

ORIGINALDecision No. 87228

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates, and practices of EDWARD E. WILLIAMS; MARQUART-WOLFE LUMBER CO., INC., a California corporation; HODGES BUILDING MATERIAL CO., INC., a California corporation; and GREAT WESTERN CHEMICAL COMPANY and/or McCALL OIL AND CHEMICAL CORPORATION, Washington corporations.

Case No. 9736
(Reopened for further hearing October 26, 1976)

Jonathan W. Wolfe, for Marquart-Wolfe Lumber Co., Inc., and Edward E. Williams, for himself, respondents.
Thomas F. Grant, Attorney at Law, and E. E. Canoon, for the Commission staff.

O P I N I O N

In Decision No. 84422 dated May 13, 1975 in Case No. 9736 we ordered Edward E. Williams (Williams) to collect undercharges of \$3,686.04 from Marquart-Wolfe Lumber Company, \$16,221.17 from Great Western Chemical Company, \$3,053.48 from Hodges Building Material Co., and to pay those amounts as undercharge fines to the Commission plus a punitive fine of \$750, or a total of \$23,710.69. Payment of these fines was due July 19, 1975. At Williams' letter request dated September 15, 1975 we permitted him in Decision No. 85310 dated January 6, 1976 to pay the total fines in monthly installments of \$500 plus any of the subject undercharges collected from the shippers. The matter was opened for further hearing because it had come to the staff's attention that Williams was behind in his monthly payments, that Williams had collected the \$16,221.17 undercharges from Great Western Chemical Company but failed to

report or remit same to the Commission, and that Williams was in a position to take a default judgment against Marquart-Wolfe Lumber Company for the undercharges but had failed to do so for some time. Further hearing was held on the matter before Examiner Pilling at Fresno on February 15, 1977. The facts are not in dispute. At the hearing the Commission staff showed that Williams, who is still operating his trucking business, was delinquent in his payment of fines to the Commission in this case in the amount of \$15,605.86 and that Williams had paid no money to the Commission since September 10, 1976. The staff also showed that Williams' case against Great Western Chemical Company for the \$16,221.17 undercharges had been dismissed because it had been shown that the latter had paid Williams the undercharges on July 2, 1975. In a letter to the Commission dated September 15, 1975 Williams stated:

"On September 10, 1975 a suit was filed by my attorney, Truman Campbell, for \$16,221.17 from Great Western Chemical Co...."

In letters from Williams to the Commission dated October 3, 1975 and November 25, 1975, respectively, Williams stated that there had been no change since the September 15, 1975 letter. Finally, after the staff, by letter, confronted Williams that they were aware that Williams had collected the undercharges from Great Western Chemical Company, Williams wrote to the staff acknowledging that he had collected those undercharges. On September 3, 1976 he wrote to the staff:

"On July 2, 1975 I received a check for \$16,221.17 from Great Western Chemical Company. At that time I was badly overdrawn at the bank. I owed some large repair bills and fuel bills. I was behind on payments. I even owed some back wages to drivers. The money from Great Western Chemical Co. saved my life. If not for that money I could not have lasted another thirty days. I used the money to save my business. I intend to repay this money, if given enough time."

The staff also showed that Williams was in a position to take a default judgment against Marquart-Wolfe Lumber Company but that he had not done so. The staff showed that Williams owes about \$74,000 on outstanding equipment obligations and about \$12,000 on his home which has an assessed value of approximately \$29,000. The staff showed that on or about September 1, 1976 Williams owned four tractors and four trailers, two of each of which were free and clear of any money owing on them. Williams' record of payments to the Commission showed that his \$500 checks for March and May 1976 were returned to the Commission marked "not sufficient funds". While each check was made good in April and June, respectively, the \$500 installment payments for April and June were never made by Williams, and the payments for July, August, and September 1976 totaled only \$250 each. As of February 1, 1977 Williams is in arrearage of \$4,250 on his monthly installment payments.

Williams admitted that he received the \$16,221.17 undercharges from Great Western Chemical Company on or about the date alleged by the staff but that he used the money to pay past-due debts and that if he had not done so he would have been forced out of business. He also admitted that he had not taken a default judgment against Marquart-Wolfe Lumber Company until the day before the hearing. Williams testified that he had been in prolonged negotiations with that company to buy his operations but the negotiations broke down.

A representative of Marquart-Wolfe Lumber Company appeared at the hearing and testified he carried a check made out to Williams for \$3,686.04, the amount of the undercharges, and was ready to give the check to Williams. The examiner asked Williams whether he was willing to endorse the check over to the Commission in part payment of his fines and Williams testified that he was willing. The check was presented to Williams who endorsed it over to the Commission and physically tendered it to the examiner who took it and turned it over

to a representative of the Commission staff to carry it to the Commission's offices in San Francisco. Assuming the check is honored Williams' delinquent balance is thus reduced to \$11,919.82.

