

**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: **20210721-7-XXXP-PD**

Date of Decision: 01/28/2022

**THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:**

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	UST521596	ONEU0136570	06/29/21	YTI/YTI	5/11/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	7/21/21
2	UST521595	FDCU0556469	06/29/21	YTI/ITS	5/11/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
3	UST521599	TRHU4350921	06/29/21	YTI/YTI	5/19/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	
4	UST521597	BEAU5302016	06/29/21	YTI/ITS	5/20/2021	6/25/2021	6/30/21	7/2/21	7/7/2021	
5	UST521052	BEAU5327884	06/29/21	YTI/ITS	5/20/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
6	UST521060	ONEU0331598	06/29/21	YTI/YTI	5/20/2021	6/23/2021	6/30/21	7/2/21	7/7/2021	

**MOTOR CARRIER'S DISPUTE**

The Motor Carrier's basis of dispute is Sections E.1.b., E.1.d., G.12, and H.2. of the UIIA. The Motor Carrier states that the Equipment Provider requested the Motor Carrier to return the empty equipment to Trapac. When the Motor Carrier attempted to return the empties to Trapac, the facility had empty return restrictions. The Motor Carrier contacted the Equipment Provider and was instructed to take the empty equipment to International Transportation Services (ITS). On July 2, 2021, the Motor Carrier received the per diem invoices and disputed the charges on the basis that there were empty equipment restrictions at the facility which precluded it from returning the equipment within the free time allowed under Section E.1.d. in order to avoid per diem charges.

The Motor Carrier believes that the Equipment Provider did not comply with Section E.1.b. of the UIIA by not providing a valid return location and not notifying the Motor Carrier by 4:00 p.m. (local time) the business day prior to the change in the equipment return location. In addition, the Equipment Provider did not provide the additional business day for the equipment to be returned as required under Section E.1.d. The Motor Carrier believes it attempted to work with the Equipment Provider to avoid the dispute from going to arbitration, but no response was received from the Equipment Provider which is a violation of Section H.2. Lastly, the Motor Carrier believes the Equipment Provider did not comply with Section G.12 of the UIIA. as they did not abide by California State Bill SB45 that precludes the Equipment Provider from assessing per diem charges on days when terminals are not receiving empty equipment due to a lack of appointments being made. The Motor Carrier stated that it does not control the appointment systems, and the steamship lines have the control to redirect the equipment to an appropriate facility. For the reasons above, the Motor Carrier believes they should not be held responsible for the per diem charges billed.

### **EQUIPMENT PROVIDER'S RESPONSE**

The Equipment Provider responded to the Motor Carrier's dispute indicating that the dispute was declined since they had provided the Motor Carrier with an alternate return location (ITS) the same day the Motor Carrier reported there were empty restrictions at the original return location (Trapac). The Equipment Provider believes that Sections E.1.b. & E.1.d. of the UIIA apply only if the original return location is changed and does not apply just because an alternative location is provided. Therefore, the Equipment Provider feels that Section E.1.d. of the UIIA did not require it to extend the last free day. The Equipment Provider's responses to the Motor Carrier's emails did not violate the UIIA as the responses solely provided exemptions or alternative return locations and never changed the original return location posted. In addition, the Equipment Provider does not believe this situation warrants a force majeure condition based on the language in Section G.12 in the UIIA as argued by the Motor Carrier. The Equipment Provider believes the per diem charges are valid as billed.

### **DISCUSSION**

After careful review of all the parties' arguments, documents, and evidence submitted, the panel finds in favor of the Equipment Provider. The Ocean Carrier panel member indicated that the Equipment Provider advised the Motor Carrier of all return locations before the daily cut-off time pursuant to Section E.1.b. of the UIIA. The Equipment Provider acted reasonably when notified on May 12<sup>th</sup> and May 25<sup>th</sup> that the original return location had empty restrictions on the specific date the Motor Carrier attempted to return the equipment by providing the Motor Carrier with either an exemption and/or an alternate location to return the equipment. This information was provided to the Motor Carrier the same day they had reported the empty restrictions to the Equipment Provider. Therefore, based on the Equipment Provider's response to the Motor Carrier in this situation, the Ocean Carrier panel member did not believe Section E.1.d. that offers an additional business day to return the equipment was applicable. In addition, although an alternate return location was provided to the Motor Carrier on the same day (May 12<sup>th</sup> and May 25<sup>th</sup>) the Equipment Provider was notified of the empty restrictions, the actual return of the equipment did not take place until late June.

The Motor Carrier panel member concurred with the Ocean Carrier panel member's analysis of the facts and documentation presented in the case. Finally, the panel agrees with the Equipment Provider that based on the facts presented, the situation did not warrant a force majeure condition set forth in the language of Section G.12 of the UIIA. Accordingly, based on the above, the panel finds in favor of the Equipment Provider.

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

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

### **E. Equipment Return, Item E.1.b.**

Motor Carrier shall return the Equipment to the physical location at which the Equipment was received unless the Provider directs the Equipment to be returned to a satellite location(s): 1) as governed by a written bilateral equipment interchange agreement between the Parties or 2) as specified in a notification from the Provider to Motor Carrier via internet posting or e-mail to return the Equipment to a Provider-designated satellite location, listed in IANA's Equipment Return Location Directory (ERLD). Satellite location(s) are facilities which are within the same local commercial territory and support operations of the Provider for the location from which the Equipment was originally received. Whenever a return location is changed, Provider must notify the Motor Carrier by e-mail by 16:00 p.m. local time the business day prior to the change becoming effective. Motor Carrier must furnish the Provider with e-mail addresses to be used for Motor Carrier notification when return locations are changed. **[Revised 02/08/16]**

### **E. Equipment Return, Item E.1.d.**

Should the notification required under subsection 1.b. above not be made one (1) business day prior to the effective date of the change, and the late notification delayed the Interchange of Equipment, then the Motor Carrier would be entitled to one (1) additional business day to return the Equipment. **[Added 02/08/16]**

### **G. General Terms, Item G.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, Item H.2.**

Should no resolution be reached between the Parties for charges disputed within the applicable dispute resolution process, then the Parties will have the ability to submit the disputed charges for binding arbitration in accordance with Exhibit D of the Agreement. Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute. Following the initiation of binding arbitration, the arbitration panel will determine the Party responsible for payment based on the specific facts and circumstances associated with the claim, the terms and conditions of the Agreement and the Provider's Addendum along with the supporting documentation presented by the involved Parties. **[Revised 04/23/21]**

**DECISION:**

The panel unanimously finds in favor of the Equipment Provider based on the evidence and supporting documentation presented in the case. The Motor Carrier is responsible for the disputed per diem charges under this claim based on Section E.1.b. of the UIIA.

**CASE REVIEWED AND DECIDED BY:**

JORDAN HUNT  
Motor Carrier Panel Member

TIM AMES  
Ocean Carrier Panel Member