

**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: **20150803-9-XXXT-MR-OTH**

Date of Decision: 03/03/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv.	Invoice #	Container #	Inv. Date	Amount	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	3519024	CMAU8342350	6/9/2015	00.00	South FL Container Terminal (SFCT)	SFCT	SFCT	6/08/15	6/09/15	7/27/15	8/3/15
2	3519025	CMAU0323780	6/9/2015	00.00	South FL Container Terminal (SFCT)	SFCT	SFCT	6/08/15	6/09/15	7/27/15	8/3/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections D.2.a and H.1 of the UIIA. The Motor Carrier believes that the Equipment Provider is billing for pre-existing damage. The Motor Carrier stated that the ingate interchange receipts for both containers identified damage as "OLD" and noted that if their driver sees that damage is marked "OLD" on the EIR, the driver will not ask for a secondary inspection or make any notations because the damage is identified as "OLD". In addition, the Motor Carrier believes that the Equipment Provider did not respond to their dispute within the required timeframe set forth in the UIIA.

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

The Equipment Provider responded stating that they believe the invoices are valid as billed, for the following reasons:

- Outgate EIR indicated no damage;
- Ingate EIR indicated panel damage; and
- The terminal manager advises that there is no designation between old damage and new damage per terminal policy.

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 does not believe it is responsible for the charges stating that 1) the damage was pre-existing; and 2) the damage was noted on the ingate EIR as "OLD" damage. Therefore, the driver would not have asked for a secondary inspection or notated this type of damage on the outgate of the equipment. In addition, the Motor Carrier asserts that the Equipment Provider did not respond to their initial dispute of charges within the timeframe required by H.1 of the UIIA.

The Equipment Provider responded stating that if the damage was pre-existing the Motor Carrier had the opportunity to report the damage and have it noted on the EIR at the time of outgate. The Equipment Provider observed that the unit outgated with no damage noted and ingated with the panel damage. The Equipment Provider believes the charges are valid as invoiced.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon this information, the Motor Carrier panel member finds in favor of the Motor Carrier for both Invoice 1 (3519024) and Invoice 2 (3519025). The Motor Carrier panel member noted that the outgate interchange receipt for each container did not include a notation for damage. However, the ingate interchange receipt for both listed damage. The description of the damage in both cases was "Area is cut Old dmg". In addition, the Motor Carrier panel member states that it is apparent from the extent and cost of the repairs that the damage was very minor. The Motor Carrier panel member notes that the work order associated with Invoice 2 (3519025) includes a charge of \$00.00 to straighten a door locking bar and finds that the damage should have never been billed to the Motor Carrier because this damage was never noted on the ingate interchange. The Motor Carrier panel member believes that because the damage listed on the two ingate interchanges clearly describe the damage as "OLD", it would not have been questioned by the driver of the Motor Carrier as something that it would likely be charged for. No reasonable review of the documents at the time of issue would lead to the conclusion that the damage was anything other than "OLD". The Motor Carrier panel member suggested that the marine terminal operator should change whatever practice it is currently employing to identify damage so that the description is accurate and not misleading.

In addition, the Motor Carrier panel member finds that the Motor Carrier's claim that the Equipment Provider did not respond to the initial dispute of charges within the timeframe required by H.1 of the UIIA has no merit. The Motor Carrier panel member notes that the Equipment Provider has a valid dispute resolution procedure in its Addendum that establishes definitive timeframes for signatories to the UIIA to dispute invoices and respond to the dispute with respect to per diem or maintenance and repair invoices. Both parties met the requirements of this provision.

The Ocean Carrier panel member agreed with the finding of the Motor Carrier panel member as to Invoice 2 (3519025), and finds in favor of the Motor Carrier. The Ocean panel member noted that the interchange period of Invoice 2 lasted for less than 3 hours and believes that the "OLD" designation is a misrepresentation. The panel member also noted that although the locking bar repair was shown on the work order, it was not included as a charge on the invoice to the Motor Carrier. As to Invoice 1 (3519024), the Ocean

panel member finds in favor of the Equipment Provider for the full amount of the invoice. The Ocean panel member noted that the Motor Carrier was in possession of the equipment for almost a month; therefore, it is reasonable to consider that a damage earlier in the interchange period could appear as “OLD” on ingate. The Ocean Carrier panel member suggested that the Equipment Provider should instruct the marine terminal operator to cease the use of the “OLD” designation for damage on the equipment interchange receipts and that Motor Carriers should take all steps necessary to protect themselves with regard to damage noted on the equipment interchange receipt.

