

UNIFORM INTERMODAL INTERCHANGE AND FACILITIES ACCESS AGREEMENT

DISPUTE RESOLUTION PANEL REVIEW AND DECISION

In the Dispute Between

UIIA Motor Carrier,
Appellant, and

UIIA Equipment Provider,
Respondent

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Case Number: **20150210-15-XXXI-PD**

Date of Decision: 09/28/2015

The motor carrier disputes the following invoice:

Invoice	Invoice #	Inv. Date	Amount	Facility Outgate/Ingate	Outgated	Ingated
1	d000455601	2/17/15	\$00.00	LBCT/Not Provided	12/19/14	1/13/15
2	d000455757	1/27/15	\$00.00	LBCT/Fast Lane	12/11/14	1/22/15
3	d000455745	1/27/15	\$00.00	CUT/ConGlobal	12/22/14	1/19/15
4	d000455743	1/27/15	\$00.00	YTI/ConGlobal	12/17/14	1/19/15
5	d000455607	1/27/15	\$00.00	LBCT/CUT	12/9/14	1/14/15
6	d0000455753	1/27/15	\$00.00	CUT/Fast Lane	12/12/14	1/21/15
7	d000455751	1/27/15	\$00.00	CUT/Fast Lane	12/9/14	1/20/15
8	d000455605	1/27/15	\$00.00	LBCT/YTI	12/9/14	1/14/15
9	d000455759	1/27/15	\$00.00	LBCT/Fast Lane	12/9/14	1/22/15
10	d000455754	1/27/15	\$00.00	YTI/Fast Lane	12/10/14	1/22/15
11	d000455599	1/27/15	\$00.00	Global Gateway/Global Gateway	12/9/14	1/12/15
12	d000455602	1/27/15	\$00.00	Global Gateway/Global Gateway	12/9/14	1/13/15
13	d000455749	1/27/15	\$00.00	YTI/Fast Lane	12/15/14	1/20/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier asserted that conditions existed that prevented its ability to return equipment within the specified free time. The Motor Carrier states that conditions such as labor issues, closed terminals, early gate closures, closed areas, equipment redirections and non-acceptance of equipment on certain days/shifts all contributed to congestion that were beyond the Motor Carrier's control. Under these situations, delays could not be avoided by the Motor Carrier and therefore the Motor Carrier should not be held responsible for per diem during this timeframe. The Motor Carrier also argued that port congestion has been recognized by the Equipment Providers, such as the Equipment Provider in this claim, as a form of force majeure. The FMC filed tariffs of many Equipment Providers include port congestion as a condition of force majeure. The Motor Carrier believes if Equipment Providers can exempt themselves from liabilities based on force majeure provisions within their own tariffs, then they should not be able to levy charges against a Motor Carrier for delays in returning equipment.

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

The Equipment Provider did not submit comments to this binding arbitration and failed to respond to the Motor Carrier's initial dispute of these charges.

DISCUSSION:

The Motor Carrier submitted as part of its supporting documentation several general articles relating to the West Coast port congestion. In addition, at the request of additional information by the arbitration panel, the Motor Carrier submitted turn time data evidencing the impact of the port congestion on drivers' turn times during the heart of the port congestion. The Motor Carrier also stated in its initial dispute of the charges that California state law SB45 prohibited imposing per diem charges during work stoppages and congested conditions.

The Equipment Provider did not respond to the arbitration claim submitted by the Motor Carrier and also did not respond to the Motor Carrier's initial dispute of the charges.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

In regards to the Motor Carrier's initial dispute of the charges relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations. Based on the supporting documentation provided by the Motor Carrier, there was no evidence presented that showed the driver attempted to gain access to the facilities associated with these invoices and was turned away.

DECISION:

The panel reviewed all documents and evidence submitted by the parties. The panel finds in favor of the Motor Carrier. The Motor Carrier complied with the requirements prescribed under provision H.1 of the UIIA. The Equipment Provider did not respond in writing to the Motor Carrier's dispute within the timeframe (30 days) prescribed under provision H.1 of the UIIA. Provision 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 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." Therefore, based on provision H.1 and H.4 of the UIIA, the Equipment Provider lost its ability to collect from the Motor Carrier the charges associated for all 13 invoices.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 1, 2014) to make its decision:

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]**

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

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

In the Dispute Between

Case Number: **20150408-5-XXXT-PD**

Date of Decision: 02/08/2016

Inv #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated
1	PF1502001301	2/17/15	\$00.00	BMOU4777897	Shippers/PCT	1/30/15	2/13/15
			\$00.00	OCGU8077757	Shippers/PCT	1/23/15	2/3/15
			\$00.00	BMOU5000350	Shippers/PCT	2/5/15	2/13/15

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier also reported that the return facility was not accepting empty equipment on behalf of the Equipment Provider. The Motor Carrier provided two email transmissions from the facility on the dates of February 5, 2015 and February 6, 2015, that indicated the facility was accepting empties on behalf of specific Equipment Providers; however, EP was not listed. The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

In addition, the Motor Carrier indicated in its narrative that the California Business and Professions Code 22928 expressly prohibits the assessment of per diem “during a labor disruption period...” and the UIIA requires that all Parties obey all applicable federal, state and local laws, rules and regulations.

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

The Equipment Provider responded submitting the following hours of operation for the facility for the period of January 23, 2015 through February 13, 2015:

- 0800 to 1700 hrs. – Monday through Friday (Day Shift)
- 1800 to 0300 hrs. – Tuesday through Friday (Night Shift)
- 0800 to 1700 hrs. – Saturday (Special Gate)

The Equipment Provider noted that Mondays and Saturdays have only a daytime shift and that Tuesday through Friday have both a daytime and night shift. The Equipment Provider also indicated that the facility was closed on Thursday, February 5, 2015 from 1800 through 0300 hours. The Equipment Provider also reported that PCT is a paperless facility; therefore, no turn away tickets are issued if a driver is turned away at the gate.

The Equipment Provider reported that excluding the day of outgate and the days the terminal was not open (i.e. Sundays), the Motor Carrier had the following number of days up to and including the expiration of free time to return the empty containers:

- BMOU4777897 – 5 days of which 2 days were double shift and 2 days under single shift at the facility
- OCGU8077757 – 5 days of which 3 days were double shift and 2 days under single shift at the facility
- BMOU5000350 – 5 days of which 4 days were double shift and 1 day under single shift at the facility

The Equipment Provider also provided documentation showing all empty containers returned to the facility during the relevant period of January 30, 2015 through February 15, 2015. The Equipment Provider states that the emails provided by the Motor Carrier on the dates of February 5, 1015 to February 6, 2015, showing that the facility was not accepting EP's empty equipment are not relevant and notes that February 5, 2015, was five (5) business days after the expiration of free time for OCGU8077757 and the last day of free time for BMOU4777897. With respect to BMOU5000350, February 5 and 6, 2015, represented the date the container was out-gated and the first day of free time. In addition, the facility further advised the Equipment Provider that it accepted eighty (80) EP's empty containers on February 6, 2015. The Equipment Provider stated that there is no factual documentation presented by the Motor Carrier that an earlier attempt to return the equipment was made and/or that it was impossible to do.

The Equipment Provider commented that the Motor Carrier must show it was "unable" to return the containers within the free time and that the force majeure condition "prevented the redelivery of the Equipment" to qualify for protection under Section G.12. of the UIIA, and, further, that it is the Motor Carrier's obligation to show that both existed. In addition, the Equipment Provider stated that the right of a carrier to declare force majeure or assess port congestion surcharges depends upon the provisions of the particular contract and tariffs in effect between the carrier and the shipper. The Equipment Provider states that the Motor Carrier is not a party to these commercial arrangements. The Equipment Provider states that the Motor Carrier did not provide any factual evidence to show its driver was turned away from the facility or that any of the conditions under the California Business and Professions Code 22928 was not complied with. The Equipment Provider believes the charges are valid as billed.

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 believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time. The Motor Carrier also reported that the facility was not accepting empty equipment on behalf of the Equipment Provider. In addition, no evidence was provided showing that the Equipment Provider responded to the Motor Carrier's original dispute of these charges.

The Equipment Provider responded to the arbitration claim stating that it does not believe the Motor Carrier provided factual documentation to support its claim that conditions existed that precluded the return of the equipment within the specified free time. The Equipment Provider believes the charges are valid as invoiced.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence, the Ocean Carrier panel member found in favor of the Equipment Provider for the full amount as originally invoiced. The Ocean Carrier panel member stated that the Motor Carrier failed to submit documentation that proved that the port congestion prevented the containers' timely return. The Ocean Carrier panel member also noted that the Equipment Provider provided data to support its claim that the terminal was open and that containers were being accepted for redelivery.

The Motor Carrier panel member disagreed stating that not only did the Motor Carrier clearly define the issues, the Equipment Provider failed to respond to the Motor Carrier's dispute. The Motor panel member observed that according to the UIIA, the Equipment Provider must respond within thirty (30) days of receiving the Motor Carrier's dispute or lose all rights to collect charges. Section H.1 of the UIIA states that *"Invoicing Party will respond in writing to such disputed items within 30 days of receipt of Invoiced Party's notice."* The Equipment Provider did not respond within the required timeframe; therefore, the Motor Carrier panel member finds in favor of the Motor Carrier stating no charges are due.

Because the model 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 Carrier panel member noted that while he does not support the Motor Carrier's Force Majeure claim, he does find in favor of the Motor Carrier for the Equipment Provider's failure to meet the requirements of Section H.1 of the UIIA which requires a thirty (30) day response to the Motor Carrier's dispute. The Rail panel member noted that documentation available in the case file contains the dispute notice from the Motor Carrier within the required time frame, but a response to this dispute from the Equipment Provider is not included in the case documentation. Therefore, the Rail panel member 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 (October 01, 2014) to make its decision:

G. General Terms

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

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]**]

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

CASE REVIEWED AND DECIDED BY:

CHAD PETERSON
Rail Carrier Member

KEVIN LHOTAK
Motor Carrier Member

JIM MICHALSKI
Ocean 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: **20150408-6-XXXT-PD**

Date of Decision: 1/11/2016

The motor carrier disputes the following per diem invoices:

Inv #	Invoice	Inv. Date	Container #	Facility	Outgated	Ingated
1	LGT057941	1/26/15	BMOU9764510	TTI	1/9/15	1/19/15
2	LGT057940	1/26/15	HJCU6127187	TTI	1/6/15	1/16/15
3	LGT058064	1/27/15	FCUI8980895	TTI	1/7/15	1/21/15
4	LGT058079	1/28/15	TGHU8756706	TTI/Fast Lane	1/6/15	1/20/15
5	LGT058249	2/12/15	TCLU1143621	EVG/TTI	1/14/15	1/27/15
6	LGT058212	2/9/15	SENU5050738	TTI	1/7/15	1/28/15
7	LGT058599	3/9/15	SEGU5125545	TTI	2/10/15	3/5/15
8	LGT058598	3/9/15	HJCU1576930	TTI	1/9/15	3/4/15
9	LGT058584	3/9/15	BSIU2360153	TTI	2/5/15	3/4/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier basis of dispute is Section G.12 of the UIIA (Force Majeure). The Motor Carrier states that it was prevented from returning the containers within the free time because of the port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier stated that the return facility, TTI, was not accepting empty equipment on behalf of the Equipment Provider and that the Equipment Provider provided no alternate return locations. Additionally, the Motor Carrier stated that it was obvious that Force Majeure conditions existed at the port and that steamship lines had already declared a de facto Force Majeure by assessing port congestion surcharges under their tariffs filed with the Federal Maritime Commission. The Motor Carrier stated that on a daily basis steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier argued that these conditions precluded it from being able to return equipment to the facilities within the allowable free time.

The Motor Carrier also stated that the findings of the FMC, as well as the articles in various publications, all support the conclusion that port congestion is Force Majeure. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define Force Majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier argued that based on these facts and the law, all UIIA Equipment Providers must immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

The Motor Carrier submitted its initial dispute of the charges with the Equipment Provider as its supporting documentation for this claim. Based on this information, the Motor Carrier believes that Force Majeure conditions existed that precluded its ability to return the equipment within the specified free time. In addition, the MC provided several status reports from the TTI facility that showed on specific dates that the facility was not accepting single empty in transactions and was not

accepting empty equipment on behalf of the Equipment Provider. The Motor Carrier indicated that on these specific dates, the Equipment Provider did not provide an alternate return location. The Motor Carrier also does not believe the Equipment Provider complied with SB45 by assessing per diem charges during a labor disruption period.

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

The Equipment Provider submitted no comments concerning the arbitration. With regard to the Motor Carrier's initial dispute of the charges, the supporting documentation indicated that the Equipment Provider only responded to the disputes related to Invoices 7, 8 and 9 that stated that all clock stop days had been properly applied. The only other communication from the Equipment Provider were e-mails on 1/16/16 and 1/26/15 advising the Motor Carrier that empty returns were not being accepted and that there were no alternate return locations for the equipment.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate., or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. During the assessment of this claim IANA's staff learned that the following invoices were canceled by the Equipment Provider.