The staff recommends that Williams' radial highway common carrier permit be revoked and canceled in the event Williams fails to pay the balance of \$11,919.82 to the Commission by April 15, 1977 and that if the permit is canceled and revoked for that reason that no new permit be issued Williams, nor to any partnership in which Williams is financially interested, nor to any corporation in which Williams is interested to the extent of 5 percent or more of the total value of the outstanding stock in the corporation unless and until Williams has complied with the requirements of the Commission's order in Decisions Nos. 84422 and 85310.

Williams contended that he would be unable to pay the delinquent balance on or before April 15, 1977 and that if we canceled his permit for nonpayment of the delinquent balance he would be out of business. He stated that business was getting better and he was cleaning up some old bills and would pay the delinquent amount in time after he became current with his other creditors. However, he did not offer to resume installment payments on any basis nor did he indicate when he could expect to have any ability to pay any of the delinquent fines. Williams stated that the Commission, up to now, had been lenient with him. He offered no financial statements in support of his alleged impoverished position.

Findings

1. In Decision No. 84422 we ordered Williams to collect as undercharges the total sum of \$22,960.69 from three shippers, including \$16,221.17 from Great Western Chemical Company, and fined Williams pursuant to Section 3800 of the Public Utilities Code an amount equal to the total undercharges ordered to be collected plus interest, plus a punitive fine of \$750 or a total of \$23,710.69. Payment of the fine was due July 19, 1975.

2. On July 2, 1975 Williams received \$16,221.17 from Great Western Chemical Company in payment of Williams' undercharge claim against that company, but did not remit that amount to the Commission.

3. In Decision No. 85310 we authorized Williams to pay the fine in monthly installments of not less than \$500 each, plus undercharges collected during the period preceding each installment payment due date in excess of \$500.

4. In Decision No. 85310 we ordered that if Williams fails to make any installment payments described in Finding 3 above when due, the full amount of the unpaid balance of the fine shall become immediately due and payable.

5. As of the date of the further hearing Williams had not made the \$500 installment payments due in April and June 1976, had made installment payments of only \$250 each for the months of July, August, and September 1976, and had not made any installment payments following the partial payment of \$250 made in September 1976.

6. Williams had collected all of the undercharges ordered to be collected by Decision No. 84422, but a total outstanding unpaid balance of \$11,919.82 remains on the fine assessed pursuant to Ordering Paragraph 2 of Decision No. 84422.

7. Williams is still operating his trucking business but claims he is unable to pay the balance of the fine.

8. Williams claims he will pay the balance of the fine at some future undetermined time.

9. The staff's recommendation set out in the body of the opinion regarding the action the Commission should take in the event Williams does not pay the balance of the fine by April 15, 1977 is reasonable, but because of the date of this decision we will extend the time to September 19, 1977.

Conclusions

1. Williams failed to remit to the Commission the \$16,221.17 collected from Great Western Chemical Company on July 2, 1975.

2. Williams has failed to remit to the Commission the \$500 installment payment due each month for the months of April, June, July, August, September, October, November, and December 1976, and January 1977 as he was required to do by order in Decision No. 85310.

3. The total outstanding balance due the Commission for undercharge penalties assessed Williams by order in Decision No. 84422 is \$11,919.82.

4. Williams should be ordered to pay to the Commission the balance of the undercharge penalties assessed him by order in Decision No. 84422 September 19, 1977.

5. If Williams fails to pay the balance of the undercharge fine by September 19, 1977 a sanction should be imposed against Williams as set out in the ordering paragraph below.

O R D E R

IT IS ORDERED that:

1. Edward E. Williams is ordered to pay to the Commission not later than September 19, 1977 the balance of the fines assessed against him by Decision No. 84422 and Decision No. 85310 in the amount of \$11,919.82.

2. In the event Edward E. Williams fails to pay the amount set forth in Ordering Paragraph 1 on or before September 19, 1977 the radial highway common carrier permit issued to Edward E. Williams as an individual will be canceled and revoked and no permit to operate as a motor carrier will be issued to Edward E. Williams or to any partnership or company in which Edward E. Williams is financially interested or to any corporation in which Edward E. Williams is interested to the extent of 5 percent or more of the total value of the outstanding stock therein unless and until Edward E. Williams has complied with the requirements of Decisions Nos. 84422 and 85310.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 19th day of APRIL, 1977.

President
William J. Lyons Jr.
Vernon L. Sturgeon

Richard D. Gault
Commissioners

Commissioner Robert Batinovich, being necessarily absent, did not participate in the disposition of this proceeding.