

ORIGINAL

Decision No. 71725

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the rates,
operations, and practices of
ROY R. MARTIN.

Case No. 8448
(Filed June 30, 1966)

Roy R. Martin, in propria persona, respondent.
D. R. Larrouy and E. E. Cahoon, for the
Commission staff.

O P I N I O N

By its order dated June 21, 1966, the Commission instituted an investigation into the rates, operations and practices of Roy R. Martin.

Public hearing was held before Examiner Mooney at Los Angeles on July 26, 1966.

Respondent conducts operations as a dump truck carrier pursuant to radial highway common carrier and city carrier permits. Respondent has one ten-wheel dump truck. Most of his for-hire transportation is performed by approximately 75 different subhaulers. His office and terminal are located in Orange, California. He employs his son as a driver and has no other employees. Respondent's gross operating revenue for the year 1965 was \$145,458.74. He was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory No. 1, together with all supplements and additions thereto.

On February 15, 16 and 22, 1966, a representative of the Commission's field section visited respondent's place of business and checked his records for the period from October 16, 1965 to February 15, 1966. The representative testified that approximately 75 to 100 shipments were handled by respondent during the review

period and that hourly rates in Minimum Rate Tariff No. 7 were applied to this transportation. He stated that none of the freight bills issued in connection therewith complied with the documentation requirements of paragraph (c) of Item 93.1 of Tariff No. 7. The witness testified that he made true and correct photostatic copies of 20 of the shipping documents issued during the review period and that they are all included in Exhibit 1. He explained that because of the missing information, it is not possible to determine from the documentation whether respondent had assessed the correct rate and charge for any of the transportation in issue.

None of the documents in Parts 1 through 20 of Exhibit 1 include the information required to be shown thereon by the following subparagraphs of paragraph (c) of Item 93.1: (5) name of consignor; (6) address of consignor; (9) name of consignee; (10) address of consignee; (11) type of loading; (13) time and location driver reported for work; (14) running time of last trip; (15) unloading time of last trip; and (16) over-all time. The documents in 14 of the parts do not show the commodity transported as required by subparagraph (12). The representative testified that he was informed by respondent that each of the 14 documents covered the transportation of dirt. In addition certain of the documents do not include other information required by paragraph (c). The documents in Exhibit 1 cover transportation subject to both the Highway Carriers' and City Carriers' Acts.

Respondent testified that new freight bill forms with space for recording all of the information required by paragraph (c) of Item 93.1 were not available until after the review period. He stated that he is now using these forms and is attempting to comply with the documentation requirements to the best of his ability.

Respondent testified that any of the information missing from the documents in Exhibit 1 which might be necessary to determine the applicable minimum rates is included in other records he maintains. He stated that the majority of the freight bills are prepared by subhaulers and that he did not realize that he might be responsible for errors in documentation prepared by subhaulers.

Discussion

The record clearly establishes that the documents in Exhibit 1 do not include all of the information required to be shown on the hourly service freight bill by paragraph (c) of Item 93.1.

With respect to the question of whether respondent is responsible for errors or omissions in the hourly service freight bill when the transportation was actually performed by a subhauler and the subhauler prepared the document, we have consistently held that the overlying carrier engaged by the shipper is not relieved of responsibility for such errors or omissions irrespective of who prepares the document.

The fact that certain of the information required by paragraph (c) may be included in other records maintained by respondent does not satisfy his obligation to show all of the required information on the hourly service freight bill. Paragraph (c) specifically states that all of the required information shall be shown on the hourly service freight bill. Furthermore, the fact that the source from which respondent obtains his freight bill forms may not have had available new forms which include spaces for recording all of the information required by paragraph (c) until after the review period covered by the staff investigation does not excuse him from complying with the documentation requirements during the review period. The effective date of the documentation

requirements in issue was October 16, 1965. On and after said date, all hourly service freight bills must include all information required by paragraph (c). It is to be noted that any document that clearly shows all of the required information is acceptable. The form shown in Item 375 of the tariff is a suggested form only.

As to the penalty to be assessed, we concur with the recommendation by the Commission staff that respondent be directed to cease and desist from further violations of the documentation requirements. The failure to comply with any directive, order or rule of the Commission is a serious matter and will not be overlooked. Respondent's operating authority also will be made subject to a one-year suspension if further violation of the documentation requirements occurs during the following one-year period.

Findings and Conclusions

The Commission finds that:

1. Respondent operates pursuant to radial highway common carrier and city carrier permits.
2. Respondent was served with Minimum Rate Tariffs Nos. 7 and 17 and Directory 1, together with all supplements and additions thereto.
3. Respondent is responsible for compliance with the documentation requirements of Minimum Rate Tariff No. 7 irrespective of whether the documentation is prepared by respondent or by the subhauler who performed the transportation.
4. Respondent has not properly completed and executed hourly service freight bills as required by paragraph (c) of Item 93.1 of Minimum Rate Tariff No. 7 in the instances set forth in Exhibit 1.

The Commission concludes that:

1. Respondent violated Sections 3704, 3737, 4044 and 4077 of the Public Utilities Code.
2. Respondent's operating authority should be suspended, pursuant to Sections 3774 and 4112 of the Code, for a period of one year with the execution thereof deferred during said one-year period. If, at the end of the one-year period, the Commission is satisfied that respondent is in substantial compliance with the documentation requirements in issue, the suspension will be vacated without further order of the Commission.

The staff of the Commission will make a subsequent field investigation to determine whether respondent is complying with the documentation requirements in issue. If there is reason to believe that respondent is continuing to violate said provisions, the Commission will reopen this proceeding for the purpose of formally inquiring into the circumstances and for the purpose of determining whether the one-year suspension or any further sanctions should be imposed.

O R D E R

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 30-3762 and City Carrier Permit No. 30-3763 issued to Roy R. Martin are hereby suspended for a period of one year; provided, however, that the execution thereof is hereby deferred pending further order of this Commission. If no further order of this Commission is issued affecting said suspension within one year from the date of issuance of this decision, the suspension shall be automatically vacated.

2. Respondent shall cease and desist from violating the documentation provisions of the Commission's minimum rate tariffs.

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 20th day of DECEMBER, 1966.

Robert E. Mitchell President

Frederick B. Holdehoff

Augustus

Commissioners

Commissioner George G. Grover, being necessarily absent, did not participate in the disposition of this proceeding.

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.