

ALJ/JJJ/jac

Mailed

Decision 91-10-008 October 11, 1991

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Ronald I. May & Associates,)
 Complainant,)
 vs.)
 Pacific Bell (U 1001 C),)
 Defendant.)

Case 91-06-017
(Filed June 7, 1991)

ORDER OF DISMISSAL

I. Summary of Decision

Defendant Pacific Bell moves to dismiss complainant Ronald I. May & Associate's (May) complaint on the grounds that the complaint fails to state a cause of action. We agree and dismiss the complaint.

II. Background

May filed its complaint on June 7, 1991. The complaint alleges that May was without telephone service to its main number for about 24 hours on January 16, 1991, and was without back-up service on its auxiliary lines for about 36 hours on January 16 and 17, 1991. The complaint alleges that Pacific Bell caused excavation work to occur on its behalf in a "negligent" and "reckless" manner. (Complaint at 2.) The complaint further alleges that this excavation work severed a central underground cable which served May, and caused the interruption of May's telephone service. Complainant alleges that telephone service is "very essential" to its business operations. (Id. at 1.) As a result of the interruption of its telephone service, May alleges lost business damages of an estimated \$530.00 and asks for general and compensatory damages.

On June 13, 1991, the Commission's Docket Office served May's complaint on defendant Pacific Bell. (See Rule 12 of the California Public Utilities Commission's Rules of Practice and Procedure.) On July 15, 1991, defendant Pacific Bell timely filed a motion to dismiss the complaint, together with an answer. Pacific Bell argues that this complaint should be dismissed for failure to state a cause of action, because this Commission is without authority to award damages in this proceeding. Pacific Bell states that it complied with appropriate tariffs and has provided May with a full tariff refund for the time its telephone service was out of order. In its answer, Pacific Bell admits that May's telephone service was interrupted on January 16, 1991. Defendant denies that any negligence or recklessness on its part caused the telephone interruption.

In the assigned Administrative Law Judge's (ALJ) July 16, 1991 ruling regarding a briefing schedule for the motion to dismiss, the ALJ requested that May, in conjunction with its response to the motion to dismiss, "state whether Pacific Bell has given May a refund for the period which May states its service was interrupted, and if so, the amount of the refund." After seeking and receiving an extension of time to respond to the motion to dismiss, May timely filed its opposition on August 9, 1991. In response to the ALJ ruling, May stated that Pacific Bell has paid it about "\$7.11" or "\$7.14" pursuant to Pacific Bell's tariffs. (Opposition to Pacific Bell's Motion to Dismiss at 2, 5.) May did not refute Pacific Bell's statement that May received a full tariff refund.

III. Discussion

For the purposes of deciding this motion to dismiss, we will assume the facts pleaded by Complainant May to be true. (Boushey, Harris and Grisell v. Pacific Gas & Electric Company and Southern California Edison Company (1972) 74 CPUC 351, 352.)

May's complaint contains allegations of ordinary and gross negligence, as well as allegations of recklessness. May alleges that because Pacific Bell caused the total interruption of its telephone service during January 16 and 17, 1991, that defendant is responsible for May's business losses for this period of time.

In a complaint before this Commission, a complainant can only recover a refund for the time that its service was out of order. Our jurisdiction is limited to reparations. (Public Utilities (PU) Code § 734.) Cases have repeatedly held that this Commission does not have the authority to award damages. (Garcia v. PT&T (1980) 3 CPUC 2d 541, 545-546; Ad Visor, Inc. v. Gen. Tel. Co. of Cal. (1977) 82 CPUC 685, 691; Mak v. PT&T (1971) 72 CPUC 735, 738; PT&T Co. (1971) 72 CPUC 505, 509.)

In PT&T Co., 72 CPUC at 509, we explained the difference between reparations and consequential damages:

"We again hold that only a court and not the Commission has the power to award consequential damages as opposed to reparations. Reparatory relief is limited to a refund or adjustment of part or all of the utility charge for a service or group of related services. Consequential damages on the other hand is an amount of money sufficient to compensate an injured party for all the injury proximately caused by a tortuous act...."

Pacific Bell stated that it has provided May with a full tariff refund. May did not refute this statement and admitted that he has received \$7.11 or \$7.14 from Pacific Bell. Therefore, May has received all that this Commission is entitled to award.¹

¹ This statement assumes that the money May states he received constitutes a full tariff refund. Since Pacific Bell has not objected to providing May with a full tariff refund, this case is dismissed with the understanding that such refund has been, or will promptly be provided to May.

While we make no judgment on the merits of this action, the authority to grant the relief requested by complainant does not lie with this Commission, but rather, with a court of competent jurisdiction. (See e.g. Colich & Sons v. Pacific Bell (1980) 198 Cal. App. 3d 1225, 244 Cal. Rptr. 714.)

The cases and statutes cited by May are not otherwise persuasive. In Trout v. Catalina Island Steamship Line (1954) 53 CPUC 649, the complainant did not seek damages, but rather, sought adequate and safe transportation service between Wilmington and Avalon, Santa Catalina Island. Blincoe v. Pac. Tel. & Tel. Co. (1963) 60 CPUC 432, supports our action today. In Blincoe, the Commission granted a motion to dismiss, in part, because "liability for alleged negligence is not a matter to be determined by the Commission." (Blincoe v. Pac. Tel. & Tel. Co. 60 CPUC at 434.) PU Code § 2106 allows a utility to be sued for damages in "a court of competent jurisdiction." That statute does not confer jurisdiction over this case on the Commission.

For the reasons stated above, this complaint states no cause of action for which relief can be granted.

IT IS ORDERED that the complaint is dismissed.

This order is effective today.

Dated October 11, 1991, at San Francisco, California.

JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

Commissioner Patricia M. Eckert,
being necessarily absent, did not
participate.

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