

ORIGINALDecision No. 70358

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
Filed October 16, 1962

Investigation on the Commission's
own motion into the operations,
rates, charges and practices of
LORRAINE GEORGE, doing business
as M & G Trucking.)

Case No. 7952
Filed July 21, 1964

Murchison & Stebbins, by Donald Murchison,
for respondents.
Robert C. Marks, for the Commission staff.

O P I N I O N

In Case No. 7460, Decision No. 65586 was issued on June 18, 1963 and became effective on July 11, 1963. Martin was offered an alternative of penalties, a 10-day suspension or a \$4,000 fine. He was also ordered to audit his books and report all undercharges found as a result of that examination as well as those found in the decision. He was also ordered to collect these undercharges.

Martin elected the suspension and it was to be in effect from August 12 to 21, 1963, inclusive. He reported to the Commission that there were no rate violations other than those the staff had proved.

Lorraine George, dba M & G Trucking, hereinafter referred to as M & G, was servicing the Martin customers during the period of suspension.

At about the beginning of the suspension period or shortly before the staff began a field investigation of Martin's compliance, a staff witness informed Martin's bookkeeper that the company would be under surveillance during the period of the suspension.

Decision 65586 contained the following clause "... shall not, by leasing the equipment or other facilities used in operations under the permits for the period of the suspension, or by any other device, directly or indirectly allow such equipment or facilities to be used to circumvent the suspension."

On July 21, 1964 the Commission reopened Case No. 7460 and instituted Case No. 7952. Duly noticed public hearings were held before Examiner Power at Los Angeles on December 16 and 17, 1964 and June 15, 16, 17 and July 7 and 8, 1965. The final volume of the transcript was filed on August 19, 1965 and the matter is ready for decision.

The staff presented two issues for decision. First, that Martin employed M & G as a device to circumvent the suspension. Second, that Martin did not review his records and collect undercharges as he had been ordered to do in Decision No. 65586.

On the first issue, the staff proffered evidence both oral and documentary. The latter included photostatic copies of certain documents labeled "Permissive Use of Equipment." These were to run for an indefinite period of time at the will of James T. Martin. The first of these from James T. Martin to M & G, authorized the use of 47 pieces of equipment, mostly if not entirely, trailers.

Thirteen other permissions authorized the use of one to four trailers, each by 13 individual subhaulers. These are included in the master list authorized to M & G. All of the permissions require the permittees to pay maintenance, insurance and the

contract payments while in their possession. The permissions to the subhaulers had the following added to their permissions: "It is further understood that the grantor will receive no compensation for the use of this equipment." Martin's accountant testified that Martin had received no compensation from the permittees of any kind except that his insurance, being based on gross receipts, would be reduced.

The respondents contended that M & G was a legitimate business; that payments for transportation were never paid to Martin but accrued to M & G and pointed to the long experience of Richard George, husband of respondent Lorraine George, in various aspects of the trucking business.

The first of the respondents' contentions simply will not bear scrutiny. M & G never, before or after the suspension of Martin, had anything remotely approaching enough equipment to take care of the business it had during the suspension. M & G had to have the use of Martin's equipment and Martin's subhaulers to serve Martin's accounts. Moreover, M & G obtained its permits on August 12, 1963, the day Martin's suspension was to commence.

The second seems to us to be irrelevant. By taking a suspension rather than a fine, Martin saved \$4,000. By turning his accounts over to M & G he protected them from loss to his competitors. He was safe in so doing since by terminating the permissive use authority he could deprive M & G at any given time of the means of servicing these accounts.

Concerning the last point, respondents argued that Richard George was a man of experience in the truck field. It was therefore natural that he should want to reenter it. This was supposed to reinforce other evidence of his bona fides. Lorraine George, the

nominal owner of the M & G was a sales woman of cosmetics and took no part in the trucking activities which were entirely conducted by her husband.

Mrs. George had another partnership, also nominal, with Martin, known as "Valley Truck Parts." Richard George was the active participant in this firm also. Mr. George operated M & G from Valley Truck Parts premises adjoining Martin's terminal and used Valley Truck Parts' telephones.

The conclusion is inescapable that M & G was no more than a device to enable Martin to accept a suspension while avoiding the possible danger of losing accounts.

Decision No. 65586, ordering paragraph 3, required Martin to audit his freight bills for the period from December 1, 1960 to June 18, 1963. Paragraph 5 required him to collect any undercharges found during the course of this review. The staff contends he did not do this.

The staff witnesses had reviewed a number of documents covering shipments in October and December of 1961. The staff had asked for all documents from September 1 to December 3 of that year but only October and December were made available. A staff rate expert presented Exhibit P which contained 40 rate analyses. This witness found undercharges, in every case, provided that the mileage rates were applied in each case. Thirty-seven of the 40 shipments contained in Exhibit P were identical to four of the shipments found to be undercharges in Decision 65586. The undercharges in Exhibit P amounted to \$2,466.42. Obviously, if this witness correctly rated the shipments, the staff has established its position on the second issue.

At the time when the transportation here was performed the prevailing rates in southern territory for dump-truck traffic were

mileage rates stated in cents per ton. These rates were to be applied when the special conditions for applying other types of rates were not met.

