

**ORIGINAL**

Decision No. 71388

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates and practices of WALNUT )  
 TRUCKING COMPANY, INC., a corpo- )  
 ration, and HARRY D. RILEY, JR., )  
 an individual doing business as )  
 RILEY AND SON TRUCKING CO. )

Case No. 7897  
 (Contempt Proceeding)

Knapp, Gill, Hibbert and Stevens, by Karl K. Roos, for Walnut Trucking Co., Inc.,  
William L. Thomas and David R. Rydbom,  
 respondents.  
Elmer Sjostrom, for the Commission staff.

O P I N I O N

On October 15, 1965, Frank J. O'Leary, senior transportation representative of this Commission, filed his affidavit and application for an order to show cause wherein it was alleged, among other things, that Decision No. 68623 issued by the Commission had been served on Walnut Trucking Co., Inc., a corporation, by personally serving William L. Thomas, its president and David R. Rydbom, its vice president; that Walnut Trucking Co., Inc., William L. Thomas, its president, and David R. Rydbom, its vice president, and each of them, have omitted, failed and refused to comply with the terms of ordering paragraphs 2 and 4 of Decision No. 68623; that such omission, failure and refusal were in violation and disobedience of said Decision No. 68623; that such failure to comply with and violation of said decision and of ordering paragraphs 2 and 4 thereof, on the part of said corporation and said officers thereof, and each of them, was committed in violation of law and in contempt of the Public Utilities Commission of the State

of California. Affiant requested that the Commission issue an order requiring Walnut Trucking Co., Inc., William L. Thomas and David R. Rydbom to appear and show cause why they, and each of them, should not be punished for contempt.

On October 26, 1965 the Commission issued its order to show cause as requested in the affidavit. The order to show cause and the affidavit in support thereof were duly served on respondents Rydbom and Thomas as officers of respondent corporation on November 1 and 2, 1965. The matter was heard on December 16, 1965 in Los Angeles before Examiner Fraser. Said respondents appeared in person and by their counsel. The matter was submitted on briefs which were received on April 4, 1966.

On the 16th day of February 1965, the Commission issued its Decision No. 68623 which, among other things, found and concluded that William L. Thomas and David R. Rydbom are officers and directors of Walnut Trucking Co., Inc., and Ford Wholesale Co., a corporation, and that each owns a 50 percent interest in both corporations, and that Walnut Trucking Co., Inc., is a device whereby Ford Wholesale Co. received transportation of property at rates less than those prescribed by the Commission and in violation of Section 3668 of the Public Utilities Code. Decision No. 68623 contained, among other orders, the following two ordering paragraphs:

- "2. Walnut Trucking Co., Inc. shall review its records of all transportation performed for Ford Wholesale Co. wherein purported subhaulers were used to perform the actual transportation between March 1, 1963 and the effective date of this order. Walnut Trucking Co., Inc. shall then pay to such furnishers of transportation the difference between the lawful minimum rate and charge applicable to such transportation and the amount previously paid to such furnishers of transportation ostensibly as subhaulers.

"4. Within ninety days after the effective date of this order, Walnut Trucking Co., Inc. shall complete the examination of records required by paragraph 2 of this order and shall file with the Commission a report setting forth the names of the purported subhaulers used to perform transportation for Ford Wholesale Co. and the amount originally paid to each, the further amount found due to each, and any amount subsequently paid to each. "

No appeals or petitions were filed and the decision became effective on March 15, 1965. During the hearing Thomas and Rydbom maintained that they are not in contempt of the Commission. They emphasized that Walnut Trucking Co., Inc., was the only respondent in the investigation proceeding and that Decision No. 68623 does not order either of them to do anything. They maintain that Walnut Trucking Co., Inc., is the only party subject to contempt since it is the only party to this proceeding ordered to comply in the original decision.

Respondents' further contend that the letter of June 23, 1965 from Walnut Trucking Co., Inc., to the Commission is a sufficient report to satisfy the requirements of Paragraph 4. The text of the letter is quoted in full below.

"Gentlemen:

After a lengthy review of our transportation records held by Walnut Trucking Company, Inc., our attorneys and accountant have concluded that no amounts remain unpaid to any subhauler. We have, therefore, complied with the requirements as outlined by the Commission.

