

**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: **20180409-8-XXXF-MR-OTH**

Date of Decision: 08/28/2018

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

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	8045	MEDU462871-8	03/14/18	PNCT/C & C Marsh Depot	10/25/17	10/27/17	3/14/18	3/27/18	3/27/18	4/9/18

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section E.3.a. (1) of the UIIA. The Motor Carrier identifies the following reasons for its dispute:

- The backup documentation provided by the Equipment Provider is only a repair estimate. There was no documentation provided by the Equipment Provider to evidence that the repairs were actually performed.
- The repair estimate lists multiple items that are not notated on the ingate EIR.
- The Motor Carrier believes that it could not have caused the type of damage that the Equipment Provider is billing for.
- The Motor Carrier stated that the container was in this condition when it was picked up from PNCT on 10/25/17 and was in their possession for two days. The Motor Carrier feels that the Equipment Provider has not provided sufficient documentation to prove the damage being billed was done while equipment was in its possession. Consequently, the Motor Carrier does not believe they are responsible for the invoice.

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

The Equipment Provider did not respond to the arbitration claim. The Equipment Provider did respond to the Motor Carrier's initial dispute stating that the damage would have been clearly visible to the driver when picking up the load from PNCT. The Motor Carrier's drivers are responsible to visually inspect equipment prior to accepting it for interchange and to ensure that any damages are recorded on the outgate EIR. The Equipment Provider also stated that in this particular case the driver left with a clean EIR, which it believes points to the damage occurring during the Motor Carrier's

possession of the equipment. Therefore, the Equipment Provider feels that based on the documentation available this container left PNCT in good order so the Motor Carrier is responsible for the damage identified on the ingate interchange.

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 found in favor of the Motor Carrier due to lack of documentation from the Equipment Provider to substantiate the repairs and further stating there was no proof supplied that the damage was done prior to the outgate other than the unsubstantiated claim that it was done while being loaded or unloaded from the vessel. The Ocean Carrier panel member found in favor of the Equipment Provider citing Section D.2.a of the UIIA and noting that the Motor Carrier had a responsibility to notate damage and record it on the interchange documentation.

Because the modal members could not reach a consensus, the senior DRP panel was brought in to render the final decision pursuant to Exhibit D.3 of the UIIA.

Upon review of the information submitted with the claim, the senior arbitration panel found the case in favor of the Motor Carrier, but solely based on the fact that the Equipment Provider provided a repair estimate versus the actual repair bill as required under Section E.3.a. (1). The panel stated that it was important to note in this decision that if the Equipment Provider had provided the necessary documentation to support its invoice the case would have been found in its favor. The Motor Carrier's assertion that the damage was pre-existing does not remove its obligation under Section D.2. to notate the damage on the outgate EIR prior to accepting the equipment for interchange.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (September 16, 2017) to make its decision:

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]**
- 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]**

- c. Each Party shall be entitled to receive a copy and/or an electronic receipt equivalent of the Equipment Interchange Receipt as described in D.2.a above without charge. **[Revised 11/12/12]**
- d. If Recorded Images are taken at the time of Interchange, Damage will not be reported on ingate or outgate EIR. The words "Damage is captured on Recorded Images" will be printed on the Equipment Interchange Receipt. All such Recorded Images will be made available for each Party for a period of 1 year from Interchange without charge. **[Revised 11/12/12]**

E. Equipment Use

3. Damage to Equipment

- a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**
 - 1) 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 an AGS gate transaction such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 09/16/17]**

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

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Senior DRP Panel Member

DAVE MANNING
Motor Carrier Senior DRP Panel Member

AL SMERALDO
Ocean Carrier Senior DRP Panel Member

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 59th 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

Invoice 2 - The Motor Carrier stated that this was also a cross-town move dispatched to them by Canadian Pacific (CP). The Equipment Provider provided an ingate AGS image billing the Motor Carrier for a slid flat tire. However, the Motor Carrier argues the fact that the unit was repaired over two months after the ingate date, and the documentation provided by the Equipment Provider did not provide adequate proof of the 4/32nd differential in the tire and that the remaining tire tread was less than 2/32nds at the time of ingate. Therefore, the Motor Carrier believes that the Equipment Provider did not comply with Section E.3.a.(2) of the UIIA by providing adequate factual documentation to support the damage billed.

Based on the above information and the supporting documentation provided, the Motor Carrier feels they should not be held liable for the two (2) slid flat tire invoice repairs.

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

The Equipment Provider responded to the claim regarding both invoices, as follows:

Invoice 1 - The Equipment Provider stated that the J1 provided by the Motor Carrier did not illustrate that the damage existed when outgated from the Norfolk Southern rail facility. The Equipment Provider also stated that if damage was not visible on the outgate from the evidence provided, it does fall on the responsibility of the Motor Carrier. The Equipment Provider provided the following language as outlined in their Addendum to the UIIA and believes that Invoice 1 is valid as billed.

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 the EP or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to the EP 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.

