

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between )  
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UIIA Motor Carrier ) Case 20090106-1-XXXT-PD  
Appellant, and )  
 ) DECISION  
 ) January 29, 2009  
UIIA Equipment Provider )  
Respondent. )  
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**FACTS:** Motor Carrier (MC) interchanged a sealed import container belonging to Equipment Provider (EP) from East Coast C.E.S. Inc./MC in Elizabeth, NJ at 16:34 on September 10, 2008.

MC returned the container empty to APL Kearny, NJ at 19:46 on September 10, 2008.

EP issued an Invoice for Per Diem charges for \$00.00 for the period from July 31, 2008 through September 10, 2008 to MC.

**BASIS OF CLAIM:** MC asserts that it was only in possession of the equipment for less than one day MC moved the equipment from PNCT to the Central Examining Station (CES). Interchange from EP was issued by the CES.

**DISCUSSION:** Both MC and EP provided a copy of the same interchange document from East Coast CES indicating the interchange to MC did not take place until September 10, 2008. Interchange is defined in the UIIA as “The transfer of physical possession of Equipment under the Agreement. MC is only responsible to EP for the period of time equipment is Interchanged to MC. EP cannot bill MC for per diem charges which accumulated prior to EP Interchange to MC.

**DECISION:** Based on the Interchange date of the equipment, MC is not responsible for Per Diem Invoice from EP.

The panel unanimously finds in favor of the MC. EP shall not be entitled to recover the per diem charges from MC. EP shall bear the cost of appeal.

DAVID MANNING  
Motor Carrier Member

PATRICK VALENTINE  
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

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|-------------------------|---|-------------------------|
| In the Dispute Between  | ) |                         |
|                         | ) | Case 20090327-1-XXXM-PD |
| UIIA Motor Carrier      | ) |                         |
| Appellant, and          | ) | DECISION                |
|                         | ) | April 17, 2009          |
| UIIA Equipment Provider | ) |                         |
| Respondent.             | ) |                         |
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**FACTS:** Motor Carrier (MC) interchanged an empty container FSCU 3508756 belonging to Equipment Provider (EP) from Integrated Marine Services La Porte, TX at 15:48 on 5-29-08.

The outbound TIR shows the EP-Hapag Lloyd and the correct Hapag Lloyd booking number for loading at Hapag Lloyd customer. The CY released an EP box against a Hapag Lloyd booking.

MC dropped the empty container for a Hapag Lloyd at customer in La Porte, TX.

Hapag Lloyd discovered the error in the release of the equipment and contacted EP. On 6-05-08 EP agreed to accept FSCU 3508756 at the customer. MC was left out of this communication.

On 7-03-09 customer released the load to MC as a Hapag Lloyd load. On 7-08-08 MC tried to return the export container to Barbours Cut as a Hapag export. Notation on inbound inspection is "HLC cannot use equipment owned by ALI"

On 8-11-08 export load on FSCU 3508756 was transloaded onto HLXU 3257890 so Hapag Lloyd export from customer could resume transit. On 8-19-08 at 9:50 HLXU 3257890 was ingated at Barbours Cut for export with Hapag Lloyd. The chassis was terminated at Integrated Marine Services on 8-19-08 at 10:33.

MC returned FSCU 3508756 with an export load to BNSF Pearland, TX at 13:47 on 1-07-09.

EP issued a Per Diem for 193 days of per diem totaling \$00.00.

**BASIS OF CLAIM:** MC asserts that EP released the wrong container to MC which caused a substantial amount of per diem. EP admits the wrong container was released from their facility and that it was incorrectly identified as a Hapag Lloyd container. The EP asserts that MC was aware of the mistake on 7-03-08 and was still responsible for the timely return of their equipment.

**DISCUSSION:** MC is not responsible for the period of time from 5-29-08 until 8-11-08 when the container was once again empty and MC was aware that it belonged to EP.

MC reloaded the container with an export load for EP from the customer but the container was not dropped for loading until 1-05-09.

For the period of time from 8-11-08 until 1-05-09, MC admits that container dropped off of their computer generated lists so they failed to notify EP equipment was available for loading.

EP did not check with MC on status of equipment during this time.

**DECISION:** Based upon the timeline described in the Discussion, we find the charges should be allocated as follows. For the period from 5-29-08 to 8-11-08, there should be no charges to the MC. Additionally the 30 day free time should apply from 8-12-08 to 9-11-08. MC is responsible for per diem charges from 9-12-08 through 1-07-09 or a total of 118 days and \$00.00. MC shall pay \$00.00 and EP shall credit \$00.00.