Invoice	Inv. Date	Container #	Status
LGT058064	1/27/2015	FCUI8980895	CANCELED
LGT058079	1/28/2015	TGHU8756706	CANCELED
LGT058212	2/9/2015	SENU5050738	CANCELED
LGT058599	3/9/2015	SEGU5125545	CANCELED
LGT058598	3/9/2015	HJCU1576930	CANCELED
LGT058584	3/9/2015	BSIU2360153	CANCELED

Therefore, the panel's decision reflects on the following outstanding invoices:

Invoice	Inv. Date	Container #	Status
LGT057941	1/26/2015	BMOU9764510	VALID
LGT057940	1/26/2015	HJCU6127187	VALID
LGT058249	2/12/2015	TCLU1143621	VALID

The panel finds in favor of the Motor Carrier for the following reasons: 1) the invoices were billed by the Equipment Provider in accordance with Section E.6.c; 2) Upon receipt of the invoices the Motor Carrier disputed the invoices well within the timeframe prescribed under Section E.6.e of the UIIA; 3) In absence of a dispute resolution process in the Equipment Provider's Addendum, Section H.1 is applicable to this case. Therefore, the Equipment Provider failed to respond in writing to the Motor Carrier's disputes within the 30 day timeframe established under Section H.1 of the UIIA. Consequently, the Equipment Provider lost its right to collect the per diem charges of the disputed invoices under Section H.4 of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (1/26/15) to make its decision:

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]

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

CASE REVIEWED AND DECIDED BY:

FRED HUENNEKENS
Motor Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

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

In the Dispute Between)

UIIA Motor Carrier)
Appellant, and)

Case Number: **20150409-7-XXXT-PD**

UIIA Equipment Provider)
Respondent)

Date of Decision: December 21, 2015

The Motor carrier disputes the following invoice:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	DT0138324	2/23/15	\$00.00	WBCT	1/20/15	2/10/15
			\$00.00	ITS/WBCT	1/19/15	2/10/15
			\$00.00	WBCT/PCT	1/22/15	2/11/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... port congestion, strikes, imminent strikes, lockouts or harbor disturbances..." The UIIA defines force majeure as "...strikes, or any like causes beyond the Motor Carrier's control..." In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded that the charges were correct and valid based on the fact that the existence of a force majeure situation must be shown. The Equipment Provider stated that it must be established that the Motor Carrier was unable (prevented) from returning the equipment. The Equipment Provider provided details of the LA terminal situation during the dates of January 14, 2015 through February 18, 2015, and stated that if a trucker notified them that they were having a problem returning equipment to a specific location, the Equipment Provider's equipment control department would have provided alternative return locations or the per diem team would have extended the last free day for the Motor Carrier if there was no alternative return location. The Equipment Provider also stated that if the Motor Carrier disputed an invoice and could provide evidence that it

was turned away, the Equipment Provider would adjust the invoice, but without evidence of this fact, the Equipment Provider is unable to verify if the delay was really caused by terminal congestion.

The Equipment Provider provided the following information regarding the operating hours at LAX/LGB terminal gate:

Monday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Open
Tuesday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Open
Wednesday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Open
Thursday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Open
Friday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Open
Saturday	1st Shift	0800hrs-1700hrs	Open	2nd Shift	1700hrs-0300hrs	Closed
Sunday	1st Shift	0800hrs-1700hrs	Closed	2nd Shift	1700hrs-0300hrs	Closed

The Equipment Provider also noted that LAX/EQC will provide assistance with empty return locations upon a trucker's e-mail/phone call inquiry if a trucker reports empty returns being rejected. In addition, the Equipment Provider noted that the facility does provide turn away tickets if the driver is turned away from the gate.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and a narrative relating to the initial dispute of the charges with the Equipment Provider. The Motor Carrier believes that force majeure conditions existed that precluded the redelivery of equipment and that the Equipment Provider has not complied with the California state regulation with regards to the conditions when state law precludes the assessment of per diem.

The Equipment Provider believes that the charges are valid as billed and that the Motor Carrier did not present any evidence to support that the Motor Carrier was unable (prevented) from returning the equipment.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regards to the Motor Carrier's basis relating to the California Business and Professions Code, Section 22928, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, during a labor disruption period, during any other period involving an act of God, or any other planned or unplanned action that closes the truck gate; or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11. of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

It should also be noted that the initial claim was for two (2) invoices. Invoice 2 was removed from the claim as the Motor Carrier did not dispute the invoice within the thirty (30) day timeframe set forth in the EP's Addendum and, therefore, does not meet the criteria set forth in Exhibit D of the binding arbitration guidelines.

DECISION

The modal panel members reviewed the case and could not reach a consensus. The Ocean Carrier panel member found the case in favor of the Motor Carrier and based its decision solely on the fact that the Equipment Provider had not provided a definitive response to the Motor Carrier's initial dispute of the charges within the thirty day timeframe set forth in the Equipment Provider's addendum. Consequently, the Ocean Carrier panel member believed that the Force Majeure issue did not come into play since the Equipment Provider did not comply with the dispute resolution provision contained in its addendum and therefore in accordance with Section H.4. of the UIIA lost its right to collect the disputed charges. The Motor Carrier panel member did look solely at the Motor Carrier's basis of dispute and found in favor of the Equipment Provider. The Motor Carrier panel member did not believe the Motor Carrier provided specific documentation to substantiate it was unable to return the equipment to the Provider within the allowable free time.

In accordance with Exhibit D, Item 3, the third panel member was brought in to render the final decision in the case since the two modal panel members were unable to reach a consensus. The third panel member believes that the Equipment Provider failed to provide an "official" response to the Motor Carrier's initial dispute of the charges within the 30 day timeframe set forth within its addendum. Based on the supporting documentation provided, the third panel member indicated that the Equipment Provider provided its decision in regards to the Motor Carrier's dispute on March 28, 2015, which was over the 30 days from the Motor Carrier's initial dispute of the charges. The basis of the Motor Carrier's dispute relating to force majeure was not raised by the third panel member since in accordance with Section H.4. of the UIIA, the EP lost its right to collect the charges since it did not respond to the Motor Carrier within the established timeframe set forth in its addendum.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

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

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.

EP's Addendum to the UIIA – Section 4 Per Diem Invoice Dispute Resolution Procedure, Items B and D

b. Motor Carrier shall provide EP with written notice within thirty (30) days of receipt of Provider's invoice of the per diem invoice. Failure to provide such 30 days will result in Motor Carrier's full acceptance of the invoices.

d. On receipt of Motor Carrier's notice, Provider will undertake to reconcile such disputed

items and will respond to Motor Carrier within (30) days of receipt of Motor Carrier's notice. In no event shall any dispute constitute valid grounds for Motor Carrier to withhold or delay payment for any non-disputed charges.

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

CASE REVIEWED AND DECIDED BY:

WALTER WATSON
Rail Carrier Member

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
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: **20150415-16-XXXN-PD**

Date of Decision: 12/31/2015

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Inv. Date	Container #	Facility	Outgated	Ingated
PD00125851	12/8/14	BMOU5229199	WBCT/WBCT	11/24/14	12/4/14
		CCLU6687745	WBCT/WBCT	11/22/14	12/3/14
		MAGU5321522	WBCT/WBCT	11/22/14	12/3/14
PD00126051	12/15/14	CCLU4463807	WBCT/WBCT	12/5/14	12/14/14
		CCLU4531012	WBCT/WBCT	1/2/14	1/10/14
		SEGU4836111	WBCT/WBCT	11/26/14	12/8/14
PD00126551	12/29/14	CCLU4465184	TTI/TTI	12/17/14	12/26/14

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections H.1, H.4 and G.12 of the UIIA (Force Majeure). The Motor Carrier stated that it originally disputed the charges with the Equipment Provider based on Section G.12. Force Majeure, indicating that it was precluded from returning the equipment within the free time period due to port congestion conditions that existed on the West Coast. The Motor Carrier indicated that because the Equipment Provider failed to respond to its initial dispute of the charges based on the Section G.12. Force Majeure, it filed for binding arbitration of the disputed charges based on Section H.1. and H.4. of the UIIA.

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

The Equipment Provider did not respond to the arbitration claim. There were however e-mail communications between the Equipment Provider and the Motor Carrier in regards to its initial dispute of the charges based on force majeure.

DISCUSSION:

The Motor Carrier submitted its basis of dispute and documentation in support of its initial dispute of the charges based on the West Coast port congestion conditions. This information included several JOC articles providing general information on the West Coast port congestion and a copy of the Equipment Provider's FMC filed tariff that referenced "port congestion" as a condition of force majeure. None of the articles submitted specifically described the conditions at the facilities associated with the disputed invoices. It should also be noted that the terms of the Equipment Provider's FMC filed tariff are outside the scope of the UIIA. The terms of the Equipment Provider's addendum to the UIIA Agreement would be applicable as it relates to the interchange contract between the Equipment Provider and the Motor Carrier at the time the charges were incurred.

The Motor Carrier argued that because the Equipment Provider did not respond to its original dispute of the charges based on force majeure that the Equipment Provider did not comply with Sections H.1. and H.4. of the UIIA. In an email dated January 7, 2015, the Motor Carrier provided additional information/documentation, at the Equipment Provider's request, supporting its initial dispute of the charges based on force majeure and asking the Equipment Provider if it was still going to pursue payment of the disputed charges. The Equipment Provider never responded to this email. Therefore, the Motor Carrier assumed the matter was resolved.

DECISION:

After careful review of all documents and evidence submitted, the modal panel members could not reach a consensus. The Ocean Carrier panel member found in favor of the Equipment Provider stating that in an e-mail communication, dated January 6, 2015, the Equipment Provider specifically denied the Motor Carrier's claim. The Ocean Carrier panel member noted that while the Motor Carrier continued to debate the charges via email, the Equipment Provider had the option to reverse its denial, but was under no obligation to continue to deny the Motor Carrier's case after the initial denial. The Motor Carrier panel member disagreed indicating that the Motor Carrier specifically inquired in the e-mail communication, dated January 7, 2015, whether the Equipment Provider wanted payment of the disputed invoices. As the Equipment Provider did not respond to this question, the Motor Carrier panel member considered the Equipment Provider not in compliance with Section H.1. of the UIIA. As the two modal panel members could not reach a consensus, in accordance with Exhibit D. of the UIIA, the third panel member was brought in to render the final decision in the case.

The Rail Carrier panel member finds in favor of the Equipment Provider noting that the Equipment Provider did respond to the Motor Carrier's initial dispute of the charges in the e-mail communication, dated January 6, 2015. After the Equipment Provider's response on January 6th, the Motor Carrier was then provided fifteen (15) days to either: a) pay the invoice; or b) seek binding arbitration. The Motor Carrier did neither, but instead engaged in further email exchange with the Equipment Provider. The Motor Carrier ultimately filed for arbitration on April 15, 2015, which was ninety-eight (98) days later. The Rail Carrier panel member stated that it is clear that the Equipment Provider denied the Motor Carrier's claim on January 6, 2015 at 11:38am in an email exchange from Alexius Moore (EP representative) to Cesar Garcia (MC representative) stating unequivocally "*..we have to deny your claim*". The Rail panel member further noted that with the failure of the Motor Carrier to meet the prescribed time limits, UIIA Section H.3 applies, which states: "*Further, the Invoiced Party, upon failing to dispute the invoice or seek arbitration within the prescribed timeframe, immediately will be*

responsible for payment thereof to the Invoicing Party and will lose its right to pursue binding arbitration under Exhibit D of the Agreement or assert any other defense against the invoice.”

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

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]**

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

CASE REVIEWED AND DECIDED BY:

GERRY BISAILLON
Rail Carrier Member

DAVE DALY
Ocean Carrier Member

ROBERT CURRY
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

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Case Number: **20150429-1-XXXM-PD**

Date of Decision: 01/20/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Inv. #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	d000476610	3/9/15	\$ 00.00	TCLU4036360	SSA OICT/ SSA OICT	1/23/15	2/5/15	3/9/15	3/18/15	

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's initial dispute of the charges was related to Section G.12 of the UIIA (Force Majeure). The Motor Carrier stated that containers could not be returned within the free time due to conditions beyond its control, i.e., constant port labor slowdowns and port congestion issues as well as vessel delays that existed at the Los Angeles and Long Beach Ports. The Motor Carrier submitted the claim for binding arbitration on the basis of Section H.1. in that the Equipment Provider did not provide a response to its initial dispute of the charges.

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

The Equipment Provider did not respond to the arbitration claim. However, the Equipment Provider did confirm receipt of the initial dispute of the invoice via automated email, but did not respond as to whether or not the initial dispute was declined.

DISCUSSION:

The Motor Carrier submitted its basis of dispute along with supporting documentation that included SSA/Port of Oakland Operations and email communications relating to terminal status, street wait time, vessels @ berth, vessels @ anchor, yard labor orders filled and comments that were made by the Port of Oakland. Based upon the documentation provided, the status of the OICT facility during the interchange period of January 23, 2015 to February 5, 2015, was as follows:

01/26/2015	Due to labor issues flip area had limited operations and could perform decking only. OICT not accepting empties for NYK on this date.
01/27/2015	Due to labor issues flip area had limited operations and could perform decking only. OICT not accepting empties for NYK on this date with the exception of 40'RH.
01/28/2015	Due to labor issues flip area had limited operations and could perform decking only. OICT not accepting empties for NYK on this date with the exception of 40'RH.
01/29/2015	Due to labor issues flip area had limited operations and could perform decking only. Street wait time reported light. A broadcast e-mail notice from eModal was sent on this date at 10:11 a.m. stating that due to labor and heavy truck volume specific lanes had been closed off for import delivery.
01/30/2015	Due to labor issues flip area had limited operations and could perform decking only. Street wait time reported light.
02/02/2015	Due to the volume of trucks on the terminal and labor challenges as of 1:40 p.m. OICT closed three delivery lanes to new import transactions. In addition, due to labor issues flip area had limited operations and could perform decking only. At noon, OICT no longer was accepting empties for NYK.
02/03/2015	Due to labor issues flip area had limited operations and could perform decking only. No empties were being accepting for NYK as of noon on this date.
02/04/2015	Due to labor issues flip area had limited operations and could perform decking only. No empties were accepted for NYK at the facility on this date.
02/05/2015	Due to labor issues flip area had limited operations and could perform decking only. No empties were accepted for NYK at the facility on this date.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

DECISION:

After careful review of the documents and evidence submitted, the panel finds that the Equipment Provider failed to provide a response to the Motor Carrier's dispute of the invoices within the established timeframe under Section H.1. of the UIIA. The panel members noted that the Motor Carrier disputed the invoice on March 19, 2015. The Equipment Provider sent an automated email response on March 19, 2015, indicating that it was currently processing/investigating the inquiry/request of the Motor Carrier. No further communication was sent to the Motor Carrier and the panel finds that the automated receipt confirmation failed to constitute a response under the terms of the agreement. 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 absence of a dispute resolution process in the Provider’s Addendum, the default dispute resolution process in Section H.1*”. The Equipment Provider’s addendum does not have a dispute resolution process that establishes timeframes for signatories to the UIIA to dispute invoices and respond to the dispute with respect to per diem or maintenance and repair invoices. Therefore, the timeframe for the Invoicing Party to respond that is established in Section H.1. would be applicable, which provides for thirty (30) days.