The rate expert based her calculations on the premise that the requirements for applying hourly rates were not met. She enumerated three specific factors that were missing. First, no notice in writing had been given; second, cubic capacity of trucks was not entered on the freight bills; and third, the method of loading was not entered on the freight bills.

Martin's defense on the rate issue was that all the rates charged were legal, including the ones listed in the finding in Decision No. 65586. He conceded that, after that decision became final, he was precluded from raising the issue as to those specific charges and, therefore, he collected those charges.

The transportation discussed in the exhibit was performed for a concern known as Hooker Materials Co. There is a letter from Hooker to Martin (Exhibit 9) that was received in evidence during the original proceeding held December 20, 1962, in Case No. 7460. It states that rates are to equal or exceed both the zone and the hourly rates provided by this Commission. The letter does not constitute a written notice of the shipper's intention to ship under the hour rates under the provision of Third Revised Page 39 of Minimum Rate Tariff No. 7. The level capacity of the equipment is not listed on Martin's shipping documents. This is absolutely essential to rate any shipments under the hourly rates in Section 4 of Tariff 7. It is also essential to know the method of loading. Without these two pieces of information it is impossible to select the correct hourly rate. Respondent's witnesses claim they had both of these bits of information available to them. It is possible that

they did. However, Tariff No. 7 requires that the information must be on the shipping documents, not in someone's head. One of the respondents' witnesses further claimed that hourly records were kept on the transportation in issue. An ex-office employee of Martin, presented by the staff in rebuttal, testified that hourly records were not recorded at the time the transportation took place but were developed fictitiously subsequent to the initial proceeding.

In conclusion the Commission is of the opinion that the staff has established its contentions on both aspects of the case. We think it immaterial whether or not Martin received any money for the equipment during the suspension period. Martin was amply compensated by his saving of a \$4,000 fine by taking the suspension. In the meantime his customers were kept in the family, so to speak, by letting M & G serve them. The same drivers and equipment were used before, during and after the suspension.

Equally the staff rate contention will be sustained. We further think it immaterial concerning the hourly recordation as Exhibit 9 is not a notice to carry at hourly rates. Insofar as it is anything, it is an agreement to apply some unascertained rate which will be equal to or higher than the zone or hourly rates. The hourly rates applicable cannot be determined from the documents by reason of omission of information essential to rate selection.

The Commission finds that:

1. James T. Martin and Lorraine George hold authority from this Commission as Highway Permit Carriers.
2. Under the terms of Decision No. 65586, in Case No. 7460, James T. Martin was offered the alternative of a \$4,000 fine or a ten-day suspension.
3. Martin elected to undergo the suspension which was in effect from August 12 to August 21, 1963, inclusive.

4. During this period of suspension, Lorraine George served Martin's customers, using Martin's equipment and drivers.

5. After the suspension ended, the customers, equipment and drivers all returned to Martin who thereafter continued to serve the customers, using the drivers and equipment.

6. James T. Martin did not audit his records and report to the Commission undercharges nor make any effort to collect undercharges as required by ordering paragraphs 3, 4, 5 and 6 of Decision No. 65586, in Case No. 7460.

7. Lorraine George, doing business as M & G Trucking did not obtain her permits with the intention of engaging in for-hire carrying business in good faith but solely for the purpose of protecting James T. Martin from certain effects of his suspension.

8. The operations of Lorraine George constituted a device by means of which James T. Martin could protect himself against possible loss of customers during the period of his suspension.

The Commission concludes that James T. Martin has not complied with ordering paragraphs Nos. 1, 3, 4, 5 and 6 of Decision No. 65586, in Case No. 7460, and Lorraine George consciously aided said failure to comply.

The order which follows will direct James T. Martin to review his records to ascertain all undercharges that have occurred since December 1, 1960, in addition to those set forth herein. The Commission expects that when undercharges have been ascertained, respondent will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them. The staff of the Commission will make a subsequent field investigation into the measures taken by respondent and the results thereof. If there is reason to believe that respondent, or his attorney, has not been diligent, or has not taken all reasonable measures to collect all

undercharges, or has not acted in good faith, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 19-45301 and City Carrier Permit No. 19-45302 issued to James T. Martin are hereby suspended for sixty consecutive days starting at 12:01 a.m., on the second Monday following the effective date of this order. 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. James T. Martin 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 20 days. Within five days after such posting James T. Martin shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.
3. James T. Martin 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, James T. Martin 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. James T. Martin 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. Radial Highway Common Carrier Permit No. 19-56764 and City Carrier Permit No. 19-56765 heretofore issued to Lorraine George are revoked and canceled.

8. Forty days of the suspension imposed by paragraph 1 of this order are hereby suspended subject to the following terms, namely, that James T. Martin shall commit no violations of the Public Utilities Code or Minimum Rate Tariff No. 7 within two calendar years from the effective date of this order. In the event that any such violation is committed by James T. Martin, a further order of this Commission will fix the dates between which said last forty days of said suspension will apply.

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

Dated at San Francisco, California, this 15th day of FEBRUARY, 1966.

Fredrick B. Holloft
President

George T. Brown

Augusta

William Van Buren

Commissioners

Commissioner Peter E. Mitchell, being necessarily absent, did not participate in the disposition of this proceeding.