Invoice 2 - The Equipment Provider stated that the Motor Carrier is claiming that they did not provide the appropriate items required in the Supplement to Exhibit C of the UIIA, which the Equipment Provider believes is only required to be provided for roadside repairs. The Equipment Provider stated that the repairs that are being billed to the Motor Carrier are from an on-terminal repair. The Equipment Provider also stated that they provided the appropriate documentation to the Motor Carrier for this on-terminal repair. Therefore, the Equipment Provider believes that Invoice 2 should stand. The Equipment Provider quoted the following language as outlined under Section E.4. of the UIIA.

Section E.4. Tires

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**
- b. Repair of tires unrelated to Damage occurring during Motor Carrier's possession is the sole responsibility of the Provider, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

- c. Photographic evidence shall be used for tire repair responsibility assignment. Photos of the tire will be produced by the road service provider based upon the stipulated criteria set forth in the Supplement to Exhibit C, Tire Marking and Photo Requirements of the UIIA. **[Added 08/01/18]**
- d. A Provider cannot require the Motor Carrier to return the physical carcass of a tire. **[Added 08/01/18]**

DISCUSSION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Equipment Provider. The Motor Carrier is disputing two invoices from the Equipment Provider for slid flat tires. The Motor Carrier panel member indicates that in both instances, the Motor Carrier references the fact that these were cross-town moves and implies that there is a different standard for charging damages on cross-town moves. In fact, the UIIA does not distinguish between cross-town moves and any other type of interchange. The Motor Carrier is required to ensure that damages are notated on outgate interchanges. The rail panel member commented further that there is not a different standard for cross-towns, tread depth measurements are not a requirement, and slid flat tires are not normal wear and tear but are considered damage.

In both instances the Motor Carrier references Exhibit C to the UIIA. The section of Exhibit C for tires being referenced is shown in bold below. The Motor Carrier references the photos and claims the photos do not meet the criteria shown below. The panel thought the photos actually are clear enough and do appear to meet the slid flat criteria.

Exhibit C to UIIA, Tires: Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

In both instances the Motor Carrier also references Exhibit C to the UIIA with the requirements for tread depth measurements shown in bold below. However, tread depth measurements are part of the Supplement to Exhibit C of the UIIA and are required for road repair vendors as it relates to over-the-road repairs. This is not applicable for on-terminal repairs.

Supplement to Exhibit C of the UIIA: Tread Depth measurements for slick tread (09) and slid flat (34)

In both instances the Motor Carrier references that its dispute is based on section D.2.a. and D.3.d. of the UIIA with the phrase “reasonable wear and tear excepted.” (The correct reference to the UIIA is Section D.3.e.) The UIIA clearly references slid flat tires as outside “reasonable wear and tear,” and Exhibit C states that slid flat tires are the Motor Carrier’s responsibility.

Finally, for invoice 310084211, the Motor Carrier provides a previous interchange showing tire damage from another carrier. That interchange shows damage to five tires including the one billed for a slid flat tire on this invoice. However, all five tires show cut / torn and not slid flat. It does not support the Motor Carrier’s claim that the damage they were billed on invoice 310084211 is the same damage noted on the previous interchange provided.

The rail panel member added that the Equipment Provider provided all the required documentation including the invoice and photos at the ingate. Even though tread depth measurements are not a requirement, it is clear in the photos that the slid flat spot was at or below 2/32nds because the affected area was smooth, and the remaining tread was more than 4/32nds. The evidence the Motor Carrier provided did not support its claim of pre-existing damage.

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.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]**

Exhibit C to UIIA, Tires

Tire sidewall, shoulder and/or tread cut/punctured/damaged exposing belt material

Slid Flat Damage to tire and/or tube - removal of tread or rubber to 2/32 inches of remaining tread depth or less in the affected area (flat spot) while the remaining unaffected tread depth is more than 4/32 inches.

Run Flat Damage to tire and/or tube

Missing Tire, tube or rim

Section E.4. Tires, Item E.4.a-d

- a. Repair of Damage to tires during Motor Carrier's possession is the sole responsibility of Motor Carrier, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**

- b. Repair of tires unrelated to Damage occurring during Motor Carrier's possession is the sole responsibility of the Provider, based on prevailing reasonable and customary repair costs and equipment use. **[Revised 09/01/09]**
- c. Photographic evidence shall be used for tire repair responsibility assignment. Photos of the tire will be produced by the road service provider based upon the stipulated criteria set forth in the Supplement to Exhibit C, Tire Marking and Photo Requirements of the UIIA. **[Added 08/01/18]**
- d. A Provider cannot require the Motor Carrier to return the physical carcass of a tire. **[Added 08/01/18]**

Supplement to Exhibit C of the UIIA: Tread Depth measurements for slick tread (09) and slid flat (34)

DECISION:

Based upon the supporting documents and evidence submitted, both panel members unanimously find in favor of the Equipment Provider on both invoices. The Motor Carrier is responsible for both repair invoices in this dispute.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

TIM MOORE
Rail Panel Member