Very truly yours,  
WALNUT TRUCKING CO., INC.  
/s/ W. L. Thomas  
W. L. Thomas, President"

Respondents also maintained that the staff is aware of the complications which have prevented any of the respondents from immediately paying the subhaulers the monies that are supposedly due them; one of the two subhaulers involved is out of business and

can't be located; the second is engaged in a legal dispute with the respondents regarding the sum of money actually owed and it is apparent that the matter will take a trial to settle; for these reasons the respondents have not been able to make payment and have not settled the actual sum owing to the surviving subhauler.

Discussion and Findings

1. The Commission, on February 16, 1965, rendered its Decision No. 68623 in Case No. 7897. Said decision has never been revoked and, insofar as it contains mandatory orders, said decision is in full force and effect. A copy of said decision was duly served upon Walnut Trucking Co., Inc., on February 23, 1965.

2. On October 15, 1965, the affidavit and application for order to show cause herein were filed with the Commission, in which it was alleged, in substance, that respondents had failed and refused to comply with ordering paragraphs 2 and 4 of said Decision No. 68623.

3. On October 26, 1965, the Commission issued its order to show cause directing respondents to appear and show cause why they should not be punished for the alleged contempt set forth in said affidavit and application for order to show cause. The order to show cause and affidavit in support thereof were duly served upon the respondents on November 1 and 2, 1965.

4. William L. Thomas and David R. Rydbom, as officers of and majority owners of the outstanding shares, had control and management of the affairs of Walnut Trucking Co., Inc., and had timely notice of the requirements of the order in Decision No. 68623, and have failed and refused to comply with the provisions of ordering paragraphs 2 and 4 of said decision.

5. Decision No. 68623 made findings that Thomas and Rydbom were officers and directors of Walnut Trucking Co., Inc., and that each owned a 50 percent interest in the corporation; also that Thomas and Rydbom used Walnut Trucking Co., Inc., as a device to provide transportation for less than the minimum rates prescribed by this Commission in violation of Section 3668 of the Public Utilities Code. These findings were never contested. No petition for rehearing of Decision No. 68623 was filed by respondent Walnut Trucking Co., Inc. Thomas and Rydbom own all the stock in the corporation and are its only active officers. They organized and formed Walnut Trucking Co., Inc., and cannot now use the corporate entity as a shield to absorb all blame for the very violations it was formed to commit. William L. Thomas and David R. Rydbom are proper respondents in the contempt proceeding, even though they were not respondents in Case No. 7897, investigation of Walnut Trucking Co., Inc. A corporation may be held in contempt for disobedience of an order served upon it (Golden Gate Consolidated Mining Co. v. Superior Court, 65 Cal., 187). Corporate officers may likewise be held in contempt for violation of orders directed against the corporation if they have notice of the order (Drew v. Superior Court, 180 Cal., 711). Since a corporation can act only through its agents, an order against a corporation binds all persons who act for the corporation in the the transaction of the business and who have knowledge of the order (Katenkamp v. Superior Court, 16 Cal.(2), 696).

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6. Walnut Trucking Co., Inc., did not review its records as required in paragraph 2 of Decision No. 68623. There is no evidence of compliance other than the statements of respondents Thomas and Rydbom. The respondents did not show that any effort was made to resolve the controversy with the subhauler and no information was received by the Commission until Exhibits 10 and 11 were filed during the contempt proceeding. These exhibits are not complete but do show the difference between the rates applied by the respondents and the rates used by the remaining subhauler on the same transportation.

7. No report has been filed with the Commission setting forth the lawful minimum rates for the transportation and the amount paid to the "subhaulers" as required by paragraph 4 of the order in Decision No. 68623. The letter of June 23, 1965 to the Commission, which states that a "lengthy review" of the records of Walnut Trucking Co., Inc., was made and that no amounts "remain unpaid to any subhauler" does not satisfy the requirement. It states a mere conclusion without providing the facts on which it is based. An acceptable report would list each load hauled separately, with the amount paid, the minimum rate, and charge, and the amount due entered in separate columns. Separate sheets should be provided for each subhauler and entries made in all columns even though no payment is due.

8. At the time of the rendition of Decision No. 68623, respondents were able to comply with the requirements of ordering paragraphs 2 and 4 thereof and have been able at all times since said time to so comply and are now able to comply.