For the reasons stated above, the panel unanimously 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 (October 01, 2014) to make its decision:

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]**

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

In the Dispute Between

Case Number: **20150429-2-XXXM-PD**

Date of Decision: 03/18/2016

7	02349200	3/16/15	\$ 0.00	PCIU1900650	ITS/SSA	2/2/15	2/25/15	3/24/15	3/26/15	3/26/15	EP waived 5 days PD @ 0.00 a day.
8	02349210	3/16/15	\$ 0.00	PCIU1900769	ITS/SSA	2/2/15	2/25/15	3/24/15	3/26/15	3/26/15	EP waived 5 days PD @ 0.00 a day.
9	02349220	3/16/15	\$ 0.00	PCIU1916615	ITS/SSA	2/5/15	2/26/15	3/24/15	3/26/15	3/26/15	EP waived 3 days PD @ 0.00 a day.
10	02349230	3/16/15	\$ 0.00	PCIU218/1910	ITS/SSA	2/4/15	2/25/15	3/24/15	3/26/15	3/26/15	EP waived 3 days PD @ 0.00 a day.
11	02349240	3/16/15	\$ 0.00	PCIU2811856	ITS/SSA	2/5/15	2/26/15	3/24/15	3/26/15	3/26/15	EP waived 3 days PD @ 0.00 a day.
12	02349250	3/16/15	\$ 0.00	PCIU2898666	ITS/SSA	2/4/15	2/26/15	3/24/15	3/26/15	3/26/15	EP waived 3 days PD @ 0.00 a day.
13	02349260	3/16/15	\$ 0.00	TEMU4438201	ITS/SSA	2/4/15	2/25/15	3/24/15	3/26/15	3/26/15	EP waived 3 days PD @ 0.00 a day.

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's initial basis of dispute is Section G.12 of the UIIA (Force Majeure) due port congestion that existed at the Ports of Los Angeles and Long Beach. The Motor Carrier stated that containers could not be returned within the free time due to conditions beyond its control, i.e., changing early return dates due to vessel delays and shortened receiving days for vessels due to these delays. The Motor Carrier stated that the Equipment Provider granted an additional five (5) days of free time; however, it is still disputing the full amount charged due to the delays. The Motor Carrier also referenced Section H.1. of the UIIA as part of its basis for the binding arbitration claim.

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

After reviewing the case, the Provider confirmed that the containers out-gated the ITS Terminal and in-gated the SSA Terminal between the dates of 2/2/15 and 2/26/15. The Provider indicated that although the terminals were congested during this period, both ITS and SSA were open and receiving containers. The Provider stated that the shipper and/or Motor Carrier could not return equipment against the original vessel and as a result, cargo was rolled to the subsequent vessel. The Provider responded to the Motor Carrier's initial dispute of the charges on March 26, 2016 stating that the

invoices were valid as billed. On April 9th, the Provider also advised the Motor Carrier that they had decided to give 10 free days on the one book MEL1500296. The EP issued adjusted invoices to the Motor Carrier reflecting the additional free time.

The Equipment Provider also provided the following operating hours for SSA Terminals (the ingating facility):

Normal Operating Hours

Monday – Thursday 0800 to 1630 (Shift 1) and 1700 – 0230 (Shift 2)
Friday 0800 – 1630 (Shift 1)
SSA Closed on Saturday and Sundays

Closure Dates for SSA

2/7 and 2/8 (weekend)
2/14 and 2/15 (weekend)
2/20 and 2/21 (weekend)
2/27 and 2/28 (weekend)

In addition, the Equipment Provider reported that the facility does provide turn away tickets if a driver turned away at the gate.

DISCUSSION:

The Motor Carrier submitted its basis with supporting documentation that included booking confirmations and eModal email communications that advise of information relating to vessel receiving and cut off dates. The Motor Carrier believes the charges should be waived based on the vessel delays and the short amount of time they had to ingate the containers to the vessel the units were originally booked for.

The Equipment Provider believes the invoices, with the adjustment in free time as noted above, are valid as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion prevented the Motor Carrier from returning the equipment to the Equipment Provider within the allowable free time.

DECISION:

After careful review of the documents and evidence submitted, the panel finds in favor of the Equipment Provider. There was no evidence submitted by the Motor Carrier that the congestion prevented it from returning the containers. The evidence showed that the facilities were in open and receiving equipment on the dates involved in the claim. The fact that the return dates were narrow or moved does not excuse the Motor Carrier from applicable per diem charges. The panel's decision is based on E.6. of the UIIA. The Motor Carrier's reference to Section H.1. as part of its basis for dispute did not come into play in the panel's decision since it was determined that both Parties had complied with the timeframes set forth in this provision.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

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

- b. Motor Carrier shall be responsible for Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges set forth in the Addenda. **[Revised 01/17/12]**

G. General Terms

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

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]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

In the Dispute Between

Case Number: **20150508-5-XXXM-PD**

Date of Decision: 12/31/2015

The Motor Carrier submitted its basis with supporting documentation that included SSA/Port of Oakland Operations and email communications relating to vessel status at the terminal. Based upon the documentation provided, the status of the SSA Pier A facility during the interchange period of January 30, 2015 to February 17, 2015, was as follows:

02/16/2015

Vessels Open for Receiving Export Cargo

Service	Vessel/Voyage
SSEA	CAP Avatele 5S
JAG	MSC Charleston 504R

Estimated First Receiving Dates

Service	Vessel/Voyage	Est. Receiving
CCE	Hammonia Rome 228E	2/17
WCX	Cap Pasley 506S	2/17

02/17/2015

Vessels Open for Receiving Export Cargo

Service	Vessel/Voyage
SSEA	CAP Avatele 5S
JAG	MSC Charleston 504R
CCE	Hammonia Rome 228E new
WCX	Cap Pasley 506S new

Estimated First Receiving Dates

Service	Vessel/Voyage	Est. Receiving
TBD	TBD	TBD

02/18/2015

Vessels Open for Receiving Export Cargo

Service	Vessel/Voyage
SSEA	CAP Avatele 5S
JAG	MSC Charleston 504R
CCE	Hammonia Rome 228E new
WCX	Cap Pasley 506S new

Estimated First Receiving Dates

Service	Vessel/Voyage	Est. Receiving
TBD	TBD	TBD

02/23/2015

Vessels Open for Receiving Export Cargo

Service	Vessel/Voyage
JAG	MSC Charleston 504R
WCX	CAP Pasley 506S
CEX	MSC Nerissa 505R
PA2	APL Turquoise 125W

Estimated First Receiving Dates

Service	Vessel/Voyage	Est. Receiving
TBD	TBD	TBD

DECISION:

After careful review of the documents and evidence submitted, the panel finds that the Equipment Provider failed to provide a response to the Motor Carrier's dispute of the invoices. The panel members noted that the Motor Carrier disputed the invoices via email on March 27, 2015, and asked for an update to the dispute on April 3, 2015. The Equipment Provider did not respond. 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 absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1"*. The Equipment Provider's addendum contains a dispute resolution process, however does not include a specific timeframe for the Equipment Provider to respond. Therefore, the timeframe for the Invoicing Party to respond that is established in Section H.1. would be applicable, which provides for 30 days. For the reasons stated above, the panel unanimously 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 (October 01, 2014) to make its decision:

Hamburg Sud North America, Inc. Addendum to the UIIA – Part III Method of Dispute Resolution for Equipment Free Time and Charges for Detention

Unless otherwise provided, notices of dispute must be given by the Motor Carrier in writing by first class mail addressed to Hamburg Sud North America, Inc., 465 South Street, Morristown, New Jersey 07960, within thirty (30) days of the invoice date. Upon receipt of Motor Carrier's notice and explanation for the dispute, Hamburg Sud North America, Inc. may reasonably conclude the charges are correct and may demand payment from the Motor Carrier. The Motor Carrier shall immediately pay the amount demanded.

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]**

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

CASE REVIEWED AND DECIDED BY:

JIM MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member

In the Dispute Between

Case Number: **20150618-11-XXXN-PD**

Date of Decision: 02/01/2016

				SEGU4687487	STL/PCT	12/1/14	12/15/14			
				BMOU4615480	Ship Transp/PCT	11/27/2014	12/19/14			
				CBHU8469818	Ship Transp/SSAT					
				FCIU9914563	PCT	12/5/2014	12/23/14			
				BMOU5162496	Ship Transp /	11/26/2014	12/18/14			
				FCIU9620722	STL/PCT	11/27/2014	12/18/14			
				BMOU4547153	STL/PCT	11/27/2014	12/20/14			
				TCNU6447060	STA/PCT	11/24/2014	12/15/14			
				CBHU8302020	STL/PCT	12/3/2014	12/20/14			
				FSCU8524106	STL/TTI	12/1/2014	12/16/14			
					TTI/WBCT	12/3/2014	12/16/14			
-	-	-	-	-	-	-	-	-	-	-

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

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

The Equipment Provider responded stating that after careful review of the marine terminal schedules for the periods in question, it adjusted MC's invoices for the dates the terminal was closed. Therefore, the Equipment Provider feels that the invoices are valid and due. In addition, the Equipment Provider provided the following information on when the terminal was closed/open:

Day	Date:	1st Shift	2nd Shift
PCT Gate Schedule			
Wednesday	12/31/2014	Closed	Closed
Thursday	1/1/2015	Closed	Closed
Saturday	1/3/2015	Closed	Closed
WBCT Gate Schedule			

Wednesday	12/31/2014	Open	Closed
Thursday	1/1/2015	Closed	Closed

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges with the Equipment Provider as its supporting documentation for this claim. The Motor Carrier also provided copies of three terminal status reports sent from the Equipment Provider to the Motor Carrier. These status reports showed the hours of operations, vessel status and conditions for inbound delivery, export delivery and empty handling. The Motor Carrier also submitted several news articles related to the port congestion; however, this information was not specific to the ITS facility associated with this claim. The Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time.

The Equipment Provider adjusted the MC's invoices for the dates the terminal was closed. As to the balance of the invoices, the Equipment Provider believes that the supporting documentation it has submitted evidences that the conditions existing at the facilities during the dates of the interchange periods did not preclude/prevent the Motor Carrier from returning the equipment within the free time. The Equipment Provider believes that the invoices should stand as billed.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

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 stating that the Motor Carrier sent a letter to the Equipment Provider on February 3, 2015, demanding that all per diem invoices issued prior to that date be immediately suspended. The Motor Carrier panel member states the demand in the notice was very specific and applied to per diem charges on any interchanged equipment. In addition, the Equipment Provider did not respond to the Motor Carrier's dispute within the thirty (30) day period required in Section H.1 of the UIIA and, as a result, the Equipment Provider lost its right to collect the disputed charges per Section H.4.

The Ocean Carrier panel member finds in favor of the Equipment Provider arguing that there is no record that the Equipment Provider recognized the February 3, 2015 e-mail sent by the Moving Party, as a dispute of any of the listed invoices as required by Section H.1 of the UIIA. The Ocean Carrier panel member notes that each of the containers were returned and invoiced by the date that the letter was sent, February 3, 2015, and yet the only suggestion made by the Motor Carrier to the Equipment Provider is to "suspend per diem charges on any interchanged equipment in the Port of Los Angeles and Long Beach until the PMA and the ILWU execute a new labor agreement". As these containers were already returned on the date of the letter, they do not fall into the category of "any interchanged equipment". Regardless of this, the Ocean Carrier panel member does not believe the letter constitutes a dispute with regard to the equipment mentioned in the invoices as required under Section H.1. of the UIIA.

