

ORIGINAL

Decision No. 70327

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's
 own motion into the operations,
 rates, charges and practices of
 SHARP FARMS TRUCKING, INC., a
 corporation; NOAH MORRIS, an
 individual; ALLEN KINCADE, an
 individual; EARL R. BROOKS, doing
 business as EARL R. BROOKS
 TRUCKING.

Case No. 8200
(Filed June 15, 1965)

Mervin C. Hoover, for Earl Brooks, Sharp Farms
Trucking, Inc. and Allen Kincade, respondents.

David R. Larrouy and Frank J. O'Leary, for the
Commission staff.

O P I N I O N

By its order dated June 15, 1965, the Commission instituted an investigation into the operations, rates and practices of Sharp Farms Trucking, Inc., a corporation (hereinafter referred to as Sharp Farms); Noah Morris, an individual; Allen Kincade, an individual; and Earl R. Brooks, doing business as Earl R. Brooks Trucking, for the purpose of determining whether respondents, or any of them, in the operation of their for-hire transportation businesses may have violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code.

A public hearing was held before Examiner Mooney on August 11 and 12, 1965, at Sacramento.

Each respondent holds a radial highway common carrier permit and was served with Minimum Rate Tariff No. 2 and Distance Table No. 4 and all supplements and corrections thereto. The

permit issued to Sharp Farms includes a restriction that it shall pay other carriers engaged by it to transport the property of Sharp Farms or Colusa Glenn Supply Co., or the customers or suppliers of either, 100 percent of the applicable minimum charge.

The location of the terminal, equipment, number of employees and gross operating revenue of each of the four respondents are as follows:

<u>Respondent</u>	<u>Location of Terminal</u>	<u>Equipment Operated</u>	<u>No. of Employees</u>	<u>Gross Revenues</u>
Sharp Farms	Maxwell	6 Tractors 13 Trailers	6 Drivers 1 Bookkeeper	\$106,844 (1)
Noah Morris	Lodi	2 Tractors 6 Trailers	2 Drivers	38,875 (1)
Allen Kincade	Yuba City	2 Tractors 6 Trailers	2 Drivers 1 Bookkeeper	126,471 (2)
Earl R. Brooks	Woodland	7 Tractors 14 Trailers	7 Drivers 1 Mechanic	134,301 (2)

(1) Year ending with second quarter of 1965.

(2) Year ending with first quarter of 1965.

A representative of the Commission staff testified that he visited the place of business of Sharp Farms during August, September and October 1964 and reviewed the records of its for-hire trucking business and also the records of its grain business. He stated that the major part of the company's business is the purchase and sale of grain. The witness testified that he made true and correct photostatic copies of freight bills covering eight shipments of rice and an invoice for two of the freight bills. The copies are all included in Exhibit 1. The representative stated that at the time of his investigation, Sharp Farms had not billed or collected transportation charges for the shipments covered by Parts 1 through 6 of the exhibit. He pointed out that the six

shipments were transported during March 1964. The witness explained that he did not discover any additional instances in which transportation charges had not been billed and collected by the carrier.

The staff investigation of Noah Morris, Allen Kincade and Earl R. Brooks was conducted concurrently with the investigation of Sharp Farms. This phase of the investigation was limited to transportation of property belonging to Sharp Farms by each of the three respondents during June and July 1964. Invoices for this transportation were prepared by Sharp Farms. The representative testified that he made true and correct photostatic copies of invoices, freight bills and various supporting documents issued in connection with this transportation. The copies of the Noah Morris, Allen Kincade and Earl R. Brooks documents are included in Exhibits 2, 3 and 4, respectively.

