

**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: **20150601-30-XXXI-PD**

Date of Decision: 02/23/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv. #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	BLAI0252650	3/30/15	\$00.00	CMAU5333307	TTI/TTI	12/12/14	1/9/15	3/30/15	4/28/15	5/18/15
2	BLAI0252647	3/30/15	\$00.00	GLDU7643123	TTI/TTI	12/3/14	1/8/15	3/30/15	4/28/15	5/18/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure) due to port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier stated that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier indicated that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts have all contributed to the congestion and are issues that were beyond the Motor Carrier's control. The Motor Carrier stated that under these conditions delays cannot be avoided and, therefore, it should not be held responsible for per diem during this timeframe. The Motor Carrier also stated that port congestion has been recognized by Equipment Providers, as a form of force majeure. Many Equipment Providers, within their FMC filed tariffs, include port congestion as an example of force majeure. The Motor Carrier argues that since the Equipment Provider can invoke the force majeure provision within its own tariff to exempt themselves from liabilities, they should not be able to levy per diem charges against Motor Carriers under these same conditions for delays in returning equipment due to congestion at the terminals.

The Motor Carrier also submitted turn time data from the Harbor Trucking Association ("HTA") that showed the impact on driver turn times during the timeframe of the port congestion. The Motor Carrier believes this evidence supports its dispute that the port congestion had a direct impact on its normal business operations in regard to being able to return equipment to the Equipment Provider within the allowable free time. The Motor Carrier also commented, in its initial dispute of the charges that it was unable to return the equipment to the TTI terminal as the facility was only accepting

dual transactions and the Motor Carrier did not have a load ready to pull from the facility at that time. The unit was finally return on January 9th when the Motor Carrier indicated that it had an empty to return in order to meet the dual transaction restriction at the TTI facility. The Motor Carriers also indicated that the terminals were over capacity and congested, which caused delays and dry runs to pull or return a container. The Motor Carrier is unable to control these types of conditions. Lastly, the Motor Carrier also referenced California State law SB45 indicating that this regulation prohibited the Equipment Provider from imposing per diem when the terminal rejected an empty and there was no other location where the empty could be terminated.

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

The Equipment Provider did not submit comments or supporting documentation relating to this arbitration claim; however, the Equipment Provider did respond to the Motor Carrier's initial dispute of the charges. The Equipment Provider stated in its initial response to the dispute that the facility was open for business during the interchange dates and there were no restrictions in place during this timeframe. Therefore, the Equipment Provider believes the charges are valid as billed.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Motor Carrier also provided turn time data from the HTA that showed the impact on driver turn times during the timeframe of the port congestion. The Motor Carrier also indicated that there were dual transaction limitations in place at TTI during the interchange period that precluded its ability to return the empty unit. In addition, the Motor Carrier does not believe the Equipment Provider complied with SB45 by assessing per diem charges since the terminal rejected the equipment and there was no alternate location provided to return the empty.

The Equipment Provider did not submit comments or documentation to the arbitration claim, but did respond to the initial dispute of charges stating the facility was open during the interchange dates and believes the charges are valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations

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 finds in favor of the Motor Carrier. The Motor panel member stated that the Motor Carrier provided documentation

proving that an empty could not be returned to TTI unless a load was picked up. The Motor panel member commented that the Motor Carrier does not control when the next load will be available at TTI and also noted that the Motor Carrier returned the empty when a load was available. The Motor panel member believes these conditions were beyond the control of the Motor Carrier.

The Ocean Carrier panel member finds in favor of the Equipment Provider. The Ocean Carrier panel member commented that the Motor Carrier did not notify the Equipment Provider at the time of interchange that they had issues regarding return of the equipment. The Ocean panel member also noted that the supporting documentation evidencing the need for dual transactions is not during the interchange period of the invoices. A request was made to both the Motor Carrier and the terminal to provide additional documentation to confirm when the dual transaction restriction was in place, but no additional evidence was provided.

Because the model 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.

Based on the evidence presented in this case, the Rail panel member commented that this is a case of "he said/she said" in that neither the Motor Carrier nor the Equipment Provider provided sufficient documentation to prove their claims. The Rail panel member states that the Motor Carrier failed to provide sufficient documentation to prove that TTI's "dual transaction" policy was in effect at the time of the attempted return, and that the Equipment Provider failed to substantiate the claims it made by failing to respond to the arbitration claim. As such, given the relatively little documentation provided by both parties, the Rail panel member finds a split decision in this case. The per diem should be evenly split between the parties. The total amount owed by the Motor Carrier to the Equipment Provider for the two invoices is \$00.00.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

11. Compliance with the Law: The Parties shall obey all applicable federal, state and local laws, rules and regulations including those pertaining to the transportation of hazardous material.
[Revised 08/26/13]

12. Force Majeure: In the event the Motor Carrier is unable to interchange Equipment to provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the per diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment.
[Revised [09/13/04]

Exhibit D, Item 9

The arbitration process will be commenced by IANA's transmittal of the Notice of Intent to Seek Arbitration and the required information and arguments to the appropriate individual in the Invoicing Party or Invoiced Party (Responding Party) organization

designated to receive such Notice and information. The Responding Party will have 15 calendar days from the date of transmittal of the arbitration documents from IANA to respond. Upon receipt of the Responding Party's documents, the complete record will be transmitted by IANA to the arbitrators. Failure of the Responding Party to respond to the claim (s) within this timeframe will result in the arbitration panel rendering its decision based solely on the supporting documentation submitted by the Moving Party, along with the terms and conditions of the UIIA and/or the Providers' Addenda. **[Revised 08/26/13]**

DECISION: The third panel member finds a split decision in this case. The per diem charges on the two invoices under dispute are to be split evenly between the involved parties. Consequently, the Motor Carrier is responsible for the adjusted amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member