DAVID MANNING  
Motor Carrier Member

PATRICK VALENTINE  
Water Carrier Member

UNIFORM INTERMODAL INTERCHANGE AGREEMENT

DISPUTE RESOLUTION PANEL

In the Dispute Between )  
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UIIA Motor Carrier ) Case 20090924-1-XXXX-PD  
Appellant, and )  
 ) DECISION  
 ) Nov. 12, 2009  
UIIA Equipment Provider )  
Respondent. )  
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**FACTS:** Equipment Provider (EP) invoiced Motor Carrier (MC) for per diem amounts accrued while certain equipment (chassis and container) were reported missing. The equipment was stolen on June 2, 2009. MC verbally reported loss to EP on 6-02 and provided the police report number to EP on June 10. On June 11, the EP contacts MC and advises that an invoice for the lost equipment will be produced in the amount of \$00.00 for the container and \$00.00 for the chassis. These amounts were not disputed, and documentation was presented demonstrating that they were paid in July and August 2009.

MC avers that they notified the EP of the loss, and advised that they had filed for a police report, and that they would attempt to secure the report and pass it along to EP. EP's addendum, sec, 4a, specifies that a loss must be noticed to the EP within two days followed up by a copy of the police report. Per diem would continue to be assessed until a written notice and police report were in the EP's possession. An Invoice was produced, # 09242300 dated 7-14-09 indicating 41 days of billable per diem totaling \$00.00.

From the documentation available from the MC claims that they provided a written notice of loss (in the form of an email) on June 10, which the EP states was not received on that date in their office. Further, it was not until August 12 that MC provided a copy of the police report. From what we can see, EP had received a number for the police report on June 30 and subsequently issued Invoices for the lost equipment on July 2.

Two weeks later the per diem invoice was issued which included time from July 2 through 13, time after the issuance of the lost equipment invoices.

**BASIS OF CLAIM:** MC asserts that they should not be invoiced for the per diem. It appears that they are basing their case on claims that they acted in good faith to get the necessary documents to the EP, and that once they were billed for the lost/stolen equipment that they should not be assessed the per diem.

**DISCUSSION:** This case lacks clarity with regard the proffered documentation and accompanying statements of the MC. We see an extended period of time between the report of the loss and the delivery of the written report and ultimately, the police report to the EP.

Regarding the invoice of the perdiem, the fact remains that the invoice for the stolen equipment is dated July 2, which seems to indicate that the EP was confident that the equipment was lost and should therefore be declared lost and invoiced as such. Prior to that date, in conformance with the EP's addendum section 4.a. perdiem continued to accrue, from the date free time ceased on 6/2 until the invoice was issued on 7/2. We calculate that based on the language in the Addendum, that the days assessed for perdiem should be reduced by 11, and the invoice adjusted \$00.00 to reflect that reduction.

**DECISION:** We find that the MC is responsible for perdiem in the amount of \$00.00, based on the requirements found in Section 4.a. of the EP addendum and the billing from June 3 through July 1. We also find that the MC is not responsible for that perdiem invoiced after the issuance of the lost/stolen invoice on July 2, 2009, that was assessed for July 2 through 13.

Appellant (MC) shall pay Respondent (EP) \$00.00 in per diem charges.

Further, the cost of this appeal shall be borne jointly by the Appellant and Respondant.

DAVID MANNING  
Motor Carrier Member

PATRICK VALENTINE  
Water Carrier Member

**UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

**DISPUTE RESOLUTION PANEL REVIEW AND DECISION**

In the Dispute Between )  
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UIIA Motor Carrier ) Case Number: **20100330-1-XXXN-PD**  
Appellant, and )  
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 )  
UIIA Equipment Provider ) **Date of Decision: July 2, 2010**  
Respondent )

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**FACTS:** Motor Carrier (MC) received a per diem invoice dated 03/22/2010 from the Equipment Provider (EP) in the amount of 85.00 for one day per diem. The invoice stated that the MC out-gated the unit on 02/11/2010, that the free time expired on 02/24/2010, and that the MC in-gated on Thursday, 02/25/2010.

**ISSUE:** The MC asserts that the EP is in violation of the California State Law – SB 45, which states that the MC cannot be billed for per diem on weekends. EP asserts that the MC was moving a container for an account that had a Service Agreement that stipulates the per diem free time of 14 calendar days at destination. The EP notes that its standard addendum provides per diem free time of 4 days, but that it was honoring its obligation under its Service Contract to allow for the longer 14 days of free time.

**DISCUSSION:** The panel reviewed all documents and materials submitted by the parties. The evidence shows that the EP billed for per diem for Thursday, February 25, 2010, a weekday, not a weekend day. Therefore, there is no apparent violation of California law. The EP's invoice conformed to its contractual obligations to provide 14 free days per diem and the MC's obligation to pay per diem beyond the free time.

