

**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: **20200217-6-XXXG-PD**

Date of Decision: 05/19/2020

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	2118143444	HLXU8006732	2/10/20	Ports Amer. New Orleans /Ports Amer. New Orleans	11/25/19	1/17/20	2/10/20	2/10/20	2/11/20	2/17/20

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section E.6 of the UIIA. The Motor Carrier disputed the invoice stating that the unit was out for an extended period of time due to issues with the TRAC chassis that the unit was pulled out on. The chassis had significant maintenance issues that were unable to be repaired on the roadside. The Motor Carrier stated that the customer had to unload this unit so that it could be towed to a facility for all of the repairs to be made. Once the repairs were made, TRAC advised the Motor Carrier that the unit could not be used to pull a loaded container until it was brought back to the port for the repairs to be inspected. The Motor Carrier feels that it is for this reason that the unit was out for such a long period of time and was returned empty. The Motor Carrier believes that they should not be held responsible for the per diem invoice due to the TRAC chassis issues.

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

The Equipment Provider responded to the claim stating that the per diem could not be waived as it was not due to the Equipment Provider's error. The Equipment Provider indicated that the shipment was a merchant haulage move, and as such, the Motor Carrier would have to contact the chassis provider if the detention was incurred due to a damaged chassis. Therefore, the Equipment Provider feels that the invoice is valid and should stand.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Equipment Provider. The Ocean Carrier panel member noted that pursuant to Section D.3.b of the UIIA Motor Carriers will conduct a pretrip inspection prior to departing with the interchanged equipment that will include those items set forth in Exhibit A to the Agreement. The following list sets forth those items contained in Exhibit A to the UIIA, which the Motor Carrier has responsibility for visually or audibly checking prior to use of the Equipment:

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.

The evidence presented in the case confirmed that four (4) tires needed to be replaced. It is the Motor Carriers responsibility to visually check the condition of the equipment prior to delivery. The delay in returning the container was of no fault of the Equipment Provider.

Based on the evidence presented in the case, the Motor Carrier panel member agreed with the finding in favor of the Equipment Provider. The Motor Carrier panel member noted that it did not believe this was a case of misuse of the chassis by the Motor Carrier, but rather the repair vendor taking an extended amount of time to repair the chassis. However, the Motor Carrier had the ability on Merchant Haulage to select or utilize their own chassis for the movement and was not required to use a specific chassis provider's equipment. Unfortunately, the chassis provider selected was not a signatory to the UIIA, but the Equipment Provider of the container is a UIIA participant and their per diem charges are spelled out within their UIIA addendum. Consequently, the billing was done in accordance with the terms set forth in the Equipment Provider's UIIA addendum so therefore the Motor Carrier would be responsible for the charges billed.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (July 1, 2019) to make its decision:

D. Equipment Interchange

3. Equipment Condition
 - b. 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. **[Item Re-numbered 10/01/18]**

E. Equipment Use

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges
 - a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges, as set forth in its Addendum. **[Revised 01/17/12]**
 - b. Motor Carrier shall be responsible for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges set forth in the Addenda. **[Revised 01/17/12]**
 - c. Provider shall invoice Motor Carrier for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges within sixty (60) days from the date on which Equipment was returned to Provider by Motor Carrier. If Motor Carrier is not invoiced within the established timeframe, the right of the Provider to recover such charges will be lost. **[Revised 01/17/12]**

Should Provider invoice the incorrect party, Provider may invoice the interchanging Motor Carrier within thirty (30) days from the date the incorrect party disputes the charges with Provider or within the original sixty (60) day deadline, whichever is later. The preceding sentence only applies as long as the Provider issues such invoice to the interchanging Motor Carrier within ninety (90) days from the date on which Equipment was returned. **[Added 01/01/17]**

Exhibit A to UIIA Motor Carrier Pre-Trip Inspection As referenced in Sections D.3.b. and F.4.b. **(Added to UIIA 1/17/08, Last Revised 05/22/19)**

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 - 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.

Equipment Providers Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement

4. USE CHARGES; SPECIAL APPLICATIONS

4.1 Motor Carrier shall pay Provider Use Charges on the Equipment as set forth in Schedule "A", which is annexed hereto and made a part hereof, for each day elapsed from the date of Interchange of each unit of Equipment until the date of return of each unit of Equipment unless otherwise expressly agreed to by Provider in writing.

4.2 When Equipment is damaged and reported to the Provider pursuant to paragraph 2 of this Agreement, Use Charges will cease from the date of notification requesting authorization to repair damages exceeding \$00.00 until repairs are authorized or instructions given as to disposition by Provider.

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

CASE REVIEWED AND DECIDED BY:

JAMES MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member