

**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: **20201214-3-XXXM-MR-OTH**

Date of Decision: 03/08/2021

THE MOTOR CARRIER DISPUTES THE FOLLOWING INVOICES:

Invoice	Invoice #	Container #	Inv. Date	Facility	Outgated	Ingated	Date MC rec'd inv.	Date MC disputed the inv.	Date EP responded to MC's dispute	Notice of Intent Rec'd
1	3RM6010	UMXU 256629	11/30/20	CSX 59 th /CSX Bedford Park	09/08/20	09/22/20	12/01/20	12/04/20	12/04/20	12/14/20

MOTOR CARRIER'S BASIS OF DISPUTE:

The Motor Carrier is basing its dispute on Sections D.2.a, D.3.b., D.3.e., and E.3.a.(2) of the UIIA. The Equipment Provider is invoicing the Motor Carrier for container damage, that the Motor Carrier believes was pre-existing. The Motor Carrier stated that they requested the out-gate AGS gate images from the Equipment Provider, but the Equipment Provider told the Motor Carrier that they could not be produced. The Motor Carrier believes that because the invoice included a J1 that states, "Damage is captured on recorded images at AGS Gates," the Equipment Provider should be able to provide the images. The Motor Carrier also stated that they do not believe that it is possible for the driver to have caused this type of damage and still arrive on time at the customer. The Motor Carrier stated that their customer is about 90 minutes away from the facility, and the customer's security camera shows the driver arriving about 90 minutes from the time noted on the out-gate EIR. The Motor Carrier feels that the damage was pre-existing, and they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. Therefore, the Motor Carrier believes they are not responsible for the charges on the invoice based on Section E.3.a.(2) of the UIIA.

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

The Equipment Provider responded to the claim stating that there are two methods for outgating a unit at their rail facilities. The driver can elect to use the mobile application, or the driver can use the Self-Service Kiosk (SSK). The Equipment Provider stated that drivers can note damage prior to outgate on their own using either method with no intervention necessary from a railyard employee or representative. The unit outgated at a non-AGS facility which does not record images at outgate but provides the Motor Carrier the ability to record electronically the condition of the equipment at the time of interchange. The Equipment Provider stated in this case there was no damage noted at outgate, and the driver elected to use the SSK to outgate the unit. The Equipment Provider also stated that the unit ingated in Baltimore, MD without damage, departed the gate at Chicago 59th Street with no documented damage noted on the EIR, and returned to Bedford Park damaged in violation of Section D.3.e. of the UIIA. It is the driver's responsibility to report any damage to the unit. The Equipment Provider believes that the language at the bottom of the J1 is consistent with UIIA guidance in Section D.2.b. and stated that they only have three terminals that are equipped with outgate AGS systems (Bedford Park, Columbus, and Northwest Ohio). Therefore, the Equipment Provider feels that the invoice should stand.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, the panel members concur that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with interchanged equipment, and pursuant to Section D.2.a, any damage observed to the equipment shall be noted on an Equipment Interchange Receipt. Damage to this unit is clearly visible. If the damage was a pre-existing condition as the Motor Carrier suggests, then it should have been detected on the pre-trip inspection and noted on the interchange receipt. The allegation that damage could not have happened while the unit was in possession of the Motor Carrier because of the timing of the cargo delivery is relatively baseless since the damage could have occurred at any point during the 14 days between when the unit was out-gated on 9/8/2020 and when it was in-gated on 9/22/2020. Given the facts presented in the case, both panel members agree that the Motor Carrier is responsible for the container damage and the repair charges of \$00.00.

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 D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10]**

Section D.2. Equipment Interchange Receipts, Item D.2.b.

Use of electronic EIRs requires that the Provider or the Facility Operator provide an electronic system whereby the Motor Carrier may describe electronically, the condition of the Equipment at the time of Interchange, without substantially burdening the Motor Carrier's use of electronic EIRs at the same Premises, and that this information be incorporated as part of the electronic EIR. **[Revised 09/16/17]**

Section D.3. Equipment Condition, Item D.3.b.

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A **[Item 8 Tires]** to this Agreement. **[Item Re-numbered 10/01/18]**

Section D.3. Equipment Condition, Item D.3.e.

Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[Revised 06/13/16]**

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the container damage and repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

MIKE PAGEL
Rail Panel Member

In the Dispute Between

UIIA MC,

Appellant, and

UIIA EP,

Respondent

Case Number: **20201211-46-XXXP-MR-TR**

Date of Decision: 03/08/2021

Invoice	Invoice #	Equipment #	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
2	309205451	NSPZ154406	10/01/20	Global 1/Fox Run	08/05/20	08/06/20	10/01/20	10/29/20	11/26/20	12/11/20

Note: originally there were two invoices submitted by the MC on this case, but the EP canceled invoice 1.

