

CARRIER MEMBERS' DISSENT

to

THIRD DIVISION AWARD 42220 - DOCKET MW-41944

(Referee Andria S. Knapp)

The Majority's rationale in this case is the same as in Third Division Award 37572 to which the Carrier Members dissented. The Majority held that the contract between the Carrier and R.T.I. could not be viewed as an "as is where is" bill of sale due to the fact that the Carrier was paying a fee for the disposal of the scrap material. We disagree. The contract presented during the on-property handling of the matter specifically states:

"All material released from projects during the term of this agreement shall become the exclusive property of the Contractor at the time the material is removed from the track structure."

The scrap ties did become the property of the Contractor. The Carrier paid a disposal fee just the same as fees that are required when property is disposed of at a dump. Payment of a disposal fee did not change the ownership of the property. The Carrier did not own the ties when they were removed from its property and as such, the disputed work was not brought under the scope of the Parties' Agreement nor was it impermissible contracting of reserved work.

One of the oft-stated purposes of arbitration is to provide consistency in the work place so as to promote harmonious labor/management relations. To ignore and/or cast aside arbitral precedent that has clearly and unmistakably recognized the long-standing practice of "as is where is" contracts on this Carrier's property does a disservice to the process and the Parties to these disputes. Without a doubt, the Majority's determinations that the notices were improper are palpably erroneous and cannot be considered as precedent in any future cases. Because they clearly create unwarranted chaos, we must render this vigorous dissent.

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Michael C. Lesnik

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