

ORIGINAL

Decision No. 71641

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, charges, and practices of James R. Green, doing business as JIM GREEN'S TRUCKING COMPANY.

Case No. 7763
(Contempt Proceeding)

Gaston & Keltner, by Robert A. Gaston, for respondent (James R. Green, doing business as Jim Green's Trucking Company).

B. A. Peeters and F. J. O'Leary, for affiant (the Commission staff).

O P I N I O N

On April 4, 1966, Rolla J. Weiser, Assistant Secretary of the Public Utilities Commission of the State of California, filed his affidavit and application for an order to show cause wherein it was alleged, among other things, that Decision No. 67998 issued by the Commission in Case No. 7763 had been personally served on James R. Green, doing business as Jim Green's Trucking Company; that said James R. Green has omitted, failed and refused to comply with the terms of ordering paragraphs 2 through 6 of said Decision No. 67998 and that such omission, failure and refusal were in violation and disobedience of said Decision No. 67998, and that such failure to comply with and the violation of said decision and of ordering paragraphs 2 through 6 thereof by said James R. Green were 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 James R. Green to appear and show cause why he should not be punished for contempt.

On April 5, 1966, the Commission issued its order to show cause directing James R. Green to appear before the Commission on the 26th day of May 1966, in the Commission Courtroom, State Building, 107 South Broadway, Los Angeles, California, and show cause why he should not be adjudged in contempt of the Commission, and punished for his failure and refusal to comply with ordering paragraphs 2 through 6 of the Commission's Decision No. 67998. The order to show cause and the affidavit in support thereof were duly served upon the respondent on April 7, 1966.

The matter was heard on May 26, 1966, before Examiner Mooney, and was submitted upon receipt of late-filed Exhibit 5 on June 9, 1966. Respondent appeared in person and by his counsel.

By Decision No. 67998, dated October 6, 1964, the Commission found, among other things, that respondent charged less than the lawfully prescribed minimum rates in the instances set forth therein resulting in undercharges in the amount of \$530.46 in violation of Section 3667 of the Public Utilities Code. In addition, the Commission found in said decision that respondent performed for-hire transportation services for Lewis Food Company; that said transportation services were performed exclusively by subhaulers; that respondent also performed services for Lewis Food Company in its sales department; that the payment received by respondent for his services in Lewis Food Company's sales department was in the form of the difference between the minimum rates and the rates paid to the purported subhaulers who are in fact prime carriers; and that this activity constituted a device whereby respondent through the use of his permits allowed Lewis Food Company to obtain transportation at less than the minimum

rates in Minimum Rate Tariff No. 2 in violation of Section 3668 of the Code.

Having thus concluded and found, the Commission ordered in paragraphs 2 through 6 of Decision No. 67998 as follows:

"2. Respondent shall examine his records for the period from April 1, 1962 to the present time, for the purpose of ascertaining all undercharges that have occurred.

"3. Within ninety days after the effective date of this order, respondent shall complete the examination of his records required by paragraph 2 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

"4. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, together with those found after the examination required by paragraph 2 of this order, and shall notify the Commission in writing upon the consummation of such collections.

"5. In the event undercharges ordered to be collected by paragraph 4 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall institute legal proceedings to effect collection and shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

"6. Respondent shall review his records for all transportation performed for Lewis Food Company wherein purported subhaulers were used to perform the actual transportation during the period from October 1, 1961 to the effective date of this order. Respondent shall pay to such purported subhaulers 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. Said payment shall be completed no later than one hundred and twenty days after the effective date of this order."

Decision No. 67998 provided that the effective date would be twenty days after personal service thereof upon respondent. Personal service was made on October 13, 1964. The Commission by

Order Extending Effective Date, signed October 30, 1964, extended the effective date to November 18, 1964. A petition for rehearing was filed by respondent, and the effective date of said decision was stayed by order issued December 9, 1964. Rehearing was denied and the effective date of Decision No. 67998 was again stayed on the advice of respondent that review by the Supreme Court of the State of California would be sought. Review by the State Supreme Court was denied, and on September 28, 1965, the Commission issued its Order Fixing Effective Date of Decision No. 67998 on the tenth day after the date of said order which was personally served on respondent on October 7, 1965. Decision No. 67998 became final on October 8, 1965 and, not having been revoked, is still in full force and effect.

A stipulation (Exhibit "H" to the affidavit and application for order to show cause) between the Commission and James R. Green filed in California Supreme Court Case S.F. No. 21994 on October 27, 1965, provided in paragraph 1 thereof that James R. Green would waive the defense of the statute of limitations during the pendency of review by the California Supreme Court and the United States Supreme Court plus 120 days after the Courts' determinations, and in paragraph 2 thereof that the Commission agreed to refrain from enforcing Decision No. 67998 pending the Courts' decisions. On January 24, 1966, the appeal from the denial by the Supreme Court of California was denied by the United States Supreme Court.

