

ORIGINAL

Decision No. 89771 - DEC 19 1978

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

JOHNSON ENTERPRISES,

Complainant,

vs.

RADIO RELAY CORPORATION,

Defendant.

(ECP)
Case No. 10657
(Filed August 24, 1978)

Gary S. Johnson, for himself,
complainant.
Michael Chumo, for defendant.

O P I N I O N

By this complaint, Gary S. Johnson, dba Johnson Enterprises, requests certain adjustments of his bill and assurance of continued paging service from defendant. Complainant did not receive timely notice of the original hearing (set October 11, 1978). A subsequent hearing was held on November 8, 1978 before Administrative Law Judge Charles E. Mattson at Los Angeles, California, under Section 1702.1 of the Public Utilities Code and Rule 13.2 of the Commission's Rules of Practice and Procedure (Expedited Complaint Procedure) and submitted on that date.

Complainant testified substantially in accordance with his complaint. On March 28, 1978 he contracted, in writing, for two pagers at a total monthly charge of \$40. One pager failed in June and it took five days to get a replacement. On July 27, 1978 one pager was false-triggering

and was not replaced until August 8, 1978. The replacement was a different pager than that contracted for, and on August 10, 1978 the proper pager was supplied. Complainant made numerous telephone calls to obtain service for the above problems. Defendant's personnel told complainant that he could get paging service from another company.

Complainant requests relief for: (1) a \$40 monthly rate until September 6, 1978 (when he received a letter from the Commission staff advising him that the correct tariff rate was \$42 monthly for two pagers; (2) adjustment of billings for time he was without functioning pagers; and (3) assurance that defendant will continue to serve him.

Defendant's representative testified that the contract price should have been \$42. Defendant cannot be expected to supply replacement pagers identical to the original pagers. The pager supplied in August 1978 had similar features to the pagers on the original contract. Both had memory capacity, the memory recall on the original could be silent vibration or sound and the replacement recall was sound only.

This Commission does not award costs or general damages, but will award reparations. The reparations awarded reflect a portion of the charges to a customer who receives less service than he contracted for and to which he was entitled. However, a utility cannot, by written contract, violate its tariffs and discriminate among its customers.

Complainant will be awarded reparations for nineteen days' loss of the use of one pager (\$13.30), plus the slightly lower rate represented to complainant for the period March 28 to September 6, 1978 (\$10.60). Complainant is obligated to pay established tariff rates for all service after September 6, 1978.

Complainant is entitled to receive the paging equipment contracted for or comparable equipment only if defendant has such equipment available. The problem regarding equipment may have been, in part, the result of a lack of communication (complainant did not appear aware of the memory capability of the replacement). A lack of communication usually arises in direct proportion to rising tempers. Defendant is obligated to serve the public, including complainant. Complainant should recognize that paging equipment does not have infinite life. As this Commission has observed before, if we lower our voices and treat one another with more courtesy, we should be able to deal with future problems with more success.

O R D E R

IT IS ORDERED that complainant is awarded reparation in the amount of \$23.90. Deposits by complainant in the sum of \$42, and any other sums deposited with the Commission by complainant with respect to this complaint, shall be disbursed as follows: \$23.90 to Gary S. Johnson, dba Johnson Enterprises, and \$18.10 to Radio Relay Corporation. In all other respects the complaint is denied.

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

Dated at San Francisco, California, this 19th day of DECEMBER, 1978.

Robert Bataine
President
William J. ...
Veron ...
Robert B. ...
Clair T. ...
Commissioners