

Decision No. 81469

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
own motion into the operations,
rates and practices of DARVIN
GREENE, an individual doing business
as GREENE TRUCKING CO. and GEM
FURNITURE MFG., INC., a California
corporation.

Case No. 9359
(Filed April 4, 1972)

Darvin Greene, for himself, and
Murchison & Davis, by Donald
Murchison, Attorney at Law, for
Gem Furniture Mfg., Inc., res-
pondents.

R. C. Fels, for Furniture Manufac-
turers Association of California,
interested party.

William D. Figg-Hoblyn, Attorney at
Law, and E. H. Hjelt, for the
Commission staff.

O P I N I O N

This is an investigation on the Commission's own motion into the operations, rates, and practices of Darvin Greene, an individual doing business as Greene Trucking Co. (Greene), for the purpose of determining whether he violated Sections 3664, 3667, and 3737 of the Public Utilities Code by failing to charge applicable minimum rates and by failing to document or properly document shipments in connection with the transportation of uncrated new furniture for Gem Furniture Mfg., Inc. (Gem).

Public hearing was held before Examiner Mooney in Los Angeles on August 2, 1972, on which date the matter was submitted.

Stipulations

The following facts were stipulated to by both respondents and we find them to be true:

1. Greene operates pursuant to radial highway common carrier and household goods carrier permits. His household goods operations are not at issue in this investigation.

2. At the time of the staff investigation referred to in Finding 4, Greene had an office in Los Angeles, employed four drivers and a secretary, operated four trucks and a tractor and semi-trailer, and had all applicable tariffs and distance tables, together with all supplements and additions to each.

3. Greene's gross operating revenue for the year 1971 was \$106,111.

4. During latter 1971, a representative of the Commission staff reviewed Greene's records for the period April, May, and June 1971. The investigation disclosed rate errors in connection with 494 less-than-truckload shipments of uncrated new furniture for Gem during the review period. None of the shipments weighed over 900 pounds and most were substantially less in weight. The rate errors are summarized in Exhibit 2 and resulted primarily from failure to assess the additional charges for pickup service set forth in Item 60 of Minimum Rate Tariff 11-A (MRT 11-A). In each instance, the pickup was at Gem's place of business. The item provides that the additional charges must be assessed when the actual weight of the shipment does not exceed 5,000 pounds and when the point of origin is other than an established depot of the carrier or the carrier's established depot is located on the premises of the shipper. There were also a few instances in which Greene had used incorrect mileages in determining rates.

5. Greene charged less than the lawfully prescribed minimum rates in connection with the transportation for Gem summarized in Exhibit 2 resulting in undercharges in the amount of \$2,394.76.

Discussion

In addition to the rate errors stipulated to, the staff alleged that Greene had transported a substantial number of truckload shipments for Gem for which no documentation had been

prepared. In this regard, the staff representative testified as follows: During his investigation, he requested copies of all shipping documents issued by Greene during the three-month review period; he was furnished with the documentation for 670 less-than-truckload shipments of uncrated new furniture, which included the documents summarized in Exhibit 2, and the documentation for eight or so used household goods shipments; he was informed by Greene's secretary that these were all the documents that were issued during the review period; the gross operating revenue reported by Greene in his Quarterly Report of Gross Operating Revenue for the quarter covered by the review period was \$23,263 (Exhibit 5); the total of the revenue represented by the documents furnished to him accounted for only 18 percent of the gross revenue reported; the remaining 82 percent was for truckload shipments for Gem; the secretary told him that she did not realize that it was necessary to prepare shipping documents for truckload shipments; after being informed that this is required, she has prepared them for all subsequent truckload shipments.

The president of Gem testified as follows: Gem was taken over by Consolidated Food Company, a Delaware corporation, some time in 1969; he was transferred to Gem from another subsidiary furniture company in Oregon in February 1972 and took over as president; the personnel responsible for transportation during the period covered by the staff review are no longer with Gem; Gem has approximately 175 employees and sales of five to eight million dollars per year; it has a shipping clerk but no traffic manager; all transportation rates and charges are now correct; he plans to have all freight bills audited by a traffic consultant firm in the future.

Greene was admonished by the staff in writing on December 21, 1971 for various violations, including failure to prepare shipping documents for all shipments (Exhibit 3).

Staff counsel in closing recommended, among other things, that in addition to a fine in the amount of the undercharges shown in Exhibit 2, a punitive fine of \$500 should be imposed on Greene and that he should be directed to review all of his records from December 21, 1970 to the present, including the review period herein, and to collect any undercharges disclosed by such review. He further recommended that Greene should be required to request subpoenas duces tecum to obtain any necessary documentation from shippers or consignees if his records are incomplete. In answer to the staff recommendations, the attorney for Gen argued that the record shows no malicious, deceitful intent by either respondent to violate the minimum rates and that no punitive fine or review of records is warranted. In this connection, Greene asserted that there was never any intent by himself or his secretary to violate the rates or orders of the Commission; that his net income for 1971 was under \$10,000; and that every effort is being made to avoid any errors in the future.

We are of the opinion that Greene should be directed to collect the undercharges in Exhibit 2; that a fine in the amount of the undercharges and a punitive fine of \$500 should be imposed on him; and that he should be directed to cease and desist violating the minimum rate tariffs and rules, including Item 200 of MRT 11-A which requires that a shipping document including the information listed therein be issued by the carrier for each shipment and that a copy of each document be retained by the carrier for not less than three years. The staff recommendation that Greene review his records will not be made mandatory.

Findings

In addition to the above five findings based upon the stipulations, we find:

6. Greene transported truckload shipments during the review period for which shipping documents and copies thereof were not prepared or retained by him as required by Item 200 of MRT 11-A.

Conclusions

1. Greene violated Sections 3664, 3667, and 3737 of the Public Utilities Code.

2. Greene should pay a fine pursuant to Section 3800 of the Public Utilities Code in the amount of \$2,394.76, and, in addition thereto, should pay a fine pursuant to Section 3774 in the amount of \$500.

3. Greene should be directed to cease and desist from violating the minimum rates and rules of the Commission, including documentation rules.

The Commission expects that Greene will proceed promptly, diligently, and in good faith to pursue all reasonable measures to collect the undercharges. The staff of the Commission will make a subsequent field investigation into the measures taken by said respondent and the results thereof. If there is reason to believe that either said 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. Darvin Greene, an individual doing business as Greene Trucking Co., shall pay a fine of \$2,894.76 to this Commission on or before the fortieth day after the effective date of this order.

2. Darvin Greene shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein, and shall notify the Commission in writing upon the consummation of such collections.

3. Darvin Greene shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the undercharges, and in the event undercharges ordered to be collected by paragraph 2 of this order, or any part of such undercharges, remain uncollected sixty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month after the end of said sixty days, a report of the undercharges remaining to be collected, 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.

4. Darvin Greene shall cease and desist from charging and collecting compensation for the transportation of property or for any service in connection therewith in a lesser amount than the minimum rates and charges prescribed by this Commission.

5. Darvin Greene shall cease and desist from failing to issue shipping documents for each and every shipment and retain copies thereof as specified in Item 200 of Minimum Rate Tariff 11-A.

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

is further directed to cause service by mail of this order to be made upon Gem Furniture Mfg., Inc. The effective date of this order, as to the latter respondent, shall be twenty days after completion of service by mail.

Dated at San Francisco, California, this 12th
day of JUNE, 1973.

William L. Stagg
William Lyons, Jr.

[Signature]

Commissioner J. P. Vukasin, Jr., being
necessarily absent, did not participate
in the disposition of this proceeding.