The evidence in this record is clear, and based on the findings herein set forth, we conclude that Walnut Trucking Co., Inc., William L. Thomas and David R. Rydbom, and each of them, have failed and refused to make the examination of records as ordered in said ordering paragraph 2, and have not filed the report required by ordering paragraph 4 of Decision No. 68623 and that such failure and refusal were and are in contempt of the Public Utilities Commission of the State of California and its said order.

JUDGMENT AND ORDER

Walnut Trucking Co., Inc., a corporation, William L. Thomas, as president of said corporation, and David R. Rydbom, as vice president of said corporation, and each of them, having appeared in person and by counsel and having been given full opportunity to answer the order to show cause of October 26, 1965, and to exonerate themselves from the alleged contempts set forth in the affidavit and application for order to show cause herein; now therefore, based upon the foregoing findings of fact,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Walnut Trucking Co., Inc., a corporation, is guilty of contempt of the Public Utilities Commission of the State of California in disobeying the Commission's order made on February 16, 1965, in Decision No. 68623, by failing and refusing to examine its records as ordered in ordering paragraph 2 of said decision, and that for such contempt said corporation shall be punished by a fine of One Hundred Dollars.

(\$100), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that William L. Thomas, as president of Walnut Trucking Co., Inc., a corporation, and David R. Rydbom, as vice president of said corporation, are guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on February 16, 1965, in Decision No. 68623, by causing Walnut Trucking Co., Inc., a corporation, to fail and refuse to make the examination of records as ordered in ordering paragraph 2 of said decision, and that for such contempt William L. Thomas, as president of said corporation, and David R. Rydbom, as vice president of said corporation, shall be punished by requiring each of them to pay a fine of One Hundred Dollars (\$100), which fines shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this order.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Walnut Trucking, Co., Inc., a corporation, is guilty of contempt of the Public Utilities Commission of the State of California in disobeying the Commission's order made on February 16, 1965, in Decision No. 68623, by failing and refusing to file the report required by ordering paragraph 4 of said decision, and that for such contempt said corporation shall be punished by a fine of One Hundred Dollars (\$100), which fine shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this order.



IT IS FURTHER ORDERED, ADJUDGED AND DECREED that William L. Thomas, as president of Walnut Trucking, Co., Inc., a corporation, and David R. Rydbom, as vice president of said corporation, are guilty of contempt of the Public Utilities Commission of the State of California in disobeying its order made on February 16, 1965, in Decision No. 68623, by causing Walnut Trucking Co., Inc., a corporation, to fail and refuse to file the report as required by ordering paragraph 4 of said decision, and that for such contempt William L. Thomas, as president of said corporation, and David R. Rydbom, as vice president of said corporation, shall be punished by requiring each of them to pay a fine of One Hundred Dollars (\$100), which fines shall be paid to the Secretary of the Public Utilities Commission of the State of California within ten (10) days after the effective date of this order. ✓

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the fines herein assessed against William L. Thomas, he shall be committed to the County Jail of Los Angeles County, State of California, until such fines be paid or satisfied in the proportion of one day's imprisonment for each Fifty Dollars (\$50) of such fines that shall so remain unpaid; and if such fines or any part thereof shall not be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of Los Angeles County, to which shall be attached and made a part thereof a certified copy of this decision. ✓

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that in default of the payment of the fines herein assessed against David R. Rydbom, he shall be committed to the County Jail of Los Angeles

County, State of California, until such fines be paid or satisfied in the proportion of one day's imprisonment for each Fifty Dollars (\$50) of such fines that shall so remain unpaid; and if such fines or any part thereof shall not be paid within the time specified above, the Secretary of the Commission is hereby ordered and directed to prepare an appropriate order or orders of arrest and commitment in the name of the Public Utilities Commission of the State of California, directed to the Sheriff of Los Angeles County, to which shall be attached and made a part thereof a certified copy of this decision.

IT IS FURTHER ORDERED that certified copies of this decision be personally served upon Walnut Trucking Co., Inc., a corporation, upon William L. Thomas, and upon David R. Rydbom. The effective date of this decision as to each of the respondents shall be twenty days after personal service of a certified copy thereof upon said respondent.

Dated at San Francisco, California, this 11<sup>th</sup> day of OCTOBER 1966.

Commissioner A. W. Gatov, being necessarily absent, did not participate in the disposition of this proceeding.

[Signature]  
President

George T. Grover

Friedrich B. Holdoff

William L. Bennett

Commissioners