

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)	
)	
UIIA Motor Carrier)	Case Number: 20130423-2-XXXG-MR-OTH
Appellant, and)	
)	
UIIA Equipment Provider)	Date of Decision: August 16, 2013
Respondent)	

UNDISPUTED FACTS: The Motor Carrier (MC) invoiced the Equipment Provider (EP) for repairs that were done to the unit while in the MC’s possession. Invoice 3717 was dated 04/18/2013 in the amount of \$00.00 for 2 torque arms, the labor to replace 2 torque arms, and tax.

The out-gate EIR dated 04/17/2013 and the in-gate EIR dated 04/23/2013 indicated no damage. A Driver/Vehicle Examination Report was provided dated 04/18/2013 noting the following: “Unsafe condition of vehicle immediate hazard--392.2...X-5 R/S Torque Arm Cut in Half.... X-5 L/S Adjustable Torque Arm Bent...O/S.”

ISSUE: The EP disputed the invoice stating that the damage should have been caught during the out-gate pre-trip inspection, before leaving the facility.

The MC declines the EP’s dispute for the following reasons:

- The torque arms are not items that the MC is required to check prior to the use of the equipment.
- The repairs were approved by the EP prior to the repairs being done.

The MC bases its argument upon Section D.3.a(1) and Exhibit A of the UIIA.

DISCUSSION: The panel notes that the torque arm is not among the 17 items required to be inspected in a pre-trip walk-around inspection under Section D.3.a(1) and Exhibit A of the UIIA. The panel also notes that the EP authorized the MC to seek repair of the equipment by an outside vendor and the MC’s submission of the invoice to the EP. Based on these facts, the panel decides that the EP was responsible for the cost of the repair of the torque bar.

UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:

D. Equipment Interchange
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]**

Exhibit A of the UIIA- Attached

DECISION: The panel finds in favor of the MC.

CASE REVIEWED AND DECIDED BY:

JEFFREY LANG
Motor Carrier Member

DAVE DALY
Ocean Carrier Member

Exhibit A to UIIA

As referenced in Sections D.3.a.1 and F.4.b.

(Added to UIIA 1/17/08)

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

1. Chassis Twist Locks and Safety Latches – (Check that twist locks and safety latches are engaged and properly secured.)
2. Slider Pins – (Check that slider pins are engaged for all sliding chassis.)
3. Bolsters (Check that bolsters are not bent and the container can be secured properly.)
4. Landing Legs (Check that Landing legs are in 90 degree position and they move up and down properly.)
5. Sand Shoes (Check that sand shoes or dolly wheels are attached to landing legs and secure.)
6. Crank Handles (Check that handle is attached, secure and operable to move landing legs up and down.)
7. Mud Flaps – (Check that mud flaps are whole and properly secured.)
8. Tires (Check that the following conditions are **not** present.)
 - a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
 - b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
 - c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
 - d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.
9. Rims (Check that rims are not cracked and/or bent.)
10. Rear Underride Guard (“ICC Bumper”) (Check that Guard is in place and not bent under the frame.)
11. Electrical Wiring/Lights – (Check that lights are in working order.)
12. Reflectors/Conspicuity Treatments (Check for reflector lenses and presence of conspicuity tape or bar on the 3 visual sides of the chassis.)
13. Brake Lines, Including Air Hoses and Glad Hands – (Check for audible air leaks and proper pressurization only.)
14. Current License Plate (Check to see that it is affixed to equipment.)
15. Proper Display of Hazardous Cargo Placards, In Accordance with Shipping Papers
16. Display of Current Non-expired Federal Placards or Stickers (Check to see that it is affixed to equipment.)

The foregoing list does not include latent defects unless caused by or resulting from the negligent or intentional acts or omissions of the Motor Carrier, its agents, employees, vendors or subcontractors during the Interchange Period. The foregoing list is without limitation of any federal or state legal requirements applicable to Motor Carrier with respect to use or operation of Equipment. **[Revised 1/17/05]**

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between)
)
)
UIIA Motor Carrier) Case Number: **20150519-5-XXE-MR-OTH**
Appellant, and)
)
UIIA Equipment Provider,) Date of Decision: 09/01/2015
Respondent)

The motor carrier disputes the following invoice:

Invoice #	Inv. Date	Amount	Facility Outgate/ Ingate	Outgated	Ingated
3JD5870	04/27/15	\$00.00	CSX S. Kearny/CSX S. Kearny	03/11/15	03/13/15

MOTOR CARRIER’S BASIS OF DISPUTE:

The Motor Carrier’s basis of dispute is that the Equipment Provider is billing for pre-existing damage that could have occurred on the Equipment Provider’s facility during the scope of chaining or stacking bare chassis for movement. The Motor Carrier states that the images that were provided show rust marks in that area as if the axle had been chained up, which would indicate pre-existing damage. The Motor Carrier believes that Exhibit A of the UIIA sets forth the items that are the Motor Carrier’s responsibility to visually and audibly check prior to the use of the equipment, but has no mention of checking between the frame rails to inspect the inside of the frame for issues. The Motor Carrier is aware that no damage was noted when the equipment was out-gated. However, the issue could not have been seen unless the driver went underneath the unit during its pre-trip inspection, something that they are not allowed to do at time of interchange. The Motor Carrier believes that the pictures show that the unit had been in this condition for some time, more than during its interchange period. The Motor Carrier noted that it returned the unit in the same condition it was received in accordance with Section D.3.d. The Motor Carrier is basing its dispute on Section D.3.d. & Exhibit A of the UIIA.

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

The Equipment Provider believes the invoice is valid as billed. The outbound Motor Carrier was rebilled the cost for a damaged sub-frame assembly, which is supported by Sections D.2.a., D.3.a.(1), D.3.d. and E.3.a.(1) of the UIIA. The Motor Carrier had the opportunity to fully inspect the unit for damage prior to departing the terminal. Further, no damage was reported at the time of out-gate.