On October 14, 1965, James R. Green paid a fine of \$1,000 as directed by ordering paragraph 1 of Decision No. 67998.

A letter dated January 27, 1966 from James R. Green to the Secretary of the Commission (Exhibit 2) regarding paragraphs

3 and 6 of Decision No. 67998 stated as follows (the text of the letter is quoted in full):

"Dear Sir:

"In regards to your letter of Jan. 25th, 1966 referring to Paragraph 3 of Decision No. 67998 to submit a report of any undercharges to the shippers I can not find any undercharges. These freight bills were rated by Miller Traffic Service Inc.

"In regards to Paragraph 6 of Decision No. 67998 the paying of these charges is a impossibility. The greatest portion of the money made by the trucking company has been paid to the Federal Government and the State Government in Taxes. The balance to attorneys to stay in business.

"In regards to the revocation of my operating authority I would say that you have practically done this by refusing to let me use sub-haulers. As of this date the Jim Green's Trucking Co. has been closed."

Rolla J. Weiser, the Assistant Secretary of the Commission, testified as follows: he examined the official records of the Commission in Case No. 7763 to determine the extent, if any, to which James R. Green has complied with the Commission's directions in ordering paragraphs 2 through 6 of Decision No. 67998; he found no evidence therein of compliance by James R. Green with said ordering paragraphs 2 through 6; the report of undercharges required by ordering paragraph 3 was due on January 6, 1966 and payment to subhaulers required by ordering paragraph 6 was to have been completed by the same date; James R. Green's letter of January 27, 1966 to the Commission cannot be considered a report of undercharges as required by ordering paragraph 3 and indicates that James R. Green has not complied or attempted to comply with the directive in ordering paragraph 6 to pay subhaulers.

James R. Green testified as follows: Jim Green's Trucking Company is no longer operating and his accountant is in the process

of auditing and closing the books of the company; he has not willfully violated any of the directives in Decision No. 67998; he considers the letter of January 27, 1966 a report of undercharges as required by ordering paragraph 3 of the decision although, he admitted, it makes no specific reference to the \$530.46 in undercharges set forth in the decision; an invoice for the \$530.46 was sent to Lewis Food Co. on October 25, 1965 (Exhibit 3), and a check for this amount was received from Lewis Food Co. on or about November 4, 1965; he has reviewed his records as required by ordering paragraph 2 and found no additional undercharges; with respect to ordering paragraph 6, his books are currently being reviewed to determine the names of the subhaulers and the amount owed each; it was his understanding of the stipulation between the Commission and himself, based on the advice of his counsel who drew up the stipulation, that he had until 120 days after the denial of his appeal by the United States Supreme Court on January 24, 1966 within which to comply with ordering paragraphs 2 and 6 of Decision No. 67998; the only communication he received from the Commission subsequent to his letter of January 27, 1966 was the order to show cause.

James R. Green further testified that he operated Jim Green's Trucking Company for three years and that after employee wages, business expenses, taxes and heavy attorney fees during this period he had only \$20,000 to \$24,000 left each year which was used to cover living expenses. He stated that the company is near bankruptcy and that if the audit of his books discloses that a substantial amount of money is due and owing to subhaulers, he will most likely be forced into bankruptcy.

The witness testified that his current assets are as follows: a Pontiac station wagon which is unencumbered; a 1965 autocar tractor and a 1965 Fruehauf flatbed trailer on which he owes \$16,067 to Lewis Food Company which is shown on the 1965 Certificate of Ownership from the State of California Department of Motor Vehicles for both pieces of equipment as the legal owner (Exhibit 5); a lot at Lake Arrowhead valued at approximately \$7,000 which was purchased in 1965 with separate money of his wife and stepson and which is held in joint tenancy with his wife; a house held in joint tenancy with his wife, which was constructed on said lot with a \$14,000 loan from the Bank of America, practically all of which is outstanding; \$1,000 per month salary from his present employment as vice president and sales manager of Tri-Valley By-Products with which he has a two-year employment contract; and a total of \$700 or \$800 in his bank accounts.

As to his present employment, James R. Green explained that he acquired a 25 percent interest in Tri-Valley By-Products in February 1966 for \$10,000 which he borrowed from his wife and stepson. He stated that he has leased a Lincoln Continental automobile in his name for a two-year period; that it is used in connection with his work as sales manager; and that the monthly rental payment of \$175 for said automobile is paid by Tri-Valley. He testified that he leased the tractor and trailer to Tri-Valley; that the income from the lease is not sufficient to cover the payment of \$1,000 per month to Lewis Food Company on the loan for the equipment and he is now trying to sell the equipment. The witness asserted that the home in which he resides is the separate property of his wife and that he pays for the upkeep and loan payments which amount to \$313 per month. He stated he relied upon his wife's

separate properties to build up his credit rating while he was operating Jim Green's Trucking Company.

