

**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: **20160324-1-XXXQ-PD**

Date of Decision: 07/25/2016

**THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:**

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	UASCCQGPD49270	03/10/16	PCT/West Basin Container Terminal (WBCT)	11/9/15	2/26/16	03/10/16	03/10/16	03/21/16

**MOTOR CARRIER'S BASIS OF DISPUTE:**

The Motor Carrier's basis of dispute is Section E.6.d of the UIIA. The Motor Carrier stated that the first invoice received indicated the charges were based on the Equipment Provider declaring the container as "stolen". The Motor Carrier disputed the stolen container invoice by providing the Equipment Provider with the ingate EIR and stating that the container was already ingated and back in their possession. However, a week later on March 2, 2016, the Equipment Provider informed the Motor Carrier that they had located the container and voided the original invoice. On March 10, 2016, the Equipment Provider issued a per diem invoice in the amount of \$00.00 for the same container. The Motor Carrier believes that there was a miscommunication between the driver and the facility operator claiming that the Steamship line code was "PAS" instead of "UAS"; however, when the Motor Carrier contacted the West Basin Container Terminal ("WBCT"), WBCT stated "if the container is UAS and the driver by mistake says PAS, the system should reject the cross input, given that the line has updated their lease list in their system." The Equipment Provider requested that the Motor Carrier remit payment of 50% of the per diem invoice because the Equipment Provider insists it was the mistake of the Motor Carrier's driver stating the wrong shipping line when the unit was returned. The Motor Carrier believes this was an in-house mistake

by the facility/Equipment Provider and does not believe they should be responsible for the unreasonable per diem invoice issued by the Equipment Provider.

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

The Equipment Provider submitted comments stating that the container was entered into the facility under another steamship line's inventory, not under UAS's inventory. The Equipment Provider believes the EIR that was provided to the Motor Carrier at ingate should have prompted the Motor Carrier to correct it in a timely manner. The Equipment Provider feels that the miscommunication was on the driver's part, but offered to adjust the invoice by 50%, \$00.00.

**DISCUSSION:**

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Motor Carrier panel member stated that the failure to accurately apply the UAS code to this particular interchange appears to have resulted from the fact that the Equipment Provider had not updated their lease list with WBCT. In addition, there is no evidence to suggest or prove that the driver gave the wrong Provider information to WBCT, and it is highly likely that the last lease list in the WBCT system that contained this particular container number was provided by PAS. The Motor Carrier panel member stated that the failure of the Equipment Provider to update their fleet file with WBCT (acknowledged by the Equipment Provider in a March 21, 2016 email) caused the wrong Provider to be listed on the ingate interchange. The Motor Carrier panel member notes that a Motor Carrier has no obligation under Section E.1 to protect an Equipment Provider from its own error, nor pay an Equipment Provider for an error that it did not commit.

The Ocean Carrier panel member agreed with the Motor Carrier panel member's decision, but asked for confirmation that WBCT was a valid return location for that Equipment Provider. The Equipment Provider confirmed that WBCT was a valid return location. The Ocean Carrier panel member stated that the receipt of equipment for the incorrect Equipment Provider is the responsibility of the facility operator who is contracted by the Equipment Provider, not the Motor Carrier. As such, allocating any portion of the per diem to the Motor Carrier would be inappropriate.

**DECISION:**

**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:**

E. Equipment Use

1. Equipment Return

- b. Motor Carrier shall return the Equipment to the physical location at which the Equipment was received unless the Provider directs the Equipment to be returned to a satellite location(s): 1) as governed by a written bilateral equipment interchange agreement between the Parties or 2) as specified in a notification from the Provider to Motor Carrier via internet posting or e-mail to return the Equipment to a Provider-designated satellite location, listed in IANA's Equipment Return Location Directory (ERLD). Satellite location(s) are facilities which are within the same local commercial territory and support operations of the Provider for the location from which the Equipment was originally received. Whenever a return location is changed, Provider must notify the Motor Carrier by e-mail by 16:00 p.m. local time the business day prior to the change becoming effective. Motor Carrier must furnish the Provider with e-mail addresses to be used for Motor Carrier notification when return locations are changed. [Revised 02/08/16]

E. Equipment Use

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges

- d. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.

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

**CASE REVIEWED AND DECIDED BY:**

**FRED HUENNEKENS**

Motor Carrier Member

**ROBERT CANNIZZARO**

Ocean 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: **20160829-1-XXXP-PD**

Date of Decision: 03/9/17

**THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:**

Inv.	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	PD00144346	CCLU4786775	08/19/16	OICT-SSA Oakland/Container Traders	1/20/16	1/21/16	8/19/16	8/19/16	8/24/16	8/29/16

**MOTOR CARRIER'S BASIS OF DISPUTE:**

The Motor Carrier's basis of dispute are Sections E.1, E.2.a., E.6.c and E.6.d of the UIIA. The Motor Carrier reports that it pulled the unit from OICT (SSA) on January 20, 2016. When they returned the unit the next day (January 21, 2016), the unit was rejected and the Port advised the Motor Carrier to contact the Equipment Provider for instructions. The Motor Carrier stated their dispatch office contacted the Equipment Provider's Equipment Team at the number provided by the port and was instructed to return the container to 2405 West 14th Street in Oakland, California under release number P184938. The Motor Carrier complied with these instructions, returned the unit to the other location, and obtained an interchange showing matching container and release number.

