

## In the Dispute Between

Case Number: **20190607-43-XXXP-MR-TR**

Date of Decision: 02/11/2020

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	299561470	TSFZ551517	3/28/19	CP Schiller Park/UP Global 1	2/21/19	2/21/19	3/28/19	4/24/19	5/23/19	6/7/19
2	300028477	EMHU270791	4/23/19	CP Schiller Park/UP Global 2	2/23/19	1/13/19	4/23/19	4/24/19	5/23/19	6/7/19

The Motor Carrier is disputing two repair invoices. The basis of the disputes are related to Section D.2.a., D.3.d. and E.3.a.(2) of the UIIA. For **Invoice 1**, the Motor Carrier states that this was a crosstown move from CP Schiller Park (non-AGS facility) to UP Global 1 (AGS facility). The Equipment Provider issued an invoice for cut/torn tire on the LOF. The Motor Carrier does not believe the AGS image provided by the Equipment Provider shows the damage being billed. The AGS image is not marked where there is a supposed cut/tear to the tire. The Motor Carrier argues that for a repair invoice to be valid it must detail the repairs done and also include factual documentation supporting the Equipment Provider's determination that the Motor Carrier is responsible for the repair. The Motor Carrier believes the invoice is not valid as there was not sufficient evidence provided to prove the tire was cut/torn and the Motor Carrier believes the equipment was returned in the same condition it was received reasonable wear and tear excepted.

For **Invoice 2**, the Motor Carrier states that this was also a crosstown move that outgated at a non-AGS facility and ingated at an AGS facility. The Equipment Provider issued an invoice for LSC cut/torn container. The Motor Carrier argues that the damage was pre-existing and they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. The Motor Carrier also presented

a previous J1 in-gate receipt that showed a different Motor Carrier ingating the same equipment at a Norfolk Southern yard with the same damage written up. The Motor Carrier believes they are not responsible for the charges based on D.3.d. of the UIIA.

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

The Equipment Provider responded to the claim regarding both invoices. For **Invoice 1**, the Equipment Provider stated that the fact that this involved a crosstown move is irrelevant as the UIIA is the contractual agreement between the Motor Carrier in possession of the unit reported under their interchange with the Equipment Provider. The Equipment Provider stated that the unit outgated with no tire damage noted and ingated on the same day with the tire visibly off the rim. A review of the pre-repair photos contributed the damage to the root cause of a cut torn tire, which the Motor Carrier was billed for. Consequently, the Equipment Provider believes that Invoice 1 is valid as billed.

For **Invoice 2**, the Equipment Provider stated that the unit outgated with no damage reported. The unit ingated Global 2 with visible cuts near the top of the container's LSC. If this condition was present at outgate, Section D.2.a. states that the Motor Carrier shall report the condition of the equipment at the time of interchange. There was no outgate documentation provided containing the LSC panel damage notation. The Equipment Provider indicated that the previous J1 that the Motor Carrier provided was a repair that took place as a result of additional damage detected at the Global 2 ingate over three and half months earlier on 9/27/18. The Equipment Provider indicated that they inspected the container on 11/9/18 and no repairable damage was detected at that time. Since the unit outgated with a clean EIR and ingated with damage noted, the Equipment Provider believes that Invoice 2 is also correct as billed.

#### **DECISION:**

##### **Invoice 1 - #299561470**

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 pursuant to Section E.3.a.(2) of the UIIA, the photographic evidence is very unclear and does not show a cut/torn tire for which the Motor Carrier was invoiced. Based on the evidence submitted there is not enough factual information to support the charge back to the Motor Carrier. The Rail Carrier panel member disagreed finding in favor of the Equipment Provider noting the EQ owner's documentation does support a repair for cut/torn; it does clearly show that the tire bead is off the rim indicating damage.

Because the modal members could not reach a consensus, the senior DRP panel was brought in to render the final decision on Invoice 1 pursuant to Exhibit D.3 of the UIIA.

Based on the documentation presented, the senior arbitration panel members rendered the decision in favor of the Motor Carrier on **invoice 1** for the full amount. It was the consensus of all three senior arbitration panel members that the images provided did not provide evidence of a cut/torn tire. Therefore, the senior arbitration agreed that the Equipment Provider did not comply with Section E.3.a.(2) by providing sufficient documentation to support the repair being billed.

