

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)	
)	No. 87N-1689-MC
)	
YELLOW FREIGHT SYSTEM, INC.)	

ORDER DENYING PETITION FOR REHEARING

Appellant filed its petition for rehearing on the basis that respondent "apparently changed its position -- on the factual point which determined the outcome of the case -- between the time it filed its answering brief and the time of the hearing. Due to this surprise, Yellow Freight was unable to present evidence on what turned out to be the critical factual issue in the dispute." (Pet. Rehg. at 1.) In our decision, we stated that appellant's argument was based on the factual premise that during a fuel shortage crisis, it could swap oil from its wells for diesel fuel. We rejected that premise. Appellant now argues that respondent had not disputed this fact prior to the hearing, and that appellant should be entitled to present evidence solely on this point to prevent unfairness.

Our conclusion that appellant did not show that it could swap oil during a fuel shortage crisis was not based on a lack of evidence but on the specific testimony of Mr. Powell, appellant's president and chairman of the board. The issue was addressed by the parties and the board members during the opening statements. Mr. Powell was then called as a witness by appellant and, on direct examination, was questioned regarding the swapping Yellow Freight System, Inc. of the wells' production for usable fuel. (Tran. at 27-28.) Then, on cross-examination, he testified that appellant had no contracts to, nor guarantees that it could, swap oil. We thus concluded that appellant had only the potential to swap fuel.

A rehearing is not necessary, since we do not find that there was unfairness, as alleged

by appellant, with regard to this issue. What appellant now seeks is another opportunity to do what it did not do at the hearing: contradict the testimony of its own chief executive officer. We do not find any unfairness in denying appellant a second opportunity to do what it could have done before, either at the hearing or in subsequent briefing.

Upon consideration of the petition filed July 8, 1992, by appellant for rehearing of its appeal from the action of the Franchise Tax Board, we are of the opinion that none of the grounds set forth in the petition constitute cause for the granting thereof and, accordingly, it is hereby ordered that the petition be and the same is hereby denied and that our order of June 18, 1992, be and the same is hereby affirmed.

Done at Sacramento, California, this 24th day of June, 1993, by the State Board of Equalization, with Board Members Mr. Sherman, Mr. Fong, Mr. Dronenburg, Jr., and Ms. Scott present.

Brad Sherman _____, Chairman

Matthew K. Fong _____, Member

Ernest J. Dronenburg, Jr. _____, Member

Windie Scott* _____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9