

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between	)	
	)	Case: 20090617-1-XXE-PD
UIIA Motor Carrier	)	
Appellant, and	)	DECISION
	)	July 31, 2009
UIIA Equipment Provider	)	
Respondent.	)	

**FACTS:** Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from Maher Terminals Fleet St at 09:58 on 05-19-09.

MC returned the empty container and chassis to Columbia Container on 05-26-09 at 08:58.

EP issued Invoice PD00084867 on 06-03-09 for Per Diem charges to MC for one day of per diem. The unit was interchanged for a total of 8 days. Included in this time period was 2 weekend days and 1 holiday.

EP Addendum to UIIA states the free time period is the day of interchange plus 4 working days.

EP provided a section of their service contract with their customer which established the free time period as 7 calendar days.

**BASIS OF CLAIM:** MC asserts that the unit was returned to EP within the free time allowed by the EP Addendum to the UIIA.

**DISCUSSION:** Section E.6.a. of the UIIA states, "Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose use charges, as set forth in its Addendum. The UIIA does not recognize the conflict that exists many times between the EP service contract and the EP Addendum to the UIIA. Nor does the UIIA prevent the EP from billing the shipper/consignee directly for per diem charges. The EP is restricted by the UIIA and their Addendum regarding per diem charges billed to the MC. The EP is not restricted by the UIIA and their Addendum regarding per diem charges billed to the shipper/consignee.

**DECISION:** Based on the fact that the MC returned the equipment within the free time established in the EP Addendum to the UIIA, the panel unanimously finds in favor of the MC. EP shall not be entitled to recover the per diem charges from MC. EP shall bear the cost of appeal.

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 )  
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UIIA Motor Carrier ) Case Number: **20100405-10-XXXL-PD**  
Appellant, and )  
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UIIA Equipment Provider )  
Respondent )

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**UNDISPUTED FACTS:** Equipment Provider (EP) issued two separate invoices for per diem charges to Motor Carrier (MC) on two separate moves that took place in January, 2010.

1<sup>st</sup> Invoice 010 0488148 in the amount of \$00.00, indicated that the MC outgated the unit on 01/15/2010 and ingated on 01/26/2010 showing that the free time expired on 01/25/2010.

2<sup>nd</sup> Invoice 010 0488146 in the amount of \$00.00, indicated that the MC outgated the unit on 01/05/2010 and ingated on 01/18/2010 showing that the free time expired on 01/15/2010.

**ISSUE:** The MC argues that because their customer (DHL) was allowed 10 calendar days free, by the EP, that the free time allowed should have been allowed to by the MC. MC also argues that they have disputed these charges with the EP within the required time frame, but because the EP has not responded to their dispute these invoices should be removed from their account.

**DISCUSSION:** The panel reviewed all documents and evidence submitted by the parties. Under provision E.6.a. of the UIIA (November 18, 2009) the EP permitted free time consistent with Nippon Yusen Kaisha (NYK Line) Addendum, provision 1.A.

The MC also claims that the EP failed to respond to the MC's initial dispute of these charges. The panel finds that the EP's failure to respond within the required timeframe had no bearing on this case since invoices were properly submitted.

**UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:**

The panel relied upon the following provisions from the UIIA (November 18, 2009) to make its decision:

E. Equipment Use....6. Free Days and Use Charges

- a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose use charges, as set forth in its Addendum.

**EP's ADDENDUM TO UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT (Revised June 13, 2009):**

**1. FREE TIME**

- A. **Regular Equipment:** Day of initial interchange plus five (5) working days, i.e., excluding Saturdays, Sundays, and Holidays (See Notes).

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

**Case Reviewed and Decided by:**

DAVE MANNING  
Motor Carrier

MICHAEL WILSON  
Water Carrier

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

**DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between )  
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 UIIA Motor Carrier ) Case Number: **20100528-12-XXXL-PD**  
 Appellant, and )  
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 UIIA Equipment Provider )  
 Respondent )

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**UNDISPUTED FACTS:** The Motor Carrier (MC) disputed 13 invoices it received from the Equipment Provider (EP) on April 12, 2010, for per diem charges on multiple moves that took place February/March 2010. All 13 invoices are dated April 5, 2010 and show the MC's "received date stamp" indicating its receipt April 12, 2010.

