

Decision 82 06 016 JUN 2 - 1982

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

PARTS LOCATOR, INC., a)
California corporation,)

Complainant,)

vs.)

THE PACIFIC TELEPHONE AND)
TELEGRAPH COMPANY, a)
California corporation,)

Defendant.)

Case 11050
(Filed December 7, 1981)

O P I N I O N

The complaint requests that the Commission reopen Case (C.) 10490 (Decision (D.) 90260 dated May 9, 1979) to reconsider its conclusion on the accuracy of defendant's business records and to award Parts Locator the reparation for overcharges collected by defendant for service which was not provided. Complainant filed a Motion "to rescind, alter or amend Decision No. 90260" on November 9, 1981. It was returned by the docket office with instructions to file a new complaint.

The Prior Proceeding

On January 24, 1978, complainant filed a complaint against The Pacific Telephone and Telegraph Company (Pacific) entitled Parts Locator, Inc., v Pacific Telephone, C.10449. In that case, complainant alleged that a certain switch known as a "29A" had been

connected to Parts Locator's circuit 6KP1048; further that the switch connected all five of complainant's circuits and qualified all as interstate circuits; that the switch had been removed without authority and that Pacific had charged higher intrastate rates for circuit 6KP1048 despite complainant's objections. Complainant sought a refund of the difference between the interstate and intrastate rate for circuit 6KP1048 and attorney's fees.

Pacific's answer in C.10490 denied the allegations concerning a "29A" switch on circuit 6KP1048 prior to October 28, 1977, and averred that the other four circuits had been billed at interstate rates. It alleged that circuit 6KP1048 was intrastate until October 28, 1977, and billed as such. It was connected to a 29A switch on the date noted and then billed as an interstate circuit. The case went to hearing on June 18, 1978. Two witnesses on behalf of Parts Locator testified that a "29A" switch had been installed on circuit 6KP1048. Pacific put into evidence its records showing that the switch had not been ordered or installed on that circuit; a witness for Pacific testified that she had examined all records involving circuit 6KP1048 and found no orders for such a switch. Pacific's witness was extensively cross-examined about Pacific's records.

The case was submitted at the conclusion of the hearing. The submission was set aside on September 11, 1978 at the request of complainant, who wished to rebut any assumption that Pacific's business records were reliable or trustworthy. A further hearing was scheduled but the parties stipulated that the matter could be resubmitted on November 3, 1978 after two late-filed exhibits were received in evidence.

The Commission issued its decision in the case on May 8, 1979 (D.90260). After reviewing and discussing the evidence, the

Commission found that circuit 6KP1048 did not have a 29A switch installed prior to October 28, 1977 and was properly classified as an intrastate circuit during the period prior to the installation of the switch. The relief requested was denied.

Complainant petitioned for a rehearing or reconsideration on June 6, 1979. It was argued that the findings were erroneous because they were based on the accuracy of Pacific's records, which complainant should have been allowed to prove unreliable; and that past Commission decisions have shown ambiguity and error in Pacific's records. The Commission denied rehearing on July 31, 1979, in D.90640.

Parts Locator filed a Petition for Writ of Review with the California Supreme Court (S.F. No. 24063) on August 30, 1979. The argument previously used was presented again in more detail. The Petition for Writ of Review was denied on December 13, 1979.

The Present Proceeding

The allegations in the current complaint are identical to those in the prior pleading. The new complaint alleges that circuit 6KP1048 had a 29A switch which connected all five circuits assigned to complainant and qualified all circuits under the tariffs for the substantially lower interstate rates. It is further alleged that the switch was removed without complainant's knowledge or consent and that substantially higher intrastate rates were charged on circuit 6KP1048 until about November 1, 1977. The current complaint requests that the Commission reopen the record to consider again the accuracy of defendant's records, review the evidence, and award complainant reparations for the overcharges collected for services not provided.

Complainant's request to reopen is based on an admission of error in a letter dated September 23, 1981, and testimony from a witness presented during a hearing on Application (A.) 59849. The error in the letter is due to an entry of "LSU" in a workman's handwriting being interpreted as "LSV". The LSV circuit costs more than the LSU circuit. When the error was discovered, Pacific returned the overcharge.

