

ALJ/RLR/tcg \*

Mailed

Decision 98-04-021 April 9, 1998

APR 9 1998

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

Jasmine Benjamin-Sohal,

Complainant,

vs.

Pacific Bell,

Defendant.

**ORIGINAL**

Case 96-12-057  
(Filed December 31, 1996)

**OPINION DISMISSING COMPLAINT WITH PREJUDICE**

**Summary**

This decision dismisses, on several grounds, the complaint of Jasmine Benjamin-Sohal (complainant) against Pacific Bell (PacBell) charging PacBell with the use of "spotters" in violation of Public Utilities (PU) Code § 8251,<sup>1</sup> resulting in the discharge of one Charles Ballard (Ballard) from his employment with PacBell and causing complainant's involuntary resignation from her position with PacBell, even though complainant's termination was termed "voluntary."

<sup>1</sup> PU Code § 8251 declares that:

"It is unlawful for any public service corporation, or agent, superintendent, or manager thereof, employing any special agent, detective, or person commonly known as a "spotter," for the purpose of investigating, obtaining, and reporting to the employer information concerning its employees, to discipline or discharge any employee, where such act of discipline or the discharge is based upon a report by such special agent, detective, or spotter, which report involves a question of integrity, honesty, or a breach of rules of the employer, unless such employer, its agent, superintendent, or manager, gives notice and accords a hearing to the employee thus accused, when requested by the employee. At such hearing the employer shall state specific charges on which act of discipline or discharge is based, and the accused employee shall have the right to furnish testimony in his defense."

### Factual Background

In September 1991, complainant, at that time a fifteen-year employee of PacBell, and her daughter, Nikkole, were residents of apartment #3 located at 2602 11<sup>th</sup> Avenue in the Belle Vista section of Oakland, California. Charles Ballard, who at that time was also an employee of PacBell and is the father of complainant's daughter, Nikkole, resided with complainant in apartment #3 at that address. According to the complaint, Ballard, whose job with PacBell permitted him to be in the field, often drove to the apartment house during the day in a PacBell truck and ate his lunch at the apartment.

At some point in the Fall of 1991, the owner of the apartment house permitted complainant's niece and her four children to take temporary shelter in one of the apartments located in the apartment building. According to the complaint, three of complainant's niece's children were fathered by one Dale Hill, an individual with a criminal history, who was incarcerated at the time the events here involved occurred. According to complainant, her niece and two of her niece's children suffer from asthma.

On October 10, 1991, a representative of the Belle Vista Crime Watch, a local organization dedicated to neighborhood crime reduction, wrote to Mihal A. G. Karkoliris, also known as George Karko, the owner of the apartment house, advising him that "there are serious drug offenses and other illegal activities being committed by your tenants... The major source of these activities has been initiated by your tenants in the downstairs apartment on the right side - apartment #3." As an attachment to that letter, the crime watch representative included an "activity log for 2602 11<sup>th</sup> Ave." which contained, by date and time, a listing of observations of activities occurring at that address, including an entry which reads:

"09/03/91 7 P.M. .... Fire truck Dept. called drug overdose  
oxygen administered.  
09/07/91 P.M. ....same  
09/12/91 P.M. ....same  
09/17/91 3:02 P.M. ....same"

The next entry reads:

"09/29/91 12:15 AM Pac Bell does bust of employee who is using company truck and company time, and parking on the street for 8 hour stretches while doing drugs in your sec. B crack house. This is the culmination of a 30-day investigation of Pac Bell after observing there [sic] employee repeatedly using your property to get high. 10/02/91 Letter received from Pac Bell to our group that employee was busted and would no longer use the company truck or company time to be using the drug facilities on your property."

Complainant denies each of the statements contained in the activity log; denies that any drug related activities ever occurred in her apartment; and alleges that the fire department responded to the apartment house to administer oxygen to complainant's niece or children who were suffering asthma attacks.

