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ORIGINAL

Decision No. 60095

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the operations,)
rates and practices of JAMES A.)
HURLEY, doing business as HURLEY)
TRUCKING CO.)

Case No. 5966

James A. Hurley, in propria persona.
Hugh N. Orr and Arthur M. Mooney, for
affiants.

OPINION, FINDINGS AND JUDGMENT

On August 24, 1959, the affidavit of R. J. Pajalich, and his application for an order to show cause were filed with the Commission. Attached to and made a part of this affidavit and application were the affidavits of Wesley J. Gwin and Carl E. Peterson, Jr.

These affidavits allege that James A. Hurley, doing business as Hurley Trucking Co., is in contempt of the Commission because of his willful violation of the Commission's Decision No. 56314 which ordered Hurley to examine his transportation records for the period from July 3, 1956, to the time of the decision for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in that decision and further to take such action as may be necessary to collect the amount of such undercharges and to notify the Commission in writing upon the consummation of such collection.

In response to this application the Commission on September 1, 1959, issued its order directing Hurley to appear on October 29, 1959 and show cause why he should not be adjudged to be in contempt of the Commission and punished therefor in the manner provided by law.

On the return date set forth in the order to show cause, James A. Hurley appeared before Commissioner C. Lyn Fox and Examiner William L. Cole. A public hearing was held on October 29, 1959, at Los Angeles at which time the matter was taken under submission.

Findings and Conclusions

Based upon all of the evidence of record, the Commission hereby makes the following findings and conclusions:

1. That at the time of the transportation referred to in Decision No. 56314, Hurley was a highway permit carrier as that term is defined in Section 3515 of the Public Utilities Code.

2. That on March 3, 1958, the Commission issued its Decision No. 56314 in Case No. 5966. The order in that decision states in part as follows:

"IT IS ORDERED:

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- (4) That James A. Hurley shall examine his records for the period from July 3, 1956 to the present time for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.
- (5) That James A. Hurley is hereby directed to take such action as may be necessary to collect the amount of the undercharges set forth in the preceding opinion, together with any additional undercharges found after the examination required by paragraph (4) of the order, and to notify the Commission in writing upon the consummation of such collection.
- (6) That in the event charges to be collected as provided in paragraph (5) of this order, or any part thereof, remain uncollected eighty days after the effective date of this order, James A. Hurley shall submit to the Commission, on Monday of each week, a report of the undercharges remaining to be collected

and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of the Commission."

3. That the effective date of Decision No. 56314 was twenty days after personal service of the decision upon Hurley.

4. That a certified copy of Decision No. 56314 was personally served upon Hurley on March 10, 1958.

5. That there has been no amendment, modification, revision or revocation of Decision No. 56314.

6. That on August 24, 1959, there was filed with the Commission the affidavit and application for an Order to Show Cause of R. J. Pajalich to which were attached the affidavits of Wesley J. Gwin and Carl E. Peterson, Jr., in which affidavits it was alleged, in substance, that Hurley had failed to review his records and to collect undercharges which would have been disclosed by such a review, that this failure was willful, and that this failure constitutes contempt of the Commission.

7. That on September 1, 1959, the Commission issued an Order to Show Cause wherein Hurley was ordered to appear before Commissioner Fox or Examiner Cole, or such other Commissioner or Examiner as may be designated, on October 29, 1959, in the Courtroom of the Commission in Los Angeles, and then and there show cause why he should not be adjudged to be in contempt of the Commission and punished therefor in the manner provided by law, for the alleged contempt set forth in the aforementioned affidavits and application for Order to Show Cause.

8. That on September 14, 1959, certified copies of the Order to Show Cause and the affidavits and application for an Order to Show Cause were personally served on Hurley.

9. That as of February 25, 1959, Hurley had not commenced reviewing his records for the period from July 3, 1956 to March 3, 1958, as ordered in Decision No. 56314 and at the time of the hearing Hurley had not completed any such review.

10. That by January 28, 1959, Hurley did collect the undercharges specifically found in Decision No. 56314; that Hurley's files contain records which show other shipments transported during the period from July 3, 1958 to March 3, 1958, which were transported at rates less than the minimum rates and charges prescribed by Commission Minimum Rate Tariff No. 2, resulting in undercharges; and that Hurley, as of the date of the hearing in this matter, has not collected such additional undercharges as ordered in Decision No. 56314.

11. That on various occasions during the period from July, 1958, to the time of this hearing representatives of the Commission staff contacted Hurley to inform him of the ordering provisions of the Commission's Decision No. 56314.

12. That at the time of the hearing, Hurley pointed out that the particular orders in question do not specifically set forth a time within which the examination required must be completed; the record shows that Hurley had indicated to the Commission's field representatives that he would try to get to making the examination but that he had been extremely busy.

13. That likewise, at the time of the hearing, Hurley stated that at that time his records were being examined by a professional tariff service.

14. The record does show that Hurley, with knowledge of the terms of the order and ability to comply therewith, did not comply.

15. That notwithstanding the foregoing mitigating circumstances, however, the Commission is compelled to find that Hurley, with full knowledge and notice of the order contained in Decision No. 56314 and the contents thereof, had not completed, as of the time of the hearing in this matter, the examination of his records as required by Decision No. 56314 and collected the additional charges that would have been discovered by such an examination and that Hurley is in violation and disobedience of Decision No. 56314; that Hurley has been able to comply with the terms of Decision No. 56314; and that the failure of Hurley to comply with the terms of Decision No. 56314 is in contempt of the Commission and of its decision and order.

JUDGMENT

James A. Hurley, having appeared and having been given full opportunity to answer the Order to Show Cause of September 1, 1959, and to purge himself of his alleged contempt; now, therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that James A. Hurley is guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on March 3, 1958, in its Decision No. 56314, by failing to examine, within a reasonable time, his transportation records for the period from July 3, 1956 to March 3, 1958, for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in Decision No. 56314 and to take such action as may be necessary to collect the amount of such additional undercharges.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that for such contempt of the Public Utilities Commission and its order as shown in the findings hereinabove set forth, James A. Hurley shall be punished by a fine of Three Hundred Dollars, which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California.

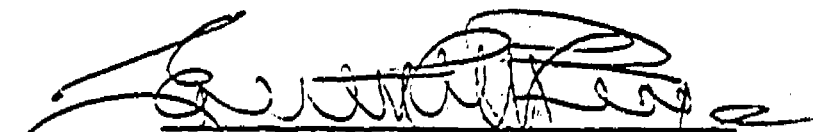
IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that the sentence hereinabove imposed shall be suspended pending further order of this Commission, and as a condition of such suspension,


IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED (1) That James A. Hurley shall make the examination required by paragraph 4 of Decision No. 56314 within six weeks after the effective date of this decision and within two weeks thereafter, James A. Hurley shall file a written report with the Commission setting forth the undercharges found from such examination. (2) That James A. Hurley shall take such action as may be necessary to collect the amount of additional


undercharges, which remain collectible, found after the examination hereinabove required and to notify the Commission in writing upon the consummation of such collection. (3) That in the event charges to be collected as hereinabove provided, or any part thereof, remain uncollected eighty days after the effective date of this order, James A. Hurley shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such action, until such charges have been collected in full or until further order of the Commission.


IT IS HEREBY FURTHER ORDERED that this opinion, findings and judgment shall become effective twenty days after personal service of a certified copy thereof upon James A. Hurley.

Dated at Sau Francisco, California, this 9th day of May, 1960.



President






Commissioners