The MC filed this dispute because the EP did not respond to the Notice of Intent to Seek Binding Arbitration submitted by the motor carrier within the 15 day timeframe. Exhibit D #8 to the UIIA, the Dispute Resolution Process Guidelines provides that the "The arbitration process will be initiated by the Motor Carrier or the Equipment Provider by the filing of a Notice of Intent to Seek Arbitration with IANA..." and that "The Responding Party will have 15 days from the date the documents are sent to it by IANA to respond." The "Notice of Intent to Seek Binding Arbitration" form submitted by the motor carrier and transmitted to the EP in this matter states as follows: "IN THE ABSENCE OF A RESPONSE FROM RESPONDING PARTY, THE CASE WILL BE ARBITRATED BASED SOLELY ON THE INFORMATION PROVIDED BY THE MOVING PARTY."

**ISSUE:** Because the MC claims that it disputed the invoices within 30 days of its receipt on April 12, 2010, and that it received no response from the EP, per the UII Agreement Section E.6.d, the MC feels that these invoices should be removed from their account.

**DISCUSSION:** The panel reviewed all documents and evidence submitted by the parties. Under provision E.6.a. of the UIIA (November 18, 2009) the EP permitted free time consistent with EP's Addendum, provision 1.A.

The panel finds that the EP's failure to respond within the required timeframe under the UIIA doesn't affect the MC's liability for these invoices.

Furthermore, the panel suggests that the MC should have their customer contact the steamship line on their behalf if the free time extended to the customer is greater than the standard free time afforded in the EP's UIIA Addendum.

**UIIA PROVISIONS RELIED UPON BY DISPUTE RESOLUTION PANEL:**

The panel relied upon the following provisions from the UIIA (November 18, 2009) to make its decision:

E. Equipment Use...6. Free Days and Use Charges

a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose use charges, as set forth in its Addendum.

**EQUIPMENT PROVIDERS ADDENDUM TO UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT (Revised June 13, 2009):**

**1. FREE TIME**

A. **Regular Equipment:** Day of initial interchange plus five (5) working days, i.e., excluding Saturdays, Sundays, and Holidays (See Notes).

**Notes:**

1.a. Regular equipment includes equipment of all sizes, with or without chassis, among others, 20 and 40 foot dry containers, high-cube containers, open-top containers, flat rack containers, bare chassis, standard flatbed trailers, etc. other than refrigerated equipment, tank equipment, and other specialized container not covered elsewhere.

b. Free time shall commence at the following business day after initial interchange, and exclude Saturday, Sunday and holidays. Once free time expires, Detention/Per Diem charges shall be charged for each calendar day, including Saturday, Sunday and holidays, until equipment is returned to the custody of EP. On an intermodal move, the bill of lading issued by the ocean carrier shall determine the beginning or ending interchange point -- i.e., the beginning interchange point on an intermodal import move shall be the point at which the ocean carrier's bill of lading ends, and the ending interchange point on an intermodal export move shall be the point at which the ocean carrier's bill of lading begins.

e. With respect to any shipment for which carrier equipment is used, the Motor Carrier shall be liable for the payment of all detention charges that may be imposed with respect to the use of that equipment pursuant to this Rule.

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

**Case Reviewed and Decided by:**

ROBERT A. CURRY, JR.  
Motor Carrier

DICK SIMMON  
Water Carrier

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

**BINDING ARBITRATION PANEL REVIEW AND DECISION**

In the Dispute Between )  
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UIIA Motor Carrier ) Case Number: **20130502-1-XXXL-PD**  
Appellant, and )  
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UIIA Equipment Provider )  
Respondent ) Date of Decision: 09/16/2013

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**UNDISPUTED FACTS:** The Equipment Provider (EP) sent the Motor Carrier (MC) Invoice Number PF1302000218 001 for per diem charges totaling \$00.00. On 4/29/13 the MC learned that they were shut out by the EP for not paying the invoice.

**ISSUE:** The MC states that it only received the invoice after inquiring as to why they were shut out. The MC immediately disputed the invoice with the EP via telephone on 4/30/13. The MC was instructed to send an e-mail to the EP disputing the charge. The MC sent their dispute via e-mail on 4/30/13. In addition to not receiving the invoice in a timely manner, the MC believes that Evergreen did not provide proper notification of container availability, which resulted in unnecessary delays for the MC in picking up and returning the containers in a timely manner. The MC is basing its dispute on Section D.1.a. and E.6.c.

The EP declined the MC's dispute indicating that it was the consignee's responsibility to notify the MC and arrange to pick up the arrived containers, not the EP's responsibility so the charges will stand as invoiced.

