

**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: **20210721-7-XXXP-PD**

Date of Decision: 01/28/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

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	UST521596	ONEU0136570	06/29/21	YTI/YTI	5/11/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	7/21/21
2	UST521595	FDCU0556469	06/29/21	YTI/ITS	5/11/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
3	UST521599	TRHU4350921	06/29/21	YTI/YTI	5/19/2021	6/21/2021	6/30/21	7/2/21	7/7/2021	
4	UST521597	BEAU5302016	06/29/21	YTI/ITS	5/20/2021	6/25/2021	6/30/21	7/2/21	7/7/2021	
5	UST521052	BEAU5327884	06/29/21	YTI/ITS	5/20/2021	6/22/2021	6/30/21	7/2/21	7/7/2021	
6	UST521060	ONEU0331598	06/29/21	YTI/YTI	5/20/2021	6/23/2021	6/30/21	7/2/21	7/7/2021	

MOTOR CARRIER'S DISPUTE

The Motor Carrier's basis of dispute is Sections E.1.b., E.1.d., G.12, and H.2. of the UIIA. The Motor Carrier states that the Equipment Provider requested the Motor Carrier to return the empty equipment to Trapac. When the Motor Carrier attempted to return the empties to Trapac, the facility had empty return restrictions. The Motor Carrier contacted the Equipment Provider and was instructed to take the empty equipment to International Transportation Services (ITS). On July 2, 2021, the Motor Carrier received the per diem invoices and disputed the charges on the basis that there were empty equipment restrictions at the facility which precluded it from returning the equipment within the free time allowed under Section E.1.d. in order to avoid per diem charges.

The Motor Carrier believes that the Equipment Provider did not comply with Section E.1.b. of the UIIA by not providing a valid return location and not notifying the Motor Carrier by 4:00 p.m. (local time) the business day prior to the change in the equipment return location. In addition, the Equipment Provider did not provide the additional business day for the equipment to be returned as required under Section E.1.d. The Motor Carrier believes it attempted to work with the Equipment Provider to avoid the dispute from going to arbitration, but no response was received from the Equipment Provider which is a violation of Section H.2. Lastly, the Motor Carrier believes the Equipment Provider did not comply with Section G.12 of the UIIA. as they did not abide by California State Bill SB45 that precludes the Equipment Provider from assessing per diem charges on days when terminals are not receiving empty equipment due to a lack of appointments being made. The Motor Carrier stated that it does not control the appointment systems, and the steamship lines have the control to redirect the equipment to an appropriate facility. For the reasons above, the Motor Carrier believes they should not be held responsible for the per diem charges billed.

EQUIPMENT PROVIDER'S RESPONSE

The Equipment Provider responded to the Motor Carrier's dispute indicating that the dispute was declined since they had provided the Motor Carrier with an alternate return location (ITS) the same day the Motor Carrier reported there were empty restrictions at the original return location (Trapac). The Equipment Provider believes that Sections E.1.b. & E.1.d. of the UIIA apply only if the original return location is changed and does not apply just because an alternative location is provided. Therefore, the Equipment Provider feels that Section E.1.d. of the UIIA did not require it to extend the last free day. The Equipment Provider's responses to the Motor Carrier's emails did not violate the UIIA as the responses solely provided exemptions or alternative return locations and never changed the original return location posted. In addition, the Equipment Provider does not believe this situation warrants a force majeure condition based on the language in Section G.12 in the UIIA as argued by the Motor Carrier. The Equipment Provider believes the per diem charges are valid as billed.

DISCUSSION

After careful review of all the parties' arguments, documents, and evidence submitted, the panel finds in favor of the Equipment Provider. The Ocean Carrier panel member indicated that the Equipment Provider advised the Motor Carrier of all return locations before the daily cut-off time pursuant to Section E.1.b. of the UIIA. The Equipment Provider acted reasonably when notified on May 12th and May 25th that the original return location had empty restrictions on the specific date the Motor Carrier attempted to return the equipment by providing the Motor Carrier with either an exemption and/or an alternate location to return the equipment. This information was provided to the Motor Carrier the same day they had reported the empty restrictions to the Equipment Provider. Therefore, based on the Equipment Provider's response to the Motor Carrier in this situation, the Ocean Carrier panel member did not believe Section E.1.d. that offers an additional business day to return the equipment was applicable. In addition, although an alternate return location was provided to the Motor Carrier on the same day (May 12th and May 25th) the Equipment Provider was notified of the empty restrictions, the actual return of the equipment did not take place until late June.

The Motor Carrier panel member concurred with the Ocean Carrier panel member's analysis of the facts and documentation presented in the case. Finally, the panel agrees with the Equipment Provider that based on the facts presented, the situation did not warrant a force majeure condition set forth in the language of Section G.12 of the UIIA. Accordingly, based on the above, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

E. Equipment Return, Item E.1.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]**

E. Equipment Return, Item E.1.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]**

G. General Terms, Item G.12.

Force Majeure: In the event the Motor Carrier is unable to Interchange Equipment to Provider within the free time as specified in Provider's Addendum, or Provider's applicable Tariff, as a result of Acts of God, war, insurrections, strikes, fire, flood or any like causes beyond the Motor Carrier's control, the Motor Carrier shall be exempted from the Per Diem charges to the extent of, and for the duration of, the condition that prevented the redelivery of the Equipment. **[Revised 09/13/04]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.2.

