutes later, picked up the phone to call again, he got Littler for an operator, and Littler again used the discourteous tone with the customer. The review further states that after the second contact between Littler and the customer, Littler completed the call and then stayed on the line and listened to it. The review concludes by the statement that Littler was interviewed, told that disciplinary action would be taken against him, and that he was being suspended without pay pending investigation. The outcome of the subsequent investigation (if any) is not included in the material forwarded with the complaint.

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Except as set forth above,

3. ¹ Other relief is denied, and this complaint is denied. ✓ / K

This order becomes effective 30 days from today.

Dated MAY 2 1984, at San Francisco, California.

I will file a concurring opinion.

LEONARD M. GRIMES, JR.
Commissioner

LEONARD M. GRIMES, JR.
President

VICTOR CALVO

PRISCILLA C. GREW

DONALD VIAL

WILLIAM T. BAGLEY

Commissioners