

**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: **20190402-3-XXXX-PD**

Date of Decision: 09/05/2019

**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	DT0216315	TEMU0746021	3/18/19	Maher/Global	2/26/19	3/5/19	3/18/19	3/19/19	3/24/19	4/2/19

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

The Motor Carrier's basis of dispute is on Section G.12 of the UIIA. The Motor Carrier disputes the invoice stating that the facility turned their driver away on 3/1/19 when they attempted to return the equipment since it was close to 4:00 p.m. when the facility closes. Consequently, the Motor Carrier indicates they were unable to return the unit within the free time allowed. When the Motor Carrier tried to return the container on Monday, 3/4/19, all the piers were closed due to a snow storm. Therefore, the Motor Carrier feels that it was precluded from returning the equipment within the allowed free time for reasons beyond their control, so they should not be held responsible for the per diem charges.

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

The Equipment Provider responded to the claim stating that the per diem charges are valid due based on the following facts & reasons:

- Last free day (LFD) was Mar 1, 2019. Container was not returned on this date, thus per diem clocks started on Mar 2, 2019.
- Trucker claimed driver was voided out by Global Container Terminal (GCT) Bayonne on the same date due to an issue that's unrelated to Equipment Provider as an Equipment Provider (in other words, Equipment Provider did not prevent trucker from returning the equipment).
- Global Container Terminal (GCT) Bayonne was closed on Monday (Mar 4, 2019). However, March 4 was still a chargeable day as per diem clock started on Mar 2, 2019, until the date the container is returned to Equipment Provider.

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 Motor Carrier. Both panel members agreed that the terminal, acting on behalf of the Equipment Provider, did not provide valid proof as to why the Motor Carrier's driver was voided out and subsequently not granted access onto the premises to conduct his transaction. Email communication between the Equipment Provider and MTO confirmed that the driver was voided due to a safety violation. Multiple requests were sent to the Equipment Provider and the terminal (GCT) for a copy of the written statement (Safety Violation issued to the Motor Carrier) that should have been sent to the Motor Carrier via registered mail, email or confirmed fax informing the Motor Carrier the reason its driver was refused premise access in accordance with Section C.1. and C.2. of the UIIA. Based upon the information provided, the Motor Carrier had no way to know that the driver dispatched had been banned from the terminal. As for the Motor Carrier's basis relating to Section G.12. Force Majeure, because the actual facility was closed on Monday, March 4<sup>th</sup> due to a snow storm, this day should not have been included in the calculation of free time and per diem.

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

The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:

**C. Premises Access**

1. Provider and/or Facility Operator grants to Motor Carrier the right to enter upon its terminal facility for the sole purpose of completing an Interchange of Equipment.
2. Nothing in this Agreement shall preclude Provider or Facility Operator from refusing access to a Motor Carrier for good cause shown. Provider or Facility Operator shall exercise this right in good faith, providing to Motor Carrier a written statement of the reason for its action by registered mail, e-mail or confirmed facsimile no less than three (3) business days prior to the suspension. **[Revised 11/08/10]**

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

**CASE REVIEWED AND DECIDED BY:**

ROBERT LOYA  
Motor Carrier Member

DENNIS MESSING  
Ocean Carrier Member