**DISCUSSION:** The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the EP. The per diem invoice was billed in compliance with Section E.6 of the UIIA. In addition, the EP furnished documentation showing that the invoice was faxed to the correct number for the motor carrier within the billing time frame.

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

The panel relied upon the following provisions from the UIIA (November 12, 2012) to make its decision:

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]**

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

e. Motor Carrier shall respond in writing to Provider's invoices within thirty (30) days, documenting with appropriate evidence its disagreement with any of Provider's invoices it believes to be incorrect.

f. Motor Carrier will participate in good faith in Provider's established method of dispute resolution, as set forth in its Addendum.

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

**CASE REVIEWED AND DECIDED BY:**

DAVE MANNING  
Motor Carrier Member

AL SMERALDO  
Ocean Carrier Member

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

In the Dispute Between )

UIIA MC, )

UIIA EP, )

Respondent )

Case Number: **20180723-9-XXXX-PD**

Date of Decision: 11/16/2018

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

Invoice	Invoice #	Unit #	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	PF1806001759	DFSU6913952	6/19/18	NS Buffalo, NY/NS Buffalo, NY	5/25/18	6/1/18	6/19/18	7/17/18	7/17/18	7/23/18

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

The Motor Carrier's basis of dispute is Section 3.a. of the Equipment Provider's addendum to the UIIA. The Motor Carrier states that the Provider's addendum identifies that free time excludes Saturdays, Sundays and legal holidays. The Motor Carrier is disputing one day of per diem and one day of chassis use charges for a total of \$00.00 noting that Monday, May 28<sup>th</sup> was a legal holiday (Memorial Day). Based on the terms of the Provider's addendum May 28<sup>th</sup> should not have been a chargeable day. The Motor Carrier also stated that it was advised by the Equipment Provider that holidays are excluded from the free time calculation, but only when the facility is closed. However, the Motor Carrier argues that this stipulation is not stated within the Provider's addendum. Consequently, the Motor Carrier believes they are not responsible for the \$00.00 associated with unit DFSU6913952 and METZ6112876.

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

The Equipment Provider responded to the Motor Carrier's initial dispute of the charges stating that Memorial Day is not a free day since the Norfolk Southern ramp was open for business. The Equipment Provider stated that their default system does not allow them to override the application of the charge when the facility is open on a holiday. In accordance with Exhibit D of the UIIA, the Equipment Provider was provided the 15 day period to review the arbitration claim and submit their comments. The only comments received indicated that the Equipment Provider was continuing to



discuss this issue internally. In addition, the Equipment Provider noted that for rail ramps they do not grant extra free time as the ramps are open 24/7 and their tariff holiday schedule is based on the terminal/rail/depot gate.

**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 Motor Carrier was within their contractual right to exclude the legal holiday in their free time calculation as outlined in the Provider's UIIA addendum, Section 3.a. The Equipment Provider's counter argument is invalid because their addendum does not reference their tariff holiday schedule, which excludes free time when facilities are open for business during a legal holiday.

The Ocean Carrier panel member also found in favor of the Motor Carrier noting that the case is fairly straight forward: 1) the Addendum says no charges for legal holidays; and 2) Memorial Day was a legal holiday, so no charges should apply. In addition, the fact that the ramp was open is not relevant, based on the wording of the Equipment Provider's addendum.

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

The panel relied upon the following provisions from the UIIA (March 2, 2018) to make its decision:

**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]**

**EQUIPMENT PROVIDER'S ADDENDUM TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

**3. Use Charges**

The Motor Carrier shall pay to the Provider the following amounts as Use Charges: 1.) 1st Excess Period charges and 2.) 2ND Excess Period charges, on a per-diem basis, for its possession of the Equipment during the Interchange Period, as provided in the Table of Equipment Detention Charges & Free Time below:

- a). The Motor Carrier shall be allowed Free Time, inclusive of the day it receives the Equipment, during which time no Use Charges are payable by Motor Carrier to Provider. Free Time excludes Saturday, Sunday and legal Holidays but includes return day. For purposes of this Addendum, "Free Time" shall mean the period of time during the use period that the Equipment Provider allows the Motor Carrier to use such Equipment without having to pay use charges.

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

**CASE REVIEWED AND DECIDED BY:**

ROBERT LOYA  
Motor Carrier Panel Member

DENNIS MESSING  
Ocean Carrier Panel Member