The representative testified that Exhibits 2, 3 and 4 cover transportation of bulk milo, wheat, barley and oats. He pointed out that each of the invoices in Exhibits 2 and 3 and Parts 1, 2 and 3 of Exhibit 4 includes a deduction from the billed transportation charges; that the deductions do not represent goods or services furnished by Sharp Farms to any of the other respondents; and that in each instance Sharp Farms paid the difference between the billed transportation charges and the amount of the deduction. The following tabulation shows for each invoice the respondent carrier's name, the number of shipments involved, the billed transportation charges, the amount of the deduction and the net amount charged to Sharp Farms:

<u>Exhibit No.</u>	<u>Carrier</u>	<u>No. of Shipments</u>	<u>Billed Transp. Charges</u>	<u>Amount of Deduction</u>	<u>Net Amt. Charged to Sharp Farms</u>
2	Morris	1	\$ 113.14	\$ 11.31	\$ 101.83
3	Kincade	12	1,075.76	107.58	968.18
4 - Part 1	Brooks	1	127.69	12.77	114.92
4 - Part 2	Brooks	13	812.29	81.23	731.06 (1)
4 - Part 3	Brooks	33	4,966.79	433.14	4,533.65 (2)

(1) The invoice also includes an additional deduction of \$25.95 for several bills of Brooks that were paid by Sharp Farms.

(2) The invoice also includes additional charges of \$713.09 for eight shipments of fertilizer and a deduction of \$31.00 for wages paid by Sharp Farms to a driver of one of Brooks' trucks.

The amount of the deduction shown on the invoice in Part 3 of Exhibit 4 is approximately nine percent of the billed transportation charges. The deduction shown on each of the other four invoices amounts to an exact ten percent of the billed transportation charges. The representative testified that the deductions are in effect a subhaul commission taken by Sharp Farms. This, he stated, is in violation of the restriction in the permit issued to Sharp Farms which requires Sharp Farms to pay 100 percent of the minimum transportation charges to other carriers engaged by it to transport its property.

The representative testified as follows regarding the deduction of \$107.58 shown on the invoice in Exhibit 3 (Kincade): The notation "Fuel (bulk)" is shown opposite the \$107.58 on the invoice; Mr. Kincade signed a receipt dated July 1, 1964 for Sharp Farms which stated "398-1/2 gals. diesel @ .27 per gallon = \$107.59" (Part 1(3) of Exhibit 3); he was informed by Mr. Kincade

that the fuel was not in fact furnished and that Sharp Farms would have made no payment for transportation performed for it had the receipt not been signed.

With respect to the deduction of \$81.23 shown on the invoice in Part 2 of Exhibit 4 (Brooks) the representative testified as follows: The word "Expense" is shown opposite the \$81.23 on the invoice; Mr. Brooks had no documents to support this deduction; he was informed by Mr. Brooks that this was a commission.

The representative testified as follows regarding the deduction of \$433.14 shown on the invoice in Part 3 of Exhibit 4 (Brooks): The notation "Truck Repair" was shown on the invoice opposite the \$433.14; Mr. Brooks had no documents to support this and could not explain it; Mrs. Sharp informed him that this was for repairs on Brooks' equipment which Sharp Farms had paid in error; Mr. Brooks had informed him that the repair bills referred to by Mrs. Sharp were for a truck belonging to Sharp Farms and not one of Brooks' trucks.

The representative testified that two shipments in Exhibit 3 (Kincade), one shipment in Part 2 of Exhibit 4 (Brooks) and four shipments in Part 3 of Exhibit 4 (Brooks) were refused by the consignees and transported to new destinations and that, in each case, no charge was assessed for the subsequent transportation from the original consignees to the new destination. He stated that two of the shipments in Part 4 of Exhibit 4 (Brooks) were combined as a single split pickup shipment without complying with the documentation requirements of Item 160 of Minimum Rate Tariff No. 2. The witness testified that he personally observed the location of the origin and destination of each shipment covered by Exhibits 1

through 4 and determined which of them were served by rail facilities and that he checked actual mileages where necessary.

