

ALJ/MJG/bg

Decision 90 06 051 JUN 20 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Craig Gomez,

Complainant,

vs.

Pacific Bell (U-1001-C),

Defendant.

Case 87-12-032
(Filed December 16, 1987)

ORDER OF DISMISSAL

Background

On December 16, 1987, Craig Gomez (complainant) filed an expedited complaint (ECP)¹ against Pacific Bell (defendant). Complainant alleges that defendant billed him for telephone calls which he did not make. Complainant requests that defendant credit complainant's account for the unpaid disputed calls and that defendant refund to complainant payments made for disputed calls. The complaint does not identify the amount of disputed charges.

Answer to Complaint

On January 20, 1988, defendant filed its answer to the complaint. Defendant asserts that it is entitled to and has demanded payment for all charges that appear on complainant's bill. Further, defendant asserts that its demand for payment of all calls placed from complainant's service was done only after defendant performed exhaustive equipment checks.

¹ An ECP is an expedited procedure whereby a complaint, with a maximum \$1,500 dispute, can be heard without the presence of an attorney and a court reporter.

Hearing

An evidentiary hearing was set for February 19, 1988 in San Francisco. However, two days prior to the hearing complainant called Administrative Law Judge (ALJ) Galvin and requested that the hearing be postponed for approximately two weeks. Accordingly, the hearing was changed to March 25, 1988 in Walnut Creek.

At the hearing, complainant testified that the amount in dispute was approximately \$4,000 and that some of the disputed telephone calls pertained to long distance calls not carried by defendant. The ALJ suspended the hearing because the disputed amount exceeded the maximum dollar level allowed for a complaint to be heard as an ECP and because complainant's long distance carrier was not a defendant.

By a March 28, 1988 ALJ ruling, complainant's ECP was redocketed under the Commission's regular complaint procedure. This ruling also ordered complainant to file an amendment to his complaint naming his long distance carrier as a co-defendant. The regular complaint procedure allows, but does not require, complainant and defendant to be represented by an attorney and requires the matter to be transcribed by a reporter.

Discussion

It has been more than two years since this complaint was changed to the regular complaint procedure, and since complainant was ordered to amend his complaint. The ALJ was not successful in contacting complainant by telephone in 1989. Having been unable to determine the status of this complaint, the ALJ issued a ruling on April 25, 1990 requiring complainant to inform the ALJ whether complainant is going to amend his complaint as required by the March 28, 1988 ruling, and whether complainant wants to proceed with his complaint. Complainant's failure to respond to the ruling would result in the ALJ's recommending that the complaint be dismissed and that complainant's \$460 deposit with the Commission be disbursed to Pacific Bell.

The April 25, 1990 ALJ ruling mailed to complainant at his last known address was returned "not deliverable as addressed."

We will dismiss this complaint with prejudice because complainant has failed to prosecute his complaint and has failed to amend his complaint. Complainant's \$460 deposit with the Commission should be disbursed to Pacific Bell.

Findings of Fact

1. Complainant failed to amend his complaint, pursuant to a March 28, 1988 ALJ ruling.

2. Complainant has not prosecuted his complaint during the two plus years that the complaint has been filed with the Commission.

Conclusion of Law

This complaint should be dismissed with prejudice because complainant has failed to amend his complaint and has failed to prosecute his complaint.

IT IS ORDERED that:

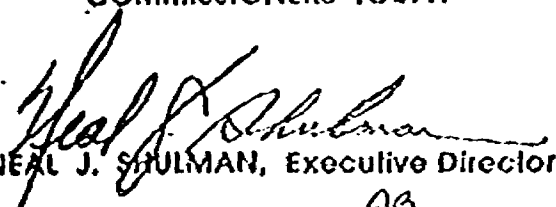
1. The complaint in Case 87-12-032 is dismissed with prejudice.

2. Craig Gomez's \$460 deposit with the Commission shall be disbursed to Pacific Bell 30 days from the date of this order.

This order is effective today.

Dated JUN 20 1990, at San Francisco, California.

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


NEAL J. SHULMAN, Executive Director
PB

FREDERICK R. DUDA
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

President G. Mitchell Wilk,
being necessarily absent, did
not participate.