**Invoice 2 - #300028477** - After careful review of all documents and the evidence submitted by the parties, the modal panel members unanimously find in favor of the Equipment Provider. The Motor Carrier panel member noted that the Motor Carrier did not report any damage at time of outgate. Per section D.2.a. of the UIIA, any observable damage must be reported at time of interchange. At the time of ingate there was reportable damage.

Even if the Motor Carrier did not cause the damage, unfortunately they are still held responsible to report damage at time of outgate. The Rail Carrier panel member agreed stating that the application of photos showing that a defect in the same area prior to this transaction does not automatically equal pre-existing condition. It is correct that the EP failed to follow the rules in place to seek J2 coverage for this invoice. However, that is an agreement between railroads and is outside UIIA. Consequently, based solely on the terms of the UIIA and the lack of evidence to sufficiently prove the damage condition was pre-existing, I find 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 1, 2018) 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]**

3. Equipment Condition

- d. Motor Carrier will reinspect and recertify the Equipment if the existing inspection will expire prior to the Motor Carrier's return of the Equipment to the Provider. This provision is only applicable to the Provider of the Chassis. **[Revised 06/08/15]**

**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]**
  - 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, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)**

**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

**EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)**

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

**DECISION:** **Invoice 1 - #299561470** - The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

**Invoice 2 - #300028477** - The panel unanimously finds in favor of the Equipment Provider.

**CASE REVIEWED AND DECIDED BY:**

DAVE HENSAL  
Motor Carrier Modal Panel Member

JEREMY LASKOS  
Rail Carrier Modal Panel Member

DAVE MANNING  
Motor Carrier Senior DRP Panel Member

AL SMERALDO  
Ocean Carrier Senior DRP Panel Member

BILL TRAUB  
Rail Carrier Senior DRP Panel Member



Regarding the Motor Carrier's argument that a bud wheel cannot be slid flat, the Equipment Provider believes this is not an accurate statement. The Equipment Provider stated that there are many factors that can cause a single slid flat (i.e. unequal tread depths, different tire pressures, etc.). The Equipment Provider indicated that for the unit in question, both tires on the same wheel set were slid flat (RIR and ROR) and both were replaced. The Motor Carrier was only billed for the ROR tire as the photographic evidence of the slid fat at the ingate on the RIR tire was not clear enough to hold the Motor Carrier responsible for this repair. The Equipment Provider also noted that the gate technology used at this facility was photographic evidence at ingate and manual reporting at the outgate. The method of reporting defects does not have to be the same at both points of the interchange. This was previously upheld by a prior arbitration decision (20161117-1-XXXV-MR-TR). In addition, tread depth of a tire has never been a required measurement at the time of interchange.

For the reasons identified above, the Equipment Provider believes the invoice is valid and should stand as billed.

#### **DECISION:**

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the Rail Carrier panel member found in favor of the Equipment Provider stating that based upon the evidence submitted it is her assessment that the unit was in good working order at the time of outgate. The IEP presented a reference noting that the unit had a pre-trip inspection 2 days prior to outgate by the carrier indicating that the unit did have some attention to the basic components of the unit. This process would be validated by the drivers required level one inspection with the clerk. The only real documentation that is present is a clean outgate and visible damage at ingate.

The Motor Carrier panel member found in favor of the Motor Carrier noting the IEP's responses to the potential root causes are speculative in nature, with numerous "what if's" that weren't identified and that could have been a result of faulty maintained equipment. In addition, there is no evidence that the driver used his trolley brake to override the ABS system. Such deliberate and negligent action by the driver would have resulted in slid flats to multiple sets of wheels and tires. There is no such photographic evidence that was submitted that indicates that slid flats were present to any other set of tires on this chassis. Because of such reasoning, the tires could have been in this condition and undetectable to the driver during his pre-trip inspection due to slid flat being in direct contact with the ground, as well as the time of day (2:49 am), or a failure within the ABS system.

In addition, in cases where a slid flat tired is identified, it would be prudent and expected, in this panel member's opinion, that the IEP immediately perform a download of the ECU and include that with the invoice as supporting documentation. It is not equitable to find the Motor Carrier at fault exclusively on the EIR documentation provided due to the speculations surrounding the potential causes of a single slid flat, as well as previous concerns raised by Motor Carriers regarding "split gate" operations and the lack of tread depth measurements at both the ingate and outgate despite there being no current language within the UIIA requiring such measurements to be taken.