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.b., D.3.e. and E.3.a.(2) of the UIIA. The Motor Carrier stated that this was a UPS unit dispatched to the Motor Carrier by UPS from the UPS Cach Yard (non-AGS facility) to UP/ Global 1 (AGS facility) on 08/06/2020. Equipment Provider issued an invoice to the Motor Carrier for a right outer front (ROF) radial tire, that was listed as cut/torn. The Motor Carrier argues that because this was a UPS move, the Equipment Provider should be billing UPS directly, not the Motor Carrier, and that the Motor Carrier is simply the agent for the Equipment Provider. The Motor Carrier states that the unit originated from a UPS facility, and the Motor Carrier had no way of notating the condition of the tire prior to leaving the UPS yard. The Motor Carrier feels that they returned the equipment to the Equipment Provider in the same condition it was received, reasonable wear and tear excepted. Therefore, the Motor Carrier believes they are not responsible for the charges based on Section D.3.e. of the UIIA.

The Equipment Provider responded to the Motor Carrier's claim stating that on 8/5/2020, NSPZ154406 was out-gated at Fox Run with no damage notated on the J1 interchange document. The equipment subsequently in-gated at Global 1 on 8/6/2020. Upon in-gate, there was a clear cut to the ROF tire, captured on the AGS images. The Equipment Provider's addendum to the UIIA clearly states that the in-gating carrier is responsible for

any damage found on the equipment unless it was identified as pre-existing. In this case, the Equipment Provider feels it has provided clear evidence that the ROF tire on chassis was damaged during the interchange period the Motor Carrier was in possession of the equipment and that it has followed all the requirements under the UIIA.

In addition, the Equipment Provider provided the following language as outlined in their Addendum to the UIIA:

Equipment Provider's Addendum to the Uniform Intermodal Interchange and Facilities Access Agreement:

Section 7.A, Paragraph 3

At an AGS gate, any damage to Equipment discovered by EP's gatehouse operator or brought to EP's later attention, including but not limited to any subsequent inspection by EP's or another railroad, will be presumed to have been caused by the Motor Carrier that Interchanged the Equipment to EP's at the time of in-gate and the Motor Carrier will be liable for all such damage unless the Party with access to the prior out-gate EIR or out-gate Recorded Image provides a copy of this documentation identifying the damage discovered by EP's gatehouse operator or brought to EP's later attention. The damage brought to EP's later attention must be captured on an AGS image.

DISCUSSION:

The panel carefully reviewed all documents and evidence submitted by the parties. Based upon the supporting documents and evidence submitted, both panel members' opinion is that pursuant to Section D.3.b of the UIIA, Motor Carrier drivers are required to conduct a pre-trip inspection prior to departing with the interchanged equipment. If the tire damage was a pre-existing condition, the Motor Carrier's driver should have noticed it during the inspection and should not have pulled the equipment from the yard without properly noting the damage, as required in Section D.2.a of the UIIA. Given the apparent severity of the damage to the tire, which does not appear to be roadworthy, and thus should not have been pulled from the yard without being repaired first. Once the driver pulls the equipment from the yard, he assumes responsibility for it. If it was a pre-existing condition on the tire, and there was no opportunity to report it or repair it, the driver should not have accepted the unit. For these reasons, both panel members agree that the Motor Carrier is responsible for the tire repair charges as shown in Invoice No. 309205451 for \$00.00.

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 D.2. Equipment Interchange Receipts, Item D.2.a.

At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange.

[Revised 05/12/10]

Section D.3. Equipment Condition, Item D.3.b.

Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A [Item 8 Tires] to this Agreement. [Item Re-numbered 10/01/18]

Section E.3. Damage to Equipment, Item E.3.a.(2)

To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. [Revised 10/01/18]

DECISION:

The panel unanimously finds in favor of the Equipment Provider. The Motor Carrier is responsible for the repair invoice in the amount of \$00.00.

