

**ORIGINAL**

Decision No. **88606** MAR 21 1978

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**BERNICE BANKS,** Complainant,

vs.

**GENERAL TELEPHONE COMPANY OF CALIFORNIA and DOES I THROUGH XX,** Defendants.

Case No. 10369

(Filed July 6, 1977)

**OPINION**

By this complaint, Bernice Banks, whose residence is located at 1520 Virginia Street, San Bernardino, alleges that she had been a customer of defendant until it disconnected her residential telephone service; that she has always paid her telephone bills on time; that on or about March 4, 1977 she received a telephone bill from defendant dated February 25, 1977 for \$122.27, of which \$115.02 was for toll call charges; that only \$26.70 of the toll charges were incurred by her; that on the date the bill was received, she notified defendant that unauthorized telephone toll calls had been charged to her account, and she paid defendant \$33.95, which represented the amount due for the toll calls she had made and her current service charge; that after its investigation of the matter, defendant disconnected her telephone on or about March 24, 1977, and she has had no telephone service at her residence since then; that she requires telephone service for emergencies; that she has had problems with her brother charging unauthorized toll calls to her in the past, and to prevent

this, she had her telephone number changed in June, 1976, and that she does not know who made the unauthorized calls or the parties whose telephone numbers were called. Complainant requests that her telephone service be reconnected at no cost to her; that the service be such that no one can charge calls to her account without her authority; that the unauthorized calls be cleared from her account at no cost to her; and that defendant indemnify her for her legal fees in this matter and pay her damages to compensate her for mental duress due to not having telephone service and not being treated with respect and courtesy by defendant's customer service department in its San Bernardino office.

Defendant filed its Motion to Strike and Answer to the Complaint on August 25, 1977. The motion requested that the Commission strike those portions of the prayer of the complaint which request damages for legal fees, mental duress, or any other form of compensatory damages on the ground that the Commission is without authority to award such damages and cited numerous cases in support of the request, including Townsley v P.T. & T. (1972) 74 CPUC 341. The answer stated that complainant had paid her telephone bills on time prior to the February 25, 1977 statement; that she paid \$33.95 on this billing of \$122.27, and the balance remains due and owing; that the delinquent amount represents toll calls charged to her telephone number; that her telephone service was disconnected on March 24, 1977 for nonpayment of the balance due on her bill; that prior to June 24, 1976, telephone service at her residence was in the name of Earl Rosenborough, Jr. with a different number, and that on that date, this service was terminated and a new service in complainant's name and with her current telephone number 889-4168 was installed. Defendant requests that the complaint be dismissed.

The matter was set for public hearing in San Bernardino on September 21, 1977, and again on October 12, 1977. In both instances, it was removed from the calendar to allow the parties to consider a settlement.

By letters dated October 4 and 14, 1977, counsel for defendant advised that because of the relatively minor dollar amount in contention, his client will remove the toll charges in issue from complainant's bill, and reestablish her telephone service without charge and that he sincerely apologizes on behalf of defendant for any mistreatment complainant might have received from any of defendant's personnel. The letters point out that this is the only relief the Commission could order. Complainant's attorney has advised that his client is not willing to accept any settlement agreement.

We agree with defendant that the Commission does not have authority to award damages for negligence or any other tort as pointed out in our decision in Townsley v P.T. & T., supra. This includes legal fees. Defendant's motion to strike those portions of the prayer requesting legal fees and damages will be granted. Since the only relief that we could grant is to direct defendant to remove the disputed toll charges and reconnect complainant's telephone service without charge and defendant has stated that it is its intention to do so, there is no purpose in again scheduling this matter for public hearing. The order which follows will authorize and direct defendant to remove the toll charges in issue and reconnect complainant's telephone service without charge.

We recognize that complainant is of the opinion that she has not received satisfactory treatment from defendant. In this connection, it is defendant's responsibility to assure that all of its customers receive fair and courteous treatment in any problems that might arise and to take all reasonable precautions to assure that a customer's telephone service account is not charged with toll calls not authorized

by the customer and not made from the customer's telephone. It is expected that defendant is doing and will continue to do this.  
Finding

Defendant by removing the disputed toll charges from complainant's account and reconnecting her telephone service without charge to her has satisfied the complaint.

Conclusions

1. Defendant should be authorized and directed to remove the disputed charges for the toll calls in issue that were charged to complainant's telephone number from her account and to reconnect her telephone service without charge.

2. Defendant's motion to strike the portions of the prayer in the complaint which requests monetary compensation for damages and legal fees should be granted.

ORDER

IT IS ORDERED that

General Telephone Company of California is authorized and directed to remove the balance shown as due and owing by Bernice Banks on the statement dated February 25, 1977 for telephone service and to reconnect her telephone service without charge.

The order which follows will be entered in issue and removed to remove the toll charges in issue and reconnect telephone service without charge.

It is recognized that complainant has not received satisfactory treatment from defendant in this connection.

It is defendant's responsibility to assure that all its customers receive fair and courteous treatment in any problem that might arise and to take all reasonable precautions to assure that telephone service accounts are not charged with toll calls not authorized.

2. Defendant's motion to strike the portions of the prayer in the complaint requesting monetary compensation for damages and legal fees is granted.

The effective date of this order shall be thirty days after the date hereof.

Dated at San Francisco, California, this 21st day of MARCH, 1978.

Robert Bateman  
President  
William Aguirre Jr  
Leon L. Strogan  
Charles D. Hinkle  
Clare J. Dubiel  
Commissioners