

**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: **20160405-10-XXXN-PD**

Date of Decision: 08/10/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv	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	P160200876	HDMU6568474	02/18/16	NIT/VIG/NIT	10/21/15	02/18/16	02/18/16	02/26/16	03/25/16	04/05/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Sections B.13, B.24, and E.1 of the UIIA. The Motor Carrier reports that it pulled the unit from NIT on November 3, 2015. When they returned the unit on the same day, the unit was rejected and the Port advised the Motor Carrier to take the unit to VIG since NIT was not open due to the Port of Virginia's extended gate hours. The Motor Carrier stated that they followed the Port's instructions and returned the container to VIG on November 3, 2015. The Motor Carrier also reported that it received an email from the Equipment Provider regarding the status of the unit on January 21, 2016, at which time the Motor Carrier informed the Equipment Provider that the unit was returned on November 3, 2015 to VIG.

The Motor Carrier believes it returned the equipment as directed by the Port of Virginia, the entity that received physical possession of the container as defined in Section B.24 Provider, which states in part, "The Party or Parties authorizing delivery and/or receipt of physical possession of Equipment with a Motor Carrier." The Motor Carrier argues that If VIG was an improper satellite return location, the container should have been rejected at VIG. The Motor Carrier indicated that if the UIIA contemplated that only the steamship line

could give direction about returning empty containers, Section E.1. would state that the notification return of an empty would come from the "Equipment Owner" as opposed to the "Provider". The Motor Carrier does not believe they should be charged per diem because they were directed by the facility to return the unit to a different location. The Motor Carrier did provide a screen print of VIT's system showing proof that the unit was rejected from the port.

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

The Equipment Provider responded by stating that the container was returned to the wrong location and that VIG is not one of their return locations. The Equipment Provider indicated that no representative from their company advised the Motor Carrier to return the container to VIG, which was the incorrect location. The Equipment Provider advised the Motor Carrier that they would agree to a 20% discount for the container detention charges. The Motor Carrier feels that the full amount should be waived.

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 reports that they pulled the unit from NIT on November 3, 2015, and returned the unit that same day to VIG, per the Port's instructions. The Motor Carrier believes it returned the equipment to the Equipment Provider in accordance with the UIIA.

The Equipment Provider argues that the equipment was returned to the wrong location. The Equipment Provider believes the charges are valid as invoiced. However, the Equipment Provider agreed to provide the Motor Carrier a 20% discount on the container detention charges billed in order to settle the dispute.

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 stating that the Motor Carrier attempted to deliver the container to the PY depot in Portsmouth which should have been open at that time, but was directed by port personnel to deliver the empty container to VIG, which the Motor Carrier did just minutes later. The Motor Carrier panel member stated that the Motor Carrier repositioned the container at no charge as an accommodation to the ocean carrier and that the Motor Carrier should not be responsible for any charges. In support of this finding, the Motor Carrier panel member referenced a February 17, 2016, email from VIT's Director of Customer Service discussing the return.

The Ocean Carrier panel member found in favor of the Equipment Provider. Before rendering a decision, the Ocean Carrier panel member requested confirmation that the ocean carrier had no cargo being gated in or out of the VIG facility during the time of the return. No gate activity was reported. Therefore, the Ocean Carrier panel member argues that the Equipment Provider had no way of knowing the container had been received.

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.

After receiving confirmation that VIG is not one of the Equipment Provider's return locations, the Rail Carrier panel member found in favor of the Equipment Provider. The Rail Carrier panel member stated that the Motor Carrier's obligation under the UIIA to return the equipment to the outgate terminal was not satisfied, and the terminal to which the Motor Carrier returned the equipment was not identified by the Equipment Provider as an acceptable satellite location.

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:

B. Definition of Terms

13. Equipment Owner: The holder of actual or beneficial title to the Equipment, regardless of the form of the title. [Revised 04/11/07]
24. Provider: The Party or Parties authorizing delivery and/or receipt of physical possession of Equipment with a Motor Carrier. The Provider of the Chassis and Container may not necessarily be the same Party. [Revised 06/08/15]

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]

DECISION: The majority of the panel finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

CLIFF CREECH
Rail Carrier Member

THOMAS BARATTINI
Ocean Carrier Member

JEFFREY LANG
Motor 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: **20160829-1-XXXP-PD**

Date of Decision: 03/9/17

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv.	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	PD00144346	CCLU4786775	08/19/16	OICT-SSA Oakland/Container Traders	1/20/16	1/21/16	8/19/16	8/19/16	8/24/16	8/29/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute are Sections E.1, E.2.a., E.6.c and E.6.d of the UIIA. The Motor Carrier reports that it pulled the unit from OICT (SSA) on January 20, 2016. When they returned the unit the next day (January 21, 2016), the unit was rejected and the Port advised the Motor Carrier to contact the Equipment Provider for instructions. The Motor Carrier stated their dispatch office contacted the Equipment Provider's Equipment Team at the number provided by the port and was instructed to return the container to 2405 West 14th Street in Oakland, California under release number P184938. The Motor Carrier complied with these instructions, returned the unit to the other location, and obtained an interchange showing matching container and release number.

