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ORIGINAL

Decision No. 69893

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's }
own motion into the operations, }
rates and practices of NORMAN A. }
HUGHEY, an individual, doing }
business as C & H TRANSPORTATION }
COMPANY. }

Case No. 7887

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

O P I N I O N

Decision No. 68033, dated October 13, 1964 in the above-entitled matter concluded that respondent had violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine in the amount of \$3,000. Said decision also ordered a review of records and a collection of undercharges as well as the institution of legal proceedings should they be necessary to effectuate such collection. Undercharges in the amount of \$3,220.01 were specifically found by said decision.

The time for paying the fine of \$3,000 was extended through January 8, 1965 by a Commission order dated December 9, 1964.

By an order dated May 11, 1965 the Commission reopened this proceeding for the purposes of determining respondent's compliance with Decision No. 68033 and whether or not any further order of the Commission was necessary.

A public hearing was held before Examiner Gravelle in Yuba City on August 24, 1965.

A searching examination of respondent's financial condition, license status, business prospects, assets and liability insurance, property interests, and status as plaintiff or defendant in any legal proceedings was conducted by counsel for the Commission staff.

Respondent is married and has a seventeen-year old son who attends school. His sole business endeavor is the operation of his trucking business in which he is aided by his wife; said business also produces his only income. He is buying his home and presently owes approximately \$5,000 on it. His trucking business is still active although he testified he had suffered a severe drop in business income since January 1, 1965. At the time of hearing he had three drivers in his employ. He no longer drives his own equipment. His business bank account had a balance of about \$1,000, he had made a deposit of \$1,400 a week prior to the hearing and his driver's wages had amounted to \$400 for the week. Between the dates of May 11, 1965 when this proceeding was reopened, and August 24, 1965, the date of hearing, he had sold two pieces of tank equipment and bought two pieces of flat rack equipment "for about the same price." Respondent drives a 1962 Cadillac on which payments of \$120 per month are made but said automobile will be fully paid for in November or December of this year. He also has a 1963 Dodge pickup truck purchased new in 1963 on a three-year contract with payments of \$59.60 per month. In his business he operates three tractors and six trailers. Payments are made monthly on two of said tractors and three of said trailers at \$635 and \$379, respectively. He testified he had been able to borrow money from two different banks for both equipment purchases and on a personal basis. He had been able to borrow \$2,500 without collateral and pay said sum back in a six-month period.

His gross revenue figures for the last quarters reported were: \$23,600 for the third quarter of 1964, \$23,424 for the fourth quarter of 1964, \$12,619 for the first quarter of 1965, and \$15,434 for the second quarter of 1965. He claimed to have lost the accounts in which the Commission had ordered him to collect undercharges as well as his "tank truck" account. His withdrawals from this business have dropped from \$500 - \$800 monthly in 1964 to \$200 - \$400 monthly in 1965. The difference in this average withdrawal has been applied to such things as motor overhauls, new tires and brakes for his equipment. He testified he was presently attempting to generate new business through hauls of lumber, tomatoes and peaches and has been actively seeking subhauls.

Respondent testified that he had collected \$1,642 in undercharges pursuant to Decision No. 68033 and was holding that sum in cashier's checks separate from his regular business accounts. A letter from an attorney making collections for him was introduced in evidence. It indicates that Blemco Lumber Sales, Inc., one of respondent's debtors had assigned its assets to the Board of Trade of San Francisco on December 19, 1964 and that said attorney was filing a claim for pro rata participation in the liquidation proceedings. Respondent testified that Blemco Lumber Sales, Inc. owes him between \$1,600 and \$1,800. In addition to the undercharges which have already been collected and the claim last mentioned, respondent admitted that his records review had brought to light other undercharges but he did not know the precise amount thereof. He also had claims of \$2,800 and \$1,500 against other debtors but expressed little hope of making any collection thereon.

Respondent stated he was willing to pay the amounts of the undercharges he had collected to the Commission but did not know how he could pay the difference of about \$1,400; he said he could not afford any installment payments because of current business conditions.

A staff representative testified that as of August 24, 1965 no part of the \$3,000 fine had been paid. He further stated that respondent's Petroleum Contract Carrier Permit No. 51-614 had been placed in suspension for a one-year period commencing July 27, 1965 at respondent's request but that Radial Highway Common Carrier Permit No. 51-762 issued to respondent was in full force and effect.

Three other cases involving review of matters wherein fines had been imposed upon carriers for violations of the Public Utilities Code have been decided today (Cases Nos. 7242, 7485 and 7537). In each of those cases said fines were rescinded and the operating authority was revoked. This proceeding is similar to those only so far as the reason for the review, nonpayment of a fine. There the similarity ends for the facts in this case clearly show that respondent not only has the ability to pay the fine imposed but indeed has already collected and held apart a sum of \$1,642. He has an expectation of receiving up to \$5,100 in other claims, had \$1,000 in the bank at the time of hearing, possessed a good equity in his home, employed three drivers and apparently had the ability to borrow money from reputable lending institutions on the strength of his signature alone.

The lack of even partial compliance with the Commission's order imposing the fine, under the circumstances of record here, approaches contempt for an order lawfully issued.

After consideration the Commission finds that:

1. Norman A. Hughey has failed to pay any part of the fine of \$3,000 imposed upon him by Decision No. 68033.
2. Norman A. Hughey has the ability to pay the fine of \$3,000 imposed upon him by Decision No. 68033.
3. Norman A. Hughey has collected \$1,642 in undercharges pursuant to the direction of Decision No. 68033.
4. Said sum of \$1,642 has been expressly set aside by Norman A. Hughey for the purpose of payment of the fine imposed by Decision No. 68033.

Based upon the foregoing findings of fact the Commission concludes that Norman A. Hughey has violated Section 3774 of the Public Utilities Code by his failure to pay the fine imposed upon him by Decision No. 68033, that Norman A. Hughey should be directed forthwith to pay the sum of \$1,642 as partial payment of said fine and that the balance of \$1,358 of said fine must be paid within nine months of the effective date of this order.

Norman A. Hughey should be mindful of the authority of this Commission to impose upon him further sanctions pursuant to Public Utilities Code Sections 2113 and 3806 (contempt), and Section 3774 (revocation or fine) for failure to comply with the lawful orders of this Commission.

O R D E R

IT IS ORDERED that:

1. The fine imposed upon Norman A. Hughey by Decision No. 68033 is hereby reaffirmed.
2. Norman A. Hughey shall pay to this Commission the sum of \$1,642 in partial payment of the fine imposed by Decision No. 68033 within ten days after the effective date of this order.

3. Norman A. Hughey shall pay to this Commission the balance of \$1,358 of the fine imposed by Decision No. 68033 within nine months after the effective date of this order.

4. Norman A. Hughey shall in all other respects fully comply with ordering paragraphs 2 through 5 of Decision No. 68033.

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 2nd day of NOVEMBER, 1965.

Frederick B. Hallock
President

George L. Grover

Muzard

William L. Brund
Commissioners