CASE REVIEWED AND DECIDED BY:

BEN BANKS
Motor Carrier Panel Member

MIKE PAGEL
Rail 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: **20230330-60-XXXP-MR-TR**

Date of Decision: 07/21/2023

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	324689031	HGIU645450/ NSPZ146935	2/1/23	Global 4/ Global 2	1/20/23	1/20/23	2/1/23	2/16/23	3/15/23	3/30/23
2	324937048	HGIU523208/ TSFZ910572	2/15/23	Global 2	12/28/22	12/28/22	2/15/23	2/16/23	3/15/23	3/30/23

MOTOR CARRIER'S BASIS OF DISPUTE

The Motor Carrier is basing its dispute on Sections D.2.a., D.3.e., and E.3.a.(2) of the UIIA. The Motor Carrier indicates both invoices are from a cross-town move dispatched to the Motor Carrier by Norfolk Southern. For invoice 324689031, the unit outgated NS 47th Street (AGS facility) and ingated UP/Global 2 (AGS facility) on January 20, 2023. The Equipment Provider did not provide ingate AGS images at UP/Global 2 showing damages with its invoice. Motor Carrier disputed charges, indicating the billing did not comply with Section E.3.a.(2). The Equipment Provider denied the dispute stating that the attached photo showed the damage being billed. The AGS photo later provided by the Equipment Provider still did not show damage was present at ingate. The Motor Carrier believes the unit was returned in the same condition as it was outgated, reasonable wear and tear excepted, and that no damage can be seen on the ingate AGS image. The Motor Carrier responded to the Equipment Provider's additional comments in this claim stating that once the ingate AGS image was provided to it by the Equipment Provider it was able to compare the outgate and ingate AGS images. Unfortunately, the NS outgate was darkened at the bottom of the picture so the Motor Carrier was unable to see the mark on the sidewall. The Motor Carrier indicated that it would have sent this to the Equipment Provider, but the Equipment Provider does not respond to its emails in a timely manner and the Motor Carrier stated that they would have missed their window to submit the claim for arbitration. The Motor Carrier also notes that the first picture provided could be from a totally different chassis or taken any time after the ingate so therefore they believe this photo is invalid. The Motor Carrier states that, based on Section D.2.d., the AGS technology did not allow for observable damage and the

outgate image provided was inadequate. The outgate image was not clear and did not have the terminology “Damage is captured on Recorded Images” on the interchange receipt as required.

For invoice 324937048, the unit outgated NSCAL (Non-AGS facility) and ingated UP/Global 2 (AGS facility) on December 28, 2022. The Equipment Provider did not provide ingate AGS images at UP/Global 2 showing damages with the invoice. The Motor Carrier disputed charges, stating the billing did not comply with Section E.3.a.(2). The AGS photo later provided by the Equipment Provider still did not show damage was present at ingate. The Motor Carrier believes the unit was returned in the same condition as it was outgated, reasonable wear and tear excepted, and that no damage can be seen on the ingate AGS image. The Motor Carrier noted that the proper procedure should be that the Equipment Provider J2 any and all damages back to the origin railroad (NS). However, because the Equipment Provider’s system can’t differentiate between a cross-town and any other interchange, the Equipment Provider sends the invoice to the Motor Carrier rather than the proper party responsible for the billing.

EQUIPMENT PROVIDER’S RESPONSE TO MOTOR CARRIER’S DISPUTE

For invoice 324689031, the Equipment Provider indicates that the Motor Carrier disputed this invoice for not having ingate images included with the invoice and for being a cross-town move. The Equipment Provider attached the ingate image showing the tire off the rim and cut on the side wall to the invoice. The Motor Carrier was directed to provide documentation showing the damage was pre-existing, however no email was received. The Equipment Provider also notes that the images the Motor Carrier provided with the arbitration claim do not clearly show the damage was pre-existing and the Equipment Provider believes the Motor Carrier is responsible for the charges as billed. The Equipment Provider also responded to the Motor Carrier’s additional comments, stating that the first photo provided is the repair photo where you can see the marking of NSPZ126935 on the tire and the date of January 27, 2023 which is the chassis that was repaired and the repaired date. The Equipment Provider is not required to furnish the repair photo, however, it was provided to show that the damage on the ingate matches the damage requiring repair to the tire. The damage is clearly visible on the ingate and would have been clearly visible during the Motor Carrier’s pre-trip inspection. The Motor Carrier’s reasoning of Section D.2.d. does not negate the Motor Carrier’s responsibility under the pre-trip inspection to check specific items visually and audibly regarding tires. The Motor Carrier failed to do a proper pre-trip inspection and outgated the equipment in a damaged condition in violation of FMCSA 392.7.