Because the modal members could not reach a consensus, the third panel member was brought in to render the final decision pursuant to Exhibit D3 of the UIIA.

The Rail Carrier panel member observed that both the modal panel members found in favor of the Motor Carrier for Invoice 2 (3519025). As to Invoice 1 (3519024), the Rail panel member finds in favor of the Motor Carrier. The Rail panel member believes that by the terminal notating the damage as “OLD” absolves the Motor Carrier of any damage responsibility associated with this claim. The third panel member also agreed that to avoid any ambiguity the marine terminal should cease the practice of using the “OLD” designation on the equipment interchange receipts.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 8, 2015) to make its decision:

CMA CGM (AMERICA) LLC Addendum to the UIIA – Section E. Method of Dispute Process

1. Motor Carrier has thirty (30) days from the date of an invoice for M & R or Per Diem claims to dispute the invoice to the Provider. All claims must be submitted in writing to our Dispute department at 5701 Lake Wright Drive, Norfolk, VA 23502/ fax number (703)341-1385/ email: M&R disputes to usa.matdisputes@cma-cgm.com and usadetdembilling@usa.cma-cgm.com for detention and demurrage. The Provider must respond to the Motor Carrier within sixty (60) days from the date of the notice of dispute. The Motor Carrier will have fifteen (15) days from the date of the Provider’s response to either pay the claim(s) or to seek arbitration

D. Equipment Interchange

2. Equipment Interchange Receipts

- 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]**

3. Equipment Condition

- a. Motor Carrier will return the Equipment to the Provider in the same condition, reasonable Wear and Tear excepted.
 - 1) The responsibility for the repair and/or replacement of equipment items during the Interchange Period are listed in Exhibits B and C of this Agreement. **[Revised 07/25/07]**
 - 2) Motor Carrier and Provider will not issue an invoice for repair items equal to or less than \$50 per unit per Interchange Period. Provider may, in its Addendum, adopt a different threshold amount as long as that amount is greater than \$50 and applies to both Motor Carrier and Provider. **[Revised 07/25/07]**

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 majority of the panel finds in favor of the Motor Carrier.

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT
DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between)	
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UIIA MC,)	Case Number: 20150925-1-XXXC-MR-TR
Appellant, and)	
)	
UIIA EP,)	Date of Decision: 01/13/2016
Respondent)	

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv.	Invoice #	Inv. Date	Amount	Facility	Outgated	Ingated
1	293527	5/18/2015	\$00.00	ContainerPort Group/ContainerPort Group	1/20/15	1/20/15

The invoice indicated one tire replacement showing the damage as: Cut.
 The outgate EIR shows the company name of: Central States, driver 1484, License # CA4MH6867
 The ingate EIR shows the company name of: Road Runner, driver 1484, License # CA4MH6867

MOTOR CARRIER’S BASIS OF DISPUTE:

The Motor Carrier’s initial dispute of the charges related to Section E.3.a(1) of the UIIA (Equipment Use). The Motor Carrier stated that their company was never in possession of the unit at the time of interchange. The Motor Carrier reported that although the outbound Equipment Interchange Report (“EIR”) shows Central States as the Motor Carrier, Central States does not have any record of the unit nor do they have a driver with the driver’s license number or truck number referenced. In addition, the Motor Carrier stated that both the outgate and the ingate EIRs show the same driver, driver’s license number & truck number, but list two different Motor Carrier company names. The Motor Carrier feels that the Equipment Provider billed the wrong Motor Carrier and, therefore, should not be held responsible for the invoice.

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

Chicago-Ohio Valley Consolidated Chassis Pool responded on behalf of the Equipment Provider stating that the Motor Carrier did not comply with the timeframe to file a claim under the binding arbitration process as set forth in Section H.1. and Exhibit D of the UIIA. The Equipment Provider stated that they responded to the Motor Carrier’s initial dispute of the charges on May 26, 2015, and that the Motor Carrier did not follow-up until

August 31, 2015. The Equipment Provider believes that the Motor Carrier failed to meet the arbitration guidelines to seek arbitration within fifteen (15) days from the invoicing party's response to their dispute. Therefore, the Equipment Provider believes that the charges billed are valid.

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds that Section H.1 of the UIIA was not followed by the Motor Carrier. The panel noted that while the Motor Carrier disputed the charges within the required thirty (30) day deadline, the Motor Carrier failed to file an arbitration claim within the fifteen (15) day timeframe set forth in Section H.1 of the UIIA. For this reason, the panel unanimously 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 (October 01, 2014) to make its decision:

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 Equipment Provider.

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

Robert A. Curry
Motor Carrier Member