

ORIGINAL

Decision No. 92295 OCT 8 1980

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Roger Gheno and Patricia Ann)
 Bullard,)
) Complainants,)
) vs.)
 Pacific Telephone Co.,)
) Defendant.)

Case No. 10819
(Filed January 4, 1980)

ORDER OF DISMISSAL

Complainants, Roger Gheno and Patricia Ann Bullard, state that an employee of a paving contractor performing work for defendant, The Pacific Telephone and Telegraph Company, entered their premises without permission, connected a test set to their line, and made a call. Complainants state that defendant, in response to complainant's request to repair their telephone service, set up an appointment and did not keep it.

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Complainants request:

- "No. 1. Unknown male should be prosecuted for trespass and having stolen telephone company equipment.
- "No. 2. Telephone Company should pay for our time.
- "No. 3. Definite appointments should be made and kept."

Defendant's Answer to Complaint, Motion to Dismiss, and Motion to Strike filed February 8, 1980 states, in part:

"Thus, the complaint should be dismissed for failure to state a cause of action."

Issues similar to the telephone service issues raised in this complaint were discussed and relief denied in Decision No. 85464 dated February 18, 1976 (Cheno v Pacific Tel. and Tel. Co.).

Defendant answers that the service was first reported out at 2:30 p.m. on December 2, 1979; an appointment was made to clear trouble by 5:00 p.m. December 3; a repair person was unable to gain access at 1:30 p.m. December 3; service was repaired at 5:30 p.m. on December 3; and it made a 65 cent billing adjustment for two days' loss of service. Defendant states that the paving company employee, who made an unauthorized call, made a verbal apology to complainants. Defendant reported the incident to the contractor, asked that the entire work crew be removed from defendant's work until further notice, and advised complainants that if they desired any further relief they should contact the contractor.

In response to complainants' telephone calls from Sun Valley, Idaho, on April 15 and 16, 1980, complainants were authorized by the assigned Administrative Law Judge (ALJ) to submit a written statement and affidavit within 20 days about their complaint, Case No. 10819, including showing a cause of action as required by Public Utilities Code Section 1702 in place of coming to San Francisco and testifying. Defendant was then to have 20 days to ask written questions or to respond.

Public Utilities Code Section 1702 states:

"Complaint may be made by...any...person...
by written petition or complaint, setting forth
any act or thing done or omitted to be done by
any public utility, including any rule or
charge heretofore established or fixed by or
for any public utility, in violation or claimed
to be in violation, of any provision of law or
of any order or rule of the commission."

In response to complainants' request about the status of their complaint, the ALJ by letter dated July 9, 1980 advised complainants that their statement and affidavit about their complaint, including showing a cause of action have not been received. They were further advised that an order is being drafted based upon the written pleadings in the file.

Having given complainants ample time to proceed with testimony and to state a cause of action, and complainants having failed to prosecute their complaint, we conclude that the motion to dismiss should be granted.

IT IS ORDERED that the motion to dismiss is granted and Case No. 10819 is dismissed.

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

Dated OCT 8 1980, at San Francisco, California.

John E. Bayan
President

Vernon L. Sturgeon

Gilbert D. Grubbe

Lawrence M. Jensen
Commissioners

Commissioner Claire T. Dedrick, being necessarily absent, did not participate in the disposition of this proceeding.