

~~CONFIDENTIAL~~

Decision 83 01 040 JAN 12 1983

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

The Dolphin Group, Inc.,)	
)	
Complainant,)	
)	
vs.)	(ECP)
)	Case 82-08-02
General Telephone Company of)	(Filed August 5, 1982)
California,)	
)	
Defendant.)	
)	

Theodore K. Green, for complainant.
Edward R. Duffy, for defendant.

O P I N I O N

Complainant alleges that it was erroneously billed by defendant for relocating telephone equipment at complainant's place of business. Complainant alleges that the relocation was to correct improperly installed equipment which created an extremely dangerous safety hazard; that it had not been advised by defendant's field representative that there would be a charge for the service nor was complainant given any estimate; and that had it been informed of the cost, complainant would not have authorized the work that was performed by defendant.

Defendant's answer denies complainant's allegation that defendant's representative never quoted a price for the service to be performed or that complainant was not informed that it would be charged for the requested service. Defendant alleges that:

1. Complainant contacted defendant for the purpose of relocating telephone wires on complainant's premises.
2. The purpose of such relocation was not to provide or maintain satisfactory telephone service but to satisfy complainant's particular esthetic desires and/or restructuring needs.
3. Since defendant deemed the construction and wiring on complainant's premises to be satisfactory, in accordance with industry standards, and made the alterations only to satisfy the demands of complainant, defendant is entitled to the reasonable value of the work performed.
4. The work performed for complainant required nine hours labor and should have been billed at a labor rate of \$29.49 per hour rather than the erroneously billed rate to complainant of \$22.50 per hour.
5. Complainant was subsequently billed for the correct rate after the error was discovered and that a total of \$304.41 is now due and payable to defendant by complainant.^{1/}

The matter was initially calendared for hearing within the time required by Public Utilities Code Section 1702.1(c) but upon the written request of complainant, who waived the 30-day requirement and requested a hearing no earlier than November 15, 1982, following notice, a public hearing was held in Los Angeles on November 19, 1982 before Administrative Law Judge William A. Turkish and the matter was submitted on that date.

^{1/} Subsequent to the filing of the complaint, complainant paid defendant \$241.50 which it had initially been billed. When defendant discovered its billing error, it billed complainant an additional \$62.91 in the October 1982 statement.

Testimony on behalf of complainant was presented by complainant's office manager. Testifying for defendant was the prefilder representative who was involved in the relocation service requested by complainant.

The testimony of complainant's witness is essentially as follows:

1. Telephone terminal equipment was already installed at complainant's place of business when she started working there in March 1981. At that time, there were only four employees working in the office.
2. The telephone equipment in issue had been installed in a wooden cabinet by defendant. The cabinet ran along the length of one wall at the end of which was a doorway leading from one office to another in the suite. The width of the cabinet projected approximately one-third of the way into the doorway which thus restricted the space within which a person could walk in going from one office to the other.
3. The cabinet and the telephone terminal equipment were already in its location when complainant moved into the premises in February 1981.
4. Complainant, a public relations firm, was associated with the 1982 gubernatorial campaign and when the campaign started, the number of people in the office expanded to approximately 20-25 people and the restricted doorway created a bottleneck.
5. In November 1981 complainant's vice president and president asked the witness to call defendant to have the cabinet and telephone terminal equipment relocated.

Under cross-examination the witness testified that she could not remember the conversation with defendant's representative when she called but testified that nothing was said about a charge for the service. She also testified that no charges were discussed by defendant's prefielder representative when he came to the premises to estimate the work to be done. As a result, she thought the service would be free.

Defendant's witness testified as follows:

1. After complainant's call to the office, he made a visit to complainant's office to look at the equipment to be moved and make an estimate on how long the job would take and the amount of equipment needed.
2. Complainant's office manager was informed at that visit that complainant would be charged on the basis of time and material needed to relocate the telephone equipment. Complainant was quoted approximately 16 hours of labor at \$22.50 per hour plus material.
3. It is standard company procedure for prefielders to quote charges to the customer on this type of equipment move.
4. The cabinet was placed in its location by a prior tenant who had the telephone terminal equipment placed within the cabinet. When that tenant moved out, complainant expanded into the vacated area.
5. The witness did not see any safety hazard associated with the cabinet protruding partially into the doorway. It was highly visible.

Discussion

Complainant advances two reasons for its belief that it should receive a refund of the \$241.50 which it paid to defendant to have the services performed:

1. Complainant was not informed of the cost or charges at any time.
2. The telephone terminal equipment located in the cabinet partially obstructing the doorway was a safety hazard which defendant should have corrected at its own expense.