A rate expert for the Commission staff testified that he took the sets of documents included in Exhibits 1 through 4 together with the supplemental information testified to by the staff representative and formulated Exhibits 5 through 8. He explained that Exhibits 5 (Sharp Farms), 6 (Morris), 7 (Kincade) and 8 (Brooks) each show the charges and deductions computed by the respondent, the minimum charges computed by the staff and the resulting undercharges for the transportation covered by the freight bills in Exhibits 1, 2, 3 and 4, respectively.

The total amount of undercharges shown in Exhibit 5 (Sharp Farms) is \$176.41. The undercharges, according to the rate expert, resulted from failure to bill and collect freight charges for 6 shipments and assessing incorrect distance rates on two shipments.

One undercharge in the amount of \$11.31 is shown in Exhibit 6 (Morris). This, the rate expert testified, resulted from an illegal deduction from transportation charges on an invoice to Sharp Farms.

Undercharges in the total amount of \$210.93 are shown in Exhibit 7 (Kincade). They resulted, according to the rate expert, from an illegal deduction of \$107.58 from transportation charges on an invoice to Sharp Farms and from failure to charge for transporting two refused shipments from the initial consignees to new destinations.

The undercharges shown in Exhibit 8 (Brooks) total \$1,309.14.^{1/} According to the rate expert, the undercharges

^{1/} Based on evidence presented by Sharp Farms, the staff rate expert, during the hearing, revised the ratings shown in Part 3 of Exhibit 8 (Brooks) for Freight Bills 6129, 6130 and 6075. The total undercharge shown above includes said revisions.

resulted from illegal deductions of \$12.77, \$81.23 and \$433.14 from transportation charges on three separate invoices to Sharp Farms, assessing incorrect distance rates on 47 shipments, assessing charges on the actual rather than the truckload minimum weights on 11 shipments, consolidating two separate pickups as a split pickup shipment without complying with the documentation requirements of Item 160 of Minimum Rate Tariff No. 2 and from failure to charge for transporting five refused shipments from the initial consignees to new destinations.

Mr. Kincade was called by the Commission staff and testified as follows regarding the fuel deduction of \$107.58 shown on the invoice in Exhibits 3 and 7: His drivers are instructed to pick up fuel from his tanks in Yuba City; to his knowledge no fuel was received from Sharp Farms; it is possible, though very unlikely, that Sharp Farms may have furnished fuel for his trucks.

Mrs. Sharp testified that she is the bookkeeper, dispatcher and telephone operator for Sharp Farms. She testified as follows regarding staff Exhibits 1 and 5 (Sharp Farms): It was an oversight that transportation charges for the six shipments included in Parts 1 through 6 were not billed and collected prior to the staff investigation; the charges for the six shipments were subsequently billed and collected and were deposited in the bank as evidenced by the documents in Exhibit 10; the two undercharges of \$6.40 each shown in Parts 7 and 8 were collected shortly after the staff investigation as evidenced by the documents in Exhibit 9.

Mrs. Sharp admitted that the deductions of \$11.31 and \$12.77 from transportation charges on the invoices in Exhibit 2 (Morris) and Part 1 of Exhibit 4 (Brooks) were subhaul commissions

that were taken in error. These amounts, she asserted, will be paid to the two carriers.

With respect to the \$107.58 deduction for fuel shown on the invoice in Exhibit 3 (Kincade), Mrs. Sharp testified that she had been informed by several of Kincade's truck drivers that they had obtained fuel from Sharp Farms and that the amount reported totaled \$107.58. She testified that no receipts were signed by the drivers for this fuel and that this is the reason she sent the note for \$107.58 for fuel (Part 1 (3) of Exhibit 3) to Mr. Kincade to sign. It is her contention that this was a legitimate deduction.