Based upon the record the Commission finds that:

1. The Commission, on October 6, 1964, rendered its Decision No. 67998 in Case No. 7763. The effective date of said decision was stayed until October 8, 1965 by several orders of the Commission. 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 James R. Green, doing business as Jim Green's Trucking Company, on October 13, 1964.

2. By stipulation filed in the California Supreme Court on October 27, 1965, the Commission agreed in paragraph 2 thereof to refrain from enforcing said Decision No. 67998 during the pendency of review by the United States Supreme Court; said Court denied review on January 24, 1966.

3. On April 4, 1966, the affidavit and application for the order to show cause herein were filed with the Commission, in which it was alleged, in substance, that James R. Green had failed and refused to comply with ordering paragraphs 2 through 6 of said Decision No. 67998.

4. On April 5, 1966, the Commission issued its order to show cause directing respondent to appear and show cause why he 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 respondent on April 7, 1966.

5. James R. Green has not omitted, failed and refused to substantially comply with paragraphs 2 through 5 of the order in Decision No. 67998 which directed him to review his records for

undercharges, collect the undercharges disclosed thereby and file reports in connection therewith.

James R. Green's letter of January 27, 1966 to the Commission stated, "I can find no undercharges." He testified that he had reviewed his records and found no undercharges other than those established in Decision No. 67998 which had been billed (Exhibit 3) and collected. There is nothing in the record to refute his testimony on this issue. Although the letter is somewhat vague and was filed three weeks late (the report of undercharges was due on January 6, 1966), James R. Green testified that he was of the opinion that his letter was an adequate report and was filed in time and that he had fully complied with the requirements of paragraphs 2 through 5. While James R. Green's compliance with all of the directives in ordering paragraphs 2 through 5 was not technically correct, there was at least substantial compliance therewith.

6. James R. Green has not complied with the directives in ordering paragraph 6 of Decision No. 67998 to review his records for transportation performed for Lewis Food Company wherein sub-haulers were used to perform the actual transportation, and to pay the difference between the lawful minimum rate and charge for such transportation and the amount previously paid to said sub-haulers not later than January 6, 1966 (120 days after October 8, 1965, the effective date of the order).

James R. Green has not shown that any effort was made to review his records and pay the sub-haulers by January 6, 1966. His allegation that paragraph 2 of his stipulation with the Commission gave him until April 1966 within which to comply with ordering paragraph 6 is a strained interpretation with which we

do not agree. Even if we were to concur with this interpretation, it would not alter the fact that he has not complied with said directives within the required time. He was in default in April 1966 as well as in January 1966.

James R. Green's letter of January 27, 1966 stated that it was impossible for him to pay the subhaulers. No explanation was given in the letter as to why it was impossible. He presented detailed testimony regarding his current financial condition, and alleged that he does not have the financial ability to pay. This may or may not be true. However, it cannot be determined on this record. According to James R. Green's testimony, he is currently having his records audited to determine the amount due subhaulers. Until this determination has been made, the question of his ability to pay is speculative. In any event, we are concerned here with whether James R. Green reviewed his records and paid the subhaulers within the specified time. There is no evidence that this was done or that he made any attempt to do so within the required time. The fact that he may now be having his records audited does not excuse his failure to comply, at least to the best of his ability, with the directives in ordering paragraph 6 within the time specified therein.

From the findings herein set forth, we conclude that:

1. James R. Green has not been shown to be in contempt of the directives in ordering paragraphs 2 through 5 of Decision No. 67998.

2. James R. Green has failed and refused to make the examination of his records and pay, or attempt to pay to the best of his ability, subhaulers as required by ordering paragraph 6 of Decision No. 67998 within the time specified therein,

and such failure and refusal were and are in contempt of the Public Utilities Commission of the State of California and its said order, and that for such contempt James R. Green should be fined the sum of \$200.

O R D E R

James R. Green, doing business as Jim Green's Trucking Company, having appeared in person and by counsel and having been given full opportunity to answer the order to show cause of April 5, 1966, and to exonerate himself 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 that James R. Green is adjudged in contempt of the Public Utilities Commission of the State of California for disobeying the Commission's order made on October 6, 1964, in Decision No. 67998, by failing and refusing to examine his records and pay subhaulers as ordered in ordering paragraph 6 of said decision, and that for such contempt said James R. Green shall be punished by a fine of Two Hundred Dollars (\$200), 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 HEREBY FURTHER ORDERED that in default of the payment of the fine herein assessed against James R. Green, he shall be committed to the County Jail of Los Angeles County, State of California, until such fine be paid or satisfied in the proportion of one day's imprisonment for each Fifty Dollars (\$50) of such fine that shall so remain unpaid; and if such fine 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 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 judgment.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent James R. Green. The effective date of this order shall be twenty days after personal service of a certified copy thereof upon said respondent.

Dated at San Francisco, California, this 6th day of DECEMBER 1966.

[Signature]
President

[Signature]

[Signature]

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Commissioners