The Rail panel member also finds in favor of the Equipment Provider stating that it is his opinion that the Motor Carrier's February 3, 2015, letter addressed to "To Whom It May Concern" with a blanket statement "immediately suspend per diem charges on any interchanged equipment..." did not provide sufficient information on which units were being disputed. In addition, there was no proof provided by the Motor Carrier that it was unable and/or prevented from returning the equipment due to the port congestion. Without this type of evidence being presented, the Rail panel member does not believe any relief from the per diem charges is warranted and that the per diem charges are valid as billed by the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

G. General Terms

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

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]**

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

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

FRED HUENNEKENS
Motor Carrier Member

In the Dispute Between

Case Number: **20150720-8-XXXN-PD**

Date of Decision: 02/01/2016

Inv. #	Invoice	Inv. Date	Amount	Container #	Facility	Outgated	Ingated	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute
1	LGBD20150020502	1/28/15	\$00.00	WHLU5354646	ITS/ITS	12/24/14	1/6/15	1/28/15	2/3/15	---
2	LGBD20150027253	1/28/15	\$00.00	WHLU5226408	ITS/ITS	12/31/14	1/8/15	1/28/15	2/3/15	---
3	LGBD20150047791	1/28/15	\$00.00	TCNU4713279	ITS/ITS	1/3/15	1/15/15	1/28//15	2/3/15	---

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Equipment Provider did not submit comments to the arbitration claim. In addition, there was no evidence presented that the Equipment Provider responded to the Motor Carrier's initial dispute of the charges. The Equipment Provider did, however, provide confirmation of the terminal's normal business hours, the dates the facility was closed and if the facility provided turn away tickets, as follows:

- ITS was open for normal business and accepting empties from 12/24/2014 thru 1/28/2015. ITS was closed for the holidays on the below dates:
- Normal business hours:
Monday – Thursday – 0700 – 0300
Friday - 0700 – 1500, Saturday & Sundays normally closed (should the Terminal open on a Saturday it would only operate the first shift).
- ITS was closed during the interchange period of 12/24/14 thru 1/28/2015: 12/25, 12/28, 1/1, 1/4, 1/10, 1/11, 1/17, 1/18, 1/24, 1/25, 1/31, 2/1, 2/7, 2/8, 2/14 and 2/15.
- Note: On 12/24 and 12/31 the terminal closed at 3:00 p.m. and did not have a second shift.

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 also provided copies of three terminal status reports sent from the Equipment Provider to the Motor Carrier. These status reports showed the hours of operations, vessel status and conditions for inbound delivery, export delivery and empty handling. The Motor Carrier also submitted several news articles related to the port congestion; however, this information was not specific to the ITS facility associated with this claim. The Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the EP within the allowable free time.

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 stating that the Motor Carrier sent a letter to the Equipment Provider on February 3, 2015, demanding that all per diem invoices issued prior to that date be immediately suspended. The Motor panel member states the demand in the notice was very specific and applied to per diem charges on any interchanged equipment. The Motor panel member also observed that the Equipment Provider does have a dispute resolution provision included in its addendum to the UIIA. That provision requires the Motor Carrier to notify the Equipment Provider of items it is disputing within thirty (30) days of receipt of the Equipment Provider's invoices. The language indicates that the Equipment Provider will "undertake" to reconcile the disputed items within thirty (30) days of receipt of the Motor Carrier's notice. The Motor panel member states this is basically a "best effort" statement and does not require the Equipment Provider to meet the thirty (30) day time frame included in its dispute resolution procedure. In addition, the statement does not establish any consequences for either party that fails to meet the time frames included in the procedure. Therefore, the statement does not meet the requirements of paragraph 1 of Section H.1 of the UIIA. The Motor panel member argues that because of the ambiguity of the dispute resolution provision in the Equipment Provider's addendum, the default dispute resolution procedure included in the UIIA is the controlling provision in this case. The Motor panel member believes that the Equipment Provider did not respond to the demand made by the Motor Carrier within the thirty (30) day period required in Section H.1 of the UIIA. Therefore, the Equipment Provider lost its right to collect the disputed charges per Section H.4.

The Ocean Carrier panel member finds in favor of the Equipment Provider arguing that there is no record that the Equipment Provider recognized the February 3, 2015 e-mail sent by the Moving Party, as a dispute of any of the listed invoices as required by Section H.1 of the UIIA. The Ocean Carrier panel member notes that each of the containers were returned and invoiced by the date that the letter was sent, February 3, 2015, and yet the only suggestion made by the Motor Carrier to the Equipment Provider is to “suspend per diem charges on any interchanged equipment in the Port of Los Angeles and Long Beach until the PMA and the ILWU execute a new labor agreement”. As these containers were already returned on the date of the letter, they do not fall into the category of “any interchanged equipment”. Regardless of this, the Ocean Carrier panel member does not believe the letter constitutes a dispute with regard to the equipment mentioned in the invoices as required under Section H.1. of the UIIA.

Because the model 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 stating that it is his opinion that the Motor Carrier’s February 3, 2015, letter addressed to “To Whom It May Concern” with a blanket statement “immediately suspend per diem charges on any interchanged equipment...” did not provide sufficient information on which units were being disputed. In addition, there was no proof provided by the Motor Carrier that it was unable and/or prevented from returning the equipment due to the port congestion. Without this type of evidence being presented, the Rail panel member does not believe any relief from the per diem charges is warranted and that the per diem charges are valid as billed by the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

EP’s Addendum to the UIIA – Section II. Methods 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 30 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.

G. General Terms

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

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]**

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

CASE REVIEWED AND DECIDED BY:

TIM WILLIAMS
Rail Carrier Member

ROBERT CANNIZZARO
Ocean Carrier Member

FRED HUENNEKENS
Motor Carrier Member

In the Dispute Between

Case Number: **20150721-9-XXXN-PD**

Date of Decision: 01/05/2016

Inv #	Invoice	Inv. Date	Container #	Facility	Outgated	Ingated
4 -	LGBD20140928639 -	12/15/14 -	TCNU8459373 -	ITS -	12/4/14 -	12/12/14 -
2 -	LGBD20140952917 -	12/26/14 -	WHLU5222336 -	ITS -	12/12/14 -	12/22/14 -
3 -	LGBD20150038825 -	1/14/15 -	WHLU5774823 -	ITS -	1/2/15 -	1/13/15 -
4 -	LGBD20150044067 -	1/15/15 -	TCNU7437256 -	ITS -	1/2/15 -	1/14/15 -
5 -	LGBD20150088210 -	2/3/15 -	TCNU4318232 -	ITS -	1/20/15 -	1/28/15 -
6 -	LGBD20150206274 -	3/18/15 -	GLDU9728913 -	ITS -	3/3/15 -	3/10/15 -
7 -	LGBD20150211881 -	3/18/15 -	WHLU4163481 -	ITS -	3/2/15 -	3/12/15 -
8 -	LGBD20150285861 -	4/20/15 -	TGHU4467080 -	ITS -	3/25/15 -	4/6/15 -

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed that prevented it from returning equipment within the specified free time. The Motor Carrier provided a narrative that stated it was obvious that force majeure conditions existed at the port, and that steamship lines had already declared a de facto force majeure by assessing port congestion surcharges under their tariffs filed with the Federal Maritime Commission. The Motor Carrier also stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion". The Motor Carrier argued that these conditions precluded it from returning equipment to the facilities within the allowable free time.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is force majeure. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many EPs also define force majeure as "... port congestion, strikes, imminent strikes, lockouts or harbor disturbances...". The UIIA defines force majeure as "...strikes, or any like causes beyond the Motor Carrier's control...". In addition, California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period...". The MC indicated that based on these facts and the law, all UIIA EPs must immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded to the arbitration claim stating that the Motor Carrier did receive extended free time for the weekends. However, the Equipment Provider presented no evidence that it responded to the Motor Carrier's initial dispute of the charges. The Equipment Provider provided the following as confirmation of when the facility was closed, and as documentation of whether turn away tickets were provided:

	ITS Gate Schedule		
Day	Date:	1st Shift	2nd Shift
Thursday	1/2/2015	Open	Closed
Saturday	1/3/2015	Open	Closed
Sunday	1/4/2015	Closed	Closed
Thursday	1/8/2015	Open	Closed
Friday	1/9/2015	Open	Closed
Saturday	1/10/2015	Closed	Closed
Sunday	1/11/2015	Closed	Closed
Saturday	1/17/2015	Closed	Closed
Sunday	1/18/2015	Closed	Closed
Friday	1/23/2015	Open	Closed

Saturday	1/24/2015	Closed	Closed
Sunday	1/25/2015	Closed	Closed

Note: Terminal confirmed that they were accepting empties on 1/20/15, 1/21, 1/22, 1/23, 1/26 thru 1/29

Terminal also confirmed that both shifts were open 1/14/2015, 1/15/15 and 2/3/15.

ITS does not provide turn away tickets.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation. Copies of three (3) terminal status reports sent from the Equipment Provider to the Motor Carrier were also included. The status reports showed the hours of operations, vessel status and conditions for inbound delivery, export delivery and empty handling. The Motor Carrier also submitted several news articles related to port congestion; however, the articles were not specific to the facility associated with this claim. Based upon the information submitted, the Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

In regards to the Motor Carrier's reference to the California Business and Professions Code Section 22928 (SB45), this legislation identifies the conditions in the state of California under which an Equipment Provider cannot assess per diem to the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION:

After careful review of the documents and evidence submitted, the panel finds in favor of the Motor Carrier as the Equipment Provider failed to respond to the Motor Carrier's initial dispute of the charges within the thirty day timeframe set forth in Section II. Method of Dispute Resolution of the Equipment Provider's UIIA addendum. 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 absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1"*. The Ocean Carrier panel member noted however that the Motor Carrier had failed to submit documentation that supported that the reported port congestion in fact prevented the equipment from being returned in a timely manner, however this point was superseded by the fact that the Equipment Provider failed to respond to the Motor Carrier's initial dispute of the charges.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

Wan Hai Lines Limited Addendum to the UIIA – Section 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 30 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.

H. Default Dispute Resolution and Binding Arbitration Processes

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]**

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

CASE REVIEWED AND DECIDED BY:

JIM MICHALSKI
Ocean Carrier Member

KEVIN LHOTAK
Motor Carrier Member

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

In the Dispute Between)

UIIA Motor Carrier)
Appellant, and)

Case Number: **20150803-10-XXXN-PD**

UIIA Equipment Provider)
Respondent)

Date of Decision: 12/21/2015

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice#	Invoice	Inv. Date	Amount	Facility	Outgated	Ingated
1	SPEI043231	4/30/15	\$00.00	LBCT	4/2/15	4/15/15
				LBCT/Global Gateway	3/31/15	4/13/15
				Global Gateway	3/25/15	4/6/15
				/LBCT	3/28/15	4/8/15
				Global Gateway	3/28/15	4/9/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier stated that these conditions prevented it from returning equipment within the allowable free time period.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is a force majeure event. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control of the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, the California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider did not respond to the arbitration claim. Therefore, there was no evidence presented to show when, or if, the Equipment Provider responded to the Motor Carrier's initial dispute of the charges.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. 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 believes that force majeure conditions existed that precluded the return of the equipment within the specified free time. The Equipment Provider did not submit any evidence or response.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine or terminal truck gate is closed during posted normal working hours. No per diem, detention, or demurrage charges shall be imposed on a weekend or holiday, or during a labor disruption period, or during any other period involving an act of God or any other planned or unplanned action that closes the truck gate, or 2) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. Section G.11 of the UIIA states that all Parties must comply with all applicable federal, state and local laws, rules and regulations.

DECISION

The panel reviewed all documents and evidence submitted by the parties and finds in favor of the Motor Carrier. The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges as its supporting documentation for this claim. The Equipment Provider failed to respond to the Motor Carrier's dispute within sixty (60) days as outlined in the Equipment Providers Addendum. UIIA Section H.4 clearly states *"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."*

The question of whether the Equipment Provider was in compliance with Section G.11. Compliance with the Law did not come into play in this case as the panel found that the Equipment Provider had failed to meet its obligations under the dispute resolution process contained in its addendum so therefore lost its right to collect such charges.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

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]**

Section II. Method of Dispute Resolution of the EP's Addendum

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

CASE REVIEWED AND DECIDED BY:

AL SMERALDO
Ocean Carrier Member

DAVE MANNING
Motor Carrier Member

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

In the Dispute Between

UIIA MOTOR CARRIER,

Appellant, and

UIIA EQUIPMENT PROVIDER,

Respondent

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Case Number: **20150910-4-XXXD-PD**

Date of Decision: 12/23/15

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv. #	Invoice	Inv. Date	Amount	Date MC stated they rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd	Comments
1	PF1402000647001	2/5/14	\$00.00	2/5/14	2/19/14	No response from EP was received on dispute invoices until MC received a Detention Past Due/Shut Out Notice on 2/25/15. MC responded on 2/25/15 advising that invoices on notice were previously disputed with no response from EP. MC received no response from EP until MC received	9/10/15	
2	PF1402001319001	2/20/14	\$00.00	2/20/14	3/6/14		9/10/15	
3	PF1405000472002	5/2/14	\$00.00	11/20/14	12/3/14		9/10/15	This is a revised invoice - Original invoice PF1405000472001 was dated and received on 5/2/14 and disputed on 5/13/14 which generated this revised invoice.
4	PF1409002102001	9/30/14	\$00.00	10/1/14	10/16/14		9/10/15	
5	PF1411000668002	11/4/14	\$00.00	11/20/14	12/2/14		9/10/15	

6	PF1412000718001	12/5/14	\$00.00	12/10/14	12/16/14	another Detention Past Due/Shut Out Notice on 9/2/15.	9/10/15	
7	PF1412001864002	12/17/14	\$00.00	1/7/15	1/8/15		9/10/15	
8	PF1501000148001	1/2/15	\$00.00	1/2/15	1/16/15		9/10/15	
9	PF1501000714001	1/7/15	\$00.00	1/7/15	1/20/15		9/10/15	
10	PF1501001586001	1/20/15	\$00.00	1/20/15	2/11/15		9/10/15	
11	PF1501002106001	1/29/15	\$00.00	1/29/15	2/13/15		9/10/15	
12	PF1502001895001	2/20/15	\$00.00	2/20/15	3/11/15		9/10/15	
13	PF1503000912001	3/10/15	\$00.00	3/10/15	3/20/15		9/10/15	
14	PF1504002369002	4/20/15	\$00.00	5/11/15	5/15/15		9/10/15	
15	PF1505002109001	5/27/15	\$00.00	5/27/15	6/17/15		9/10/15	
16	PF1506000899001	6/5/15	\$00.00	6/8/15	7/7/15		9/10/15	
17	PF1506002123002	6/24/15	\$00.00	7/17/15	7/23/15		9/10/15	
18	PF1507001769001	7/16/15	\$00.00	7/17/15	7/31/15		9/10/15	
19	PF1507001886002	7/16/15	\$00.00	7/29/15	7/31/15		9/10/15	

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections H.1 and H.4 of the UIIA. The invoices in dispute are set forth above together with the dates received, and disputed, by the Motor Carrier. The Motor Carrier states that the Equipment Provider failed to respond to the Motor Carrier's dispute of charges. Therefore, the Motor Carrier contends that the Equipment Provider did not comply with Sections H.1 and H.4 of the UIIA and, therefore, lose their right to collect on any of the invoices.

