

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)
)
UIIA Motor Carrier) Case 20081216-1-XXXL-MR-OTH
Appellant, and)
) DECISION
) January 26, 2009
UIIA Equipment Provider)
Respondent.)

FACTS: Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from the Seagirt Marine Terminal at 10:33 AM on September 24, 2008. The outbound TIR reported ... "Damaged Dent: Front Panel" and cargo weight of 11,293 lbs.

MC returned the container empty to Seagirt Marine Terminal at 14:25 on September 30, 2008. The inbound TIR reported ... "Damaged Broken: Floor"

EP issued an invoice for the purported cost of repairing the damages noted on the empty ingate inspection in the amount of \$00.00. The invoice included the cost of repairing the cross member, as well as, the floor. There is no evidence that the container has, in fact, been repaired and that the invoice accurately reflected the cost of that estimate.

BASIS OF CLAIM: MC asserts that all of the damage appears to be old with heavy rust evidenced by photos, that the cargo weight was only 11,293 lbs, and there was no mention of cross member damage on the return interchange.

DISCUSSION: Nothing in Exhibit A of the UIIA indicates the driver is responsible for inspecting the floor or cross members prior to interchanging the equipment. Exhibit B of the UIIA identifies the floor as the responsibility of the EP unless the result of damage by the MC. The photos indicate heavy corrosion on the cross members and no evidence of damaged caused by the MC.

While it is possible that the floor was damaged by the consignee while unloading the container, the light cargo weight indicates that the floor probably failed from normal wear and tear.

DECISION: Based on Exhibit A and Exhibit B of the UIIA, the panel unanimously finds in favor of the MC. EP shall not be entitled to recover the actual costs of repair from MC. EP shall bear the costs of appeal.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)
)
UIIA Motor Carrier) Case 20090203-1-XXXI-MR-OTH
Appellant, and)
) DECISION
) April 8, 2009
UIIA Equipment Provider)
Respondent.)

FACTS:

1. Sealed outbound loaded container from New York Container Terminal on October 2, 2008 at 11:06.
2. No notations of defects on outgate TIR.
3. Empty container returned to New York Container Terminal on October 3, 2008 at 13:42.
4. Notation of "A" Damage on ingate TIR showing: "SAE Plugs, Lights: Inoperative".
5. Citation for "airlines chafing or kinking (air lines tied together)" issued to MC on 10-03-08 at 10:05 requiring appearance on 12-04-08 at 9:30.
6. Citation for "fail to secure load from loss (defective locking pin) issued to MC on 10-03-08 at 10:05 requiring appearance on 12-04-08 at 9:30.
7. Staten Island Towing Service invoice for "storage and services rendered" dated 10-03-08 paid by MC for \$00.00.
8. Edgar Road Garage invoice dated 10-03-08 for "Road service to breakdown location, check and tie up airline, escort unit to Howland Hook SI" paid by MC for \$00.00.
9. Letter from Edward Petrini, Safety & Compliance at MC, to John Dunn, Equipment Manager at EP, advising court date rescheduled for 1-20-09 at 9:00 and attorney is required for appearance and asking for EP assistance.
10. New York Container Terminal repair invoice dated 10-04-08 indicating left front twist lock was replaced and air lines were secured. Total cost \$00.00.
11. Letter from Matthew Pavis, attorney hired by MC, dated 1-21-09 stating the court accepted a plea for disorderly conduct and assessed a fine of \$00.00.

BASIS OF CLAIM:

MC asserts that the failure to properly maintain a chassis in safe operating condition has resulted in fines, towing charges and attorney costs that are the responsibility of EP. Pursuant to the UIIA Agreement Exhibit B, Equipment owners are responsible for normal wear and tear including "Trailer/chassis locking assemblies, safety latches, container securement handles, brake adjustments and brake component repairs". MC, as a motor carrier was responsible pursuant to the UIIA Agreement Exhibit A, for "Brake air leaks and proper pressurization only" and "Twist locks are engaged and secured".

