

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)
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 UIIA Motor Carrier,) Case Number: **20100720-2-XXXC-MR-TRSF**
 Appellant, and)
)
 UIIA Equipment Provider,) Date of Decision: 03/11/2011
 Respondent)

UNDISPUTED FACTS: Motor Carrier (MC) out-gated the unit at the CSX 59th street facility on 03/31/2010 at 16:24 and in-gated at the CSX Bedford Park on 04/02/2010 at 21:48.

An M&R invoice was issued by EP to MC on 06/08/2010 in the amount of \$00.00 indicating the following tire repair: Job code: 1115-Bias Tire, Cond: 3-Replace, Defect: 34-Slid Flat, Location: ROF, Time: 1, Rate/Labor: \$00.00, Part/Material \$00.00, Qty.: 1. The out-gate EIR indicated no damage. The in-gate EIR indicated the following: Job Code Description: 1115 Bias Tire, Location ROF – Right outside Front, Why Made: 34 Slid Flat, Qty. 1, Damage is Captured on Recorded Images at AGS Locations. Pictures were provided for review.

ISSUE: MC asserts that they are not responsible for this invoice due to the following arguments:

- The CSX out-gate yard was not equipped with AGS and the in-gate images only show the outside sidewall view of the tire. Therefore, there is no comparison images to determine the pre-existing condition of this tire prior to or during the out-gate interchange.
- The AAR Rules and criteria for indentifying a legitimate “Skid Flat” (flat spot) is specific – 4/32” of tread removed. At which the AGS image is incapable of determining tread depth.
- The in-gate occurred on 4/2/2010, but the tire was not changed until 4/29/2010. The tire may have had an irregularity present during the in-gate interchange, but there was more than enough time and opportunity for the chassis to be used and the ROF tire to sustain additional skidding, which ultimately necessitated its replacement.
- You cannot skid only one tire on a set of duals

EP states that the CSX facility on 59th street is a manned gated facility and the out-gate inspections are performed by the MC’s. The out-gate EIR shows no indications of tire issues. When the MC in-gated the unit at the Bedford Park facility on 4/2/2010, this unit was not out-gated again until 05/20/2010. EP asserts that the AGS in-gate images clearly show the slid flat portion of the tire. As well as the ISS inspector who is assigned to this location performs an inspection on each chassis for tire replacement. Tires that do not exceed the 4/32 standard to be changed are declined for payment by EP. EP’s position is that this invoice was a justifiable invoice based on the information presented and the declination of the requested dispute was justified based on the rules of the UIIA for which all parties are required to abide by.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. Under the UIIA provision D.2.c. “if recorded images are taken at the time of the interchange, damages will not be reported on ingate or outgate EIR. The words “Damage is captured on Recorded Images” will be printed on the Equipment Interchange Receipt.” In this instance, when the equipment was in-gated there were recorded images taken at the time of the interchange. The driver was supplied with an EIR with the phrase “Damage is captured on Recorded Images”. However, the recorded images neglect to show the tire damage disputed in EP’s invoice.

UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:

The panel relied upon the following provisions from the UIIA (May 12, 2010) to make its decision:

D. Equipment Interchange... 2. Equipment Interchange Receipts...

c. If Recorded Images are taken at the time of Interchange, **Damage will not be reported on ingate or outgate EIR. The words “Damage is captured on Recorded Images” will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange. [Revised 05/12/10]**

DECISION: The panel unanimously finds in favor of the MC.

Case Reviewed and Decided by:

JEFF LANG
Motor Carrier

ROBERT E. HUFFMAN
Rail Carrier

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between)
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UIIA Motor Carrier) Case Number: **20110624-4-XXXP-MR-OTH**
Appellant, and)
)
)
UIIA Equipment Provider) Date of Decision: 10/25/2011
Respondent)
)

UNDISPUTED FACTS: The Motor Carrier (MC) received three M&R invoices from the Equipment Provider (EP) on three separate units that were outgated from different UP facilities and ingated at the CSX Bedford Park facility.

