

ORIGINAL

Decision No. 78882

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations and practices of KENNETH W. PITCHFORD, EDDIE P. BROWN, KENNETH POOLE, RICHARD A. STEINBERGER, and ROY L. TIEVEL.

Case No. 9198
(Filed March 9, 1971)

Joseph C. Eischen, Attorney at Law, for Kenneth W. Pitchford; Roy L. Tieuel,^{1/} in propria persona; Louise T. Steinberger, for Richard A. Steinberger; and Kenneth Poole and Eddie P. Brown, in propriae personae; respondents.
Elmer Siostrom, Attorney at Law, and J. Asman, for the Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion for the purpose of determining whether Eddie P. Brown, Kenneth Poole, Richard A. Steinberger and Roy L. Tieuel violated Section 3611 of the Public Utilities Code by operating as dump truck carriers without first having obtained the required operating authority from the Commission, and whether Kenneth W. Pitchford violated said code by engaging the aforementioned four respondents as dump truck subhaulers, thereby procured, aided and abetted the violation of Section 3611 by said other respondents.

Public hearing was held before Examiner Mooney in Los Angeles on May 6, 1971, on which date the matter was submitted.

1/ This is the correct spelling of Mr. Roy L. Tieuel's name.

Pitchford operates pursuant to dump truck carrier and radial highway common carrier permits. He has a subhaul bond on file with the Commission. Pitchford has a terminal in Irwindale. During the staff investigation referred to hereinafter, he operated the business with the assistance of his wife and had no employees; he had eight tractors and 12 sets of bottom dump trailers; all of said equipment was leased to others, including the four additional respondents; and Pitchford engaged all of said lessees as subhaulers. His gross operating revenue for the year 1970 was slightly in excess of \$243,000.

On various days during July and October 1970, a representative of the Commission staff visited Pitchford's place of business and examined his records for the period December 1969 through June 1970. All transportation handled by Pitchford during this period was performed by subhaulers. The representative testified that he made true and correct photostatic copies of all available tractor lease agreements and schedules, trailer rental agreements, vehicle and trailer registration slips, subhauling contracts and statements showing gross and net earnings for the month of June 1970 together with supporting freight bills and canceled checks in the files of Pitchford relating to respondents Brown, Poole, Steinberger and Tieuel, and that all of said photocopies are included in Exhibit 1. He stated that although several of the listed documents could not be located for Poole or Steinberger, Pitchford informed him they were executed and had apparently been misfiled.

The representative testified that Pitchford had explained his arrangement with the other four respondents as follows: A tractor was leased to each of said respondents with an option to buy; trailers were also rented to each of them at a rental based

on 25 percent of the gross earned; Mr. Pitchford solicited and obtained work which he distributed among the lessees; at the end of the month, each lessee was paid the gross amount he had earned less five percent, applicable taxes and fees and all liquidated amounts due and owing to Pitchford, including installment payments on the tractor, trailer rentals, charges for repair parts and fuel and the like; and all of the lessees were independent subhaulers and not employees of Pitchford.

The representative stated that he called at the homes of each of the respondent lessees and that they had copies of the documents in Exhibit 1. He explained that in addition to the four lessee respondents who do not have operating authority, Pitchford also leased equipment to other parties who do have the required dump truck carrier permits and engaged said other parties as subhaulers.

Testimony was presented by or on behalf of each of the lessee respondents. According to said testimony, none had operating authority in their own names during the period covered by the staff investigation; Steinberger and Tieuel are no longer in the transportation business; and although Brown and Poole are continuing to subhaul for Pitchford, each is attempting to obtain the required operating authority.

Mr. Pitchford testified as follows: He informed the staff representative during the investigation that he did not feel his arrangement with the other respondents violated any laws but that he would comply with any determination by the Commission regarding this; he was cooperative with the investigator; all leased trucks are operated under his permit authority and under his name; and as of

January 1, 1971, he has been operating 17 sets of trailers and all of the lessees have the required permits except those herein.

The record clearly establishes that the lessee respondents have operated as for-hire dump truck carriers without the required authority from the Commission and that Pitchford has engaged said respondents as subhaulers. We agree with the staff that each of the lessee respondents should be directed to cease and desist operating as for-hire carriers and that all respondents should be directed to terminate forthwith the subhaul arrangements herein until the lessee respondents have obtained the required operating authority.

Additionally, the staff recommended that a punitive fine of \$2,000 be imposed on Pitchford. Regarding this recommendation, counsel for Pitchford argued that Pitchford had been cooperative with the staff; that he was not informed that the arrangements in issue were in violation until now; that the recommended \$2,000 fine is extremely harsh; and that although he does not feel a fine is warranted, if one is to be imposed, it should be minimal. Upon consideration of the entire record, we are of the opinion that a punitive fine should be assessed against Pitchford in the amount of \$1,000.

The Commission finds that:

1. Pitchford operates pursuant to dump truck carrier and radial highway common carrier permits.
2. Brown, Poole, Steinberger and Tieuel did not have the required permit authority from the Commission to operate as for-hire dump truck carriers during the period covered by the staff investigation, December 1969 through June 1970.

3. Brown, Poole, Steinberger and Tieuel leased dump truck tractors and trailer equipment from Pitchford during the period referred to in Finding 2 and operated as for-hire dump truck carriers in performing subhaul services for Pitchford with said equipment during said period.

4. An overlying carrier is responsible for determining whether a subhauler engaged by it has the required operating authority to so operate.

5. Steinberger and Tieuel are no longer in the for-hire transportation business.

6. Brown and Poole are continuing to operate as dump truck subhaulers for Pitchford, and each is attempting to obtain a dump truck carrier permit.

The Commission concludes that:

1. Pitchford violated Section 3801 of the Public Utilities Code and should pay a fine pursuant to Section 3774 of said code in the amount of \$1,000.

2. Pitchford procured, aided and abetted the violation of the Public Utilities Code by Brown, Poole, Steinberger and Tieuel.

3. Pitchford should be directed to cease and desist engaging subhaulers who do not possess the required authority to so operate.

4. Brown, Poole, Steinberger and Tieuel should be directed to cease and desist operating as for-hire carriers subject to the jurisdiction of the Commission until they have obtained the required operating authority.

The staff of the Commission will make a subsequent field investigation to determine whether each respondent has complied with all provisions of the following order which applies to him.

If there is reason to believe that any respondent or respondents have not so complied, the Commission will reopen this proceeding for the purpose of inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed against said respondent or respondents.

O R D E R

IT IS ORDERED that:

1. Kenneth W. Pitchford shall pay a fine of \$1,000 to this Commission on or before the fortieth day after the effective date of this order.

2. Kenneth W. Pitchford shall cease and desist engaging subhaulers who do not possess the required operating authority from the Commission to so operate.

3. Eddie P. Brown, Kenneth Poole, Richard A. Steinberger and Roy L. Tieuel shall each cease and desist operating as carriers for compensation subject to the jurisdiction of the Commission, including operating as a dump truck subhauler, unless and until he has obtained the required operating authority.

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

The effective date of this order as to each respondent shall be twenty days after the completion of such service on that particular respondent.

Dated at San Francisco, California, this 29th
day of JUNE, 1971.

[Signature]
Chairman
William [Signature]
[Signature]
Samuel L. Sturgeon
Commissioners

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