The Motor Carrier stated that on June 13, 2016, they were asked by the Equipment Provider to provide an update on the container and to send a copy of the interchange if it was returned. The Motor Carrier provided the Equipment Provider with a copy of the ingate. On August 15, 2016, the Motor Carrier received an invoice from the Equipment Provider showing the container value of \$00.00. On August 19th 2016, the Motor Carrier received another invoice from the Equipment Provider showing per diem charges from January 20, 2016 thru August 10, 2016 in the amount of \$00.00. On August 22, 2016, the ingating facility confirmed that the unit was mistakenly listed as a sales container and the container was sold. However, Cube/TCT (the alternate return location) did confirm that they would pay the invoice for the cost of the container of \$00.00. As for the per diem invoice, the Motor Carrier feels that they should not be held liable for the per diem invoice since they complied with the instructions that were provided by the Equipment Provider in regards to the return of the equipment.

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

The Equipment Provider responded to the claim stating that the container should have been ingated at the same location it was originally picked up, which was (OICT (SSA)) and that TCT (The Container Traders) is not a depot used by the Equipment Provider. The Equipment Provider provided an e-mail communication from the OICT (SSA) facility confirming that their records showed that there were never any "no return" constraints on this container during the interchange dates associated with this claim. In addition, the Equipment Provider also stated that it confirmed that the release number P184938 was not associated with the CCLU4786775 container related to this dispute. This release number was related to unit CCLU2746006, which was redelivered on January 22, 2016. Therefore, the Equipment Provider feels that the Motor Carrier is responsible for the per diem invoice since the container should have been returned to the original point of interchange.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Motor Carrier panel member finds in favor of the Motor Carrier noting that the Motor Carrier returned the unit to a location directed by the Equipment Provider and has interchange documentation to substantiate the return. The Motor Carrier panel member commented that the Motor Carrier should not be held responsible for whatever confusion occurred between Cube/TCT and the Equipment Provider. The Motor Carrier panel member does not believe the Equipment Provider provided evidence to refute the Motor Carrier's claim.

The Ocean Carrier panel member finds in favor of the Equipment Provider. The Ocean Carrier panel member believes the facts show the Equipment Provider had a return location of OICT that indicated there was no restriction on return. The Ocean Carrier panel member states that the Motor Carrier provided no evidence that they were turned away from the return location. In addition, the release number provided by the Motor Carrier is not for the container in question and there is no written correspondence between the Equipment Provider and the Motor Carrier regarding this transaction. Follow-up by the Equipment Provider in June ultimately revealed that the Motor Carrier took the container to a different location than expected and was ultimately sold.

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

The Rail panel member also finds in favor of the Equipment Provider. The Rail panel member observed the following:

1. The Motor Carrier stated they attempted to return the unit to the original location of pick-up and that the terminal (OICT) turned them away at the gate stating that the container could not be returned there; however, no documentation was provided by the Motor Carrier or OICT that confirms this rejection.
2. The Motor Carrier stated that they called the Equipment Provider's Equipment Team for an alternate return location and was provided a release number (P184938) with instructions to take the unit to Cube/TCT where the container was ultimately sold in error; however, no written documentation was provided confirming return instructions that Motor Carrier stated it received from the Equipment Provider.

In addition, the Rail panel member commented that although she believes verbal communication may have taken place between the Equipment Provider's Equipment Department and the Motor Carrier, there is not sufficient documentation to substantiate that the Motor Carrier was provided instructions to redeliver the unit to Cube/TCT.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (June 13, 2016) to make its decision:

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]**

6. Free Days, Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage Charges

- c. Provider shall invoice Motor Carrier for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges within sixty (60) days from the date on which Equipment was returned to Provider by Motor Carrier. If Motor Carrier is not invoiced within the established timeframe, the right of the Provider to recover such charges will be lost. **[Revised 01/17/12]**
- d. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.

DECISION: The majority of the panel finds in favor of the Equipment Provider.

CASE REVIEWED AND DECIDED BY:

LaVERSIA (ELLE) SPENCER
Rail Carrier Member

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member