The complaint indicates that on October 2, 1991, Ballard's employment with PacBell was terminated. At some unknown date thereafter, complainant submitted her resignation to PacBell which accepted the same. In her complaint, complainant refers to her resignation as her "involuntary resignation."

The complaint in this proceeding charges that "The actions taken by Pacific Bell, the violation of P.U.C. Sect. 8251, resulted in the termination of the employee, Charles Ballard, and the, involuntary, resignation of my employment of 15 years."

#### **Procedural Background**

The record in this case indicates that on November 14, 1994, some three years after the events described above occurred, complainant filed a civil suit against PacBell and several other defendants in the Superior Court in and for the County of Alameda seeking damages and other relief for, among other things, defendant's purported use of surveillance [use of "spotters"], resulting in the discharge of Ballard from his employment with PacBell, and subsequently forcing complainant to resign from her employment with PacBell. Pursuant to the Federal Rules of Civil Procedure (FRCP), PacBell caused the Superior Court action to be removed to the U.S. District Court for the Northern District of California, Alameda Division (USDC), where it was assigned

docket number C-95-00490. Thereafter, defendant filed a motion to dismiss the complaint, which was granted on March 23, 1995, however, complainant was granted leave to amend her complaint. Complainant thereafter amended her complaint to charge defendant once again, inter alia with a violation of PU Code § 8251, based on the same facts as previously alleged. Again, the USDC dismissed the complaint, but as before, granted leave to amend. Complainant once again amended her complaint, to which defendant demurred. The USDC then dismissed the complaint with prejudice and without leave to amend. The complainant then appealed that decision to the U.S. Court of Appeals for the Ninth Circuit which, in an unpublished memorandum opinion filed December 5, 1996, upheld the decision of the USDC.

More than five years after the accrual of her alleged cause of action, complainant served the complaint instituting this procedure, seeking relief against PacBell based on the same facts alleged against PacBell in and considered by the USDC and the Ninth Circuit Court of Appeals. Defendant then filed an answer setting forth several affirmative defenses, and demanded dismissal of the complaint.

PacBell's demand for dismissal was considered to be the equivalent of a motion to dismiss the complaint, and was scheduled for oral argument on several occasions, however, complainant found it impossible for a variety of reasons to attend any of the scheduled arguments. Finally, in order to dispose of the matter, the ALJ ruled that the demand for dismissal would be decided on the basis of written submissions. Complainant has submitted her argument in writing, however, PacBell has chosen to rely on the answer to the complaint and papers in support thereof. We grant the motion and dismiss the complaint with prejudice.

#### **Discussion**

We dismiss the complaint on five separate grounds: (1) Lack of Standing; (2) Res Judicata; (3) Complainant's employment dispute will not be considered by exercise of discretionary jurisdiction of the Commission; (4) Complainant's claims are time barred; and (5) Lack of jurisdiction to award punitive damages.

**(1) Lack of Standing**

Complainant has no legal basis upon which to complain of Charles Ballard's termination by PacBell or any activity by PacBell leading up to that termination. Complainant claims that PacBell violated PU Code § 8251 by the use of a "spotter" to investigate Ballard and his activities. So far as the record indicates, Charles Ballard is alive and not under any disability that would impair his ability to seek redress for any wrong done him by PacBell. Any cause of action arising out of his termination is personal to him, and may not legally be asserted by anyone else. Complainant is not and apparently never has been married to Ballard, so even in the event he were deceased, complainant would have no right to claim a cause of action in her own name arising out of the termination of Ballard.

**(2) Res Judicata**

Loosely translated, "Res judicata" means "a matter adjudged" and is one of the most fundamental of the rules of civil law. Most simply, the rule is that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. (Black's Law Dictionary, Rev'd Fourth Ed.) Here, each of the claims alleged in the amended complaint has been dismissed with prejudice by the USDC in C-95-00490 and that decision was affirmed by the U.S. Court of Appeals for the Ninth Circuit in an unpublished memorandum opinion filed December 5, 1996. The federal case was brought by Jasmine Benjamin-Sohal as Plaintiff against several defendants including PacBell as Defendants and the causes of action alleged in this proceeding were among those alleged and considered in the federal case. Thus, insofar as this proceeding is concerned, the parties are the same and the causes of action alleged are the same. The unpublished opinion affirming the trial court's dismissal with prejudice decision by the U.S. Court of Appeals constitutes Res Judicata, and we may not reconsider the allegations.