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

**CASE REVIEWED AND DECIDED BY:**

DAVE MANNING  
Motor Carrier Member

MIKE WILSON  
Water 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: **20171020-1-XXXXA-PD**

Date of Decision: **December 20, 2017**

**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       | P171001666 | CAIU7396786 | 10/16/17  | APMT<br>Newark/APMT<br>Newark | 9/07/17  | 9/13/17 | 10/17/17           | 10/17/17                  | 10/17/17                          | 10/20/17               |

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

The Motor Carrier's basis of dispute is Section E.1. of the UIIA. The Motor Carrier disputed the invoice stating that they pulled the container out as an import, delivered the container and then street turned it for an export move. However, because their customer cancelled the export booking, the Motor Carrier returned the container back to the port empty. The Motor Carrier states that because they returned the unit back empty the Equipment Provider charged them from the date of the street turn, due to the street turn not being cancelled in the system and because the unit was pulled out empty and returned empty. The Motor Carrier feels they should not be held liable due to not being aware they would be charged for not cancelling the street turn request and returning an empty container.

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

The Equipment Provider responded to the claim stating that the Motor Carrier originally outgated the equipment as an import move. They later requested to street turn the unit, which the Equipment Provider approved. After the approval, the Motor Carrier's customer cancelled the booking, so the unit was returned back empty to the Equipment Provider. The Equipment Provider believes the charges billed are in accordance with the terms of Section 1, Item H. of its addendum as it relates to empty to empty returns.

## **DECISION:**

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Motor Carrier. The Ocean Carrier panel member noted that normally, the Equipment Provider addendum allows for equipment used to move import and export shipments by HMM to be granted four (4) working days free. The entire time between release and return was 4 working days total. Of interest would be the specific language in the Equipment Provider's addendum related to the termination of any free time relative to equipment associated with canceled bookings, which reads at Section 1. H. "For intermodal equipment, which is released empty and later redelivered empty (i.e. empty to empty) without an intervening shipment, Motor Carrier shall be entitled to no Free Time and the Motor Carrier shall be responsible for the payment of Detention Charges as per this Addendum." The important part of this clause is actually stated twice for clarity: 1) equipment, which is released empty and later redelivered empty; and 2) (i.e. empty to empty). This clause was clearly designed to protect the Equipment Provider from the loss of a benefit (equipment usage) for which no economic compensation (the intervening shipment) was derived. As this unit was actually part of an intervening shipment (the import move) this clause would not apply. While the Motor Carrier should have contacted the Equipment Provider to report the street turn cancellation at the time, they admitted this mistake and this should not be supportive of the Equipment Provider's misapplication of their addendum language. The appropriate action for the Equipment Provider would have been to accept the miscommunication, cancel the street turn and recalculate the per diem owed based on the import movement alone. As the equipment was actually returned empty within the Equipment Provider's stated free time afforded to the import move, no per diem would be owed.

The Motor Carrier panel member agreed stating the language in Section 1. H. of the Equipment Provider's addendum was intended to protect it from the use of its equipment without any compensation. This unit was used for an import move that clearly involved compensation to the Equipment Provider. Additionally, despite the cancellation of the street turn the equipment was still returned within the free time allowed for that initial import move. No per diem would have been charged had the street interchange never occurred.

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

The panel relied upon the following provisions from the UIIA (May 1, 2017) to make its decision:

### **EP's ADDENDUM TO THE UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT**

#### **Section 1. Free Time and Use Charges**

In the absence of any other written agreement with Motor Carrier and in accordance with Section E.6 of the UIIA, the following free time shall be allowed and the following use charges assessed to Motor Carrier.

- I. Equipment Free Time and Use/Rental Charges
  - A. For Equipment used to move import and export shipments by HMM, the following free time shall be allowed: (see notes)
    1. Regular Equipment: Four (4) working days.
    2. Refrigerated/Tank Equipment: Three (3) working days.
    3. Open Top/Flat Rack Equipment: Three (3) working days
    4. Chassis: Four or three working days based on the type of corresponding containers.

- H. For intermodal equipment, which is released empty and later redelivered empty (i.e. empty to empty) without an intervening shipment, Motor Carrier shall be entitled to no Free Time and the Motor Carrier shall be responsible for the payment of Detention Charges as per this Addendum.