DISCUSSION:

1. Exhibit A requires the motor carrier to check that twist locks and safety latches are engaged and properly secured but Exhibit A, by reference, applies to Section D.3.a.1 which requires the MC to conduct a pre-trip inspection prior to departing and Section F.4.b. which references Indemnity.
2. It is a common occurrence for the safety latches on twist locks similar to the ones on this chassis to be secured upon inspection but due to bouncing and vibration from normal operation to become unsecured.
3. Additionally, whether or not the safety latch is "secure" is a matter of opinion and open to interpretation. In this case, both the driver and the NYCT maintenance personnel determined the safety latches were secure. The roadside inspector determined they were not. This also is a common occurrence.
4. It is likely that this whole issue simply resulted from an overzealous roadside inspector which is a hazard both the MC and EP must accept.
5. EP states NYCT's maintenance personnel found no defect in the twist lock but were instructed to replace the left, front.
6. Citation is for defective locking pin but no location is specified.
7. Edgar Road Garage applied plastic ties to the twist locks to secure. There is no requirement of MC to apply plastic ties to secure.
8. Section D.3.d.1. clearly places the responsibility for the repair and or replacement of the air hoses and twist lock/security latches with the EP.

DECISION:

1. Based on the UIIA, the responsibility for repairing the air lines and twist locks/security latches rests with the EP. The EP paid the cost for the repairs.
2. Based on the UIIA, the MC does not have recourse against the EP for costs, other than repair costs, the MC incurs due to normal wear and tear defects.
3. The safety latch on this chassis needs to be redesigned. This type of safety latch is susceptible to citations as issued in this case due to its design.

The panel unanimously finds in favor of the EP. MC's request that EP reimburse them for total costs of \$00.00 is denied.

DAVE MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between)	
)	Case 20090414-1-XXXT-MR-OTH
UIIA Motor Carrier)	
Appellant, and)	DECISION
)	May 5, 2009
UIIA Equipment Provider)	
Respondent.)	

FACTS: Motor Carrier (MC) received loaded import container from Equipment Provider (EP) from NS St Louis at 07:40 on 1-07-09. The outbound TIR records no damage.

MC returned empty container to EP at ContainerPort Group in St Louis on 1-07-09. The inbound TIR reported “RF corner post dented in 1 7/16 inches – replace, RS panel #11 bent in & starting to kink – str 12 inch by 48 inch”.

EP invoice MR09CH104 dated 2-23-09 indicated “charges for major damage to corner post done while in MC possession”.

BASIS OF CLAIM: MC asserts Exhibit A of UIIA does not require driver to inspect for dents of any kind. MC admits Exhibit C states MC is responsible for items bent where proper operation and function of the unit is impaired. MC asserts rail would not allow MC to note the bent corner post.

EP asserts the dent in the corner post prohibited the unit from further legal and proper use because it could not support the original stacking weight as it was originally rated for 50,000 PSI.

DISCUSSION: The pictures provided substantiated that there was a significant dent in the right front corner post which could affect the proper use and function of the container. This dent would have been readily visible to the driver while performing the walk around inspection required in UIIA Exhibit A. It is obvious the damage could be caused by a MC. MC has the responsibility to document damage that exists on equipment at the time of the outbound interchange. This is the best protection against damage noted on the inbound interchange.

DECISION: Because the damage was enough to affect the proper operation and function of the container, the damage would have been readily visible to the driver, and the damage could be caused by impact while in the possession of the MC, the panel unanimously finds in favor of the EP. EP is entitled to receive reimbursement for the damaged equipment.