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 Equipment Provider. It was the consensus of the senior arbitration panel members that the Equipment Provider did in fact properly document and identify the repairs billed. There were no previous indications that there were brake issues and therefore, the senior panel members find that the tire repair bill meets the definition for a slid flat tire in accordance with Exhibit C of the UIIA. Exhibit C states, "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". The senior panel members agreed that the Equipment Provider complied with providing the documentation and images to support their billing.

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

**The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:**

**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]**
- 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]**

**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]**

**Exhibit B to UIIA, Provider Responsibility (added to UIIA on 07/25/07, Last Revised 10/01/18)**

**Brake adjustments on trailers or chassis (1)**

**Brake and brake component repairs (2)**

**Tires and Tubes, renewals, repairs or replacement**

**A repair made to any item listed in Exhibit B is the responsibility of the Provider unless the repair made is a result of damage that occurred during the Interchange Period.**

**Exhibit C to UIIA, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)**

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.

**EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)**

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

**DECISION:** The Senior DRP Panel unanimously finds in favor of the Equipment Provider.

**CASE REVIEWED AND DECIDED BY:**

LaVERSIA (ELLE) SPENCER  
Rail Carrier Modal Panel Member

ROBERT LOYA  
Motor Carrier Modal Panel Member

DAVE MANNING  
Motor Carrier Senior DRP Panel Member

GORDON GRAHAM  
Rail Carrier Senior DRP Panel Member

AL SMERALDO  
Ocean Carrier Senior DRP Panel Member



## In the Dispute Between

Case Number: **20190725-1-XXXF-MR-TRSF**

Date of Decision: 01/28/2020

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	301114582	UMXU254616	6/14/2019	UP City of Industry/UP Commerce	5/13/19	5/15/19	6/14/19	6/24/19	7/23/19	7/25/19

The Motor Carrier's basis of dispute is Section D.2.d. of the UIIA. The Motor Carrier was invoiced for slid flat tire damage. The Motor Carrier believes the slid flat was caused by normal wear and tear and not driver abuse. If the slid flat was a result of driver abuse, both tires on the same axle would be slid flat. The Motor Carrier believes that the slid flat could be a result of uneven tread wear, which is not the Motor Carrier's responsibility. The Motor Carrier also stated that the tire was barely visible in the images provided by the Equipment Provider. Consequently, the Motor Carrier does not believe there is sufficient evidence to hold them responsible for this invoice.

The Equipment Provider responded to the claim stating that they have documented numerous ways in which a single slid flat tire can appear on a chassis. The Equipment Provider also stated that the Motor Carrier's assertion that a single slid flat is a mechanical impossibility is inaccurate. The pre-repair photos indicate that there was a slid flat on both right tires (inside & outside). However, the carrier was only billed for the damage visible on the tire at ingate. Therefore, the Equipment Provider feels that based on the documentation, they consider this invoice to be valid and shall stand.

## 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 photos did not provide sufficient evidence to support a slid flat or that they showed there is enough tread missing to call it a slid flat.

The Rail panel member found in favor of the Equipment Provider stating the Equipment Provider provided evidence that both tires on the same axle were replaced and met the definition of slid flat. In looking at a close-up image of the slid flat on the subject tire pre-repair, the same pattern is evident on the close-up image provided at IG (specifically the oval pattern of the slid flat and the tread deformation within the slid flat). While portions of the IG image are blurred by light reflection, the image provides sufficient evidence that the slid flat on the subject tire upon repair also existed upon IG by the Motor Carrier.

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. It was the consensus of all three senior arbitration panel members that the Equipment Provider did not provide sufficient evidence to support that the Motor Carrier was responsible for the damage. The senior arbitration panel noted there was no documentation showing that the slid flat tire met the definition of a slid flat in accordance with Exhibit C of the UIIA. Exhibit C states, "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". Although photos were provided, there was not adequate proof of the 4/32<sup>nd</sup> differential and that the remaining tire tread was less than 2/32nds. Therefore the senior arbitration panel agreed 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.

## UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:

### 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]**
- 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]**

4. Tires

- 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]**

**Exhibit C to UIIA, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)**

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.

**EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)**

- 3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

**DECISION:** The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

**CASE REVIEWED AND DECIDED BY:**

KEVIN LHOTAK  
Motor Carrier Modal Panel Member

GORDON GRAHAM  
Rail Carrier Modal Panel Member

DAVE MANNING  
Motor Carrier Senior DRP Panel Member

AL SMERALDO  
Ocean Carrier Senior DRP Panel Member

BILL TRAUB  
Rail Carrier Senior DRP Panel Member



the damage recorded on the inbound inspection was sufficient to document the damage as the Motor Carrier's responsibility as described in Exhibit C of the UIIA.

