

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

**BINDING ARBITRATION PANEL REVIEW AND DECISION**

In the Dispute Between	)	
	)	
UIIA Motor Carrier	)	Case Number: <b>20140619-3-XXXC-PD</b>
Appellant, and	)	
	)	
UIIA Equipment Provider	)	Date of Decision: October 8, 2014
Respondent	)	

**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

**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: **20150616-6-XXXN-PD**

Date of Decision: 02/01/2016

**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	PD00127837	2/2/15	\$0.00	DFSU7024142	WBCT/WBCT	1/12/15	1/27/15	2/3/15	2/3/15	
2	PD00127645	1/26/15	\$0.00	CCLU3329080 CCLU3374109 CCLU4627602	WBCT/WBCT WBCT/Seaside STS WBCT/WBCT	1/10/15 1/8/15 1/5/15	1/20/15 1/20/15 1/12/15	1/29/15	2/3/15	
3	PD00127444	1/19/15	\$0.00	CCLU4462781 CCLU4465190 CCLU4488240	WBCT/WBCT WBCT/WBCT WBCT/WBCT	1/2/15 12/31/14 1/2/15	1/13/15 1/12/15 1/13/15	1/22/15	2/3/15	

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

The Motor Carrier's 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 force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

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

The Equipment Provider did not submit comments to the arbitration claim. In addition, there was no evidence presented that the Equipment Provider responded to the Motor Carrier's initial dispute of the charges. The Equipment Provider did, however, provide confirmation of the terminal's normal business hours, the dates the facility was closed and if the facility provided turn away tickets, as follows:

- Monday – Thursday – 0700 – 0300
- Friday and Saturday 0700 – 1500, Sundays Closed
- Terminal closed January 8<sup>th</sup> (closed 2<sup>nd</sup> shift)

The Equipment Provider noted that the WBCT facility does not give turn away tickets to Motor Carriers.

**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 submitted several news articles related to the port congestion; however, this information was not specific to the facility associated with this claim. The Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time.

The Equipment Provider provided information relating to the business operating hours for the WBCT facility. No further comments were submitted.

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 EP within the allowable free time.

**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 stating that the Motor Carrier sent a letter to the Equipment Provider on February 3, 2015, demanding that all per diem invoices issued prior to that date be immediately suspended. The Motor Carrier panel member states the demand in the notice was very specific and applied to per diem charges on any interchanged equipment. In addition, the Equipment Provider did not respond to the demand made by the Motor Carrier within the thirty (30) day period required in Section H.1 of the UIIA and, as a result, the Equipment Provider lost its right to collect the disputed charges per Section H.4.

The Ocean Carrier panel member finds in favor of the Equipment Provider arguing that there is no record that the Equipment Provider recognized the February 3, 2015 e-mail sent by the Moving Party, as a dispute of any of the listed invoices as required by Section H.1 of the UIIA. The Ocean Carrier panel member notes that each of the containers were returned and invoiced by the date that the letter was sent, February 3, 2015, and yet the only suggestion made by the Motor Carrier to the Equipment Provider is to "suspend per diem charges on any interchanged equipment in the Port of Los Angeles and Long Beach until the PMA and the ILWU execute a new labor agreement". As these containers were already returned on

the date of the letter, they do not fall into the category of “any interchanged equipment”. Regardless of this, the Ocean Carrier panel member does not believe the letter constitutes a dispute with regard to the equipment mentioned in the invoices as required under Section H.1. of the UIIA.

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.

The Rail panel member also finds in favor of the Equipment Provider stating that it is his opinion that the Motor Carrier’s February 3, 2015, letter addressed to “To Whom It May Concern” with a blanket statement “immediately suspend per diem charges on any interchanged equipment...” did not provide sufficient information on which units were being disputed. In addition, there was no proof provided by the Motor Carrier that it was unable and/or prevented from returning the equipment due to the port congestion. Without this type of evidence being presented, the Rail panel member does not believe any relief from the per diem charges is warranted and that the per diem charges are valid as billed by the Equipment Provider.

