

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier,)	Case Number: 20150211-7-XXXI-PD
Appellant, and)	
)	
UIIA Equipment Provider,)	Date of Decision: 06/22/2015
Respondent)	

MOTOR CARRIER'S DISPUTE

The Motor Carrier disputes the following invoices:

Invoice	Invoice #	Inv. Date	Amount	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	NAIM3120369	1/5/15	\$0.00	TTI/TTI	10/27/14	12/9/14	1/5/15	1/12/15	2/11/15	2/11/15
2	NAEX1599014	1/7/15	\$0.00	SSA/SSA	12/18/14	1/5/15	1/7/15	1/12/15	2/10/15	2/11/15
3	NAIM3133283	1/15/15	\$0.00	APM/SSA	12/3/14	1/7/15	1/15/15	1/21/15	No response from EP	2/11/15
4	NAIM3133294	1/15/15	\$0.00	Shippers Transport/SSA	12/15/14	1/7/15	1/15/15	1/21/15	No response from EP	2/11/15
5	NAIM3133301	1/15/15	\$0.00	Shippers Transport/SSA	12/23/14	1/5/15	1/15/15	1/21/15	No response from EP	2/11/15
6	NAIM3134672	1/16/15	\$0.00	Shippers Transport/SSA	12/18/14	1/6/15	1/16/15	1/21/15	No response from EP	2/11/15
7	NAIM3134676	1/16/15	\$0.00	Shippers Transport/SSA	12/18/15	1/8/15	1/16/15	1/21/15	No response from EP	2/11/15
8	NAIM3137033	1/20/15	\$0.00	APM/SSA	12/10/14	1/12/15	1/20/15	1/21/15	No response from EP	2/11/15

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier indicates that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. Under these situations, delays cannot be avoided by Motor Carriers and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. In addition, the Motor Carrier also argued that the California State regulation SB45 prohibited an Equipment Provider from imposing per diem charges during work stoppages and congested conditions.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider did not submit comments or supporting documentation relating to this arbitration claim.

DISCUSSION

The Motor Carrier submitted as part of its supporting documentation a JOC article that referenced specific equipment providers reinstating port congestion surcharges due to the port congestion. The date of the JOC article was prior to the dates associated with the interchange period for the disputed invoices, with the exception of invoice 1 that shows the unit was out-gated on 10/27/14 and in-gated on 12/9/14. The Motor Carrier provided additional e-mail communications to the Equipment Provider indicating that it was unable to return equipment to the TTI facility since they were only accepting dual transactions. These communications however were all prior to the interchange dates associated with the disputed charges. The only exception was an e-mail transmission from TTI, dated November 14th specifically stating that it was only accepting dual transactions.

As precedent in regards to identifying a situation as falling under the Force Majeure provision of the UIIA, the IIEC has previously indicated that in situations when the facility is open, the applicability of force majeure would need to be determined by each Equipment Provider on a case by case basis dependent upon the conditions that existed at a specific facility, on a specific date and time, and if these conditions prevented the pick-up and/or re-delivery of equipment.

The Motor Carrier also indicated that the Equipment Provider was not in compliance with the California State regulation SB45, which prohibits intermodal marine Equipment Providers from imposing per diem, detention and demurrage charges under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION

The panel reviewed all documents and evidence submitted by the parties. The panel members stated that in previous case precedent it has been established that the Motor Carrier must provide evidence that it was precluded from interchanging equipment based on the force majeure conditions that existed in order to meet the requirements for invoking relief available in Section G.12, Force Majeure of the UIIA. Force Majeure as defined in provision G.12 of the UIIA requires conditions to exist that prevent the Motor Carrier from interchanging equipment. Provision G.12 states: "In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in the Provider's Addendum." SB45 clearly states that in order to qualify for relief, the planned or unplanned action (i.e. Labor disruption) would need to close the truck gate, or that the intermodal marine terminal turns away the Motor Carrier due to congestion. Both provision G.12 of the UIIA and SB45 contemplate the inability to interchange equipment.

In this case, the Motor Carrier failed to present substantial evidence that demonstrated it was subjected to force majeure conditions of severe congestion which prevented the interchange of equipment on the dates of the disputed invoices. Consequently, the panel finds in favor of the EP. However, the two modal panel members were unable to reach a consensus on whether a partial adjustment should be made to Invoice NAIM3120369 since the Motor Carrier had presented an e-mail transmission that stated that the facility was only accepting dual transactions on the date of November 14, 2014. The third panel member was brought in under Exhibit D of the UIIA to render the final decision in regards to only this one invoice.

The third panel member found that the Equipment Provider should adjust invoice NAIM3120369 by one day of per diem charge for the date of November 14th on the grounds that the Motor Carrier was UNABLE to return the equipment due to actions taken by TTI requiring only dual transaction on this date. The email from "TTI Admin" clearly stated that "ALL DRIVERS ARRIVING TO TTI WITH AN EMPTY IN ONLY WILL BE TURNED AROUND." The third panel found that the Motor Carrier had provided sufficient proof and as such should be granted relief under the provisions of G.12 of the UIIA for the date of 11/14/14.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material. **[Revised 08/26/13]**

12. Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider’s Addendum, or Provider’s applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier’s control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

EXHIBIT D TO THE UIIA

3. A three-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IANA member from each mode, i.e. a Motor Carrier, Water Carrier and Railroad. However, the decision will be rendered by the two arbitrators representing the modes involved in the disputed invoice(s). The third appointed arbitrator from the mode not involved in the transaction will act as an alternate, and will render a decision only in the event the arbitrators from the involved modes cannot agree on a resolution of the dispute.

DECISION: The panel unanimously finds in favor of the Equipment Provider with the exception of the adjustment to Invoice NAIM3120369. In regards to the adjustment to this invoice, the majority of the panel finds that an adjustment should be applied to invoice NAIM3120369 based on the reason below.

Invoice #	Inv. Date	Amount	Ingate Facility	Adjusted Date	Adjustment	Reason	<u>NEW</u> Amount Owed
NAIM3120369	1/5/15	\$0.00	TTI/TTI	11/14/14	\$0.00	The panel finds that the Motor Carrier provided sufficient proof and as such should be granted relief under the provisions of G.12 of the UIIA.	\$0.00

CASE REVIEWED AND DECIDED BY

GERRY BISAILLON
Rail Carrier Member

ROBERT A. CURRY
Motor Carrier Member

DAVID DALY
Ocean Carrier Member