- SACP stated that there are prior arbitration rulings that address that the term "Flat Spot" is not appropriate terminology as it could be a result of uneven tread wear. However, these decisions do not address that the term "Slid" is not appropriate terminology for "Slid Flat" tire damage.
- "Slid" identifies that the tire was "Slid" across the ground and is sufficient terminology that enough tread was removed to meet the UIIA "Slid Flat" requirements, supported by the M&R vendor's replacement of the tires for slid flat tire damage.
- SACP feels that the Motor Carrier is responsible for the LIF/LOF slid flat tires, as notated on the ingate interchange and was accepted by their driver.

#### **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 both the Motor Carrier and the Equipment Provider's arguments center around the terminology used on the ingate interchange receipt. The Motor Carrier argues that Slid is not interchangeable with Slid Flat. The Equipment Provider argues that Slid is interchangeable with Slid Flat. Part of the response from the Equipment Provider contains previous DRP cases where it was ruled that Flat Spot was not interchangeable for Slid Flat. Those cases refer to the fact that there is no definition for Flat Spot in the UIIA as the basis for finding in favor of the Motor Carrier. The Motor Carrier panel member stated that that same logic applies in this case; that there is no definition for Slid, so it is not interchangeable with Slid Flat. The Ocean Carrier panel member found in favor of the Equipment Provider noting the ingate EIR clearly notates damage to the LIF and LOF tires noting 'SLID' to indicate the tires had been drug across the pavement to the point of removing substantial tread. The omission of the word 'FLAT' after describing the tires as 'SLID' does not release the Motor Carrier from responsibility on semantics. In addition, the driver signed the EIR accepting the notated damages without comment at time of interchange.

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. It was the consensus of all three senior DRP panel members that the Equipment Provider did not sufficiently provide the factual documentation in accordance with Section E.3.a.(2) to support that the Motor Carrier was responsible for the repair bill. In addition, the panel noted the terminology used on the repair documentation was not clear and the term "Slid" is not a proper defined term for "Slid Flat" in accordance with Exhibit C of the UIIA. It was the consensus of the group that a tire can be "slid" without being "slid flat" and since sufficient supporting documentation showing evidence of the tread depth was not presented in this case, the Equipment Provider failed to meet their obligation under Section E.3.a.(2).

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

**The panel relied upon the following provisions from the UIIA (October 1, 2018) to make its decision:**

##### **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]**
- 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, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)**

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.

**EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)**

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

**DECISION:** The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

**CASE REVIEWED AND DECIDED BY:**

CHRIS GILTZ  
Motor Carrier Modal Panel Member

RONNIE ARMSTRONG  
Ocean Carrier Modal Panel Member

DAVE MANNING  
Motor Carrier Senior DRP Panel Member

AL SMERALDO  
Ocean Carrier Senior DRP Panel Member

WILLIAM TRAUB  
Rail Senior DRP Panel Member



clearly identified the true nature of the damage, it would be impossible to notate the full damage until the tire was dismounted. The Equipment Provider operated with due diligence and provided the correct and updated information as soon as possible. There is no dispute as to who caused the damage as the Motor Carrier did have the chassis out under their interchange at the time of damage.

The Motor Carrier panel member found in favor of the Motor Carrier noting that If additional damage is discovered at the time of repair that is different than the damage noted on the original ingate EIR, it is not unrealistic to expect there be physical visual proof of the additional damage. Since there's additional cost being charged/assessed to the Motor Carrier and there's a change in the damage description to a legally binding EIR, then it's reasonable that supporting evidence of the new damage be provided to justify the additional expense and change to the EIR. The Motor Carrier is only responsible for the damages noted on the original EIR.

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. It was the consensus of all three senior arbitration panel members that the supporting documentation that the Equipment Provider submitted did not validate the charges billed. They noted that the work order does not match the details of the inspection report and associated paperwork is not clear in supporting the damage being billed. The senior panel members agreed that the Equipment Provider did not comply with Section E.3.a.(2) by providing sufficient documentation to support the damage being billed.