Mrs. Sharp testified that the deduction of \$81.23 which was listed as "Expense" on the invoice in Part 2 of Exhibit 4 (Brooks) covered bills for fuel and a barrel of oil (Exhibit 11) which Sharp Farms paid to service stations for Brooks. She was not certain whether the fuel and oil were for equipment leased by Sharp Farms from Brooks or for equipment which Brooks operated himself. In this connection, the equipment lease agreement (Exhibit 14) between Brooks (lessor) and Sharp Farms (lessee) provides that the lessee shall pay for all fuel and oil for the leased equipment. Mrs. Sharp testified that it was a mere coincidence that the deduction amounted to ten percent of the transportation charges shown on the invoice.

The deduction of \$433.14 shown on the invoice in Part 3 of Exhibit 4 (Brooks) was, according to Mrs. Sharp, for repairs to equipment owned by Brooks which had been paid by Sharp Farms in error. She produced several repair bills (Exhibit 12) to support her allegation. The bills do not identify the truck that was repaired. The witness admitted that she did not know which

specific truck was repaired. She stated she does not keep records of this. The witness pointed out that the invoice in Part 3 also includes a charge of \$713.09 for transporting eight shipments of fertilizer; that fertilizer is exempt from minimum rate regulation; and that the deduction for repairs was offset against the charges for the transportation of the fertilizer and not against the charges included on the invoice for the transportation of commodities subject to minimum rates.

Mrs. Sharp testified that the seven shipments of bulk wheat and barley included in the staff exhibits which were refused by the original consignees and transported to new destinations had been contaminated. She explained that the carriers involved (Kincade and Brooks) had failed to clean their equipment after transporting fertilizer. The witness alleged that the amount of damage to each shipment because of this exceeded the cost of transporting the shipment to the new destination. Documents purporting to support her allegation on two of the shipments were placed in evidence (Exhibit 13). No documents to support her allegation in connection with the other five shipments were offered in evidence.

Mr. Sharp, the president of Sharp Farms, explained the rating of several shipments in Exhibit 4 (Brooks). Mrs. Sharp testified that all errors in rates were inadvertent and that she had relied on mileages furnished by drivers and buyers in calculating distance rates.

Discussion

There is no controversy in the record regarding the deductions of \$11.31 and \$12.77 shown on the invoices in Exhibit 2

(Morris) and Part 1 of Exhibit 4 (Brooks), respectively. Mrs. Sharp admits that these deductions were taken in error. However, as to the other deductions in issue, Mrs. Sharp does not agree with the staff allegations that they were illegal deductions.

With respect to the deduction of \$107.58 which was designated "bulk fuel" on the invoice in Exhibit 3 (Kincade), Mrs. Sharp testified that several of Kincade's drivers had informed her that they had received fuel from Sharp Farms. She admitted no receipts for the fuel were signed by the drivers. Mr. Kincade, on the other hand, testified that to his knowledge no fuel had been furnished to any of his drivers by Sharp Farms. He explained that the only reason he signed the statement sent to him by Sharp Farms (Part 1 (3) of Exhibit 3) for the fuel was because he did not believe he would be paid for the transportation he had performed unless and until he signed it. The record is not convincing that the fuel was in fact furnished to Kincade.

Likewise, the record does not clearly establish that there is a legitimate basis for the claim of \$81.23 which is designated "Expense" on the invoice in Part 2 of Exhibit 4 (Brooks). Mrs. Sharp did produce several bills for fuel and oil which Sharp Farms had paid (Exhibit 11). She explained that the fuel and oil was for Brooks' equipment. However, she was not certain whether it was for equipment Brooks operated himself or for equipment he leased to Sharp Farms. As to the leased equipment, Sharp Farms is required to furnish all fuel and oil (Exhibit 14). Furthermore, the staff representative testified that Mr. Brooks had informed him that the deduction was a subhaul commission.

