

ORIGINAL

Decision No. 92595

JAN 6 1981

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, rates and practices of Mark Gibson and Nancy Gibson, his wife, doing business as Transport-Sea and Sea Enterprises; and General Tire & Rubber Co., an Ohio corporation.

OII No. 51
(Filed May 22, 1979;
Reopened July 2, 1980)

Alvin S. Pak, Attorney at Law, for the Commission staff.

SUPPLEMENTAL OPINION

Order Instituting Investigation No. 51 (OII 51) was filed on May 22, 1979, commencing an investigation into alleged undercharges by respondents Mark Gibson (Gibson) and his wife, Nancy Gibson, doing business as Transport-Sea and Sea Enterprises, assessed in connection with various transportation performed for the shipper respondent, General Tire and Rubber Co. (General). Hearing in this matter was held before Administrative Law Judge Pilling on June 19, 1979 in San Francisco. On November 20, 1979 the Commission issued Decision No. 91041 whereby Gibson was fined for undercharges in the amount of \$8,163.84 in addition to a punitive fine of \$2,500. Gibson was directed to undertake collection of the undercharges from General and to report to the Commission on his efforts.

On July 2, 1980 the Commission issued Decision No. 92015 ordering further hearing in OII 51 on the grounds that:

"According to the record of this Commission, respondents Gibson have submitted neither payment of the fines assessed in Decision No. 91041 nor reports concerning the pursuit

of undercharges from General Tire. Inasmuch as respondents Gibson have failed to comply with their responsibilities as described in Decision No. 91041, good cause appears to reopen this proceeding..."

Hearing in the reopened proceeding was held before Administrative Law Judge Pilling on July 30, 1980 at San Francisco. Gibson did not appear at the hearing of the reopened proceeding.

At the hearing of the reopened proceeding a representative of the Commission staff testified that on December 4, 1979 he personally served Gibson with a copy of Decision No. 91041 and a Formal Decision Report of Service indicating the effective date of the order, date that payment of the fine was due, and the date a monthly report was due stating the action taken by the carrier to collect the undercharges due Transport-Sea and Sea Enterprises. Between March 19, 1980 and March 21, 1980 he attempted to contact Gibson 11 times, eight times by telephone but was unsuccessful. He learned that Gibson had moved to Madera from his previous address. He has since learned by word of mouth that Gibson has moved to Oregon. He testified that he had reviewed the Commission's files on June 16, 1980 and on the date of the herein hearing could find no record that Gibson had paid any of the fines levied by Decision No. 91041 or that Gibson had made any reports concerning his attempts to collect the undercharges as required by that decision. He stated that on April 29, 1980 he contacted Larry Buchholz, traffic manager for General at the city of Industry and Buchholz stated that his company had paid Gibson the undercharges and punitive fine by check dated March 31, 1980. A copy of the General check endorsed by Gibson and a copy of a release covering moves which are the subject of this investigation signed by Gibson were admitted into evidence attached to Exhibit 6.

Another member of the Commission staff investigating the case testified that on July 15, 1980 he called Gibson's home in Madera and was told by Gibson's son that his father had moved to

Medford. The staff witness stated that on April 3, 1980 and again on April 11, 1980 he left at the Madera address an informal notice to appear at the Commission's office concerning the payment of the fines but Gibson and his wife never appeared. The staff witness testified that on two days in July he attempted to make personal service of Decision No. 92015 on Gibson but could not find him at any of the addresses where Gibson had been known to be residing, including Gibson's last known address in California.

The staff recommends the following sanctions be levied on Gibson:

- "(a) The permanent revocation of any and all California operating authority held either jointly or individually by the Gibsons.
- "(b) Denial of any application for such authority filed either jointly or individually by the Gibsons or by any applicant, e.g., partnership or corporation, in which the Gibsons jointly or individually hold or own an ownership or beneficial interest exceeding 5 percent until one year after payment to the Commission of the fines assessed in Decision No. 91041 with interest is received."

The Commission's records show that Gibson's operating authority, a highway common carrier certificate and a contract carrier permit issued under Section 860 of the Public Utilities Code, has been suspended since April 23, 1980 for Gibson's failure to have an insurance certificate on file.

Findings of Fact

1. Decision No. 91041, served on Gibson on December 4, 1979, found Gibson had unlawfully undercharged General in the amount of \$8,163 and levied a fine on Gibson for that amount and also fined Gibson \$2,500 as a punitive fine, the fines payable within 40 days after date of service.

2. Decision No. 91041 also required Gibson to make periodic reports to the Commission concerning his attempts to collect the undercharges.

3. On or about March 31, 1980 General paid Gibson the amount of the undercharges and punitive fine.

4. To date Gibson has not paid all or any part of the fines levied on him and his wife by Decision No. 91041 or made any reports to the Commission as required by that decision.

5. Gibson has left California and resides in another state.

Conclusions of Law

1. Except for collecting the undercharges, Gibson has violated Ordering Paragraphs 1, 2, and 4 of Decision No. 91041.

2. Gibson's operating authorities should be revoked pursuant to Sections 1070 and 3774(c) for violating Ordering Paragraphs 1, 2, and 4 of Decision No. 91041.

3. Gibson and/or his wife should be denied any new operating authority as set forth above in the staff recommendation.

SUPPLEMENTAL ORDER

IT IS ORDERED that:

1. The operating authority of Mark Gibson and Nancy Gibson, File No. T 114-143, is revoked.

2. Until one year after the payment to the Commission of the fines assessed in Decision No. 91041, with interest, no motor carrier operating authority shall be issued to Mark Gibson and/or his wife Nancy Gibson or to any enterprise in which Mark Gibson and/or his wife Nancy Gibson hold or own a legal or beneficial interest exceeding five percent.

The Executive Director of the Commission shall attempt and/or cause service of this order to be made upon respondents Mark Gibson and Nancy Gibson and cause service by mail of this order to be made upon all other respondents. The effective date of this order as to each respondent shall be thirty days after completion of service on that respondent.

Dated JAN 6 1981, at San Francisco, California.

John E. Bryson
President
Richard D. [unclear]
[unclear]

Commissioners