Invoice 1 – Invoice C176654 dated 04/26/2011 relates to equipment out-gated of UP/Global I and in-gated at CSX Bedford Park. Both ramps are AGS facilities. Invoice 1, in the amount of \$00.00, stated the following: “Job Code: 3355-DOT bumper-horizon, Condition: 1-Replaces w/new, Defect: 02-Bent, Location: R, Job Code: 3354 – DOT Bumper Upright; Condition: 8-Straightened, Defect: 02-Bent; Location: LR; Job Code: 3354 – DOT Bumper Upright; Defect: 8-Straightened, Defect: 02-Bent.” Both in-gate and out-gate state damage captured on Recorded Images. The EP provided images for review.

Invoice 2 – Invoice 3237, dated 3/23/2011 relates to equipment taken out of UP/Yard Center (non-AGS ramp) and in-gated at CSX Bedford Park (AGS ramp). Invoice 2, for the amount of \$00.00, stated the following: “Job Code: Main Frame Rail; Condition: C-Section; Defect: 14-Cut, Torn, Location: LSF; Job Code: 5020 – Main Frame Rail; Condition: C-Section; Defect: 14-Cut, Torn, Location: RSF.” The in-gate EIR noted no damage. The outgate EIR states “Damage Captured on Recorded Images”.

Invoice 3 – Invoice C176717, dated 4/28/2011 relates to equipment taken out of UP/Global I and in-gated at CSX Bedford Park. Both ramps are AGS facilities. Invoice 3, for the amount of \$00.00, stated:”Job Code: 3354-Bumper Upright, Condition: 8-Straightened, Defect: 02-Bent, Location: RR; Job Code: 3355-DOT Bumper Horizon, Defect: 8-Straightened, Defect: 02=Bent, Location: R.” Both in-gate and out-gate state damage captured on Record Images. The EP provided images for review.

ISSUE:

Invoice 1 and 3 – The MC argues that the out-gate image from UP is unclear and damage to the equipment cannot be proven. The MC bases its dispute on Section D.2. of the UIIA requiring either the use of an EIR description or recorded images of the physical condition of the equipment.

The EP declined this dispute arguing that the MC failed to identify the damage invoiced in accordance with UIIA section D.3.a.(1) and 49 C.F.R. § 392.7, requiring the MC to conduct a pre-trip inspection. Exhibit A, Item 10, of the UIIA states that the MC will visually check the “Rear Underride Guard (“ICC bumper”)(Check that the Guard is in place and not bend under the frame).” The EP claims that the AGS image shows the bumper to be bent under the frame of the chassis.

Invoice 2 – The MC argues that the frame damage invoiced cannot be seen on the AGS image. The MC states that if the EP is claiming there is frame damage, then it could be existing crane damage. The MC is basing its dispute on Section D.3.d. and argues that it is being billed for old wear and tear, which is not the MC’s responsibility under the UIIA.

The EP declined dispute based on Section D.3.d.(1), which states that the “Motor Carrier will return Equipment to the Provider in the same condition, reasonable Wear and Tear excepted” and that the responsibility for repair and replacement items during the interchange Period are listed in Exhibits B & C of the UIIA.

DISCUSSION: The panel reviewed all documents and evidence submitted by the parties. The panel finds as follow:

Invoice 1 and 3 – The first two panel members were unable to agree upon what the evidence showed, therefore, the third panel member was brought in under Exhibit D to the UIIA. The third panel reviewed the outgate AGS images in connection with Invoices 1 and 3 and find that the images do not describe the physical condition of the equipment as required under D.2.c of the UIIA Agreement, and, therefore, are not evidence of the damage invoiced.

Invoice 2 – The first two panel members were unable to agree upon what the evidence showed, therefore, the third panel member was brought in under Exhibit D to the UIIA. The third panel reviewed the ingate AGS image and found that the image shows old, not new, damage. Based on the image reviewed and the lack of supporting documentation from the EP, a majority of the panel finds that the EP failed to comply with the requirements under D.2.c of the UIIA Agreement.

PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 14, 2011) to make its decision:

D. Equipment Interchange... 2. Equipment Interchange Receipts...

- c. If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words “Damage is captured on Recorded Images” will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange. **[Revised 05/12/10]**

DECISION: The majority of the panel finds in favor of the MC on each of the three disputed invoices.

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

BARRY D. MICHAELS
Rail Carrier Member

PATRICK VALENTINE
Water Carrier Member