With respect to the first reason, we find insufficient evidence to conclude that complainant was not informed or advised of the charges for relocating the terminal equipment. Complainant's witness testified that she did not believe charges were discussed either by the telephone representative when she called defendant's business office or by the prefielder representative who visited the premises. At one point in her testimony, she stated she could not remember the conversation with either, although she believed no charges were mentioned by either. On the other hand, contradicting this testimony was the testimony of defendant's witness who remembers discussing the estimate of time and charges with complainant's witness. This is standard company operating procedure for defendant's prefielder representatives.

As to the second reason put forth by complainant, we do not consider that a cabinet extending along a wall which is highly visible and whose depth from the wall partially extends into the pathway leading through a doorway is a dangerous safety hazard. Apparently, for the 9 or 10 months that complainant occupied the premises before calling defendant it too did not believe the cabinet, which did not even belong to the telephone

company, posed any dangerous safety hazard. If complainant had believed it to be unsafe, one would reasonably expect complainant to have notified defendant of such hazard immediately when it moved into the premises in February 1981 and found the cabinet and the telephone terminal equipment already there. However, complainant made no effort to contact defendant.

Defendant's tariff Schedule A-41, Sheet 3, Subsection B.2.c. authorizes defendant to charge for the "actual cost of work performed on premises" for "rearranging, moving or rerouting house cable or entrance facilities." Defendant's labor cost per hour at the time the services were performed was \$29.49 per hour. Although defendant's representative quoted an hourly labor rate of \$22.50 per hour to complainant, which was in error, defendant is required by its tariffs to bill and collect the correct amount from complainant. In addition to the labor total of \$265.41, defendant is entitled to a "premises visit" of \$30 in accordance with its tariff Schedule A-41, Sheet 2, Subsection A.3.a. and a \$9 charge for "moves or changes" as provided for in tariff Schedule A-41, Sheet 2, Subsection A.1.b. (1) which applies to moves or changes subsequent to establishing the customer's account.

Inasmuch as complainant who has the burden of proving its case by a preponderance of the evidence has failed to do so, the claim should be denied.

Findings of Fact

1. Defendant installed telephone terminal equipment for a customer who occupied the premises prior to complainant's occupation of the premises. The equipment was placed in a cabinet which was already in place on the premises. The cabinet was not placed in its location by defendant.

2. Complainant moved into the premises containing the cabinet and telephone terminal equipment in February 1981.

3. Between February 1981 and November 1981 complainant made no complaints or expressed any dissatisfaction to defendant about the location of the cabinet and the telephone terminal equipment. Furthermore, complainant made no complaints that the location of the cabinet and terminal equipment constituted a safety hazard.

4. In November 1981 complainant made a request to defendant to have the terminal equipment relocated. No mention was made of any safety hazard or that the equipment had been improperly installed.

5. Although a portion of the cabinet extended out from the wall and restricted a portion of the doorway, it posed no dangerous safety hazards and still permitted use of the doorway.

6. The purpose of complainant's request for relocation of the telephone terminal equipment was to satisfy complainant's esthetic desires.

7. Defendant informed complainant that there would be charges associated with the relocation and gave complainant an estimate.

8. Complainant authorized defendant to perform the required service request.

9. Defendant did not install its telephone terminal equipment on the premises in an improper manner.

Conclusion of Law

Since the preponderance of evidence fails to support any of complainant's allegations, the claim should be denied.

O R D E R

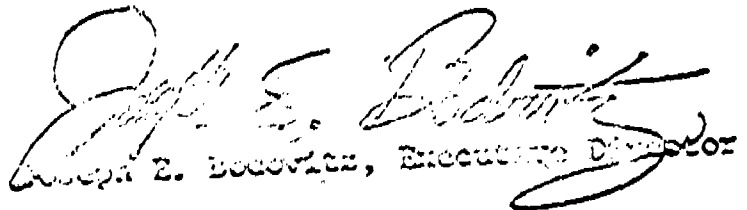
IT IS ORDERED that the complaint in Case 82-08-02 is denied.

This order becomes effective 30 days from today.

Dated JAN 12 1983, at San Francisco, California.

LEONARD M. GRIMES, JR.
President
VICTOR CALVO
PRISCILLA C. GREW
DONALD VIAL
Commissioners

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


Joseph E. DeLoach, Executive Director

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3. The cabinet and the telephone terminal equipment were already in its location when complainant moved into the premises in February 1981.
4. Complainant, a public relations firm, was associated with the ~~Deukmejian for Governor Campaign in 1982~~ ^{1982 gubernatorial} and when the campaign started, the number of people in the office expanded to approximately 20-25 people and the restricted doorway created a bottleneck.
5. In November 1981 complainant's vice president and president asked the witness to call defendant to have the cabinet and telephone terminal equipment relocated.