

Decision No. 69890

**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations and )  
 practices of Neil Brouwer, Henry )  
 Kuiper, Alvin Kuiper, James E. Van )  
 Binsberger, George Cissell, D. D. ) Case No. 7242  
 Street and Richard C. Rietsma, )  
 relating to the transportation of )  
 property by motor vehicle over the )  
 highways of the State of California. )

Robert C. Marks and Richard D. Lowe,  
 for the Commission staff.

O P I N I O N ✓

Decision No. 64316, dated September 25, 1962, in the above-entitled matter found, among other things, that respondent Neil Brouwer had violated Section 3668 of the Public Utilities Code. Said decision ordered that Radial Highway Common Carrier Permit No. 19-40347 be revoked pending further order by the Commission. On March 24, 1964, Case No. 7242 was reopened by Commission order with respect to respondent Neil Brouwer. Decision No. 67885, dated September 22, 1964, vacated the revocation order of September 25, 1962 as of September 26, 1963. Said latter numbered decision also found respondent Neil Brouwer had further violated Section 3668 of the Public Utilities Code, ordered collection of undercharges and imposed a fine of \$1,000.

This matter was again reopened by the Commission by order dated May 4, 1965, for the limited purpose of determining whether respondent Neil Brouwer could pay the fine imposed by Decision No. 67885 and whether said fine should be modified or rescinded.

A public hearing was held before Examiner Gravelle on August 17, 1965 at Los Angeles.

Respondent was personally served with a copy of the Order Reopening Proceedings on May 10, 1965 by a staff representative. Respondent was advised at that time to be present at the Commission hearing so that he could explain any difficulty he had in paying the fine. Notice of further hearing was sent to respondent Neil Brouwer by mail on July 8, 1965, informing him of the time and place of the public hearing heretofore mentioned.

Respondent Neil Brouwer made no appearance at the public hearing of August 17, 1965. An attempt to reach said respondent by telephone while the hearing was in recess proved unsuccessful.

A Commission staff representative testified that as of August 17, 1965 no part of the \$1,000 fine imposed by Decision No. 67885 had been paid. He also testified that respondent's operating authority had been suspended on June 24, 1964, for failure to maintain on deposit adequate liability insurance and that respondent has paid no Transportation Rate Fund Fees since the first quarter of 1964.

In Decision No. 67885 respondent Neil Brouwer was fined pursuant to Section 3774 of the Public Utilities Code. A fine imposed under said code section is a discretionary alternative, exercised exclusively by the Commission, to the cancellation, revocation or suspension of an operating permit. Section 1708 of the Public Utilities Code gives the Commission continuing jurisdiction, after notice and an opportunity to be heard, to rescind, alter or amend any order or decision previously made by it. That section, as well as the entire chapter wherein it is found, "Hearings and Judicial Review," applies with equal force to the Highway Carriers' Act (Sec. 3731). Since fines imposed by reason of Section 3774 are not to be paid into the General Fund of the State Treasury until they have been collected by this Commission and since no part of the

fine so imposed upon Neil Brouwer has been paid to this Commission we remain in a posture where the exercise of discretion granted by Sections 1708 and 3774 permits us to reweigh the sanctions available pursuant to Section 3774.

After consideration the Commission finds that:

1. Neil Brouwer has illegally conducted highway carrier operations.
2. Neil Brouwer has twice been found in violation of Section 3668 of the Public Utilities Code.
3. Neil Brouwer has violated orders and decisions of this Commission by failing to pay the fine imposed by Decision No. 67885.
4. Neil Brouwer has failed to maintain on deposit adequate liability insurance as required by Section 3631 of the Public Utilities Code.
5. Neil Brouwer should be specifically informed of Section 3775 of the Public Utilities Code which makes the issuance of a permit discretionary where revocation has occurred pursuant to Section 3774.
6. No useful purpose would be served by further efforts to collect the fine of \$1,000 imposed upon Neil Brouwer by Decision No. 67885.

Based upon the foregoing findings of fact the Commission concludes that the fine of \$1,000 imposed by Decision No. 67885 should be rescinded and that the operating authority of Neil Brouwer should be revoked forthwith.

O R D E R

IT IS ORDERED that:

1. The fine imposed upon Neil Brouwer by ordering paragraph 1 of Decision No. 67885 is hereby rescinded.

2. Radial Highway Common Carrier Permit No. 19-40347 issued to Neil Brouwer is hereby revoked.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent.

The effective date of this order shall be twenty days after the date of such personal service.

Dated at San Francisco, California, this 21st day of NOVEMBER, 1965.

Fredrick B. Hallock  
President

John E. D. Lister

George J. Traver

Augusta

William B. Brouwer  
Commissioners