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

**The panel relied upon the following provisions from the UIIA (October 1, 2018) 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]**

#### **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]**



- 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, Motor Carrier Responsibility during the Interchange Period (Added to UIIA on 07/25/07, Last Revised 10/01/18)**

**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

**EXHIBIT D TO THE UIIA, BINDING ARBITRATION PROCESS GUIDELINES (Added to UIIA on 8/1/08) (Last Revised 09/16/17)**

3. A two-member arbitration panel will be appointed by IANA to handle disputed invoices submitted for arbitration. The panel will consist of one IIEC member from each mode involved in the dispute. In the event that the arbitrators from the involved modes cannot agree on a resolution of this dispute, a decision will be rendered by a majority of a senior panel consisting of the longest tenured IIEC member or alternate from each mode, as determined by the Chairperson. **[Revised 09/16/17]**

**DECISION:** The Senior DRP Panel unanimously finds in favor of the Motor Carrier.

**CASE REVIEWED AND DECIDED BY:**

TIM AMES  
Ocean Carrier Modal Panel Member

ROBERT LOYA  
Motor Carrier Modal Panel Member

DAVE MANNING

Motor Carrier Senior DRP Panel Member

AL SMERALDO

Ocean Carrier Senior DRP Panel Member

BILL TRAUB

Rail Carrier Senior DRP Panel Member



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

The Equipment Provider initially asked the chassis pool to respond on their behalf for this claim. The chassis pool responded stating that Motor Carriers are responsible for tire damage that occurs during the interchange period and provided the following information:

XPO – Atlanta Conley is a nonstop location. While SACP has repair vendors on site, this location does not stop an interchange. Some facts about the XPO ATL location:

- XPO creates an EIR upon entry
- All repairs to SACP units are submitted through SACP's chassismandr.com web portal and SACP pays the repair vendor directly. XPO is rebilled for the repairs so that SACP can be reimbursed for these flat tire repairs during the interchange.
- Any flat tire that is repaired as a result of tube failure is not noted as rebillable in the MandR system and would not be rebilled back to XPO.
- Photo documentation of the flat tires repaired during interchange are not provided at this location
- This process works in XPO's benefit as most repairs made during an interchange are paid upfront by the trucker and later submitted to SACP via the OTR process.
- The repair vendor will submit an invoice directly to XPO for any non-pool chassis repairs.
- SACP has since required the onsite repair vendor to get pre-approval from the terminal manager before making any repairs which is slowing the chassis repairs down.

The Equipment Provider also added as part of its response that although it paid for the use of the chassis associated with this dispute, paying for the chassis is not the same as interchanging the chassis. "Interchange" and "Provider" are defined terms in the UIIA and that in the present dispute, the Equipment Provider stated that they were neither the "Provider" nor the "Interchange" party for the chassis. The Equipment Provider indicated that this is consistent with the UIIA, which clearly contemplates that the Provider of the container may be different from the Provider of the chassis. Consequently, the Container EP is not the proper party for the arbitration of charges related to the chassis. This dispute would fall outside of the UIIA and should be handled under the Motor Carrier's direct interchange with the non-UIIA chassis provider (Flexi-Van Leasing and DCLI).

## **DECISION:**

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon this information, the panel's opinion is that the UIIA does not have jurisdiction to make a ruling on this case. The charges under arbitration are related to the chassis, which was interchanged under the Motor Carrier's direct interchange with a non-UIIA chassis provider (Flexi-Van Leasing and DCLI) so is outside the scope of the UIIA. Note on the date the interchange occurred, Flexi-Van Leasing was not an active Equipment Provider participant in the UIIA. Consequently, because the Container EP is not the interchange party for the chassis the UIIA provisions would not apply.

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

The panel relied upon the following provisions from the UIIA (July 1, 2019) to make its decision:

**Section B. Definition of Terms, Section B.21 Parties**

Parties: The Provider Motor Carrier and/or Facility Operator who are signatories to this Agreement. **[Revised 02/24/06]**

**Section B. Definition of Terms, Section B.24. Provider**

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]**

**Exhibit D., Item D.1.**

“This process is applicable for disputed transactions relating to Per Diem, maintenance and repair or Equipment use/rental charges between Providers and Users (Motor Carriers) of Equipment who are signatories to the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). **[Revised 05/01/17]**

**DECISION:** The panel unanimously finds that the UIIA does not have jurisdiction to make a ruling on this case. The interchange associated with the disputed charges is between the Motor Carrier and the non-UIIA chassis provider. Consequently, the dispute of the charges should be addressed under the Motor Carrier’s direct interchange with the chassis provider, which is outside the scope of the UIIA.

**CASE REVIEWED AND DECIDED BY:**

DAVE HENSAL  
Motor Carrier Panel Member

LEONARD IMPERIAL  
Ocean Carrier Panel Member