

**ORIGINAL**Decision No. 65586

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
 own motion into the operations, )  
 rates, and practices of )  
JAMES T. MARTIN. )

Case No. 7460

James T. Martin, in propria persona.  
Sheldon Rosenthal and Frank J. O'Leary,  
 for the Commission staff.

O P I N I O N

The respondent, Martin, is a dump truck operator. As such he performed certain transportation of light aggregates, crushed base and rock in southern California between December 23, 1960 and November 29, 1961 at rates which the Commission staff contends are less than the established minimums.

The present investigation was instituted principally to determine this issue. A public hearing was held before Examiner Power at Los Angeles, on December 20, 1962, and the matter was submitted subject to the filing of certain late-filed exhibits. These have been received and the matter is ready for decision.

The staff presented evidence concerning 32 loads transported in dump trucks between December 23, 1960 and November 29, 1961. All of the loads moved at less than the proper rates set forth in Minimum Rate Tariff No. 7.

The order instituting this investigation raises two issues other than rate violations. One of these is failure to include all necessary information on freight documents, the other was operations outside the scope of applicant's permits.

The staff case, detailed in the findings hereinafter made, was thoroughly proved. The staff also presented evidence in aggravation which shows that the Secretary of the Commission directed a letter to the respondent dated June 13, 1961, directing the collection of certain undercharges. Five specific undercharges were listed, totaling \$92.46. In addition, the letter directed the respondent to review his records from December 1, 1960 to the date of the letter and to report the amount of the undercharges disclosed by the review to the Commission. A copy of this letter is in evidence as Exhibit No. 3.

The respondent failed to answer this letter and on August 10, 1961, the Assistant Secretary of the Commission sent out a follow-up letter. On August 31, Martin replied with a note written on the follow-up letter itself. It was directed to the attention of Richard Carlin (a staff witness herein). Martin reported that he had collected the listed undercharges of \$92.46, that he had reviewed his records and that there were no other uncollected undercharges (Exhibit No. 4). The staff's evidence in this proceeding includes 11 loads from Ridgelite Products, Lockwood Valley to either Transit Mix Concrete, Sun Valley, or San Diego Transit Mix, the origin and destinations mentioned in the undercharge letter. These 11 loads were transported during the period of review specified in the letter of June 13, 1961. Martin obviously did not review his records pursuant to the direction contained in that letter.

Respondent's defense consisted chiefly of a statement that the speedometers on his trucks were inaccurate and that he relied on rate statements issued by shippers. He did not attempt to defend the issuance of incomplete documents and operation beyond the territorial limits of his permits.

It may be said of the defenses offered that they are no defense at all. The duty to ascertain correct mileages and rates is imposed by law upon carriers.

The Commission finds that:

1. From December 23, 1960 to the date of hearing herein James T. Martin was the holder of Radial Highway Common Carrier Permit No. 19-45301 authorizing operations between points within a 50-mile radius of Los Angeles.

2. From December 23, 1960 to the date of hearing herein James T. Martin was the holder of City Carrier Permit No. 19-45302 authorizing transportation within all incorporated cities in the County of Los Angeles.

3. From December 23, 1960 to November 29, 1961, both dates, inclusive, respondent had been served with and was in possession of Minimum Rate Tariff No. 7, a minimum rate order of this Commission with supplements to date.

4. Between July 6, 1961 and November 29, 1961, James T. Martin transported 18 truckload lots under 18 shipping documents from each of which documents the precise point of origin was omitted.

5. Between December 23, 1960 and November 29, 1961, James T. Martin transported 32 truckload lots under 32 shipping documents from each of which documents the precise point of destination was incorrectly stated or incomplete.

6. Between December 23, 1960 and November 29, 1961, James T. Martin transported 32 truckload lots under 32 shipping documents from each of which documents the rate and charge assessed was omitted.

7. On January 3, 8, 12, 25 and March 2 and 13, 1961, James T. Martin transported six truckload lots consigned to a point more than 50 miles distant from Los Angeles, namely a point in or near San Diego, viz., Texas Street and Friars Road.