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

The Equipment Provider did not respond to the arbitration claim or to the Motor Carrier's dispute of the invoices.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. After careful review of this case, the panel finds that the Equipment Provider failed to provide a response to the Motor Carrier's dispute of the invoices. 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 absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1"*. It was further noted that the Equipment Provider does not have an alternative dispute resolution time frame outlined in its addendum. Therefore, Section H.1. applies, which provides for 30 days. For these reasons, the panel unanimously 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 (June 8, 2015) to make its decision:

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]**

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean 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: **20151008-12-XXXL-PD**

Date of Decision: 01/29/2016

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Amount	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	P141101275	SZLU9822198	11/19/14	\$00.00			11/12/14	11/19/14	11/20/14	10/7/15	10/8/15
2	P150400930	BMOU4149648	4/13/15	\$00.00	LBCT/CUT	3/18/15	4/5/15	4/13/15	5/8/15	No response	10/8/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's initial basis of dispute is Section 2. Method of Dispute Resolution of the Equipment Provider's addendum and Section E.6.d of the UIIA. The Motor Carrier disputed Invoice 1 on November 20, 2014. The Equipment Provider responded on October 8, 2015, almost one (1) year later. In addition, the Motor Carrier stated that it does not have a record of moving this container. The Motor Carrier disputed Invoice 2 on the basis that the Equipment Provider never responded to its initial dispute of the charges submitted on May 8, 2015. The Motor Carrier stated that the only correspondence it received regarding Invoice 2 was a statement submitted by the Equipment Provider on October 2, 2015. The MC believes that because the EP did not comply with its own dispute resolution process within its addendum and the fact that the MC had not record of moving the equipment associated with Invoice 1 that it is not responsible for the charges as billed.

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

The Equipment Provider responded and provided the following information regarding the invoices:

Invoice 1 The Equipment Provider stated that their employee, Joy Miller, responded to the dispute. The Equipment Provider also reported that Joy Miller no longer works for them. They did, however, provide an email from Joy Miller to Andrea Hyler stating "I replied to Myra (MC) on this a while ago and provided paperwork to her."

Invoice 2 The Equipment Provider stated that the Motor Carrier outgated Container BMOU4149648 as a loaded container for customer Binex Line Corp. and reported that the Motor Carrier street turned the container submitting documentation on April 7, 2015. The Equipment Provider reported that it did respond to the Motor Carrier's initial dispute as one of the containers on the invoice was removed and the billed amount was adjusted.

The Equipment Provider provided no other evidence that they responded to the Motor Carrier's dispute.

DISCUSSION:

The Motor Carrier submitted its basis and narrative relating to the initial dispute of the charges. The Motor Carrier believes that the charges are not valid in that the Equipment Provider failed to respond to the Motor Carrier's initial dispute of the charges for both invoices. The Motor Carrier also reported that it does not have a record of moving the container associated with Invoice 1. The Equipment Provider responded to the arbitration claim stating that it did respond to the Motor Carrier's dispute of both invoices.

DECISION:

After careful review of the documents and evidence submitted, the panel finds that the Equipment Provider failed to provide a response to the Motor Carrier's dispute of the invoices. The Equipment Provider responded stating that it did respond to the Motor Carrier's dispute, but provided no evidence other than that set forth above. 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 absence of a dispute resolution process in the Provider's Addendum, the default dispute resolution process in Section H.1*". The Equipment Provider's addendum contains a dispute resolution process that provides for a sixty day timeframe for the Equipment Provider to respond. The panel concurred that since the EP failed to prove that it responded to the Motor Carrier's initial dispute of the charges within this established timeframe, therefore the Equipment Provider would lose its right to collect the charges under Section H.4. For the reasons stated above, the panel unanimously 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 (October 01, 2014) to make its decision:

EP's Addendum to the UIIA – Section 2. Method of Dispute Resolution

Motor Carrier shall advise EP 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, Motor Carrier will have 15 days from the date of Provider's response to either pay the claim or seek arbitration pursuant to Article H of the UIIA and Exhibit D thereto.

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]**

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

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
Motor Carrier Member

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

In the Dispute Between)

UIIA MC,
Appellant, and)

Case Number: **20151104-13-XXXN-PD**

UIIA EP,
Respondent)

Date of Decision: **May 26, 2016**

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Inv. Date	Amount	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	CHS9150188739P	1/14/15	\$0.00	1/14/15	2/3/15	No response	11/4/15
2	CHS9150887897P	4/7/15	\$0.00	4/7/15	5/5/15	No response	11/4/15
3	CHS9150597848P	4/13/15	\$0.00	4/13/15	5/5/15	No response	11/4/15
4	CHS9150456462P	4/21/15	\$0.00	4/21/15	5/5/15	No response	11/4/15

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Section G.12 of the UIIA (Force Majeure). Due to port congestion that existed at the Ports of Los Angeles and Long Beach, the Motor Carrier stated that force majeure conditions existed at the port and that steamship lines declared a de facto force majeure by assessing port congestion surcharges under their Federal Maritime Commission ("FMC") filed tariffs. The Motor Carrier further stated that, on a daily basis, steamship lines and terminal operators unreasonably refused, diverted, changed, split and preconditioned the return of equipment in the name of "port congestion." The Motor Carrier argued that these conditions precluded the Motor Carrier from returning the equipment to the facilities within the allowable free time.

The Motor Carrier also indicated that the findings of the FMC as well as the articles in various publications all support the conclusion that port congestion is force majeure. The Motor Carrier referenced that under the Code of Federal Regulations (49 CFR 375.103), "*Force majeure means a defense protecting the parties in the event that a part of the contract cannot be performed due to causes which are outside the control the parties and could not be avoided by exercise of due care.*" The FMC filed tariffs of many Equipment Providers also define force majeure as "... *port congestion, strikes, imminent strikes, lockouts or harbor disturbances...*" The UIIA defines force majeure as "...*strikes, or any like causes beyond the Motor Carrier's control...*" In addition, California Business and Professions Code Section 22928 expressly prohibits the assessment of per diem "during a labor disruption period..." The Motor Carrier indicated that based on these facts and the law, all UIIA Equipment Providers should immediately suspend per diem charges on any interchanged equipment in the Port of Long Beach and Port of Los Angeles.

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

The Equipment Provider responded stating that revised invoices were provided to the Motor Carrier. In addition, the Equipment Provider stated that the dates of the container moves were not within the port restriction times. The Equipment Provider believes the charges are valid as billed.

DISCUSSION:

The Motor Carrier submitted its basis and narrative as its supporting documentation for this claim along with several news articles regarding the overall port congestion conditions. Based upon this information, the Motor Carrier believes that force majeure conditions existed that precluded its ability to return the equipment within the specified free time.

The Equipment Provider responded stating that the Motor Carrier was provided with revised invoices and that the container date moves were not within the port restriction times.

In identifying a situation as falling under the Force Majeure provision of the UIIA, the arbitration panel must consider the evidence presented and determine whether the supporting documentation proves that the conditions that existed as a result of the port congestion impacted the ability of the Motor Carrier to return the equipment to the Equipment Provider within the allowable free time.

With regard to the Motor Carrier's basis relating to SB45, this legislation indicates that no per diem can be assessed to the Motor Carrier under the following conditions: 1) when the intermodal marine terminal or terminal truck gate is closed during posted normal working hours, or during a labor disruption or any other period involving an act of God or any other planned or unplanned action that closes the truck gate, 2) when the intermodal marine terminal decides to divert equipment without 48 hours' electronic or written notification to the Motor Carrier, 3) when a loaded container is not available for pickup when the Motor Carrier arrives at the intermodal marine terminal, and 4) when the intermodal marine terminal is too congested to accept the container and turns away the Motor Carrier. The Motor Carrier indicated that one or more of the above conditions existed during the period covered by the disputed charges.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Motor Carrier panel member indicated that the Equipment Provider had not provided evidence that supported it had responded to the Motor Carrier's dispute within the thirty (30) day timeframe set forth in Section 4. Invoices – Dispute Resolution of the Equipment Provider's Addendum to the UIIA. Consequently, the Motor Carrier panel member found in favor of the Motor Carrier. The Ocean Carrier panel also found that the Equipment Provider failed to provide a response to the Motor Carrier's dispute within the established timeframe, and therefore based on Section H.4. of the UIIA loses its right to collect the charges. Neither panel member thought it necessary to address the Motor Carrier's basis in regards to Section G.12. Force Majeure or Section G.11. Compliance With the Law due to the fact that that the Equipment Provider did not respond to the Motor Carrier's dispute within the thirty (30) day timeframe.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL:

The panel relied upon the following provisions from the UIIA (October 01, 2014) to make its decision:

MEDITERRANEAN SHIPPING COMPANY S.A. Addendum to the UIIA – Section 4.

INVOICES – 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 30 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 have been verified by 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.

H. Default Dispute Resolution and Binding Arbitration Processes

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]

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

CASE REVIEWED AND DECIDED BY:

DAVE MANNING
Motor Carrier Member

AL SMERALDO
Ocean Carrier Member

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

In the Dispute Between

UIIA MOTOR CARRIER,

Appellant, and

UIIA EQUIPMENT PROVIDER,

Respondent

Case Number: **20160425-1-XXXC-PD**

Date of Decision: 7/19/2016

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	ATM001269	HJCU1341318	7/10/15	Savannah Port/Savannah Port	12/12/14	7/7/15	7/10/15	7/13/15	4/11/16	4/25/16

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's basis of dispute is Sections C.1, H.1 and H.4 of the UIIA. The Motor Carrier states that the Equipment Provider failed to respond to the Motor Carrier's per diem dispute within the 30 day timeframe. The Motor Carrier also contends that it is not responsible for any per diem charges that were incurred because it was not dispatched to pickup the container until July 7, 2015. The Motor Carrier reports that the Equipment Provider had an agreement with the customer, whereby the customer was a store-door customer and would directly pay per diem charges through the point that it requested pick-up of an empty container and, further, that this is evidenced by the Equipment Provider's email dated June 30, 2015, where it initially stated that the customer would be charged for the full detention.

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

The Equipment Provider responded to the claim by stating they billed the Motor Carrier for this amount because the charges resulted from the Motor Carrier's error. The Equipment Provider stated that the Motor Carrier disputed the charges upon receiving the invoice. The Equipment Provider indicated that it responded within 30 days as required by the UIIA and believes the Motor Carrier failed to timely seek arbitration and, therefore, it must pay the disputed charges. The Equipment Provider noted that the Motor Carrier's failure to pay these charges gave the Equipment Provider good cause to refuse the Motor Carrier access to its terminal facilities in accordance with Section C.2. of the UIIA.

In addition, the Equipment Provider reports that the following procedures were in place with the Motor Carrier for drop/hook deliveries: 1) by delivering a container to a customer, Motor Carrier was also responsible for retrieving that particular container; 2) the customer would notify Motor Carrier when a container was ready for retrieval; 3) Motor Carrier would contact Equipment Provider and request a work order and bobtail charge guarantee; and 4) upon Motor Carrier's request, Equipment Provider would contact the customer to guarantee the bobtail charge and issue a work order to the Motor Carrier.

DISCUSSION:

The panel reviewed all documents and evidence submitted by the parties. After careful review of this case, the panel finds that the Equipment Provider failed to provide a response to the Motor Carrier's dispute of the invoice within 30 days as required by Sections H.1 and H.4 of the UIIA. Both panel members agree that the Equipment Provider's feedback that "Our HQ is working with sales team for the detention issue" is not an adequate response. It was also noted that the Motor Carrier followed up in October on this matter, and did get any response from the Equipment Provider whether the dispute was denied or accepted.

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:

C. Premises Access

1. Provider and/or Facility Operator grants to Motor Carrier the right to enter upon its terminal facility for the sole purpose of completing an Interchange of Equipment.

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]**

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

CASE REVIEWED AND DECIDED BY:

DAVE DALY
Ocean Carrier Member

ROBERT A. CURRY
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:

Invoice	Invoice #	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	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 Provider 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

In the Dispute Between

Case Number: **20190509-5-XXXL-PD**

Date of Decision: 10/01/2019

Invoice	Invoice #	Container #	Inv. Date	Amount	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
See Spreadsheet that show the 13 invoices under this dispute totaling \$00.00											

The Motor Carrier's basis of dispute are Sections E.1.b, E.6.d., H.1. and H.4. of the UIIA. The Motor Carrier asserts that there was an agreement between their company and the Equipment Provider that they were to manage the Equipment Provider's Phoenix area destination equipment inventory in and out of the Lincoln Transport Phoenix, Inc. designated satellite container yard (CY). In addition, they were to maintain an empty inventory at Lincoln Transport Phoenix, Inc. designated CY to support the Equipment Provider's export moves and equipment needs out of the Phoenix area. The Moving Party was authorized to terminate emptied inbound equipment (after delivery to Equipment Provider's store door customers) at the Phoenix satellite CY for storage with the intent that the Motor Carrier would move empties back to the Port of LA and Port of LB under one-way return or round trip work orders authorizing empty return revenue only when return inbound loads were available allowing for required dual outbound/inbound transactions at the LA/LB marine terminals. Empty only returns were discouraged. The Motor Carrier indicates that it was not to be charged per diem under the arrangement with the Equipment Provider for any empty equipment terminated and/or stored at the satellite CY. Full loads were ingated at Phoenix for the convenience of the Equipment Provider, its customer (with Provider's approval and knowledge) or in compliance with a CBP hold or inbond movement. Consequently, the Motor Carrier does not believe it is responsible for the per diem charges (referred to as detention charges on the billings) and that the Equipment Provider should bill these charges to its customer.

