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Decision 96-11-043 November 26, 1996

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Thomas Alton, Complainant, vs. Pacific Bell, a Pacific Telesis Company, Defendant.	Case 96-08-036 (Filed August 16, 1996)

INTERIM OPINION

Summary of Decision

That portion of the complaint relating to an employment dispute is dismissed for lack of jurisdiction. That portion of the complaint alleging improper termination of telephone service and failure to restore service is continued pending attempted informal resolution by the Consumer Services Division.[1]

Background

This complaint was filed on August 16, 1996, asserting a violation of Public Utilities (PU) Code § 761. It alleges a breach of implied and express contract of continued employment and implied covenant of good faith and fair dealing by defendant regarding an employment contract. It also alleges that complainant's telephone service was disconnected and that upon payment of the sum claimed by defendant, defendant continued to refuse reconnection without payment of an additional sum.

1 By action of the Executive Director, the Commission's Consumer Affairs Branch and all of its functional responsibilities, was superseded by the Consumer Services Division, effective September 10, 1996.

Complainant requests a temporary restraining order and a temporary and permanent injunction prohibiting defendant from refusing telephone service or employment to complainant, to require defendant to pay certain sums based on what complainant claims is an outstanding balance, to pay weekly sums until this matter is heard, to provide employment to complainant, to restore complainant's telephone service, to pay damages for the breach of contract, to pay compensatory damages for emotional distress, humiliation, and mental anguish, for interest on lost earnings, for punitive damages, for attorney and intervenor fees and for costs of suit.

Amended complaints were sent to Administrative Law Judge (ALJ) Rosenthal on September 6 and September 9, 1996, but were not filed with the Docket Office. The ALJ contacted complainant, who was handling the matter without aid of counsel. Complainant was made aware of the filing requirements. At that time the ALJ cautioned complainant about the potential problems concerning our jurisdiction over employment matters. (The ALJ learned later that complainant is licensed to practice law in Arizona.)

On returning to his office on September 12, 1996, the ALJ had a call waiting from complainant requesting 10 blank subpoenas. The ALJ made several unsuccessful attempts to contact complainant. He then contacted defendant and requested that defendant arrange for a conference call between complainant, defendant, and the ALJ. This telephone conference resulted in an agreement that defendant would reply to the complaint and requests for temporary orders no later than September 19, 1996. Complainant would file his response no later than September 25, 1996. Furthermore, complainant would withhold his request for subpoenas until such time as the Commission rules on the jurisdictional issue. This agreement was confirmed in an ALJ's Ruling issued September 12, 1996. All filings were made within the agreed time.

Discussion

Review of the amended complaint, the answer of defendant, and the complainant's response, as well as our own research, convinces us that the portion of the complaint concerned with complainant's employment and subsequent termination are not within the jurisdiction of this Commission to adjudicate. PU Code § 761 authorizes the Commission to "...prescribe rules for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any public utility." Thus, it is relevant to dealings between the utility and its customers. Termination of complainant's employment with defendant does not relate to the service rendered by defendant to ratepayers, but rather to a personnel dispute between defendant and complainant. As such it is beyond the jurisdiction of this Commission to resolve.

This result was clearly set forth by the California Supreme Court in Pac. Tel. & Tel. v. Pub. Util. Com., (1950) 34 C2d 822, where the Court stated:

> "The act [Public Utilities Act] does not, however, specifically grant to the commission power to regulate the contracts by which the utility secures the labor, materials, and services necessary for the conduct of its business, whether such contracts are made with affiliated corporations or others." Id. at 827.

After further discussion of the limits of the Commission's jurisdiction the Court said:

> "In the absence of statutory authorization, however, it would hardly be contended that the commission has power to formulate the labor policies of utilities, to fix wages or to arbitrate labor disputes." Id. at 829.

Complainant attempts to diminish the effect of the Pac. Tel. case, supra, by claiming it was partially overruled by General Telephone Co. v. Pub. Util. Com., (1983) 34 Cal.3d 817. That case did criticize the "invasion of management" rationale in Pac. Tel. (34 Cal.3d at 824), but specifically distinguished the case, rather than overruling it. (34 Cal.3d at 826.) It continued to stress that the Commission's power over utilities extended to rates and services to utility customers, thereby approving the Commission requirement that General Telephone obtain certain equipment by competitive bidding. (34 Cal.3d at 827.) The Supreme Court had no doubts of our authority to consider a contract that affected utility customers. We do not believe that a single employment dispute rises to that level. Thus, we conclude that this issue, as raised by complainant, is beyond our jurisdiction to determine. This is not to say that complainant has no remedy. It only means that there is no remedy on the employment issue at this Commission.

The assertion of improper disconnection of telephone service and refusal to reconnect is clearly within our jurisdiction. In this regard, complainant was advised by the ALJ that the Consumer Services Division may provide a more expeditious resolution to the disconnection problem. (Rule 10.) Complainant notified the ALJ by letter dated September 10, 1996 that he had filed an informal complaint with the Consumer Services Division. Therefore that portion of the complaint will be held in abeyance pending the outcome of the attempted informal resolution.

In as much as we have determined that there is no jurisdiction over the employment issues raised in the complaint there is no need for us to rule on the requests for temporary or permanent injunctions or restraining orders pertaining to those issues. As to the service issue, the responses of defendant have raised factual issues which cannot be resolved at this time. Complainant has brought this matter to the Consumer Services Division for informal resolution. We shall take no action until learning the result of their effort.

Findings of Fact

1. Complainant alleges improper termination of employment by defendant.

2. Complainant alleges dual jurisdiction between this Commission and the courts over this dispute.

3. Complainant alleges that this Commission's jurisdiction arises under PU Code § 761.

4. Jurisdiction of this Commission to determine labor disputes between a public utility and its employee is contested by defendant.

5. There is no dispute over the jurisdiction of this Commission to resolve complainant's allegations of improper disconnection of service and failure to restore that service.

6. Complainant has filed an informal complaint with the Consumer Services Division of this Commission.

Conclusions of Law

1. PU Code § 761 pertains to matters between a utility and its ratepayers rather than between a utility and its employees.

2. This Commission does not have jurisdiction to determine employment disputes between a public utility and one of its employees.

3. The complaint, insofar as it relates to the termination of employment of complainant, must be dismissed.

4. The Commission has jurisdiction to resolve the issue of improper termination of telephone service and failure to restore service.

INTERIM ORDER

IT IS ORDERED that:

1. Defendant's motion to dismiss this complaint, in so far as it relates to the employment dispute between complainant and defendant, is granted.

2. Defendant's motion to dismiss this complaint, in so far as it relates to the termination of telephone service and refusal to reinstate the telephone service, is denied.

3. That portion of the complaint relating to the termination of telephone service and failure to reinstate service will be continued until such time as an attempted resolution by the Consumer Services Division has been concluded. Complainant and defendant are directed to inform the ALJ at such time whether this complaint should be activated or dismissed.

4. The request for temporary and permanent injunctions and restraining orders pertaining to restoration of telephone service is denied. It may be reinstated should the Consumer Services Division be unable to achieve an informal resolution of this issue.

This order is effective today.

Dated November 26, 1996, at San Francisco, California.

P. GREGORY CONLON
President
DANIEL Wm. FESSLER
JESSIE J. KNIGHT, JR.
JOSIAH L. NEEPER
Commissioners

Commissioner Henry M. Duque, being necessarily absent, did not participate.