

**ORIGINAL**

Decision No. 63227

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own  
motion into the operations, rates and  
practices of MARTIN J. HERREMA, doing  
business as M. J. HERREMA TRUCKING.

Case No. 7202

Martin J. Herrema, respondent, in propria persona.  
Elmer Sjostrom, for the Commission staff.

O P I N I O N

This proceeding, instituted by the Commission on its own motion, pertains to the operations, rates and practices of Martin J. Herrema, doing business as M. J. Herrema Trucking, operating as a radial highway common carrier, a highway contract carrier and a city carrier pursuant to Permits Nos. 19-45776, issued July 3, 1952, 19-49852, issued January 4, 1956, and 19-46071, issued June 7, 1954, which permits at all times hereinafter mentioned have been and now are in full force and effect.

A public hearing was held in Los Angeles on December 21, 1961, before Commissioner C. Lyn Fox and Examiner Robert D. De Wolf, to determine whether or not said Martin J. Herrema, hereinafter referred to as respondent, violated, as charged in the order instituting investigation, Section 3667 of the Public Utilities Code of this State by charging, demanding, collecting or receiving lesser compensation for the transportation of property than the applicable charges prescribed by Minimum Rate Tariff No. 2 and by failing to adhere to the provisions of said tariff, all as more specifically set forth in the said order instituting investigation.

Evidence Submitted by the Commission Staff

A Commission staff witness testified that he checked the freight bills of respondent, issued from July 1, 1960, to September 30, 1960, and discovered twenty-seven shipments with undercharges. Copies of these freight bills are set forth in Exhibit No. 4.

Exhibit No. 6, which was introduced into evidence through the testimony of a Commission staff rate expert, shows that respondent assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2, which resulted in undercharges as follows:

<u>Respondent's Freight Bill Number</u>	<u>Date</u>	<u>Amount of Undercharges</u>
17927	July 1, 1960	\$ 12.00
17929	July 7, 1960	13.00
17932	July 20, 1960	8.00
17933	July 22, 1960	12.00
17934	July 26, 1960	8.00
19360	July 27, 1960	12.00
19361	July 28, 1960	10.68
17936	August 2, 1960	18.40
17936	August 2, 1960	12.00
17937	August 9, 1960	9.63
17939	August 16, 1960	9.81
17939	August 16, 1960	10.40
19365	August 23, 1960	8.00
19366	August 26, 1960	12.00
19367	August 29, 1960	8.00
19369	September 2, 1960	13.00
19374	September 17, 1960	10.40
6048	July 19, 1960	29.05
6152	July 22, 1960	5.30
6154	July 28, 1960	71.16
6156	July 29, 1960	28.56
6157	August 8, 1960	71.88
6161	August 9, 1960	26.74
6089	August 15, 1960	14.00
6166	August 20, 1960	28.17
6167	August 25, 1960	28.60
6168	August 31, 1960	28.68
	Total	\$519.46

Evidence of Respondent

Respondent admitted all of the alleged violations; he stated that he had no defense to the undercharges set forth in the order of investigation, and that said items are correct as amended by the staff witness. Respondent further stated that he was operating under a gentlemen's agreement with the United Dairymen's Association, and that he charged a flat \$2.00 rate for everything within a 20-mile radius, and over that from 20 to 35 miles he charged a \$2.70 rate. He stated that this has been going on for ten years now and that he always felt it was all right.

Findings and Conclusions

Upon the evidence of record the Commission finds:

1. That all applicable minimum rate orders were served upon respondent prior to the undercharges above set forth.

2. That respondent Martin J. Herrema assessed and collected charges less than the applicable minimum charges prescribed in Minimum Rate Tariff No. 2 which resulted in undercharges in the total amount of \$519.46, as above set forth.

3. That in the performance of various transportation services hereinabove set forth and as more particularly appearing in Exhibits Nos. 4, 5 and 6 of the record herein, respondent has violated, or failed to comply with, the provisions of Minimum Rate Tariff No. 2.

The Commission having found facts as hereinabove set forth, and concluding that respondent Martin J. Herrema has violated Section 3667 of the Public Utilities Code and the provisions and requirements of Minimum Rate Tariff No. 2 by charging, demanding, collecting or receiving a lesser compensation for the transportation of property as a radial highway common, a highway contract and a city carrier than the minimum charges prescribed in the Commission's Minimum Rate Tariff No. 2, makes its order as follows:

O R D E R

A public hearing having been held and the Commission basing its decision on the findings and conclusions set forth in the foregoing opinion,

IT IS ORDERED that:

1. Respondent Martin J. Herrema shall cease and desist from charging, demanding, collecting or receiving a lesser compensation for the transportation of property than the applicable charges prescribed in the Commission's Minimum Rate Tariff No. 2 and from any and all other violations of said tariff.

2. All operating authority of Martin J. Herrema, issued to him by this Commission, be and it is suspended for a period of two consecutive days commencing at 12:01 a.m. on the second Monday after the effective date of this order; and he shall not lease the equipment used in the operation under these permits for the period of the suspension or directly or indirectly allow such equipment to be used to circumvent the suspension.

3. Respondent Martin J. Herrema shall post at his place of business used for receiving property from the public for transportation, not less than two days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit, highway contract carrier permit and city carrier permit have been suspended by the Commission for a period of two days; and that within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

4. Respondent Martin J. Herrema shall examine his records for the period January 1, 1960, to the effective date of this order, for the purpose of ascertaining if any additional undercharges have occurred other than those mentioned in this decision.

5. Respondent Martin J. Herrema is hereby directed to take such action, including legal action, as may be necessary to collect undercharges, both those set forth in the foregoing opinion and those, if any, found during the examination ordered by paragraph 4 of this order.

6. Within ninety days after the effective date of this decision, Martin J. Herrema shall complete the examination of his records hereinabove required by paragraph 4 and file with the Commission a report setting forth all undercharges found pursuant to that examination.

7. In the event charges to be collected as provided in paragraph 5 of this order, or any part thereof, remain uncollected one hundred twenty days after the effective date of this order, Martin J. Herrema shall institute legal proceedings to effect collection and shall submit to the Commission, on the first Monday of each month, a report of the undercharges remaining to be collected and specifying the action taken to collect such charges and the result of such, until such charges have been collected in full or until further order of this Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made on respondent, and this order shall be effective twenty days after the completion of such service.

Dated at San Francisco, California, this 10th  
day of FEBRUARY, 1962.

*Garrett B. Rogers*  
President  
*John L. ...*  
*E. ...*  
*George H. Hoover*  
*Fredrick B. Halaloff*  
Commissioners