**E. Equipment Use**

1. Equipment Return

- a. Absent a separate bilateral equipment interchange agreement in written or electronic form between the Parties, the Motor Carrier shall use the Equipment for only the purposes for which it was interchanged, not authorize use by others, and promptly return the Equipment after its interchange purpose is complete. An Addendum to this Agreement does not constitute a separate bilateral equipment interchange agreement. **[Revised 02/08/16]**
- 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]**
- c. Provider may add or delete satellite locations to its listing by giving fourteen (14) days written notice to IANA. **[Added 02/08/16]** 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]**
- e. Nothing in Section E. shall be interpreted to preclude Motor Carrier from receiving compensation when Provider directs Equipment to be returned to a satellite location. Compensation for services rendered in these circumstances is outside the scope of this Agreement. **[Added 02/08/16]**

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

**CASE REVIEWED AND DECIDED BY:**

ROBERT CANNIZZARO  
Ocean Carrier Member

FRED HUENNEKENS  
Motor Carrier Member

**CASE – 20170406-13-XXXL-PD Moving Party: /Responding Party:**

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

| <b>Invoice</b> | <b>Invoice #</b> | <b>Inv. Date</b> | <b>Facility</b>         | <b>Outgated</b> | <b>Ingated</b> | <b>Date MC rec'd inv.</b> | <b>Date MC disputed the inv.</b> | <b>Date EP responded to MC's dispute</b> | <b>Notice of Intent Rec'd</b> |
|----------------|------------------|------------------|-------------------------|-----------------|----------------|---------------------------|----------------------------------|--|-------------------------------|
| 1              | SPEE001565       | 12/20/16         | Los Angeles/Los Angeles | 12/02/16        | 12/12/16       | 12/27/16                  | 01/20/17                         | No response from EP                      | 04/06/2017                    |
| 2              | SPEE001650       | 01/03/17         | Phoenix/Los Angeles     | 12/12/16        | 12/27/16       | 01/03/17                  | 01/20/17                         | No response from EP                      |                               |
|                |                  |                  | Los Angeles/San Pedro   | 12/8/16         | 12/19/16       |                           |                                  |  |                               |
|                |                  |                  | Los Angeles/San Pedro   | 12/12/16        | 12/20/16       |                           |                                  |  |                               |
| 3              | SPEE001785       | 01/12/17         | Los Angeles/San Pedro   | 12/13/16        | 01/04/17       | 01/12/17                  | 02/09/17                         | No response from EP                      |                               |

**MOTOR CARRIER'S DISPUTE**

The Motor Carrier is basing its dispute on Sections H.1, H.4 of the UIIA & Section II of the Equipment Providers addendum to the UIIA. The Motor Carrier's basis of dispute is that the EP did not respond to their dispute within the required 60days timeframe. Therefore, the Motor Carrier feels that the Equipment Provide should lose its rights to collect such charges and its ability to pursue binding arbitration under this agreement and under the terms of the Provider's Addendum.

**EQUIPMENT PROVIDER'S RESPONSE**

The Equipment Provider provided no response to the claim or the Motor Carrier's initial dispute.

**DISCUSSION**

IANA Staff reviewed all documents and evidence submitted by the Moving Party and it has been determined that this issue has already been addressed and resolved in a prior arbitration decision that was rendered by the arbitration panel on case 20150910-4-XXXD-PD. Therefore, in accordance with Exhibit D, Item 8 of the UIIA, if it is determined that the submitted claim has already been addressed and resolved in a prior arbitration decision, then both the Moving and Responding Parties will be provided with the precedent set forth in the former decision and advised that this decision will apply to the submitted claim. Therefore, both the Moving and Responding Parties were provided with the prior case decision and were advised that the decision applied to the current claim submitted by the Moving Party. The Responding Party agreed with Staff's determination that the prior case decision was the same. However, the Moving Party provided no comment. Therefore, this decision was based on the prior case decision, case 20150910-4-XXXD-PD & its applicability to this current claim. Section H.4. provides that the Invoicing Party will lose its right to collect charges if it fails to respond to disputed invoices "... within the established timeframes in the Provider's Addendum, or in the absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process is Section H.1".

## UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

### 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]**

**APL Co. Pte Ltd – Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement [Revised: November 24, 2016]**

### II. Method of Dispute Resolution

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 sixty (60) 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 which have been verified by the Provider are again rejected and disputed by Motor Carrier for whatever reasons, Provider reserves its rights and remedies under the law to compel payment of such charges. In the event any disputed items involve Eagle Credits (I.E. above) it will not be the Provider's obligation to supply reports detailing all such Eagle Credits as earned to the Motor Carrier by invoice.

**DECISION:** Found in favor of the Motor Carrier.

**Based on H.1. previous case decision 20150910-4-XXXD-PD**