The Motor Carrier stated that on June 13, 2016, they were asked by the Equipment Provider to provide an update on the container and to send a copy of the interchange if it was returned. The Motor Carrier provided the Equipment Provider with a copy of the ingate. On August 15, 2016, the Motor Carrier received an invoice from the Equipment Provider showing the container value of \$00.00. On August 19th 2016, the Motor Carrier received another invoice from the Equipment Provider showing per diem charges from January 20, 2016 thru August 10, 2016 in the amount of \$00.00. On August 22, 2016, the ingating facility confirmed that the unit was mistakenly listed as a sales container and the container was sold. However, Cube/TCT (the alternate return location) did confirm that they would pay the invoice for the cost of the container of \$00.00. As for the per diem invoice, the Motor Carrier feels that they should not be held liable for the per diem invoice since they complied with the instructions that were provided by the Equipment Provider in regards to the return of the equipment.

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

The Equipment Provider responded to the claim stating that the container should have been ingated at the same location it was originally picked up, which was (OICT (SSA)) and that TCT (The Container Traders) is not a depot used by the Equipment Provider. The Equipment Provider provided an e-mail communication from the OICT (SSA) facility confirming that their records showed that there were never any "no return" constraints on this container during the interchange dates associated with this claim. In addition, the Equipment Provider also stated that it confirmed that the release number P184938 was not associated with the CCLU4786775 container related to this dispute. This release number was related to unit CCLU2746006, which was redelivered on January 22, 2016. Therefore, the Equipment Provider feels that the Motor Carrier is responsible for the per diem invoice since the container should have been returned to the original point of interchange.

## **DECISION:**

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier noting that the Motor Carrier returned the unit to a location directed by the Equipment Provider and has interchange documentation to substantiate the return. The Motor Carrier panel member commented that the Motor Carrier should not be held responsible for whatever confusion occurred between Cube/TCT and the Equipment Provider. The Motor Carrier panel member does not believe the Equipment Provider provided evidence to refute the Motor Carrier's claim.

The Ocean Carrier panel member finds in favor of the Equipment Provider. The Ocean Carrier panel member believes the facts show the Equipment Provider had a return location of OICT that indicated there was no restriction on return. The Ocean Carrier panel member states that the Motor Carrier provided no evidence that they were turned away from the return location. In addition, the release number provided by the Motor Carrier is not for the container in question and there is no written correspondence between the Equipment Provider and the Motor Carrier regarding this transaction. Follow-up by the Equipment Provider in June ultimately revealed that the Motor Carrier took the container to a different location than expected and was ultimately sold.

Because the modal members could not reach a consensus, the third panel member was brought in to render the final decision pursuant to Exhibit D 3. Of the UIIA.

The Rail panel member also finds in favor of the Equipment Provider. The Rail panel member observed the following:

1. The Motor Carrier stated they attempted to return the unit to the original location of pick-up and that the terminal (OICT) turned them away at the gate stating that the container could not be returned there; however, no documentation was provided by the Motor Carrier or OICT that confirms this rejection.
2. The Motor Carrier stated that they called the Equipment Provider's Equipment Team for an alternate return location and was provided a release number (P184938) with instructions to take the unit to Cube/TCT where the container was ultimately sold in error; however, no written documentation was provided confirming return instructions that Motor Carrier stated it received from the Equipment Provider.

In addition, the Rail panel member commented that although she believes verbal communication may have taken place between the Equipment Provider's Equipment Department and the Motor Carrier, there is not sufficient documentation to substantiate that the Motor Carrier was provided instructions to redeliver the unit to Cube/TCT.

#### **UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:**

The panel relied upon the following provisions from the UIIA (June 13, 2016) to make its decision:

#### **E. Equipment Use**

##### **1. Equipment Return**

- a. Absent a separate bilateral equipment interchange agreement in written or electronic form between the Parties, the Motor Carrier shall use the Equipment for only the purposes for which it was interchanged, not authorize use by others, and promptly return the Equipment after its interchange purpose is complete. An Addendum to this Agreement does not constitute a separate bilateral equipment interchange agreement. **[Revised 02/08/16]**
- b. Motor Carrier shall return the Equipment to the physical location at which the Equipment was received unless the Provider directs the Equipment to be returned to a satellite location(s): 1) as governed by a written bilateral equipment interchange agreement between the Parties or 2) as specified in a notification from the Provider to Motor Carrier via internet posting or e-mail to return the Equipment to a Provider-designated satellite location, listed in IANA's Equipment Return Location Directory (ERLD). Satellite location(s) are facilities which are within the same local commercial territory and support operations of the Provider for the location from which the Equipment was originally received. Whenever a return location is changed, Provider must notify the Motor Carrier by e-mail by 16:00 p.m. local time the business day prior to the change becoming effective. Motor Carrier must furnish the Provider with e-mail addresses to be used for Motor Carrier notification when return locations are changed. **[Revised 02/08/16]**
- c. Provider may add or delete satellite locations to its listing by giving fourteen (14) days written notice to IANA. **[Added 02/08/16]**
- d. Should the notification required under subsection 1.b. above not be made one (1) business day prior to the effective date of the change, and the late notification delayed the Interchange of Equipment, then the Motor Carrier would be entitled to one (1) additional business day to return the Equipment. **[Added 02/08/16]**
- e. Nothing in Section E. shall be interpreted to preclude Motor Carrier from receiving compensation when Provider directs Equipment to be returned to a satellite location. Compensation for services rendered in these circumstances is outside the scope of this Agreement. **[Added 02/08/16]**

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges

- 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]**
- d. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.

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

**CASE REVIEWED AND DECIDED BY:**

LaVERSIA (ELLE) SPENCER  
Rail Carrier Member

AL SMERALDO  
Ocean Carrier Member

DAVE MANNING  
Motor Carrier Member