Should no resolution be reached between the Parties for charges disputed within the applicable dispute resolution process, then the Parties will have the ability to submit the disputed charges for binding arbitration in accordance with Exhibit D of the Agreement. Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute. Following the initiation of binding arbitration, the arbitration panel will determine the Party responsible for payment based on the specific facts and circumstances associated with the claim, the terms and conditions of the Agreement and the Provider's Addendum along with the supporting documentation presented by the involved Parties. **[Revised 04/23/21]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider based on the evidence and supporting documentation presented in the case. The Motor Carrier is responsible for the disputed per diem charges under this claim based on Section E.1.b. of the UIIA.

CASE REVIEWED AND DECIDED BY:

JORDAN HUNT
Motor Carrier Panel Member

TIM AMES
Ocean Carrier Panel Member

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA MC,

Appellant,

UIIA EP,

Respondent.

Case Number: **20220610-29-XXI-PD**

Date of Decision: 1/24/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

	Invoice Number	Unit #	Invoice Date	Facility	Outgated	Ingated	Date MC Rec'd Invoice	Date MC Disputed Invoice	Date EP Responded only confirmed receipt of dispute	Date Notice of Intent Received
1	100001579801P (original invoice)	MEDU4331259	4/5/2022	Not provided	2/22/2022	3/01/2022	4/06/2022	4/06/2022	5/23/2022	6/10/2022
2	100001710201P (revised invoice)	MEDU4331259	4/5/2022	Not provided	2/22/2022	3/01/2022	5/23/2022	5/24/2022	5/24/2022	6/10/2022

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections H.1. and H.4. of the UIIA. The Motor Carrier received a per diem invoice on April 6, 2022 and disputed the invoice the same day indicating that the Equipment Provider did not calculate the free time and charges correctly. The Equipment Provider responded to the Motor Carrier's dispute on May 23, 2022, which was over the established 30-day timeframe for the Equipment Provider to respond to a Motor Carrier's dispute pursuant to Section H.1. of the UIIA. On May 23, 2022, the Equipment Provider's response was the issuance of a corrected invoice. The Motor Carrier believes that since the Equipment Provider's response to the dispute was outside of the established 30-day timeframe it loses the right to collect the charges in accordance with Section H.4. of the UIIA.

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

The Equipment Provider responded stating that it revised the invoice according to the dispute submitted by the Motor Carrier. The invoice was reduced to the amount that the Motor Carrier agreed was correct. The Equipment Provider stated that there is nothing in the UIIA that states that the undisputed part of the charge must be waived. The Equipment Provider indicates that the remaining balance that was billed was not part of the Motor Carrier's original dispute. The Equipment Provider added that once a decision is rendered in this case, Section H.4. should be modified so it is clear as to the intent of the meaning of this provision in the UIIA.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier panel member's summary of the facts is that the dispute centers around Section H.4. of the UIIA. The Motor Carrier received invoice No. 100001579801P on April 6, 2022 and disputed the invoice on the same date with the Equipment Provider. The Motor Carrier complied with the initial dispute requirements under Section H.1. of the UIIA. The Equipment Provider did not address or respond to the dispute within the 30 days specified in Section H.4. of the UIIA.

The Motor Carrier states that Section H.4. eliminates the ability of the Equipment Provider to collect any charges on the invoice. The Equipment Provider interprets Section H.4. to mean that the Equipment Provider cannot challenge the part of the invoice that was disputed, but there is no time limit to issue a corrected invoice.

Section H.4. of the UIIA states:

Should the Invoicing Party fail to respond to the Invoiced party's dispute of an invoice relating to Per Diem, maintenance and repair or Equipment use/rental 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 is 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 05/01/17]**

The Motor Carrier panel member also noted that the Equipment Provider issued a revised invoice, No. 100001710201P, on May 23, 2022 however, the revised invoice was dated April 5, 2022. The Motor Carrier panel member indicated that the Equipment Provider should be notified that a revised invoice cannot be backdated to appear that the invoice was created on the date the original invoice was issued. This is precisely the reasoning behind establishing timelines in the UIIA.

The Ocean Carrier panel member concurred with these findings and added that Section H.4. precludes an Equipment Provider from collecting charges on an invoice that was disputed within the appropriate timeframe by the Motor Carrier, but the Equipment Provider did not respond within the established timeframe. Based on all of the above, the panel finds in favor of the Motor Carrier.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (April 23, 2021) to make its decision:

Section H. Default Dispute Resolution and Binding Arbitration Processes, Item H.1.

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, maintenance and repair or Equipment use/rental charges, the following default dispute resolution process will apply: **[Revised 05/01/17]**

Invoiced Party shall advise Invoicing Party in writing of any disputed items on invoices within 30 days of the receipt of such invoice(s), documenting with appropriate evidence, its disagreement with any of Invoicing Party's bills it believes to be incorrect. Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party's notice with its decision to accept or deny the Invoiced Party's dispute. 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 06/13/16]**

Section H. Default Dispute Resolution and Binding Arbitration Processes, Item H.4.

4. Should the Invoicing Party fail to respond to the Invoiced Party's dispute of an invoice relating to Per Diem, maintenance and repair or Equipment use/rental 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 05/01/17]**

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on Sections H.1. and H.4. of the UIIA.

CASE REVIEWED AND DECIDED BY:

CHRIS GILTZ
Motor Carrier Panel Member

RONNIE ARMSTRONG
Ocean Carrier Panel Member