

ORIGINAL

Decision No. 90429

JUN 19 1979

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

NATIONAL SEMICONDUCTOR CORPORATION,)

Complainant,

vs.

PACIFIC TELEPHONE AND TELEGRAPH
COMPANY,

Defendant.

Case No. 10539
(Filed April 5, 1978)

David L. Wilner, for National Semiconductor Corporation and himself, complainants.
Stanley J. Moore, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

By their complaint, as amended, filed April 5, 1978, National Semiconductor Corporation (National) and David L. Wilner (Wilner), doing business as Rayne Communications, acting as communications consultant for National, dispute a bill of The Pacific Telephone and Telegraph Company (PT&T) in the amount of \$11,241.58 for basic termination charges relating to the removal of NA409 PBX service at 1130 Kifer Road, Sunnyvale, California.

Public hearing was held before Administrative Law Judge Daly at San Francisco and the matter was submitted on March 21, 1979.

The record discloses that in 1974 National was in the process of having PT&T install an 812A PBX system in its facilities at 2900 Semiconductor Drive, Santa Clara, California. By letter dated March 19, 1974, (Exhibit 1), National informed PT&T that it had entered into a contract with Wilner to act as its communications consultant regarding the 812A system. On April 16, 1974, PT&T, through its representative,

Mr. Robert Francis Cirillo (Cirillo), acknowledged the letter of March 19, 1974, and expressed an understanding that the writer was no longer to deal with National's Communications Service Manager, Mr. Cliff Gorenflo (Gorenflo), on matters concerning the 812A system, but was to deal with Wilner. (Exhibit 2.)

In January 1976, National advised PT&T that on February 26, 1976, it was moving approximately 80 employees to a newly acquired branch facility located at Sunnyvale. On February 10, 1976, PT&T informed National that it could not integrate Sunnyvale into the Santa Clara system until March 8, 1976, when it was anticipated that the 812A system at Santa Clara would be installed and operative; however, because of an overflow in National's plumbing, which caused water damage to the 812A PBX common control equipment, the 812A PBX system did not become operative at the Santa Clara facilities until May 17, 1976.

To facilitate matters at the Sunnyvale facility, National, acting through its employee (Gorenflo), entered into an agreement (Exhibit 12) with the Bragen Corporation (Bragen), the prior occupants of the Sunnyvale building, to use an existing NA409 PBX system for a period of three months. When the NA409 PBX system had been installed in 1975, Bragen had agreed to pay basic termination charges if the system was removed within a period of five years. According to the terms of the agreement, National agreed to assume responsibility for all monthly NA409 charges, but excluded therefrom any liability on the part of National for payment of basic termination charges.

At the instance of PT&T, the president of Bragen on February 26, 1976, as outgoing customer, and Gorenflo on March 1, 1976, as incoming customer, signed a Request For Supersedure of the NA409 service which provided that National, as the incoming customer, assumed responsibility for all charges from the date of supersedure, including basic termination charges.

On June 1, 1976, the 812A system was activated at both Santa Clara and Sunnyvale and the NA409 system was terminated. On May 28, 1976, PT&T billed National \$11,241.58 for basic termination charges.

Although complainants allege and testified to entering into an agreement setting forth the scope of Wilner's authority, a copy thereof was never produced.

The notices sent by National to PT&T as evidenced by Exhibits 1 and 2 appear to restrict the scope of Wilner's authority to the installation of the 812A system at Santa Clara.

Exhibit 1, which is a letter dated March 19, 1974, from Pierre R. Lamond, Vice President of National, to PT&T contains the following language:

"This is to inform you that National Semiconductor has entered into a contract with Rayne Communications. Rayne Communications is our communications consultant regarding the 812 System that you have contracted to deliver to us."

Exhibit 3 is a letter dated September 24, 1974, from E. Floyd Kramme, Vice President and General Manager of National, to PT&T and contains the following language:

"Because of the fact that National has previously retained Mr. David Wilner of Rayne Communications of Tiburon, California, to represent National with regard to the 812 System purchase, any inquiries or discussions in that area should be directed to Mr. Wilner."

Even if National had originally intended to make Wilner its exclusive agent on matters relating to the 812A system, the scope of his authority was subsequently modified by Exhibit 20, which is a letter dated April 26, 1974, from Pierre R. Lamond to Cirillo of PT&T, and reads in part as follows:

"This letter should further clarify my March 19 letter with reference to the 812A Centrex System.

"Separate from your dealings with Rayne Communications you are authorized to coordinate the installation of the System with Cliff Gorenflo and Frank Deal in all details such as 'station review' and 'user training' which must precede a Centrex cut."

As a representative of PT&T, Cirillo was responsible for the National account from 1973 to the middle of 1976. He testified that he dealt with both Gorenflo and Wilner during that time; that he was never sure of the scope of Wilner's authority; that to protect himself he obtained the approval of the National people whenever Wilner gave him orders; and that he was never advised not to communicate with Gorenflo on matters relating to the NA409 PBX, nor to communicate exclusively with Wilner on the NA409 PBX.

Gorenflo testified that as National's Communications Service Manager he was in frequent contact with PT&T's representatives; that the NA409 PBX system at the Sunnyvale building is different from the 812A PBX system at Santa Clara; that he read the supersedure before signing it; that he was familiar with basic termination charges; and that he knew what they were at the time of signing the supersedure form.