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(Lincoln's Phoenix CY) or upon delivery of full loads to the Equipment Provider's store door customer's dock as specified in the Equipment Provider's work orders.

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

Legal counsel responded on behalf of the Equipment Provider stating "the Motor Carrier has not produced any written agreement between the Motor Carrier and the Equipment Provider which modifies the terms of the UIIA. In the absence of such a written agreement signed by both of the parties the understanding that the Motor Carrier alleges to have existed between the parties cannot modify the UIIA, and the UIIA governs the relationship between the parties." In addition, the Motor Carrier states that the Equipment Provider failed to respond to its rejection of the charges. It is the Equipment Provider's position that the Motor Carrier did not properly submit the appropriate dispute forms and, therefore, the Provider rejected the disputes. Consequently, the timeline for disputing the charges on the part of the Motor Carrier was not met and the invoices are valid as billed.

Legal counsel for the Equipment Provider also noted that there is current litigation between these two parties in federal court that was initiated by the Moving Party and that the Equipment Provider has asserted a counter claim for detention charges. Legal counsel for the Equipment Provider has requested in its response for consideration that all arbitration cases involving detention be postponed until the federal court litigation has concluded.

DECISION:

After careful review of all documents and the evidence submitted by the parties, the panel unanimously finds in favor of the Motor Carrier. Both the Motor Carrier panel member and the Ocean Carrier panel member agree that the Equipment Provider did not respond within the 30-day time limit set forth in Sections H.1 and H.4 of the UIIA and therefore lost its right to collect the charges. In addition, the Ocean Carrier panel member also noted that the Equipment Provider did not comply with Sections E.1.b. whereby per diem should have been stopped upon the delivery of empty or full Equipment to the designated satellite location or upon delivery of loads to the Equipment Provider's door customer per the work order.

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

1. Equipment Return
 - 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]**

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, 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]**

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.

CASE REVIEWED AND DECIDED BY:

DAVE HENSAL
Motor Carrier Member

LEO IMPERIAL
Ocean 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: **20210524-13-XXXI-PD**

Date of Decision: 11/6/2021

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICE:

Invoice	Invoice #	Equipment #	Inv. Date	Original Outgate 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	DT0267695	BEAU4319729	4/5/21	Garden City Terminal	2/22/21	3/23/21	4/7/21 - org. inv. 5/23/21 - revised inv.	4/8/21 - original inv 5/24/21 - revised inv.	5/20/21 original inv. & 5/24/21 revised inv.	5/24/21
		FFAU1272726	4/5/21	Garden City Terminal	3/4/21	3/25/21	Same as above	Same as above	Same as above	Same as above
		MAGU5780590 /DCLZ408032	4/5/21	Garden City Terminal	2/23/21	3/19/21	Same as above	Same as above	Same as above	Same as above
		SEGU6804807	4/5/21	Garden City Terminal	2/23/21	3/17/21	Same as above	Same as above	Same as above	Same as above
		TCNU4802843/ TSXZ652469	4/5/21	Garden City Terminal	2/16/21	3/16/21	Same as above	Same as above	Same as above	Same as above
		TLLU4937789	4/5/21	Garden City Terminal	2/10/21	3/17/21	Same as above	Same as above	Same as above	Same as above
		YMLU8837390	4/5/21	Garden City Terminal	2/16/21	3/17/21	Same as above	Same as above	Same as above	Same as above

***Note: Above is the revised invoice that was issued to the Motor Carrier on 5/23/21 that Motor Carrier continued to dispute stating the Equipment Provider did not respond to the dispute within the appropriate timeframe.**

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier's dispute is based on Section H.1. of the UIIA. The Motor Carrier states that the Equipment Provider did not respond in a timely manner to its initial dispute of the charges on invoice DT0267695. The Motor Carrier disputed the charges on April 8, 2021 because the free time was incorrect based on the fact the Equipment Provider did not apply the street turns associated with the moves of the units. The street turn approvals were attached to the April 8, 2021 email disputing the charges. The Equipment Provider did not respond to the Motor Carrier's dispute until May 20, 2021 and then issued a revised invoice on May 23, 2021. The Equipment Provider's response was outside of the 30-day timeframe of receipt of the Motor Carrier's initial dispute of the charges under Section H.1. of the UIIA. Consequently, the Motor Carrier believes that because the Equipment Provider did not respond to the Motor Carrier's dispute within the established 30-day timeframe the Equipment Provider lost the right to collect the charges on the invoice.

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

The Equipment Provider responded to the Motor Carrier's initial dispute regarding the free time on May 20, 2021, requesting a representative of the Equipment Provider to check the SIA information that the Motor Carrier had provided to confirm if the free time should be adjusted. On May 23, 2021, the Equipment Provider issued an adjusted invoice to the Motor Carrier after applying the SIA information. The Motor Carrier continued to dispute the charges because the Equipment Provider did not respond to the initial dispute within 30 days. The Equipment Provider responded on May 24, 2021, indicating that they believe the charges are valid as billed under the adjusted invoice. The Equipment Provider did not respond to the binding arbitration claim with any further comments.

Note: The default dispute resolution process set forth under Section H.1. is utilized should the Equipment Provider not have its own dispute resolution in its addendum. The Equipment Provider in this claim does have its own dispute resolution process in its addendum which provides the same terms as Section H.1., with the Equipment Provider having 30 days from receipt of dispute to respond to the Motor Carrier's dispute of charges.

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 Motor Carrier received invoice DT0267695 on April 7, 2021 and disputed the invoice with the Equipment Provider on April 8, 2021. As of May 20, 2021, the Equipment Provider had not responded to the dispute but started the process internally to check and see if the invoices should be adjusted. This was done and sent by email to the Motor Carrier on May 23, 2021.

The Ocean Carrier panel member's review of this case indicates the Motor Carrier performed timely actions by receiving approval from the Equipment Provider to street-turn the units in question. The Equipment Provider's clock continues to accrue detention against original use of the equipment and the Equipment Provider invoiced the Motor Carrier accordingly. The Motor Carrier disputed in a timely manner, however the Equipment Provider failed to meet the time requirements under UIIA in responding to the dispute.

The basis of the dispute by the Motor Carrier is that the Equipment Provider did not reply to the dispute within the timeframe required by Section H.1. of the UIIA. The Equipment Provider states it responded to the dispute on April 8th, however, the documents reflect that it was simply an internal email to another group within the Equipment Provider offices requesting to check if the invoices were correct. On May 20, 2021, there was another internal email requesting the invoice to be adjusted. The Motor Carrier received the adjusted invoice on May 23, 2021. Simply sending an email asking another group within the Equipment Provider's organization to investigate does not constitute a response to a dispute.

The panel agrees that Section H.1. of the UIIA governs this dispute which states in part:

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]**

In addition, Section H.4. of the UIIA states that should the Invoicing Party fail to respond to the Invoiced Party's dispute within the established timeframe, which in this case is thirty days from receipt of the Invoiced Party's dispute, the Invoicing Party loses its right to collect the charges.

Based on 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 (May 1, 2020) 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 Section 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

**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: **20220318-5-XXE-PD**

Date of Decision: 08/29/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

	Invoice Number	Container Number	Invoice Date	Facility	Outgated	Ingated	Date MC Rec'd Invoice	Date MC Disputed Invoice	Date EP Responded	Date Notice of Intent Received
1	6362170	SKIU 9079235	1/18/2022	SSA Pier A/LA1	12/15/2021	12/29/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
2	6362180	SKIU 9080703	1/18/2022	SSA Pier A/LA1	12/8/2021	12/28/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
3	6362190	SKIU 9081295	1/18/2022	SSA Pier A/LA1	12/6/2021	12/29/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
4	6362200	SLVU 4533240	1/18/2022	SSA Pier A/LA1	12/15/2021	1/3/2022	1/26/2022	2/8/2022	No reply from EP	3/18/2022
5	6362210	SLVU 4535449	1/18/2022	SSA Pier A/LA1	12/21/2021	1/3/2022	1/26/2022	2/8/2022	No reply from EP	3/18/2022
6	6362220	SLVU 4537652	1/18/2022	SSA Pier A/LA1	12/6/2021	12/27/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
7	6362230	SLVU 4541565	1/18/2022	SSA Pier A/LA1	12/14/2021	1/4/2022	1/26/2022	2/8/2022	No reply from EP	3/18/2022
8	6362240	SLVU 4701494	1/18/2022	SSA Pier A/LA1	12/17/2021	12/27/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
9	6362250	SLVU 4704913	1/18/2022	SSA Pier A/LA1	12/15/2021	12/27/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
10	6362260	SLVU 4706876	1/18/2022	SSA Pier A/LA1	12/21/2021	12/28/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
11	6362270	SLVU 4713685	1/18/2022	SSA Pier A/LA1	12/6/2021	12/29/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
12	6362280	SLVU 4880450	1/18/2022	SSA Pier A/LA1	12/21/2021	12/29/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
13	6362290	VOLU 4532583	1/18/2022	SSA Pier A/LA1	12/13/2021	1/3/2022	1/26/2022	2/8/2022	No reply from EP	3/18/2022
14	6362300	SLVU 4537349	1/18/2022	SSA Pier A/LA1	12/1/2021	12/30/2021	1/26/2022	2/8/2022	No reply from EP	3/18/2022
15	6370290	SLVU 4601860	1/29/2022	SSA Pier A/LA1	12/17/2021	1/19/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022
16	6370300	SLVU 4601915	1/29/2022	SSA Pier A/LA1	12/17/2021	1/19/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022
17	6370310	SLVU 4609686	1/29/2022	SSA Pier A/LA1	12/6/2021	1/19/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022
18	6370320	SLVU 4714228	1/29/2022	SSA Pier A/LA1	12/1/2021	1/19/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022

19	6370330	VOLU 4972670	1/29/2022	SSA Pier A/LA1	1/6/2022	1/21/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022
20	6370340	VOLU 4973439	1/29/2022	SSA Pier A/LA1	1/6/2022	1/21/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022
21	6370350	VOLU 4973608	1/29/2022	SSA Pier A/LA1	1/9/2022	1/21/2022	2/11/2022	2/14/2022	No reply from EP	3/18/2022

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections E.1.b. and H.1. of the UIIA. The Motor Carrier disputes all twenty-one (21) invoices based on the fact that there were no available locations/port appointments to return the empty containers to the Equipment Provider as required under Section E.1.b. of the UIIA. The Motor Carrier disputed the charges on February 8, 2022 and February 14, 2022, but the Equipment Provider did not respond to the Motor Carrier's dispute within the 30-day timeframe in accordance with Section H.1. of the UIIA. Consequently, the Motor Carrier believes the Equipment Provider has lost its right to collect the charges.

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

The Equipment Provider confirmed that it received the Motor Carrier's dispute on February 8, 2022 and February 14, 2022, but it could not locate a specific acknowledgement email to the Motor Carrier. The Equipment Provider stated that they had regular communications with the Motor Carrier, but no evidence of the communications was provided. The Equipment Provider stated that due to conditions on the West Coast, the Equipment Provider received numerous disputes related to no available return locations, lack of empty return appointments, and empty return restrictions. As a result of the number of disputes received, the Equipment Provider stated that it caused some delays in responses. Norton Lilly International (NLI) indicated that they have been working on a resolution process with the Equipment Provider to handle these types of disputes. During the review process, the Equipment Provider stated that it has not suspended any Motor Carrier's interchange privileges for outstanding per diem charges.

In addition, the Equipment Provider agreed to offer additional free time or settlements of per diem charges in order to account for the issues on the West Coast. In the case of this specific Motor Carrier, the Equipment Provider offered a 50% settlement of all disputed per diem charges on the twenty-one (21) disputed invoices. Consequently, the Equipment Provider believes this offer is a reasonable settlement based on the current conditions. The Equipment Provider indicated that they were in the process of notifying all Motor Carriers of the per diem settlement offer due to this issue.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier filed its dispute based on Sections E.1.b. and H.1. of the UIIA. The panel addressed its decision as it relates to these sections, as well as Section H.4. of the UIIA, as follows:

As the Motor Carrier claims, there were no return locations for the Motor Carrier to return empty containers. Under Section E.1.b. equipment is to be returned to a location designated by the Equipment Provider, and if changed, then the Equipment Provider must notify the Motor Carrier by e-mail by 16:00 pm the business day prior to the change becoming effective. Thus, under Section E.1.b., the Equipment Provider failed to provide an open return facility online or under the Equipment Return Location Directory (ERLD).

The panel agrees that Section H.1. of the UIIA applies to this dispute which states in part:

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]**

On April 23, 2022, the Equipment Provider responded to the Motor Carrier and confirmed it received the Motor Carrier's dispute on February 8, 2022 and February 14, 2022. However, the Equipment Provider failed to respond to the dispute within the required timeframe under Section H.4. of the UIIA, as follows:

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]**

The panel concurs that the documents submitted in this claim do not reflect that the Equipment Provider responded to the dispute within the required timeframe. Therefore, based on Section H.4. of the UIIA, the arbitration panel members have decided that the Equipment Provider loses its right to collect the per diem charges.

