



customarily been performed by BMW employees. In addition, the work was contracted out without the required prior notice. For these reasons, Claimants should be compensated for the lost work opportunities. See, Third Division Award No. 37572.

Carrier's principal defense is that the ties were sold to Wood Waste Energy, Inc. on an "as is, where is" basis. The work involved in the loading, hauling and removal of the ties did not violate the Agreement since the ties were no longer owned by the Carrier. Since Carrier relinquished to the outside concern all rights and legal title to the property, it was not required to provide notice to the Organization, Carrier submits. See, Third Division Award Nos. 37621 and 37270.

During the on-property handling, the Organization was provided a copy of the January 20, 1999 Agreement between the Carrier and Wood Waste Energy, Inc. The Organization argues that, although the document purports to be a sale, close examination reveals that it is nothing more than a subcontracting arrangement designed to circumvent the Agreement. The Organization points out that ownership of the ties allegedly was transferred to Wood Waste Energy, Inc. for \$1.31 per ton, yet the Carrier agreed to pay Wood Waste Energy, Inc. \$14.69 per ton for processing and disposal of the ties. In the Organization's view, it is doubtful that the Carrier would enter into such a financial arrangement to process and dispose of ties it no longer owned.

The Board finds, after careful consideration, that the same argument has been addressed on this property and it has not been resolved in the Organization's favor. In Third Division Award No. 37621, involving an identical contractual arrangement with Wood Waste Energy, Inc., the Board concluded as follows:

...[W]e find that the instant matter qualified as an 'as is, where is' sale and, therefore, is outside the purview of the Agreement. The fact that there was a reciprocal financial arrangement between the Carrier and [Wood Waste Energy, Inc.] does not change the fact that this was a bona fide sale, and, therefore, the Carrier was not required to provide notice to the Organization.

The Organization argues that there is another award which should be relied upon here. Having reviewed Third Division Award No. 37522, however, we find that it is distinguishable from the case at hand as it did not involve either the same parties or the same contractual arrangement with an outside concern.

To insure predictability and stability in labor-management relations, we must follow precedents on this property, particularly where the same factual

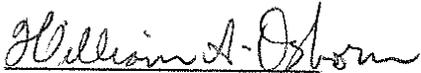
predicates are present. The Organization failed to show that Third Division Award No. 37621 was palpably erroneous. We adopt the logic and findings of that award and find that the instant claim must be denied on the same basis.

AWARD

Claim denied.



ANN S. KENIS, Neutral Member



Carrier Member  
William A. Osborn



Organization Member  
Roy C. Robinson

Dated this 24<sup>th</sup> day of July 2007.