Wilner testified that if the supersedure form had been given to him instead of Gorenflo he would have rejected it and would have suggested alternate ways of using the NA409 PBX service under PT&T's tariffs without signing a supersedure form.

PT&T's Industry Manager for the Electronics Industry, having responsibility for the electronics accounts throughout northern California, testified that PT&T was not a party to the agreement entered into between National and Bragen, and the only way that National could have used the NA409 PBX system was by executing a supersedure form in compliance with PT&T's supersedure tariff (Cal PUC 36-T, 8th Revised Sheet 72, Rule No. 23 - Exhibit 18). In support of his position he relied upon Cal PUC No. 36-T, 5th Revised Sheet 64, Rule No. 18 - Exhibit 19 which reads in part as follows:

"Unless otherwise indicated in the tariff schedules of the Utility the use of the Service is restricted to the customer, his agents and representatives and no service, furnished under the Rules and Special Conditions contained in the tariff schedules shall in any case be resold."

With respect to prior knowledge of Bragen's financial difficulties, Cirillo testified that from 1975 to 1976, National was his sole account; that he had never heard of the Bragen company until the proposed takeover of the premises by National; and that he had no way of knowing what Bragen's financial status was. Gorenflo testified that at some time during the negotiations leading up to the use of the NA409 PBX system he was made aware of Bragen's financial difficulties and believes that PT&T also possessed such knowledge.

Discussion

The best evidence as to the scope of Wilner's authority would have been the agreement between National and Wilner. If it had been broader than as described in Exhibits 1, 3, and 20, it was never made known to PT&T. Based upon the notices sent to PT&T, Wilner's authority to act for National appears to have been restricted solely to the installation of the 812A PBX system at Santa Clara.

Gorenflo appears to have had authority to act for National in all other respects including certain aspects of the 812A PBX system as evidenced by Exhibit 20. Use of the NA409 PBX service at Sunnyvale was a matter completely separate and distinct from the Santa Clara installation.

The agreement between National and Bragen may have been binding on those two companies, but it could not bind or restrict PT&T, which was not a party to the agreement. When informed of the proposed takeover of the NA409 PBX system by National, PT&T followed its prescribed tariff procedure and presented a supersedure form to representatives of both companies and both representatives signed the form. Although it may have been the first such form that Gorenflo had ever signed, he admitted that he was familiar with it, had read it, and knew the meaning of the term "basic termination charges."

As to whether PT&T had prior knowledge of Bragen's poor financial condition is unimportant, unless it was established that possessing such knowledge PT&T intentionally deceived or misled National to act to its detriment. In this case National's representative

admitted that he was aware of Bragen's financial difficulties during the negotiations for the takeover of the NA409 PBX service and at the time of signing the supersedure form.

Findings of Fact

1. During the early part of 1974, National and Wilner entered into an agreement whereby Wilner was to act as National's communications consultant. Neither the agreement nor a copy thereof was introduced in evidence.

2. By letter dated March 19, 1974, National notified PT&T that Wilner was acting as its consultant with respect to the installation of an 812A PBX system in National's facilities at Santa Clara, which was to be completed in 1976.

3. In January 1976 National informed PT&T that it was moving 80 employees to a branch facility in Sunnyvale and expected to make the move by February 26, 1976.

4. It was anticipated that the Sunnyvale office would be integrated into the 812A PBX system at Santa Clara by March 8, 1976, but because of damage resulting from a water leak, the 812A PBX system was not operative until May 1976. During the interim National used an existing NA409 PBX service at the Sunnyvale building pursuant to an agreement with Bragen, the prior occupant, whereby Bragen agreed to assume responsibility for basic termination charges if the system were removed. PT&T was not a party to the agreement.

5. On March 1, 1976, National's representative, Gorenflo, executed a Request For Supersedure of the NA409 PBX system at Sunnyvale, which in accordance with PT&T's filed tariff, provided, on its face, that National would be responsible for basic termination charges.

6. At the time that he signed the supersedure form, Gorenflo, as Communications Service Manager for National, was familiar with the meaning of basic termination charges, and read the form before signing it.

7. On June 1, 1976, the 812A system was activated at both Santa Clara and Sunnyvale and the NA409 PBX system was terminated at Sunnyvale. On May 28, 1976, Bragen was in bankruptcy and on May 28, 1976, PT&T billed National \$11,241.58 for basic termination charges.

8. During the period 1974-1976 Wilner's authority to act on behalf of National appeared to be limited to the installation of the 812A PBX system at Santa Clara. During the same period of time, Gorenflo, with the full knowledge of National, conducted activities with PT&T relating to all other communication requirements of National including the use of the NA409 PBX system at Sunnyvale, as well as certain phases of the 812A PBX system at Santa Clara.

9. PT&T's representative, Cirillo, had reason to believe that Gorenflo had ostensible authority to act on behalf of National in all matters relating to the NA409 PBX system at Sunnyvale including the signing of the supersedure form.

10. Although PT&T, through its representative, Cirillo, may have had knowledge of Bragen's poor financial condition at the time the supersedure form was signed, National through its representative, Gorenflo, also possessed the same knowledge.

C.10539 kd *

Conclusion of Law

Complainant is entitled to no relief in this proceeding.

O R D E R

IT IS ORDERED that the complaint in Case No. 10539 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 JUNE, 1979.

John E. Byrne
President
Virginia L. Strayhorn
Charles D. Howell
Clair L. Deloach
Edward W. Quinn
Commissioners