Based on 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:

E. Equipment Use, 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 Invoice 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 E.1.b., H.1. and H.4 of the UIIA.

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
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, and

UIIA EP,

Respondent.

Case Number: **20220413-24-XXXI-PD**

Date of Decision: 11/21/2022

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	DT0300418	BEAU2418131	03/06/2022	Wando/Wando	01/31/2022	02/14/2022	2/21/22	2/23/22	4/11/22	4/13/22
		CXDU2284170			01/25/2022	02/14/2022				
Cancelled by EP	DT0301250	BMOU6335847	03/06/2022	Wando/Wando	01/20/2022	02/14/2022	3/7/22	3/12/22	3/16/22	
		YMLU9012984			01/21/2022	02/14/2022				
Cancelled by EP	DT0301251	OCGU8019489	03/06/2022	Wando/Wando	01/19/2022	02/16/2022	3/6/22	3/12/22	3/16/22	
Cancelled by EP	DT0301252	TGBU6572122	02/20/2022	Wando/Wando	01/13/2022	01/25/2022	3/7/22	3/12/22	3/16/22	

***Note:** Notice was received from the Equipment Provider that it canceled 3 out of the 4 invoices under this claim. Therefore, please review only invoice No. DT0300418.

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections E.1.b., H.1., and H.4. of the UIIA. The Motor Carrier disputes all 4 invoices based on the fact that there were no available locations/appointments available to return the empty containers to the Equipment Provider as required under Section E.1.b. of the UIIA. The Motor Carrier disputed the charges, but the Equipment Provider did not respond to the Motor Carrier's dispute indicating that they agreed or declined the dispute in accordance with Section H.1. of the UIIA. Therefore, the Motor Carrier believes the Equipment Provider has lost its right to collect the charges.

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

The Equipment Provider did not provide any comments during the 15-day comment period in the Notice of Intent to Seek Binding Arbitration, but it did respond to the Motor Carrier's initial dispute asking the Motor Carrier if it checked the terminal announcements. The Equipment Provider never responded to the Motor Carrier's initial dispute agreeing or declining the dispute.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier filed its dispute based on Sections E.1.b., H.1., and H.4. of the UIIA. The panel addressed its decision as it relates to these sections as follows:

As the Motor Carrier claims, it was disputing invoices based off of ERD shifts of the vessel providing dates of the changes. The Motor Carrier also states that the Equipment Provider responded that they were checking into the issue. However, under Section E.1.b. of the UIIA, the Equipment Provider failed to provide a return location.

Based on the evidence submitted, invoice No. DT0300418 was issued by the Equipment Provider on February 20, 2022, and disputed by the Motor Carrier on February 23, 2022. The dispute was never definitively responded to by the Equipment Provider pursuant to the terms established in Section H.4. of the UIIA and within the established timeframes in Section IV, Paragraph 3d, of the Equipment Provider's Addendum to the UIIA. As such, the Equipment Provider has lost its right to collect such charges pursuant to Section H.4. of the UIIA.

The Ocean Carrier panel member points out that the Equipment Provider responded in writing to the disputed items within 30 days of receipt of the Motor Carrier's notice under Section H.1. of the UIIA that it was waiting on clarification from the department involved in the case, but no decision was provided by the Equipment Provider to accept or deny the Motor Carrier's dispute. The Equipment Provider failed to follow up on the original dispute, and it did not respond within the timeframes set forth in the terms of the UIIA. Therefore, based on the above, the panel finds in favor of the Motor Carrier and agrees that invoice No. DT0300418 should be cancelled for the full amount of \$0.00.

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 Use, 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 Invoice 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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]**

Section IV.3.d. – Free Time and Charges of the Provider's Addendum

On receipt of Motor Carrier's notice, Provider will undertake to reconcile such disputed items will respond in writing to Motor Carrier within (30) days of receipt of Motor Carrier's notice. In no event shall any dispute constitute valid grounds for Motor Carrier to withhold or delay payment for any non-disputed charges.

DECISION:

The panel unanimously finds in favor of the Motor Carrier based on Sections E.1.b., H.1., and H.4. of the UIIA and Section IV.3.d. of the Provider's Addendum. Invoice No. DT0300418 should be cancelled for the full amount of \$0.00.

CASE REVIEWED AND DECIDED BY:

MATTHEW SCIASCIA
Motor Carrier Panel Member

JIM MICHALSKI
Ocean Carrier Panel 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: **20221213-3-XXXX-PD**

Date of Decision: 05/08/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Inv. Date	Amount	Date MOTOR CARRIER rec'd inv.	Date MOTOR CARRIER disputed the inv.	Date EQUIPMENT PROVIDER responded to MOTOR CARRIER's dispute	Notice of Intent Rec'd
		See attached list of invoices disputed in this arbitration claim					

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections E.1.b, H.1, and H.4 of the UIIA. The Motor Carrier disputes 24 invoices based on the fact that there were no available locations/appointments available to return the empty containers to the Equipment Provider as required under Section E.1.b. of the UIIA. The Motor Carrier disputed the charges, but the Equipment Provider did not respond in writing to the Motor Carrier's dispute of the invoices that they accepted or denied the dispute in accordance with Section H.1. of the UIIA. Therefore, the Motor Carrier believes the Equipment Provider has lost its right to collect the charges on the invoices.

In addition, after reviewing the Equipment Provider's response to the arbitration claim, the Motor Carrier states that it felt the Equipment Provider was provided with ample documented proof of its dispute. The Motor Carrier states that the information provided to the Equipment Provider of its dispute of the invoices was the same as with other accepted disputes placed with the Equipment Provider in the past. The Motor Carrier further states that because there are no specific definitions or guidelines stating the documentation or proof required to support a dispute, the Motor Carrier believes any information it provided should be deemed sufficient. The Motor Carrier also states that under Section H.1. the Equipment Provider is obligated to respond to a dispute with an acceptance or denial of the dispute within the allotted 30-day timeframe pursuant to Section H.1. of the UIIA. The Motor Carrier feels that the Equipment Providers cannot arbitrarily deem a dispute as incomplete or invalid and just ignore it as Motor Carriers are obligated to respond to every invoice regardless of whether we think it's a valid invoice.

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

The Equipment Provider responded to the claim stating the following:

Regarding invoices 1 through 10, the Equipment Provider believes that the Motor Carrier failed to provide evidence to support its dispute when it notified the Equipment Provider. The Equipment Provider states that Section H.1 of the UIIA requires the Motor Carrier to advise the Equipment Provider in writing of the disputed items on invoices within 30 days of the receipt of such invoice(s), documenting with appropriate evidence, its disagreement with any of the Equipment Provider's bills it believes to be incorrect. The Equipment Provider states that the Motor Carrier offered only its statement as to why the invoices should be canceled but did not provide evidence in support of their statement. Accordingly, the Equipment Provider states because the Motor Carrier did not document its disputes with appropriate evidence, the Equipment Provider was not required to respond within the 30-day timeframe.

Regarding invoices 23 through 34, the Equipment Provider responded stating that its dispute resolution team has no record of the dispute emails submitted by the Motor Carrier referenced in the Motor Carrier's Notice of Intent. Therefore, the Equipment Provider believes it was not required to respond to the disputes which the Equipment Provider's dispute resolution team has no record of receiving.

In conclusion, the Equipment Provider states that the precedent decision provided by IANA does not apply to this factual situation, and the requirements under Sections H.1. and H.4. of the UIIA, as referenced in the prior case decision are not applicable based on the reasons stated above. Furthermore, the Equipment Provider states that because the Motor Carrier failed to properly submit the disputes, the Equipment Provider was under no obligation to accept or decline the disputes within the 30-day timeframe.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier filed its dispute based on Sections E.1.b., H.1., and H.4. of the UIIA. Based upon the evidence provided, the panel addressed its decision as it relates to these sections as set forth below regarding the three groups of invoices disputed in this matter as follows:

Invoices 1 - 4 and 23 – 34, the panel finds in favor of the Motor Carrier. Pursuant to Sections H.1. and H.4. of the UIIA, the Equipment Provider did not respond within 30 days to the Motor Carrier's initial DRP claims in emails sent on November 8, 2021, February 16, 2022, and March 7, 2022. The panel found no evidence from the Equipment Provider that they responded to the Motor Carrier's dispute regarding invoices 1 – 4 and 23 – 34. The information supports that some type of response from the Equipment Provider is required stating that more evidence is needed. The panel also finds that the correct email was being used by the Motor Carrier to send its disputes to the Equipment Provider.

Invoice 5-10. The Equipment Provider's response to the Motor Carrier's DRP claims regarding invoices 5-10 states that the claims did not include any additional evidence or documentation to support the Motor Carrier's claim. However, the panel determined from the supporting documentation presented in the case that there was no evidence that the Equipment Provider responded to the Motor Carrier's initial dispute of these invoices as to whether they accepted or denied these disputes as required by Section H.1 of the UIIA.

Invoices 39 & 40, the panel rules in favor of the Equipment Provider. The Motor Carrier arbitration panel member suggests that the Motor Carrier assist with getting the issue resolved with the BCO correcting the SWIFT Code to the correct code which will result in getting the Equipment Provider's invoices 39 & 40 paid.

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 Use, 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 Invoice 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 regarding Invoices 1 – 4, 23 – 34, and 5 – 10. The Motor Carrier is not responsible for payment of Invoices 1 – 4, 23 – 34, and 5 – 10.

The arbitration panel suggests that the Motor Carrier assist with getting the issue resolved with the BCO correcting the SWIFT Code to the correct code which will result in getting the Equipment Provider's invoices 39 & 40 paid in the total amount of \$0.00.

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
Motor Carrier Panel Member

RYAN KOCH
Ocean Carrier Panel 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: **20230221-20-XXXP-PD**

Date of Decision: 09/05/2023

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Inv.	Invoice #	Container#	Inv. Date	Facility	In/out gate Date	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	5260452576		7/14/22			07/14/2022	07/21/2022	No response	02/20/2023
2	Invoice Canceled by EP								
3	5260971363		9/26/22 – Original 10/1/2022 – Revised			9/26/22 – Original 10/1/2022 – Revised	9/26/22 – Original 10/3/2022 – Revised	02/16/2023	
4	5261045207		10/10/22			10/10/2022	10/17/2022	02/16/2023	
5	5261122954		10/20/22			10/20/2022	10/26/2022	02/16/2023	
6	5261263134		11/11/22			11/11/2022	11/14/2022	No response	
7	5261516153		12/27/22			12/27/2022	1/19/2023	No response	

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier's basis of dispute for invoices 1, 4, and 7 is based on Sections E.6.a. and E.6.d. of the UIIA. The Motor Carrier indicates that it has no record of moving the equipment. The Motor Carrier requested the EIR's from the Equipment Provider to validate the per diem being charged but only received an Excel spreadsheet with one container move listed. Therefore, the Motor Carrier believes that because the Equipment Provider did not provide the proper documentation to prove its billing, the Motor Carrier should not be liable for the per diem on a container it did not move.

The Motor Carrier's dispute of invoices 3 and 5 is based on Section E.6.d. of the UIIA. The Motor Carrier states the containers were loaded for export based on the original earliest return date (ERD), but because the booking rolled and the vessel was pushed a day, the Motor Carrier had to store the container on its yard until the new ERD was received.

The Motor Carrier's dispute of invoice 6 is based on Section E.6.c of the UIIA. The Motor Carrier states that they ingated the container on 8/30/2022 but did not receive the invoice from the Equipment Provider until 73 days after, 11/11/2022. Therefore, the Motor Carrier believes that the Equipment Provider is outside of their 60day timeframe on invoicing the Motor Carrier.

Note: Invoice 2 was cancelled by the Equipment Provider after the case was submitted for arbitration.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider provided a table with the dispute dates and dates resolved, along with some additional back-up documentation. The Equipment Provider believes the Motor Carrier is responsible for the invoices as billed.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. Initially, the panel notes that the dispute regarding invoice 2 has been resolved and Equipment Provider canceled the invoice. The panel addresses the remaining invoices as follows:

Invoice 1: Section H.1. of the UIIA requires an invoicing party to respond in writing to disputed items within 30 days of notice with its decision to accept or deny the invoiced party's dispute. Here, no response was received from the Equipment Provider accepting or denying the Motor's Carrier's dispute under Section H.1. of the UIIA. Therefore, the panel finds in favor of the Motor Carrier.

Invoice 3: The Motor Carrier returned the container on July 20, 2022. The Equipment Provider sent the original invoice on September 26, 2022 and the revised invoice on October 1, 2022. The invoice was not received by the Motor Carrier within 60 days of return of the equipment as required by UIIA Section E.6.c. Therefore, the panel finds in favor of the Motor Carrier.

Invoice 4: The Equipment Provider did not provide the documentation reasonably necessary to support its invoice as required by UIIA Section E.6.e. Therefore, the panel finds in favor of the Motor Carrier.

Invoice 5: The Motor Carrier disputed the invoiced interchange date of September 13, 2022 and stated the ingate date was September 6, 2022. The Equipment Provider did not respond to the dispute within the 30-day time frame set forth under UIIA Section H.1. Therefore, the panel finds in favor of the Motor Carrier pursuant to UIIA Section H.4.

Invoice 6: The Motor Carrier returned the container on August 30, 2022. The Equipment Provider sent the original invoice on November 11, 2022. The invoice was not received by the Motor Carrier within 60 days of return of the equipment as required by UIIA Section E.6.c. Therefore, the panel finds in favor of the Motor Carrier.

