

# UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

## BINDING ARBITRATION PANEL REVIEW AND DECISION

In the Dispute Between )  
                          )  
                          )  
UIIA Motor Carrier   ) Case Number: **20140619-3-XXC-PD**  
Appellant, and       )  
                          )  
UIIA Equipment Provider   ) Date of Decision: October 8, 2014  
Respondent            )  
                          )

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**UNDISPUTED FACTS:** The Equipment Provider (EP) sent the Motor Carrier (MC) the following two per diem invoices:

Invoice NYC9080565250X – Invoice Date: 6/2/2008 – amount \$00.00 (Moving Party disputing \$00.00 of invoice)

Invoice NYC9080775624X – Invoice Date: 8/1/2008 – amount \$00.00 (Moving Party disputing \$00.00 of invoice)

**(Note: Only Invoice NYC9080775624X is applicable to this arbitration claim. Invoice NYC908056250X is dated prior to August 1, 2008 so is not acceptable for submission under the binding arbitration process.)**

### ISSUE:

The MC submitted claim for binding arbitration against EP seeking reimbursement of above per diem charges that the MC alleges the EP billed for on weekends and holidays. The MC disputes these invoices stating that it believes billing of per diem charges on weekends and holidays is prohibited by California Business & Professions Code Section 22928 (Copy of CA Code Section 22928 attached). In addition, the MC believes that this dispute requires an interpretation of a California regulatory statute (CA Code Section 22928), which does not fall within the subject matter encompassed by the UIIA's arbitration provision.

EP contends that MC did not dispute any of the above invoices within the 30 day timeframe set forth in the EP's addendum. In addition, none of the per diem in dispute were assessed for any days that were weekends or holidays. The days billed were for a Thursday, Friday and Monday so therefore the billing did not violate CA Code Section 22928. The EP also indicates that this claim clearly falls within the UIIA arbitration provision since the arbitration panel would not be required to interpret the California statute since there is now a case precedent that was rendered by a federal district court in California that interprets the relevant provisions of this statute.

As additional background material leading up to this claim, MC filed a complaint for a class action lawsuit in the U.S. District Court, Central District of California, against the EP. The MC in the class action lawsuit seeks reimbursement of unlawful fees assessed against this class (California MCs) as well as injunctive relief under the Unfair Competition Laws, California Business & Professions Code Section 17200. This complaint was filed on April 7, 2011 and served on the EP on May 24, 2011. The EP in turn filed a petition to dismiss the class action lawsuit for lack of subject matter or in the alternative to compel arbitration of this matter under the UIIA on December 21, 2011. On October 4, 2013, stipulations regarding EP's petition to compel arbitration was filed, which on October 25, 2013 the superior court of California granted the EP's petition to compel arbitration of the matter under the UIIA.

### DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties and reached the following decision:

- Both companies were participants in the UIIA when the disputed per diem charges were originally billed and as such, agreed to be bound by the provisions of the UIIA including the binding arbitration procedure.

- Exhibit D of the UIIA sets forth the guidelines for binding arbitration. Item D.7. indicates that all claims must have been initially disputed through the standard dispute resolution process contained in the EP's addendum or absent a dispute process in the EP's addendum, the default process contained in the base Agreement. The EP's Addendum specifically requires that the MC advise the EP in writing of any disputed items on the EP's invoice within 30 days of the receipt of such invoice. There was no evidence presented in this case that validated the MC met this requirement by disputing the per diem charges within this specified timeframe. As a result, the MC lost its right to pursue a claim for relief and subsequent reimbursement of those charges now.
- The question of whether the provisions of the California Business & Professions Code Section 22928 precluded billing for per diem charges that incurred over a weekend or holiday did not come into play since the MC failed to comply with the requirements of the EP's Addendum and Exhibit D of the base UIIA Agreement, by not initially disputing the charges with the EP within the specified timeframe. In addition, the days billed by the EP were not for a weekend day or holiday.
- Although the issue of California Business & Professions Code Section 22928 did not come into play in this decision, it should be noted that because there is now a case precedent that provides an interpretation of California Business & Professions Code Section 22928, a claim involving this subject matter would be acceptable for submission under the UIIA binding arbitration process. Because of the precedent case decision rendered in case CV11-02952 DDP, which states that an EP is only precluded from assessing per diem on a weekend or holiday when the facility gate is closed, the arbitration panel would no longer be required to interpret a state statute.
- The panel finds in favor of the EP in this case based on the following provisions in the UIIA and the EP's Addendum:

- **Invoices – Dispute Resolution (effective April 18, 2008 – note EP's Addendum provided by Responding Party in claim was not the version of the addendum in effect at the time of the billing.)**

*"Motor Carrier shall advise Provider in writing of any disputed items on Provider's invoices within 30 days of the receipt of such invoice(s). Provider will undertake to reconcile such disputed items within 30 days of receipt of Motor Carrier's notice and will either provide verification for the charges as invoiced or will issue a credit to Motor Carrier's account for any amount not properly invoiced. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. In the event that charges have been verified by Provider are again rejected and disputed by the Motor Carrier for whatever reasons, Provider reserves its rights and remedies under the law to compel payment of such charges."*

- **Section H. Dispute Resolution Process (effective August 1, 2008)**

*"Dispute Resolution Process: Parties shall utilize the mandatory and binding Dispute Resolution Process, in accordance with the guidelines listed in Exhibit D, to arbitrate matters relating to per diem/use, maintenance and repair or lost/stolen equipment charges. All claims must have been disputed initially through the standard dispute resolution process under the UIIA/EP Addenda and meet the criteria outlined in Exhibit D. [Added 08/01/08]*

- **Exhibit D, Item 7. – Dispute Resolution Process Guidelines (Revised: September 1, 2009)**

*"All claims must have been disputed initially through the standard dispute resolution process under the UIIA/EP Addenda. In absence of a dispute resolution process contained in the Provider's Addendum, the default process in the UIIA will be utilized in which a Motor Carrier has 30 days from the date of an invoice for M&R or Per Diem claims to dispute the invoice to the Provider. The Provider must respond to the Motor Carrier within 30 days from the date of the notice of the dispute. The Motor Carrier will have 15 days from the date of the Provider's response to either pay the claim(s) or to seek arbitration."*

**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