**(3) Complainant's Employment Dispute Is Beyond the Jurisdiction of the Commission**

The complaint in this proceeding is, in reality, a dispute over labor and employment issues, and as such, fails to state a claim over which this Commission has jurisdiction. The Commission has generally deferred the enforcement for discriminatory employment practices to the courts and prosecution with the Fair Employment and Housing Act (FEHA). However, we do consider the consequences of employment practices on the part of its regulatees insofar as they relate directly to its establishment of just and reasonable rates. Brown v. Southern California Gas Company, 1996 Cal. PUC LEXIS 745 (July 3, 1996) citing Pacific Telephone & Telegraph Co. v. Public Utilities Commission, 34 Cal. 2d 822, 829 (1950). Here, the actions alleged to have been taken by PacBell do not relate in any way to the establishment of just and reasonable rates, thus we will not exercise our jurisdiction over them.<sup>2</sup>

**(4) Complainant's Claims are Time Barred**

The actions of PacBell on which the claims asserted by complainant in her amended complaint are allegedly based occurred no later than October 1991. The original complaint in this proceeding was filed with this Commission on December 31, 1996, far beyond the time limit set forth in PU Code §§ 735 and 736. Since the complaint was not filed within the time specified by those sections of the Code, prosecution of any claim arising from the facts alleged in the original complaint is time barred.

**(5) Lack of Jurisdiction to Award Punitive Damages**

As a remedy for the wrong allegedly caused her by PacBell, complainant requests that the Commission award her punitive damages. The Commission is without jurisdiction to award punitive damages, therefore the complaint fails to state a claim upon which the relief requested may be granted.

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<sup>2</sup> The filing of a timely application for rehearing with the Commission remains a prerequisite to court review. See PU Code § 1732.

Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This a complaint case not challenging the reasonableness of rates or charges, and so this decision is issued in an "adjudicatory proceeding" as defined in § 1757.1.

#### **Findings of Fact**

1. In September 1991, complainant resided in apartment #3 at 2602 11<sup>th</sup> Avenue in the Belle Vista section of Oakland.

2. Charles Ballard, the father of complainant's daughter, either lived at or was a frequent visitor to complainant's apartment during the time period covered by the complaint.

3. In September 1991, complainant's niece and her four children also resided in an apartment located at 2602 11<sup>th</sup> Avenue.

4. Complainant's niece and two of her four children allegedly suffered from asthma.

5. On October 2, 1991, Ballard was terminated from his employment at PacBell.

6. On October 10, 1991, a representative of the Belle Vista Crime Watch wrote to the owner of the apartment house at 2602 11<sup>th</sup> Avenue complaining of "drug activity" centering around complainant's apartment and noted that a PacBell employee [Ballard] parked his PacBell truck in the vicinity of 2602 11<sup>th</sup> Avenue during the day and often for as long as eight hour stretches.

7. At some unknown date subsequent to October 2, 1991, complainant resigned from her employment at PacBell.

8. On November 14, 1994, complainant filed a civil action against several defendants, including PacBell, in the Superior Court in Alameda County, which suit was thereafter transferred to the U.S. District Court in Alameda under case number C-95-00490.

**O R D E R**

**IT IS ORDERED** that the amended complaint is dismissed with prejudice.

This order is effective today.

Dated April 9, 1998, at San Francisco, California.

**RICHARD A. BILAS**  
President  
**P. GREGORY CONLON**  
**JESSIE J. KNIGHT, JR.**  
**HENRY M. DUQUE**  
**JOSIAH L. NEEPER**  
Commissioners