The Motor Carrier states that the damage occurred as a result of chaining or stacking of the chassis on the terminal. This is an assumption by the Motor Carrier with no evidence to support. The chassis sub-frame had “accordion” damage, which is indicative of the slider assembly being adjusted in an abrupt manner against the frame stops. Sliders are adjusted by drivers only. Neither EP nor vendor personnel adjust slider assemblies on our terminals. Damage of this type cannot happen during a stacking or unstacking event or normal terminal operations.

DISCUSSION:

The Motor Carrier’s position is that it is not responsible for the following reasons: 1) the damage was pre-existing; and 2) the damage was not visible and could have not been inspected during the pre-trip inspection as prescribed under Exhibit A of the UIIA. As a result, the Motor Carrier was not able to report the damage at the time of out-gate.

The Equipment Provider states that if the damage was pre-existing the Motor Carrier had the opportunity to report the damage and have it noted on the EIR at the time of out-gate. Since the unit out-gated with no damage noted and in-gated with the sub-frame damage, the Motor Carrier is responsible for the invoice as billed.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The panel has reached a split decision in this case. Under provision D.3.a of the UIIA, the Equipment Provider must meet its obligation to provide the Motor Carrier with an equipment that complies with the federal motor carrier safety regulations. The images provided show evidence of dirt/dust, flaking paint, and rust buildup and thereby demonstrate that the damage pre-existed prior to out-gate. However, the panel also finds that the Motor Carrier failed its obligations under D.3.a 1) and D.2.a of the UIIA. At the time of out-gate the Motor Carrier's driver had the obligation to do a pre-trip inspection and report and record the damage before out-gating the equipment. Consequently, the panel finds that both parties are at fault and assigns 50% of the invoice to the Motor Carrier and has the Equipment Provider waive the remaining 50% of invoice no. 3JD5870.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (January 26, 2015) to make its decision:

D. Equipment Interchange....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]**

DECISION: The panel unanimously finds as follows:

Invoice #	Amount	MC Owed Amount	EP Waived Amount
3JD5870	\$00.00	\$00.00	\$00.00

CASE REVIEWED AND DECIDED BY:

JEFF 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: **20170804-8-XXXP-MR-OTH D8**

Date of Decision: 08/22/17

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv. #	Invoice	Inv. Date	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	8300042036	7/5/17	Detroit Intermodal Terminal/CPG Detroit	5/2/17	5/2/17	7/25/17	7/25/17	7/26/17

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is D.3.d.(3) and Exhibits A and C of the UIIA. The Motor Carrier is being billed for damage to container floor. The Motor Carrier indicates that container was outgated as a sealed load with no damage noted on the outbound TIR. The Motor Carrier noted that because this was a sealed load there was no way for them to inspect the condition of the floor at the time of interchange when unit was outgated. In addition, the Motor Carrier argues that Exhibit A of the UIIA, which lists the items that the Motor Carrier is to visually or audibly check prior to accepting equipment for interchange does not identify the condition of the container floor and/or cross members as items that the Motor Carrier is responsible for checking. Exhibit C of the UIIA that identifies items that the Motor Carrier is responsible for during the interchange period also does not mention the container floor. The Motor Carrier references prior DRP case decisions where charges related to damage to the floor of a sealed container were found in favor of the Motor Carrier since there is no way for the Motor Carrier to inspect the inside of the container at the time of outgate interchange. Consequently, the Motor Carrier believes this condition is a result of wear and tear and not their responsibility.

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

The Equipment Provider did not provide any additional comments that disputed that the prior binding arbitration case decision involving this similar issue was not applicable to this claim. The Equipment Provider did respond to the Motor Carrier’s initial dispute of the charges stating that Exhibit B of the UIIA states that repairs made to any item on this list that are result of damage and not wear and tear are the responsibility of the Motor Carrier. Floor and decking are shown as an item in Exhibit B. Therefore, the Equipment Provider denied the Motor Carrier’s initial dispute of the charges and indicated invoice was valid.

DISCUSSION:

IANA staff reviewed all documents and evidence submitted by the Moving Party and it was determined that this issue had already been addressed and resolved in a prior arbitration decision that was rendered by the arbitration panel on case 20150414-4-XXXC-MR-OTH. Therefore, in accordance with Exhibit D, Item 8. of the UIIA, if it is determined that the submitted claim has already been addressed and resolved in a prior arbitration decision, then both the Moving and Responding Parties will be provided with the precedent set forth in the former decision and advised that this decision will apply to the submitted claim.

Therefore, both the Moving and Responding Parties were provided with the prior case decision and were advised that the decision applied to the current claim submitted by the Moving Party. Both parties were provided 10 days to submit additional information as to why the precedent decision did not apply to this claim or was in conflict with the Agreement. No additional comments were received within the 10-day period so the prior case decision is applied to this case and found in favor of the Moving Party.

At the time of outgate, the container was sealed so the Motor Carrier had no opportunity to inspect the container floor. Consequently, there is no supporting evidence that confirms that the Motor Carrier is responsible for the damages as required under Section E.3.a.(1) of the UIIA. In addition, Section D.3.d, states that the Motor Carrier is responsible to return the equipment to the Equipment Provider in the same condition reasonable wear and tear excepted. Since the Motor Carrier had no opportunity to inspect the floor of the sealed container then there is no evidence to support that the condition billed was not associated with normal and wear and tear versus damage.

DECISION:

UIIA PROVISIONS PRIOR AND CURRENT CASE DECISIONS BASED ON:

- D. Equipment Interchange.....3. Equipment Condition
 - d. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.

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]**