Mrs. Sharp produced a number of documents (Exhibit 12) for truck repairs which she alleged supported the deduction of \$433.14 designated "Truck Repairs" on the invoice in Part 3 of Exhibit 4 (Brooks). Mrs. Sharp stated that the repairs were made on Brooks' equipment and that Sharp Farms had paid them in error. The documents do not identify the equipment that was repaired, and Mrs. Sharp admitted that she had no additional records that would identify the equipment involved. The staff witness testified that Mr. Brooks had informed him that the repair bills were not for any of his equipment. Mrs. Sharp further testified that the deduction for truck repairs was applied against the \$713.09 charge on the invoice for hauling fertilizer and not against the \$4,966.79 charge shown thereon for hauling grain and related commodities. Based on a review of all the evidence, the \$433.14 has not been proven to be a proper deduction from the invoice. For the purposes of this proceeding, it will not be allowed.

As to the seven shipments of bulk wheat and barley which were refused by the original consignees and transported to new destinations without charge, we do not concur with Mrs. Sharp's contention that damage claims may be offset against the transportation charges for the subsequent movements. In each instance, the commodity transported is subject to minimum rate regulation. The rates are provided in Minimum Rate Tariff No. 2. It is a general rule of transportation law that damage claims may not be offset against tariff charges. Damage claims must be handled as a separate transaction. No determination need be made herein as to the merits of said claims. Furthermore, from a review of the documentation in Exhibit 13 it appears that Sharp Farms has

already deducted the damage alleged on two of the shipments from a check paid to Brooks in connection with transportation services not in issue in this proceeding.

The Commission staff has recommended that, pursuant to Section 3800 of the Public Utilities Code, a fine equal to the amount of the net undercharge of each respondent as shown in the staff rate exhibits (Exhibits 5 through 8) be assessed against the respective respondents. In addition, the staff recommends that, pursuant to Section 3774 of the Code, an additional fine of \$1,000 be assessed against Sharp Farms because of its practice of taking a deduction of generally ten percent from minimum transportation charges paid to other carriers for transporting its products. This practice, the staff argued, is prohibited by the restriction in the permit held by Sharp Farms.

We agree with the staff recommendation that each of the respondents should be assessed a fine under the provisions of Section 3800 of the Code in the amount of the net undercharges found in the staff rate exhibits to be applicable to such respondent.

As to the staff recommendation that an additional fine of \$1,000 be assessed against Sharp Farms under the provisions of Section 3774, we do not concur with the representative of respondent that the suggested fine is excessive. Based on a review of the entire record, an additional fine in the amount of \$1,000 under said section would appear to be appropriate.

Findings and Conclusions

After consideration the Commission finds that:

1. Each of the four respondents herein operates pursuant to radial highway common carrier permits.

2. Each of the four respondents herein was served with appropriate tariffs and distance tables.

3. The staff rating of the transportation covered by Exhibit 5 (Sharp Farms) is correct.

4. Sharp Farms did not collect \$163.61 in freight charges for the six shipments covered by Parts 1 through 6 of Exhibit 5 within the time required by Item No. 250 of Minimum Rate Tariff No. 2.

5. Sharp Farms charged less than the lawfully prescribed minimum rates in the instances as set forth in Parts 7 through 8 of Exhibit 5, resulting in undercharges in the amount of \$12.80.

6. Sharp Farms, prior to the hearings in this proceeding, collected the \$163.61 in freight charges and the \$12.80 in undercharges referred to in Findings 4 and 5, respectively.

7. The staff rating of the transportation covered by Exhibit 6 (Morris) is correct.

8. The deduction of \$11.31 from the invoice for freight charges to Sharp Farms in Exhibit 6 (Morris) was an illegal deduction.

9. Morris charged less than the prescribed minimum rates in the instance as set forth in Exhibit 6, resulting in an undercharge of \$11.31.

10. The staff rating of the transportation covered by Exhibit 7 (Kincade) is correct.

11. The deduction of \$107.58 for "bulk fuel" from freight charges on the invoice to Sharp Farms in Exhibit 7 (Kincade) was an illegal deduction.

