

ORIGINAL

Decision No. 63372

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the
operations, rates, charges
and practices of JOE P. MARTIN,
an individual.

Case No. 7181

Joe P. Martin, respondent.

Paul Hogan, for the Commission staff.

O P I N I O N

On August 29, 1961, the Commission instituted its investigation into the operations, rates, charges and practices of Joe P. Martin. Respondent is engaged in the business of transporting property over the public highways as a radial highway common carrier.

Pursuant to the order instituting investigation, public hearing was held before Examiner Martin J. Porter on December 27, 1961, at Fresno, on which date the matter was submitted.

The purpose of this investigation is to determine whether respondent, in violation of Sections 3664, 3667 and 3737 of the Public Utilities Code, has charged, demanded and received a lesser compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 3-A and supplements thereto.

The Field Section of the Commission staff presented evidence, and we find that respondent was transporting property and refunding to the shipper fifteen to sixteen percent of the minimum rate, providing free transportation of property, and honoring claims for damaged property without proper documentation.

It was stipulated that Joe P. Martin holds Radial Highway Common Carrier Permit No. 54-2703 and that he had been served with Minimum Rate Tariff No. 3-A, Distance Table No. 4, and applicable supplements thereto.

The respondent's testimony in explanation of the discrepancies found by the Commission staff was that other carriers operated and billed in the same manner as he did. Respondent did not challenge the staff's showing.

Findings and Conclusions

Based upon the evidence of record, we hereby find and conclude that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier.

2. Respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 3-A and refunded a percentage of said minimum rate which resulted in undercharges as follows:

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charges Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
3443	1/ 8/61	\$130.42	\$154.43	\$24.01
3444	1/ 8/61	127.91	150.48	22.57
3448	1/ 9/61	124.55	146.53	21.98
3327	1/ 9/61	132.17	155.50	23.33
3329	1/10/61	123.04	144.55	21.51
3351	1/10/61	126.87	149.26	22.39
3353	1/11/61	176.54	207.69	31.15
3331	1/11/61	181.40	213.41	32.01
3358	1/15/61	131.53	154.74	23.21
3359	1/15/61	132.50	155.88	23.38
3360	1/16/61	129.07	151.85	22.78
3335	1/16/61	127.01	149.42	22.41
3361	1/17/61	128.75	151.47	22.72
3337	1/17/61	119.00	140.00	21.00
3338	1/18/61	166.90	196.35	29.45
3362	1/18/61	157.96	182.40	24.44
3363	1/17/61	127.07	149.49	22.42
3339	1/19/61	123.19	144.93	21.74
3366	1/23/61	123.32	145.08	21.76

<u>Freight Bill No.</u>	<u>Date</u>	<u>Charges Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
3367	1/24/61	\$119.00	\$140.00	\$ 21.00
3344	1/24/61	92.92	100.70	7.78
3503	2/19/61	172.71	205.61	32.90
3414	2/19/61	179.70	213.93	34.23
3502	2/19/61	180.14	214.45	34.31
3504	2/20/61	130.70	156.56	25.86
3415	2/20/61	126.40	150.48	24.08
3469	2/20/61	125.13	146.98	21.85
3470	2/21/61	186.60	216.94	30.34
3505	2/21/61	180.66	215.07	34.41
3416	2/21/61	178.30	212.26	33.96
3506	2/22/61	126.60	150.56	23.56
3417	2/23/61	176.21	209.77	33.56
3507	2/23/61	170.50	202.90	32.40
3472	2/23/61	168.52	200.62	32.10
3475	2/26/61	129.91	154.66	24.75
3418	2/26/61	122.57	145.92	23.35
3511	2/26/61	130.87	155.72	24.85
3419	2/27/61	Deficit (161.23)	169.20	330.43
3576	2/27/61	138.47	173.52	35.05
3513	2/27/61	131.83	165.20	33.37
3420	2/28/61	122.38	153.36	30.98
3578	2/28/61	116.69	152.00	35.31
3515	2/28/61	124.87	148.66	23.79
3516	3/ 1/61	166.77	198.54	31.77
3517	3/ 1/61	160.74	197.60	36.86
3421	3/ 1/61	170.08	202.49	32.41
3582	3/ 2/61	131.90	157.09	25.19
3497	12/ 5/60	No charge	26.60	26.60
3271	11/30/60	No charge	36.00	36.00
3437	12/30/60	No charge	23.53	23.53
3438	12/31/60	74.18	78.00	3.82
3278	11/23/60	100.00	149.38	49.38
3313	12/11/60	272.45	354.00	81.55

Undercharges for these shipments amounted to \$1,785.59

3. Respondent violated Sections 3664, 3667 and 3737 of the Public Utilities Code by charging and collecting a compensation less than the prescribed minimum established by this Commission in Minimum Rate Tariff No. 3-A, and by refunding a percentage of said minimum rate.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 54-2703 issued to Joe P. Martin is hereby suspended for five consecutive days starting at 12:01 a.m. on the second Monday following the effective date of this order. Respondent shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Respondent shall post at his terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit has been suspended by the Commission for a period of five days. 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.

3. Respondent shall examine his records for the period from November 30, 1960 to the present time, for the purpose of ascertaining all undercharges that have occurred.

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

5. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges found

after the examination required by paragraph 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent 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 this Commission.

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

Dated at San Francisco, California, this 16th day of MARCH, 1962.

[Signature]
President

[Signature]

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Commissioners