**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**

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]**

**H. Default Dispute Resolution and Binding Arbitration Processes**

1. In absence of a dispute resolution process contained in the Provider’s Addendum that establishes timeframes for signatories to the Agreement to dispute invoices and respond to the dispute with respect to Per Diem or maintenance and repair invoices, the following default dispute resolution process will apply:

Invoiced Party shall advise Invoicing Party in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s). Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party’s notice. The Invoiced Party will have 15 days from the date of the Invoicing Party’s response to either pay the claim(s) or seek arbitration. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. **[Revised 04/14/11]**

4. Should the Invoicing Party fail to respond to the Invoiced Party's dispute of an invoice relating to Per Diem or maintenance and repair charges within the established timeframes in the Provider's Addendum, or in absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1., the Invoicing Party will lose its right to collect such charges and its ability to pursue binding arbitration under Exhibit D of the Agreement. **[Revised [4/14/11]**

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

**CASE REVIEWED AND DECIDED BY:**

TIM WILLIAMS  
Rail Carrier Member

ROBERT CANNIZZARO  
Ocean Carrier Member

FRED HUENNEKENS  
Motor Carrier Member

**CASE – 20160304-1-XXXP-PD Moving Party: MC /Responding Party: EP**

Below is a summary of the invoices being disputed under this arbitration claim:

Inv	Invoice #	Unit #	Inv. Date	Amount	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP respond ed to MC's dispute	Notice of Intent Rec'd
1	BLAI0230060	CMAU0521507	11/13/14	\$00.00	BNSF- Corwith/ CN- Harvey	10/6/14	10/21/14	11/13/14	11/17/14	11/17/14*	3/4/16

\*Note: The claim for binding arbitration was precipitated by the Equipment Provider’s original email advising the Motor Carrier that charges would be cancelled and then 14 months later notifying the Motor Carrier that the same charges were still owed. Motor Carrier again disputed charges and Equipment Provider responded on February 25, 2016 issuing a suspension notice, which resulted in Motor Carrier’s submission of claim for binding arbitration.

**MOTOR CARRIER’S BASIS OF DISPUTE:**

The Motor Carrier’s basis of dispute is Sections E.6. and H.1 of the UIIA. The Motor Carrier stated that they received an invoice on November 13, 2014. The Motor Carrier disputed the invoice on November 17, 2014. The Equipment Provider responded shortly thereafter confirming that the invoice would be cancelled and rebilled. For this reason, the Motor Carrier felt that there was no need to move forward with their dispute with EP dispute team. However, on February 3, 2016, fourteen (14) months later, the Motor Carrier received a statement from the Equipment Provider identifying that the charges it believed had been cancelled in November 2014 were still owed. The Motor Carrier made the Equipment Provider aware of this fact and that it had originally disputed the invoice because the customer never informed them of when to pick up the empty container. It was later disclosed that the Equipment Provider’s customer was using the incorrect email address for the Motor Carrier. There was no further communication from the Equipment Provider until the Motor Carrier received a shut-out notice on February 25, 2016, at which point the Motor Carrier submitted the claim for binding arbitration. For the reasons set forth above, the Motor Carrier does not believe it is liable for payment of the invoice.

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

EP responded on behalf of EP stating that it confirms the facts as stated below:



- The dispute process as outlined in the EPs tariff as well as at the bottom of the invoice in question specifically states: “Disputes must be sent to EP’s email address\_within 30 days of invoice date.”

The dispute was raised timely; however, it was raised to the EPs Customer Service Team instead of the dispute team email. The proper dispute process as stated above was not followed by the trucker. Proper review of the invoice and the circumstances surrounded by it were not followed by the Customer Service Team and is the exact reason that the disputes process was created. Dispute Team members have been properly trained to review all angles of invoice disputes in order to avoid situations like this.

The Equipment Provider stands by its claim that this invoice should remain billable as charged as the trucker eliminated their opportunity to arbitrate because the proper dispute process was not followed.

**DISCUSSION:**

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Ocean Carrier panel member stated:

- There is a clear message from EP that they intended to cancel the invoice. If the trucker had contacted the incorrect party, the person who confirmed that they were cancelling the invoice should have redirected the trucker to the correct party; and
- The Ocean Carrier panel member also agrees with the trucker’s response that empty notification was given on a Friday and it is reasonable that the trucker picked up the container on next working day, which was a Monday.

The Motor Carrier panel member agreed with the Ocean Carrier panel member decision.

**DECISION:**

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

**The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:**

- E. Equipment Use
  - 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

H. Default Dispute Resolution and Binding Arbitration Processes

- 1. In absence of a dispute resolution process contained in the Provider's Addendum that establishes timeframes for signatories to the Agreement to dispute invoices and respond to the dispute with respect to Per Diem or maintenance and repair invoices, the following default dispute resolution process will apply:

Invoiced Party shall advise Invoicing Party in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s). Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party's notice. The Invoiced Party will have 15 days from the date of the Invoicing Party's response to either pay the claim(s) or seek arbitration. Such disputes do not constitute valid grounds for withholding or delaying payments of undisputed charges as required by the Terms of this Agreement. **[Revised 04/14/11]**

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

**CASE REVIEWED AND DECIDED BY:**

THOMAS BARATTINI  
Ocean Carrier Member

JEFFREY LANG  
Motor Carrier Member