8. James T. Martin transported 32 truckload lots at rates less than the minimum rates authorized by the Commission's Minimum Rate Tariff No. 7 as indicated on the following table:

<u>Freight Bill No..</u>	<u>Date</u>	<u>Com- modity</u> (1)	<u>Actual Charge</u>	<u>Correct Charge</u>	<u>Under- charge</u>
3813	12-23-60	L.A.	\$ 56.84	\$ 60.35	\$ 3.51
3953	1-10-61	"	58.70	62.32	3.62
3959	1-10-61	"	59.02	62.66	3.64
4147	1-31-61	"	56.32	59.79	3.47
3951	1--9-61	"	56.43	66.87	10.44
3952	1--9-61	"	59.02	69.94	10.92
4088	1-23-61	"	73.89	96.67	22.78
4150	1-31-61	"	54.00	57.33	3.33
3891	1--3-61	"	132.09	152.83	20.74
3935	1--8-61	"	129.95	150.36	20.41
3980	1-12-61	"	131.77	152.46	20.69
4122	1-25-61	"	139.58	161.50	21.92
4443	3--2-61	"	142.90	165.33	22.43
4553	3-13-61	"	123.69	143.11	19.42
3170	7--6-61	C.B.	22.79	29.49	6.70
3173	7--6-61	"	21.79	28.20	6.41
3174	7--6-61	"	22.47	29.07	6.60
3175	7--6-61	"	22.24	28.79	6.55
3204	7--6-61	"	23.06	29.84	6.78
3209	7--6-61	"	26.35	34.10	7.75
6415	9-25-61	"	27.83	33.92	6.09
6418	9-25-61	"	27.98	34.11	6.13
6419	9-25-61	"	15.33	18.69	3.36
6423	9-25-61	"	22.66	27.62	4.96
6424	9-25-61	"	27.51	33.54	6.03
6427	9-25-61	"	20.16	24.58	4.42
6428	9-25-61	"	16.59	20.22	3.63
6431	9-25-61	"	27.40	33.41	6.01
7387	11-29-61	R.	10.62	15.44	4.82
7388	11-29-61	"	11.33	16.48	5.15
7389	11-29-61	"	10.53	15.32	4.79
7390	11-29-61	"	11.11	16.16	5.05
Total			1,641.95	1,930.50	288.55

(1) L.A. Lightweight aggregate.  
C.B. Crushed Base.  
R. Rock.

The Commission concludes that:

1. James T. Martin has violated Items Nos. 93-A, 130-K and 150 of Minimum Rate Tariff No. 7
2. James T. Martin has violated Sections 3664, 3667 and 3737 of the Public Utilities Code.

3. James T. Martin has violated Section 3561 of the Public Utilities Code by transporting property to a point outside the territorial scope of his permits.

O R D E R

IT IS ORDERED that:

1. If, on or before the twentieth day after the effective date of this order, respondent has not paid the fine referred to in paragraph 7 of this order, then Radial Highway Common Carrier Permit No. 19-45301 and City Carrier Permit No. 19-45302 issued to James T. Martin shall be suspended for ten consecutive days, starting at 12:01 a.m., on the second Monday following the twentieth day after said effective date. Respondent shall not, by leasing the equipment or other facilities used in operations under these permits for the period of suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. In the event the suspension as provided in paragraph 1 hereof becomes effective, 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 and city carrier permit have been suspended by the Commission for a period of ten 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 December 1, 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 order, 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 set forth herein, together with those 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 institute legal proceedings to effect collection and 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 the Commission.

7. As an alternative to the suspension of operating rights imposed by paragraph 1 of this order, respondent may pay a fine of \$4,000 to this Commission on or before the twentieth day after the effective date of this order.

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 18th day of June, 1963.

George H. Trover  
President

~~John L. Fitzpatrick~~  
~~Walter W. Ray~~

Fredrick B. Haliloff

William W. Burnett  
Commissioners