Invoice 7: The panel believes both the Motor Carrier and Equipment Provider could have handled this dispute in a more reasonable manner. However, the Equipment Provider produced a gate transaction from the facility operator's terminal operating system identifying the Motor Carrier and tractor number. Therefore, the per diem is valid and the panel finds in favor of Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (April 23, 2021 and July 20, 2022) to make its decision:

E. Equipment Use

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

a. Interchange of Equipment is on a compensation basis. Provider may permit some period of uncompensated use and thereafter impose Per Diem, Container Use, Chassis Use/Rental and/or Storage/Ocean Demurrage charges, as set forth in its Addendum. **[Revised 01/17/12]**

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]**

e. Provider shall provide the Motor Carrier documentation as is reasonably necessary to support its invoice.

H. Default Dispute Resolution and Binding Arbitration Processes, Items H.1. and H.4.

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 Invoice 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]**

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 finds as follows based on the invoices submitted under this claim and for the reasons stated above:

Invoice	Decision	Amount
Invoice 1	Panel found in favor of the Motor Carrier based on Sections H.1. of the UIIA.	\$00.00
Invoice 3	Panel found in favor of the Motor Carrier based on Section E.6.c.	\$00.00
Invoice 4	Panel found in favor of the Motor Carrier based on Section E.6.e.	\$00.00
Invoice 5	Panel found in favor of the Motor Carrier based on Section H.1. and H.4 of the UIIA.	\$00.00
Invoice 6	Panel found in favor of the Motor Carrier based on Section E.6.c.	\$00.00
Invoice 7	Panel found in favor of the Equipment Provider based on Section E.6.e.	\$00.00

CASE REVIEWED AND DECIDED BY

DAVID HENSAL
Motor Carrier Panel Member

RYAN KOCH
Ocean Carrier Panel 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: **20230313-26-XXXP-PD**

Date of Decision: 09/08/2023

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	2121864991	FANU1571700	11/30/22	Landers IL/ITI Intermodal	11/2/2022	11/7/2022	11/30/2022	12/6/2022	3/12/2023	3/13/2023

***Three invoices submitted under this claim were either canceled by the Equipment Provider or rejected as not meeting binding arbitration criteria.**

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier's dispute is based on Sections H.1. and H.4. of the UIIA. The Motor Carrier states that invoice 212864991 was billed with the wrong number of days. The Motor Carrier disputed the invoice on December 6, 2022. The Motor Carrier states the Equipment Provider did not respond to the dispute until March 12, 2023, which is beyond the 30-day timeframe set forth in Section H.1. of the UIIA. Based on Section H.4. of the UIIA, if the Equipment Provider fails to respond, it loses the right to collect the disputed charges. For these reasons, the Motor Carrier believes it is not responsible for the charges billed on this invoice.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider states it canceled two of the invoices under this claim, but that invoice 2121864991 is still due as invoiced because the dispute was responded to within 30 days as required under Section H.1. of the UIIA. No supporting documentation was provided by the Equipment Provider other than its response. Based on supporting documentation provided by the Motor Carrier, the first response from the Equipment Provider on this dispute was on March 3, 2023 and the response indicated "Dispute Template Rejected". The screenshot the Equipment Provider sent shows the Dispute ID, the status of "settled," and shows the reason the Motor Carrier disputed the charges. The note in the Equipment Provider's email states that if the Dispute ID shows Closed/Settled, that means the Equipment Provider has completed the dispute case and determined the dispute to be valid or invalid. The same email regarding the "Dispute Template Rejected" was sent again in response to an additional inquiry from the Motor

Carrier on March 7, 2023. On March 12, 2023, a final response is shown from the Equipment Provider stating it believes the invoice was billed correctly.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. The panel finds the Equipment Provider failed to comply with its obligations under Sections H.1. and H.4. of the UIIA. The Motor Carrier representative noted that the invoice was dated November 30, 2022 and the dispute was dated December 6, 2022. Depending on which email is interpreted as the definitive denial of the dispute, the denial date was either March 3, 2023 or March 12, 2023, which are both beyond the 30-day timeframe set forth under Section H.1. of the UIIA. The Equipment Provider also failed to provide any documentation after the filing of this case to challenge the timeline alleged by the Motor Carrier despite being given an opportunity to do so. The Ocean Carrier panel member noted that there is no clear evidence that the Equipment Provider responded to the Motor Carrier's dispute within 30 days in accordance with Section H.1. of the UIIA.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (July 20, 2022) to make its decision:

H. Default Dispute Resolution and Binding Arbitration Processes, Items H.1. and H.4.

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]**

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

Based on Sections H.1. and H.4. of the UIIA and the evidence submitted by the parties, the panel finds in favor of the Motor Carrier. The Equipment Provider did not provide any documentation evidencing that it responded to the Motor Carrier's dispute within 30 days. Therefore, the invoice should be canceled for the full amount of \$00.00.

CASE REVIEWED AND DECIDED BY

MATT SCIASCIA
Motor Carrier Panel Member

JIM MICHALSKI
Ocean Carrier Panel 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: 20230316-42-XXXI-PD

Date of Decision: 09/19/2023

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	DT0316797	TCNU1858941/ HDMZ408367	11/6/2022	USCHS	09/28/22	10/7/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TGBU6600836	11/6/2022	USCHS	09/28/22	10/13/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		NAPZ422215	11/6/2022	USCHS	09/28/22	10/07/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TLLU4183605	11/6/2022	USCHS	09/28/22	10/17/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
		TLXZ459409	11/6/2022	USCHS	09/28/22	10/07/22	11/7/2022	11/9/2022	12/7/2022	03/16/23
	Total of Invoice									

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier's dispute is based on Sections G.12. and H.1. of the UIIA. The Motor Carrier disputes charges billed covering the date of September 30, 2022 since the Port of Charleston was closed that day due to a hurricane. There were ongoing e-mail communications with the Equipment Provider relating to the dispute. In the last correspondence, dated December 7, 2022, the Motor Carrier explained to the Equipment Provider that Force Majeure is a special circumstance and days when the port is closed cannot be counted as days towards free time or per diem regardless of contract terms. No further response was received from the Equipment Provider, so the Motor Carrier believes the Equipment Provider also did not comply with Section H.1. of the UIIA by responding with a definitive denial or acceptance of the Motor Carrier's dispute within 30 days. Consequently, the Motor Carrier believes the invoice should be canceled.

EQUIPMENT PROVIDER'S RESPONSE TO MOTOR CARRIER'S DISPUTE

The Equipment Provider did not respond to the binding arbitration claim, but there were multiple communications between the Motor Carrier and the Equipment Provider related to the Motor Carrier's initial dispute of the charges. The last communication from the Equipment Provider was on December 7, 2022, when it indicated that the shipment was provided 10 calendar days and that every calendar day counted in the calculation of free time, including weekends, holidays, and terminal closure days. The Equipment Provider stated that although the port was closed on September 30, 2022, it is still counted as a one free day based on the terms of the service contract.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. The Motor Carrier's initial basis of dispute is that the Equipment Provider counted as free time a date, September 30, 2022, on which the Motor Carrier was unable to interchange equipment to the Equipment Provider due to circumstances covered under Section G.12. of the UIIA, namely a hurricane, confirmation of which was received from the Marine Terminal Operator via email on November 16, 2022. The Equipment Provider, in its email of December 7, 2022, asserted that "every day is counted into your free time, including weekends, holidays, terminal closure day," which appears to conflict with Section G.12. of the UIIA. While the Motor Carrier relies on Section H.1 of the Agreement in its filing, the Motor Carrier panel member finds that the Equipment Provider's December 7, 2022 email is a definitive denial of the Motor Carrier's dispute and that this denial took place within the 30-day timeframe afforded by Sections H.1. and H.4 of the UIIA. The Ocean Carrier panel member finds that the Equipment Provider responded to the Motor Carrier's dispute on December 7, 2022 and therein confirmed that the special free time was applied, and that this response can be interpreted as the Equipment Provider's response that the invoice is valid.

However, the panel also finds that the Equipment Provider erred in refusing to honor the Motor Carrier's initial dispute under Section G.12. of the UIIA. The Motor Carrier panel notes that a terminal closure due to a hurricane would most reasonably be construed as within the accommodations afforded by Section G.12. The Ocean Carrier panel member notes that it is reasonable for the Motor Carrier to dispute the invoice because the port was closed for 1 day, which prevented the Motor Carrier from delivering the equipment and was validated by the South Carolina Ports Update provided in the case file.

Note: The original arbitration panel did not reach a consensus on how the \$00 arbitration filing fee should be handled in this case. Consequently, this specific issue related to reimbursement of the filing fee was directed to the senior arbitration panel for final determination. The senior arbitration panel unanimously determined that in accordance with Exhibit D, Item D.14. that the Motor Carrier should be reimbursed the \$00 filing fee by the Equipment Provider since the Motor Carrier prevailed in the arbitration case.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

The panel relied upon the following provisions from the UIIA (July 20, 2022) to make its decision:

G. General Terms

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, Items H.1. and H.4.

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]**

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 finds the Equipment Provider's December 7, 2022 email was a denial of the Motor Carrier's initial dispute and that the denial occurred within 30-days and therefore complied with Section H.1. of the UIIA. However, the Equipment Provider should have honored the Motor Carrier's dispute under Section G.12. of the UIIA because the port was closed on September 30, 2022 when the Motor Carrier tried to interchange the equipment. Consequently, the invoice in question should be adjusted by reducing one day of per diem for each piece of equipment listed, which equates to a reduction of \$00.00. The adjusted invoice total with this reduction would be \$00.00, which would be owed by the Motor Carrier. The Equipment Provider should issue an adjusted invoice to the Motor Carrier for the revised amount of \$00.00. In addition, the senior arbitration panel determined that the Equipment Provider is to reimburse the Motor Carrier the \$00.00 arbitration filing fee.

CASE REVIEWED AND DECIDED BY:

MATT SCIASCIA
Motor Carrier Panel Member

JIM MICHALSKI
Ocean Carrier Panel Member

Note: Senior arbitration panel rendered the final decision solely as it relates to the handling of the arbitration filing fee of \$00.

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

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent.

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Case Number: **20220318-6-XXE-PD**

Date of Decision: 08/19/2022

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Amount Disputed	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed inv.	Date EP responded	Notice of Intent Rec'd
See attached spreadsheet listing 70 invoices being disputed in this arbitration claim											

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections E.1.b. and H.1. of the UIIA. The Motor Carrier disputes all 70 invoices on the attached spreadsheet based on the fact that there were no available locations/appointments to return the empty containers to the Equipment Provider as required under Section E.1.b. of the UIIA. The Motor Carrier sent the dispute to the Equipment Provider on February 4, 2022, but the Equipment Provider did not respond to the Motor Carrier's dispute within the 30-day timeframe in accordance with Section H.1. of the UIIA. Consequently, the Motor Carrier believes the Equipment Provider has lost its right to collect the charges.

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

The Equipment Provider confirmed that it received the Motor Carrier's dispute on February 4, 2022 but could not locate a specific acknowledgement email to the Motor Carrier. The Equipment Provider stated that due to conditions on the West Coast, they received numerous disputes related to no available return locations, lack of empty return appointments, and empty return restrictions. Due to the number of disputes received during that period, the Equipment Provider stated that it caused some response delays. The Equipment Provider indicated that they have been working on a resolution process with the Motor Carrier to handle these types of disputes. During the review process, the Equipment Provider stated that it has not suspended any Motor Carrier's interchange privileges for outstanding per diem charges.

The Equipment Provider added that on April 16, 2022, it made several adjustments (reductions) to the Motor Carrier's invoices to account for the issues on the West Coast. The Equipment Provider provided four (4) examples of invoice adjustments made for the Motor Carrier and confirmed that they are cancelling all four (4) invoices under this claim. The cancelled invoice numbers are #06354110-\$00.00, #06364290-\$00.00, #06364170-\$00.00, and #06364190-\$00.00. The Equipment Provider indicated that they were in the process of notifying all Motor Carriers of any cancelled or adjusted invoices due to this issue.

Note: Staff provided this information to the Motor Carrier, and they indicated that they wish to proceed with the claim.

DISCUSSION:

The panel carefully reviewed all documents and information provided by the parties. The Motor Carrier filed its dispute based on Sections E.1.b. and H.1. of the UIIA. The panel addressed its decision as it relates to these sections as follows:

As the Motor Carrier claims, they could not find an open facility to return the empty equipment. The Equipment Provider did not respond to the Motor Carrier's request or provide any alternative return facilities. Thus, under Section E.1.b., the Equipment Provider failed to provide an open return facility online or under the Equipment Return Location Directory (ERLD). The panel agrees that Section H.1. of the UIIA applies to this dispute which states in part:

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]**

The Equipment Provider confirmed that it received notice of the disputed invoices from the Motor Carrier on February 4, 2022. However, the Equipment Provider failed to respond to the dispute within the required timeframe under Section H.4. of the UIIA, as follows:

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]**

The Motor Carrier panel member points out that the documents submitted in this claim do not reflect that the Equipment Provider responded to the dispute within the required timeframe. Therefore, under Sections H.1. and H.4 the arbitration panel members concurred that the Equipment Provider loses its right to collect the charges and dispute the Motor Carrier's claim.

Based on 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:

E. Equipment Use, 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 Invoice 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]**

H. Default Dispute Resolution and Binding Arbitration Processes, Item H.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 E.1.b., H.1., and H.4. of the UIIA.

CASE REVIEWED AND DECIDED BY:

PETER SCHNEIDER
Motor Carrier Panel Member

TIM AMES
Ocean Carrier Panel Member