

**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: **20211129-1-XXXG-PD**

Date of Decision: 06/10/2022

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 | DT0285993 | YMLU8660241 | 08/31/21 | TraPac/TraPac | 05/24/21 | *5/26/21 | 8/31/21 | | | 11/29/21 |

***The Motor Carrier stated that the unit ingated on 5/26/21, but Trapac reported to the EP that the unit ingated on 8/24/21.**

MOTOR CARRIER'S DISPUTE

The Motor Carrier is basing its dispute on Sections E.1, E.2, E.6 of the UIIA. On June 24, 2021, the Motor Carrier received an email from the UIIA office on behalf of the Equipment Provider showing outstanding interchanged equipment. The Motor Carrier quickly contacted the Equipment Provider stating that the container listed in the notice was returned to Trapac on 5/26/2021, but since Trapac did not post it and their system was showing "no record found", the container was considered "lost" by the Equipment Provider and the Motor Carrier was invoiced for the equipment.

On 08/24/2021 the container resurfaced at Trapac as an empty return by another trucking company (BACC). Trapac notified the Equipment Provider that the unit had been found. The Equipment Provider invoiced the Motor Carrier for per diem charges from 05/24/2021 to 08/24/2021. The Motor Carrier disputed the per diem charges stating that they contacted Trapac multiple times for gate information that showed where/when the container was outgated but received no response from the terminal.

The Motor Carrier also stated that if the container was in fact ingated by the other trucking company, BACC, then information needs to be provided as to where this unit was originally picked up from since the Motor Carrier asserts that this unit was not in their possession after the time of ingate, 05/26/2021. The Motor Carrier believes they are being held responsible for a terminal error and feel they should not be held liable for the per diem charges since they returned the equipment on 5/26/2021.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded to the claim stating the container was first reported to them as missing/total loss as TraPac found "no record on file" for this container. On August 24th, they received an in-gate EDI from TraPac on this container. The Equipment Provider updated their system to show the container from "TL" (Total Loss) to "RE" (Resurfaced) and the missing container case was closed. However, since the status of the unit was changed to a "RE" movement as of 08/24/21, the EP generated a per diem invoice for the period of 05/24/21 to 08/24/21. Therefore, the Equipment Provider feels that the invoice should stand.

DISCUSSION

After careful review of all documents and evidence submitted by the parties, the two modal members that originally reviewed the claim were unable to reach a consensus in the case. The Ocean Carrier panel member found in favor of the Equipment Provider indicating that since the Motor Carrier could not provide proof that the container was received by the facility on May 26, 2021, then the panel can only go by the facts of when the facility reported the unit received, which was August 24, 2021. The Motor Carrier panel member disagreed and indicated the burden of proof to verify equipment was returned should not fall solely on the Motor Carrier. Although the terminal operator provided an ingate date and SCAC Code, the second Motor Carrier indicated that they did not have possession of the container. The Motor Carrier panel member noted that the terminal operator was not able to provide any details about the return of the unit. Section D.2.a. states that parties shall execute an Equipment Interchange Receipt (EIR) that confirms the interchange of the equipment. Since no information has been provided to confirm the second Motor Carrier ingated the container, the arbitration panel cannot make that conclusion. Therefore, based on the facts presented in the case and the technical issues the facility was having, the Motor Carrier panel member found in favor of the Motor Carrier.

In accordance with Exhibit D, Item D.3. of the UIIA, when the two modal arbitration panel members are unable to reach a consensus on the case decision, the claim is forwarded to the senior arbitration panel to make the final determination in the case. Upon review of the case, including all documents and evidence received, the senior arbitration panel believes the Motor Carrier is not responsible for the per diem charges based upon the following:

- The terminal operator admitted that its system was down, thus no interchange record exists or J1 was available.
- Once aware that the terminal did not have record of the unit being returned and the Motor Carrier was made aware of that fact, the Motor Carrier appeared to make a good-faith effort to reach out to the terminal to help figure out what happened to the unit, but there appeared to be little to no response from the terminal.
- Given that the terminal's system was having technical issues, there doesn't appear to have been any way for the original Motor Carrier to prove that the unit was brought back. And, at that time, there would have been no cause for concern about whether or not the unit was brought back because the driver knew he was bringing it back.
- With the terminal's system down, the facility was out of compliance with D.2.a. and D.2.c. of the UIIA:
 - *"At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent,"*
 - *"Each Party shall be entitled to receive a copy of and/or an electronic receipt equivalent of the Equipment Interchange Receipt as described in D.2.a. above without charge."*
- The Motor Carrier that allegedly brought the container back on August 24th denies ever having possession of the unit.

Based on the reasons stated above and the evidence presented in the case, or lack thereof by the terminal operator and the Equipment Provider, the senior panel believes the responsibility lies more with the Equipment Provider than the Motor Carrier to provide proof that the unit was not returned on May 26th as the Motor Carrier indicated. Therefore, the panel renders its decision in favor of the Motor Carrier and finds that they are not responsible for the per diem charges billed.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The senior arbitration panel relied upon the following provisions to make its decision:

Section D.2.a. Equipment Interchange Receipts

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.

Section D.2.c. Equipment Interchange Receipts

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.

DECISION: The senior arbitration panel unanimously renders its decision in favor of the Motor Carrier and finds that the Motor Carrier is not responsible for the \$0.00 per diem charges billed by the Equipment Provider.

Case Initially Reviewed by Modal Arbitration Panel

Ben Banks, Motor Carrier Panel Member

Tom Barattini, Ocean Carrier Panel Member

Case Reviewed and Decided by the Senior Arbitration Panel

Kevin Lhotak, Senior Motor Carrier Panel Member

Al Smeraldo, Senior Ocean Carrier Panel Member

Mike Pagel, Senior Rail Carrier Panel Member