DAVID MANNING
Motor Carrier Member

PATRICK VALENTINE
Water Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between)

UIIA MC,)
Appellant, and)

UIIA EP,)
Respondent)

Case Number: **20151113-24-XXXP-MR-OTH**

Date of Decision: 7/18/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv	Invoice #	Chassis #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3JK5321	TSFZ557901	10/16/15	UP Global 1/CSX Bedford Park	9/13/15	9/13/15	10/16/15	10/21/15	10/29/15	11/13/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.2.a and D.3.d of the UIIA. The Motor Carrier states it is being billed for landing leg damage for a cross-town move. The Motor Carrier outgated the equipment from the UP Global 1 facility (AGS) to CSX Bedford Park (AGS). The Motor Carrier reports that the unit was in its possession for only twenty-nine (29) minutes and, therefore, believes any damage would be pre-existing and/or reasonable wear and tear to the unit. The Motor Carrier argues that the AGS image provided by the Equipment Provider shows that the damage already existed prior to outgating the unit and, further, that both AGS images are consistent and show the same damage. The Motor Carrier believes that if there was damage at the ingate, the CSX would then J2 the damage back to the origin railroad (UP). The Motor Carrier states this was a direct interchange from UP to CSX. The Motor Carrier believes it returned the unit to CSX in the same condition as it was received, reasonable wear and tear accepted, in accordance with Section D.3.d. The Motor Carrier does not believe that the Equipment Provider has provided proof that the damage was caused by the Motor Carrier.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded by stating that the Motor Carrier is required to fully inspect the unit for damage prior to terminal departure and noted that no damage was reported. The Equipment Provider argues that Exhibit A, Item 4 to the UIIA assigns the Motor Carrier responsibility for visually or audibly checking to ensure that the landing legs are in a 90 degree angle and that they are in good working order prior to leaving the gate. The Equipment Provider feels that if the pre-trip inspection had been properly completed, pre-existing landing leg damage could have been addressed via repair or switching out the chassis prior to departure. The Equipment Provider feels that the Motor Carrier is responsible for the charges as billed since it failed to do a proper pre-trip inspection.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Motor Carrier reported that the equipment was in its possession for only twenty-nine (29) minutes. The Motor Carrier states that AGS images show that the damage existed prior to outgating. The Motor Carrier believes it returned the equipment to the Equipment Provider in the same condition as it was received, reasonable wear and tear excepted, in accordance with the UIIA.

The Equipment Provider argued that Exhibit A, Item 4 to the UIIA assigns the Motor Carrier responsibility for visually or audibly checking to ensure that the landing legs are in a 90 degree angle and that they are in good working order prior to leaving the gate. The Equipment Provider believes the charges are valid as invoiced.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Motor Carrier panel member found in favor of the Motor Carrier stating that the damage to the landing gear was documented on the outgate EIR from the UP. Therefore, the damage could not have taken place while in the Motor Carrier's possession.

The Rail Carrier panel member found in favor of the Equipment Provider. The Rail panel member observed that the Motor Carrier's position that the damages they were billed for were present before the interchange period misses the critical point, i.e., the Motor Carrier's acceptance of the chassis with landing legs that did not meet the UIIA pre-trip requirement to be "in a 90 degree position" allowed an unsafe chassis to be operated on public roads, violating the terms of the UIIA and the Equipment Provider's Addendum.

Because the modal members could not reach a consensus, the third panel member was brought in to render the final decision pursuant to Exhibit D3 of the UIIA.

The Ocean Carrier panel member found in favor of the Motor Carrier. The Ocean panel member noted that although he fully understands the Equipment Provider's position in this matter, the question at hand is to determine the party responsible for the damage. The Ocean Carrier panel noted that while the Motor Carrier has an obligation to perform a pre-inspection of the equipment for the

safety and the well-being of our public road system, the AGS images provided by the Equipment Provider clearly show that the damage associated with the billing existed prior to the out-gate. Consequently, the damage to the landing legs was not done while in the Motor Carrier's possession. The Ocean Carrier panel member stated that although case was found in the Motor Carrier's favor, that a stern warning should be issued to the Motor Carrier that their drivers must do a more thorough pre-inspection of equipment before accepting it for interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

EP's Addendum to the UIIA – Section VI. General Purpose Equipment, C. Equipment Inspection

