



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

The Equipment Provider responded to the claim stating that there are two methods for outgating a unit at their rail facilities. The driver can elect to use the mobile application, or the driver can use the Self-Service Kiosk (SSK). The Equipment Provider stated that drivers can note damage prior to outgate on their own using either method with no intervention necessary from a railyard employee or representative. The unit outgated at a non-AGS facility which does not record images at outgate but provides the Motor Carrier the ability to record electronically the condition of the equipment at the time of interchange. The Equipment Provider stated in this case there was no damage noted at outgate, and the driver elected to use the SSK to outgate the unit. The Equipment Provider also stated that the unit ingated in Baltimore, MD without damage, departed the gate at Chicago 59<sup>th</sup> Street with no documented damage noted on the EIR, and returned to Bedford Park damaged in violation of Section D.3.e. of the UIIA. It is the driver's responsibility to report any damage to the unit. The Equipment Provider believes that the language at the bottom of the J1 is consistent with UIIA guidance in Section D.2.b. and stated that they only have three terminals that are equipped with outgate AGS systems (Bedford Park, Columbus, and Northwest Ohio). Therefore, the Equipment Provider feels that the invoice should stand.

## **DISCUSSION:**

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members concur that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with interchanged equipment, and pursuant to Section D.2.a, any damage observed to the equipment shall be noted on an Equipment Interchange Receipt. Damage to this unit is clearly visible. If the damage was a pre-existing condition as the Motor Carrier suggests, then it should have been detected on the pre-trip inspection and noted on the interchange receipt. The allegation that damage could not have happened while the unit was in possession of the Motor Carrier because of the timing of the cargo delivery is relatively baseless since the damage could have occurred at any point during the 14 days between when the unit was out-gated on 9/8/2020 and when it was in-gated on 9/22/2020. Given the facts presented in the case, both panel members agree that the Motor Carrier is responsible for the container damage and the repair charges of \$00.00.

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

**The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:**

### **Section D.2. Equipment Interchange Receipts, Item D.2.a.**

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

### **Section D.2. Equipment Interchange Receipts, Item D.2.b.**

Use of electronic EIRs requires that the Provider or the Facility Operator provide an electronic system whereby the Motor Carrier may describe electronically, the condition of the Equipment at the time of Interchange, without substantially burdening the Motor Carrier's use of electronic EIRs at the same Premises, and that this information be incorporated as part of the electronic EIR. **[Revised 09/16/17]**

**Section D.3. Equipment Condition, Item D.3.b.**

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A **[Item 8 Tires]** to this Agreement. **[Item Re-numbered 10/01/18]**

**Section D.3. Equipment Condition, Item D.3.e.**

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

**Section E.3. Damage to Equipment, Item E.3.a.(2)**

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

**DECISION:**

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$00.00.

**CASE REVIEWED AND DECIDED BY:**

BEN BANKS  
Motor Carrier Panel Member

MIKE PAGEL  
Rail Panel 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: **20201211-46-XXXX-MR-TR**

Date of Decision: 03/08/2021

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

Invoice	Invoice #	Equipment #	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
2	309205451	NSPZ154406	10/01/20	Global 1/Fox Run	08/05/20	08/06/20	10/01/20	10/29/20	11/26/20	12/11/20

Note: originally there were two invoices submitted by the MC on this case, but the EP canceled invoice 1.

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

The Motor Carrier is basing it's dispute on Sections D.2.a., D.3.b., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier stated that this was a UPS unit dispatched to the Motor Carrier by UPS from the UPS Cach Yard (non-AGS facility) to UP/ Global 1 (AGS facility) on 08/06/2020. Equipment Provider issued an invoice to the Motor Carrier for a right outer front (ROF) radial tire, that was listed as cut/torn. The Motor Carrier argues that because this was a UPS move, the Equipment Provider should be billing UPS directly, not the Motor Carrier, and that the Motor Carrier is simply the agent for the Equipment Provider. The Motor Carrier states that the unit originated from a UPS facility, and the Motor Carrier had no way of notating the condition of the tire prior to leaving the UPS yard. The Motor Carrier feels that they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. Therefore, the Motor Carrier believes they are not responsible for the charges based on Section D.3.e. of the UIIA.

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

The Equipment Provider responded to the Motor Carrier's claim stating that on 8/5/2020, NSPZ154406 was out-gated at Fox Run with no damage notated on the J1 interchange document. The equipment subsequently in-gated at Global 1 on 8/6/2020. Upon in-gate, there was a clear cut to the ROF tire, captured on the AGS images. The Equipment Provider's addendum to the UIIA clearly states that the in-gating carrier is responsible for

any damage found on the equipment unless it was identified as pre-existing. In this case, the Equipment Provider feels it has provided clear evidence that the ROF tire on chassis was damaged during the interchange period the Motor Carrier was in possession of the equipment and that it has followed all the requirements under the UIIA.

In addition, the Equipment Provider provided the following language as outlined in their Addendum to the UIIA:

**Equipment Provider's Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement:**

**Section 7.A, Paragraph 3**

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP's or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP's at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

**DISCUSSION:**

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, both panel members' opinion is that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with the interchanged equipment. If the tire damage was a pre-existing condition, the Motor Carrier's driver should have noticed it during the inspection and should not have pulled the equipment from the yard without properly noting the damage, as required in Section D.2.a of the UIIA. Given the apparent severity of the damage to the tire, which does not appear to be roadworthy, and thus should not have been pulled from the yard without being repaired first. Once the driver pulls the equipment from the yard, he assumes responsibility for it. If it was a pre-existing condition on the tire, and there was no opportunity to report it or repair it, the driver should not have accepted the unit. For these reasons, both panel members agree that the Motor Carrier is responsible for the tire repair charges as shown in Invoice No. 309205451 for \$00.00.

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

**The panel relied upon the following provisions from the UIIA (May 1, 2020) to make its decision:**

**Section D.2. Equipment Interchange Receipts, Item D.2.a.**

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.

**[Revised 05/12/10]**

**Section D.3. Equipment Condition, Item D.3.b.**

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A [Item 8 Tires] to this Agreement. [Item Re-numbered 10/01/18]

**Section E.3. Damage to Equipment, Item E.3.a.(2)**

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. [Revised 10/01/18]

**DECISION:**

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the repair invoice in the amount of \$00.00.

**CASE REVIEWED AND DECIDED BY:**

BEN BANKS  
Motor Carrier Panel Member

MIKE PAGEL  
Rail Panel Member