12. The net amount less than the lawfully prescribed minimum rates charged by Kincade for the transportation covered by Exhibit 7 is \$210.93.

13. The staff rating, as amended at the hearing, of the transportation covered by Exhibit 8 (Brooks) is correct.

14. The deductions of \$12.77, \$81.23 and \$433.14 from the invoices in Parts 1, 2 and 3, respectively, of Exhibit 8 (Brooks) will not be allowed.

15. The net amount less than the lawfully prescribed minimum rates charged by Brooks for the transportation covered by Exhibit 8 is \$1,309.14.

Based on the foregoing findings of fact, the Commission concludes that:

1. Sharp Farms has violated Sections 3664, 3667 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Code in the amount of \$176.41, and in addition thereto Sharp Farms should pay a fine pursuant to Section 3774 of the Code in the amount of \$1,000.

2. Noah Morris has violated Sections 3667 and 3668 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Code in the amount of \$11.31.

3. Allen Kincade has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Code in the amount of \$210.93.

4. Earl R. Brooks has violated Sections 3664, 3667, 3668 and 3737 of the Public Utilities Code and should pay a fine pursuant to Section 3800 of the Code in the amount of \$1,309.14.

5. Noah Morris, Allen Kincade and Earl R. Brooks should be ordered to cease and desist from making or accepting any deductions from minimum transportation charges on freight bills or invoices covering transportation of the property of Sharp Farms that are not specifically provided for by the applicable minimum rate tariffs or authorized by the Commission.

The Commission expects that Noah Morris, Allen Kincade and Earl R. Brooks will proceed promptly, diligently and in good faith to pursue all reasonable measures to collect the net amount of undercharges found herein as to each. The staff of the Commission will make a subsequent field investigation thereof. If there is reason to believe that any of said respondents, or any of their attorneys, have not been diligent, or have not taken all reasonable measures to collect the net amount of undercharges found herein as to that respondent or respondents, or have not acted in good faith, the Commission will reopen this proceeding as to that particular respondent or respondents for the purpose of formally inquiring into the circumstances and for the purpose of determining whether further sanctions should be imposed against the particular respondent or respondents involved.

O R D E R

IT IS ORDERED that:

1. Sharp Farms Trucking, Inc., a corporation, shall pay a fine of \$1,176.41 to this Commission on or before the twentieth day after the effective date of this order.

2. Noah Morris, an individual, shall pay a fine of \$11.31 to this Commission on or before the twentieth day after the effective date of this order.

3. Allen Kincade, an individual, shall pay a fine of \$210.93 to this Commission on or before the twentieth day after the effective date of this order.

4. Earl R. Brooks, doing business as Earl R. Brooks Trucking, shall pay a fine of \$1,309.14 to this Commission on or before the twentieth day after the effective date of this order.

5. Noah Morris, Allen Kincade and Earl R. Brooks shall take such action, including legal action, as may be necessary to collect the amounts of undercharges set forth herein as to each and shall notify the Commission in writing upon the consummation of such collections.

6. In the event Noah Morris, Allen Kincade or Earl R. Brooks have not collected the undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, within sixty days after the effective date of this order, said respondent or respondents shall proceed promptly, diligently and in good faith to pursue all reasonable measures to collect them; said respondent or respondents 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 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. Noah Morris, Allen Kincade and Earl R. Brooks shall henceforth cease and desist from making or accepting any deductions from minimum transportation charges on freight bills or invoices covering transportation of the property of Sharp Farms

Trucking, Inc., that are not specifically provided for by the applicable minimum rate tariffs or authorized by the Commission.

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 a particular respondent, shall be twenty days after the completion of such service upon such respondent.

8th Dated at San Francisco, California, this
 day of FEBRUARY, 1966.

Frederick B. Holcluff
President

[Signature]

[Signature]

William W. Benne

Commissioners

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