Motor Carrier shall inspect General Purpose Equipment prior to leaving the Terminal in accordance with Section D(3) of the UIIA. Motor Carriers shall not interchange equipment that possesses a visible and audible roadability defect. Damage to General Purpose Equipment must be noted on the outbound Equipment Interchange Receipt at manned gates prior to Motor Carrier leaving the Terminal. Motor Carrier will not be held responsible for damages noted on the Equipment Interchange Receipt. If such damage prevents the Motor Carrier from taking the General Purpose Equipment out of the Terminal, the Motor Carrier will notify the CSXIT Terminal Manager and/or CSXIT repair contractor that a repair is required. Upon completion of repairs the Motor Carrier will be notified of General Purpose Equipment availability.

D. Equipment Interchange

2. Equipment Interchange Receipts

- a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

- 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

Exhibit A of the UIIA

4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)

DECISION: The majority of the panel finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor Carrier Member

CLIFF CREECH
Rail Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between)

UIIA MC,)
Appellant, and)

UIIA EP,)
Respondent)

Case Number: **20161026-13-XXXH-MR-OTH**

Date of Decision: 01/03/2017

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	282895645	UPHZ130188	09/14/16	UP Los Angeles/City of Industry	7/5/16	7/5/16	09/14/16	09/20/16	10/14/16	10/25/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.3., E.3.a.(1) and Exhibit B of the UIIA. The Motor Carrier disputed the invoice stating that the photos provided for repair bills continue to be inconclusive for the damages being billed. The Motor Carrier believes that in all three pictures provided, there does not appear to be significant damage that would indicate that the landing gear was bent while under their interchange. Furthermore, the Motor Carrier stated that when pictures were requested from a previous move that their company made on the same unit, their request was ignored. The Motor Carrier feels that if they had a previous picture to compare the landing gear to, they might be able to determine whether there was actual damage. It is the Motor Carrier's opinion that the Equipment Provider should have provided the additional information when requested.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE:

The Equipment Provider responded to the claim stating that it is the Motor Carrier's responsibility to conduct a thorough pre-trip inspection to detect and notate equipment condition prior to acceptance per D.3 of the UIIA Agreement (as well as 49CFR Section 392.7). Any damage not notated on the outgate is presumed to have occurred while in the possession of the Motor Carrier during the interchange period. The outgate on July 5, 2016 by this Motor Carrier had no damages notated at all. The unit ingated ELA on the same day and the AGS images reflected the damage. The Equipment Provider stated it is visible that the legs were not perpendicular to the base of the chassis, as well as the DOT underride guard was bent beyond DOT limits. The Equipment Provider also stated that if the Motor Carrier handled the exact same equipment earlier within the timeframe, they would have had the ability to pull the images for this unit.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Motor Carrier panel member stated that the photographic evidence supplied by the Equipment Provider documents the damages being billed for. In addition, the Motor Carrier panel member noted that the Motor Carrier failed to provide an interchange receipt showing the damage was reported at the time the equipment was outgated.

The Rail Carrier panel member also found in favor of the Equipment Provider stating it is the responsibility of the Motor Carrier to write up any damage discovered upon outgate, specifically at a manual outgate.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (February 8, 2016) to make its decision:

D. Equipment Interchange

2. Equipment Interchange Receipt

- A. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

3. Equipment Condition

- a. Warranty: WHILE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO THE FITNESS OF THE EQUIPMENT, THEY RECOGNIZE AND AFFIRM THEIR RESPONSIBILITIES UNDER THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS.
 - 1) Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Revised 01/17/05]**
- d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of AGS gate transactions such documentation must include images depicting the condition of the Equipment at the time the Motor Carrier to be charged both accepted and returned the Equipment. **[Revised 09/01/09]**

Exhibit A, Item 4 – Landing Legs

The following list sets forth those items, which the Motor Carrier has responsibility for visually and audibly checking prior to use of the Equipment:

- 4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)

DECISION: The panel unanimously finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

FRED HUENNEKENS
Motor Carrier Member