

Decision 90 05 092 MAY 22 1990

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

TOM HORSLEY,  
 )  
 Complainant,  
 )  
 vs. )  
 )  
 PACIFIC BELL (U 1001 C), )  
 )  
 Defendant. )

Case 88-05-055  
(Filed May 31, 1988)

ORDER MODIFYING DECISION 90-01-045,  
DENYING PETITION FOR MODIFICATION IN ALL OTHER RESPECTS,  
AND DENYING APPLICATION FOR REHEARING

Tom Horsley (Horsley) has filed an application for rehearing of Decision (D.) 90-01-045, in which the Commission denied his complaint against Pacific Bell (PacBell). Horsley has also filed a petition for modification of that decision. PacBell has filed a response to Horsley's pleadings.

We have carefully considered all of the issues and arguments raised in the application for rehearing and the petition for modification, as well as PacBell's response, and are of the opinion that the decision should be modified in certain limited respects, but that sufficient grounds for granting rehearing have not been shown.

Therefore good cause appearing,

IT IS ORDERED that D.90-01-045 is modified as follows:

1. The last sentence in the third full paragraph on page 3 is modified to read:

Both complainant's late-filed Exhibit 3 and the affidavit of Cherri Gurney submitted by PacBell were admitted over objection.

2. Immediately following the heading "Evidence" near the top of page 5, a subheading: "Complainant's Evidence" is inserted.

3. At the end of the third full paragraph under the heading "Evidence" on page 5, the following sentence is added:

He denied that he contacted PacBell concerning insignificant matters.

4. Before the fourth full paragraph under the heading "Evidence" on page 5, a subheading: "PacBell's Evidence" is inserted.

5. The second sentence in the first full paragraph on page 6 is modified to read:

According to PacBell's witness, the supervisor then found a way to provide the information sooner.

6. The third and fourth sentences in the first paragraph on page 7 are replaced with the following:

The responsible company official believed these actions were justified, since she had received reports that complainant was frequently abusive and vulgar.

7. The last paragraph on page 7 is replaced with the following paragraph:

Thereafter, PacBell continued doing business with complainant over the telephone. In letters dated January 26 and February 22, 1988, PacBell's designated contact person continued to ask complainant to use "the written channel" for complaints. However, according to the Gurney affidavit, on only one occasion since January 1988 has complainant been advised by a service representative with whom he was talking on the phone to submit a complaint in writing. According to PacBell's computerized notes, on

that occasion the service representative gave complainant the amount of an adjustment, he became very abusive and he was told to send any question in writing to his designated contact.

8. The first paragraph on the top of page 8 is deleted.

9. The second sentence in the second full paragraph on page 9 is modified to read:

In effect, he contends that a subscriber is privileged to spontaneously adopt annoying tactics in response to employee incompetence or malfeasance.

10. The fourth sentence in the second paragraph under the heading "Intent" on page 10 is modified to read:

From an objective viewpoint, complainant's method of dealing with his disputes with PacBell was not reasonable to achieve quick, reasonable solutions to significant problems.

11. The second sentence in the last paragraph on page 10 is revised to read:

We note, however, that its action followed on the heels of complainant's letter stating his intention to "seek legal advice for fraud and harrassment."

12. The paragraph beginning on the bottom of page 11 and continuing on page 12 is replaced with the following material (however, the text of footnote 1 remains unchanged):

Complainant has not rebutted PacBell's allegation that he used obscene language. In fact, complainant testified: "I will not tell you here that I've never used an obscene word in a business conversation in my life. . . . It's a very rare occasion that happens with me. And yet Pacific Bell is saying that I often use obscene language. It's just a plain falsity." Thus, complainant apparently does not dispute that he used obscene language with PacBell personnel, only

the frequency with which that occurred. In fact, at the hearing, complainant admitted that PacBell's computerized notes include one reference to his use of obscene language.

IT IS FURTHER ORDERED that:

- 13. Rehearing of D.90-01-045 as modified herein is denied.
- 14. Except to the extent specifically granted above, Horsley's petition for modification of D.90-01-045 is denied.

This order is effective today.

Dated MAY 22 1990, at San Francisco, California.

G. MITCHELL WILK  
 President  
 STANLEY W. HULETT  
 JOHN B. OHANIAN  
 PATRICIA M. ECKERT  
 Commissioners

Commissioner Frederick R. Duda, being necessarily absent, did not participate.

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

*Neal J. Saulman*  
 NEAL J. SAULMAN, Executive Director

*DB*