A.59849 was filed by Pacific to request authority to increase its intrastate telephone rates. The witness referred to was the supervisor of Pacific's Service Evaluation Division, a separate entity which was organized to monitor and suggest improvements in customer service. The witness testified on November 21 and December 1, 1980 that 1,490 service orders were reviewed and 527 billing entries in these orders were incorrect. The errors included both under- and overcharges and many had been corrected by the time the bills were reviewed. The witness testified on cross-examination that service orders usually had more than one billing entry. He tabulated the error rate as 9%. ✓

Pacific filed a Motion To Dismiss and an answer on January 13, 1982. The answer denied all of complainant's original allegations. The motion to dismiss argues that the complaint is barred by res judicata and that it fails to state a new cause of action against Pacific since the only addition to the original complaint is a prayer "that the Commission consider the general level of accuracy in the equipment records of Pacific." ✓

Discussion

Pacific prevailed on the original complaint because of a universal practice in construction and maintenance. When an employee requires a special tool or piece of equipment he goes to the supply facility maintained by his employer. He presents a work order which describes the job or project where the item to be picked up will be used and the need for it. The supply clerk prepares a voucher which lists the item by description and identification number, the date and time of the pickup, the name of the workman, and the number of the work order as justification for the release of the item requisitioned. The workman then signs and sometimes writes in the date in his own handwriting to confirm that he received the item being transferred. The voucher and work order are stapled together and become a permanent record at the supply room and main office of the employer. It can be inferred that these records are kept with reasonable accuracy, due to frequent inspections, and the liability of supply personnel for missing items.

Pacific had no record that a 29A switch had been requisitioned and installed prior to October 28, 1977.

Complainant's current allegation that Pacific's business records are untrustworthy is based on a handwritten entry where the letter "U" was misread as a letter "V." The error was later identified and corrected with a substantial rebate to complainant. The second allegation concerns a reference to inaccurate billing entries by a Pacific official whose function is locating and correcting errors in Pacific's records. These alleged errors are an insufficient basis for reopening C.10490.

Res Judicata

The complaint must be dismissed on the ground of res judicata (the thing is judged). Parts Locator cannot litigate the same issues against the same defendant a second time. The issues of the existence of the 29A switch and the accuracy of Pacific's records were presented and decided in C.10490. The Commission considered the Parts Locator arguments and rejected them. The record was presented to the California Supreme Court and the decision of the Commission was affirmed. Parts Locator has had its day in court and cannot be permitted to circumvent a Commission decision by presenting the same cause of action in a new complaint.

In a complaint case, such as C.10490, the Commission acts in a judicial capacity and its decisions are given res judicata effect, particularly when they have been the subject of a petition for writ of review to the California Supreme Court. (People v Western Air Lines, Inc. (1954) 42 Cal 2d 621.) The Court in Western Air Lines held:

"Under the Constitution and statutes of this State the Commission is possessed of broad and comprehensive powers. . . . That it also possesses judicial powers may not be questioned. . . . When its determinations within its jurisdiction have become final they are conclusive in all collateral actions and proceedings (Pub. Util. Code, § 1709.) . . . Direct attack is made available by application for writ of review to this court in accordance

with the provisions of Section 1756 of the Public Utilities Code. We are not herein dealing with a determination of the Commission made in the exercise of its judicial power where no direct attack, on constitutional or other grounds, has been made within the time provided by Section 1756. . . . However, it seems clear that where those determinations have been appropriately and unsuccessfully challenged, as here, by direct attack and have run the gamut of approval by the highest Courts, state and federal, they should have the conclusive effect of res judicata as to the issues involved where they are again brought into question in subsequent proceedings between the same parties." (42 Cal 2d at 630; citations omitted, emphasis added. See, also, Consumers Lobby Against Monopolies v Public Utilities Commission (1979) 25 Cal 3d 891, 900.)

The rationale for the doctrine of res judicata is that finality should be given to judicial decisions. The parties should be able to rely on them, and should not be forced to litigate the same issues again and again. Decisions based on error in fact or law are res judicata. (U.S. v Coronado Beach Co. (1921) 255 US 472; 65 L ed 736; Olwell v Hopkins (1946) 28 Cal 2d 147; Stark v Coker (1942) 20 Cal 2d 839.) A plaintiff whose tort claim was barred by the guest statute could not sue again after the statute was declared unconstitutional. (Slater v Blackwood (1975) 15 Cal 3d 791, 796.)

Finding of Fact

The subject matter of this complaint, the parties to this complaint, and the issues raised by this complaint are identical to the subject matter of and parties to C.10490 and the issues decided by D.90260 in C.10490.

Conclusion of Law

The issues decided in C.10490 are res judicata as between Pacific and the complainant and cannot now be relitigated. (People v Western Air Lines, Inc. (1954) 42 Cal 2d 621, 630.)

O R D E R

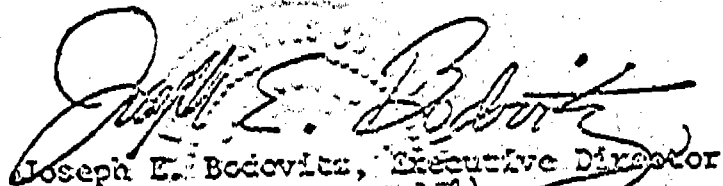
IT IS ORDERED that C.11050 is dismissed.

This order becomes effective 30 days from today.

Dated JUN 2 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

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


Joseph E. Bodovitz, Executive Director

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