For invoice 324937048, the Equipment Provider indicates that the Motor Carrier disputed this invoice for not having ingate photos attached. The AGS ingate image was attached showing the slid flat tire damage that matches the repair photos. There were no additional communications from the Motor Carrier providing any evidence showing that the damage was pre-existing. The Equipment Provider concluded that the damage was visible on ingate and the outgate provided by the Motor Carrier from NS stating there was no damage noted by the driver and deemed the Motor Carrier responsible for the damaged tire. The Equipment Provider also added, based on Motor Carrier’s additional comments, that the Motor Carrier is required to do a pre-trip inspection under Exhibit A of the UIIA. The Motor Carrier is responsible to ensure the equipment is in a safe operating condition. Failure to conduct a proper pre-trip inspection and to have damage or defects repaired prior to outgating the equipment is a violation of FMCSA 392.7. The ingate images clearly showed in this case a slid area identical to the repair photos.

DISCUSSION

The panel has carefully reviewed all documents and evidence submitted by the parties. The Motor Carrier Panel member indicated that, as the Motor Carrier points out, the Equipment Provider did not initially provide copies of the Recorded Images in accordance with UIIA Section D.2.a. However, the Equipment Provider provided the images at a later date to justify the repair invoices. While the facility where the Motor Carrier outgated the equipment may not have provided adequate photographs, the Motor Carrier is required to perform a pre-trip inspection in accordance with UIIA Section D.3.b., inspecting items addressed in Exhibit A to the UIIA. Tire damage, as identified in this claim, is specified for review in Exhibit A. As the Motor Carrier outgated the equipment without noting the corresponding damage, the Motor Carrier either failed to adequately perform a pre-trip

inspection (and thereby assumed responsibility for any non-compliant damages) or damaged the equipment in its possession. In addition, the photos provided by the Equipment Provider make the damage appear recent in nature. The Rail panel member concurred and stated that the AGS image also shows the cut tire and a time stamp and the ingate images show damaged tires. Had the Equipment Provider not provided photos supporting the claim at a later date, these invoices would not be in accordance with the UIIA. However, since they were later provided and the damage identified in the pictures is consistent with the invoices, the panel finds in favor of the Equipment Provider.

UIIA PROVISIONS RELIED UPON BY BINDING ARBITRATION PANEL

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

D. Equipment Interchange

2. Equipment Interchange Receipts

a. At the time of Interchange, the Parties or their agents shall execute an Equipment Interchange Receipt and/or exchange an electronic receipt equivalent, which shall describe the Equipment and any Damage observable thereon at the time of Interchange, reasonable Wear and Tear excepted. The physical condition of the Equipment may be described by either Party within the EIR or via Recorded Images taken at the time of Interchange. **[Revised 05/12/10].**

3. Equipment Condition

b. Motor Carriers will conduct a pre-trip inspection prior to departing with interchanged Equipment that will include those items set forth in Exhibit A to this Agreement. **[Item Re-numbered 10/01/18]**

e. Motor Carrier will Interchange the Equipment to the Provider or another Motor Carrier that is authorized for Interchange by that Provider, in the same condition, reasonable Wear and Tear excepted. **[06/13/16]**

E. Equipment Use

3. Damage to Equipment

a. Motor Carrier shall pay to Provider the reasonable and customary costs to repair Damages done to Equipment during Motor Carrier's possession. **[Revised 09/01/09]**

2) To be valid, invoices must detail the repairs done; include a copy of the actual repair bill upon which the invoice is based and include the factual documentation supporting the Provider's determination that the Motor Carrier is responsible. In instances where a copy of the actual repair bill is not available to Provider, documentation containing the repair vendor's name, repair date, location and a control number that ties the documentation to the invoice provided to the Motor Carrier is acceptable, in lieu of the actual repair bill. In the case of a gate transaction using Recorded Images such documentation must include images depicting the condition of the Equipment at the time of that Interchange. **[Revised 10/01/18]**

Exhibit A of the UIIA – Item 8

8. Tires (Check that the following conditions are not present.)

- a. Tire is flat, underinflated or has noticeable (e.g., can be heard or felt) leak.
- b. Any tire with excessive wear (2/32nds or less thread depth), visually observable bump, or knot apparently related to tread or sidewall separation.
- c. Tire is mounted or inflated so that it comes in contact with any part of the vehicle. (This includes any tire contacting its mate in a dual set.)
- d. Seventy-five percent or more of the tread width is loose or missing in excess of 12 inches (30cm) in circumference.

DECISION

The panel unanimously finds in favor of the Equipment Provider based on the evidence and supporting documentation presented in the case. Although the Equipment Provider did not initially provide copies of the recorded images, it provided the images at a later date that reflected the damage billed. Additionally, since the Motor Carrier outgated the equipment without noting the corresponding damage, the Motor Carrier either failed to adequately perform a pre-trip inspection as required under Section D.3.a. of the UIIA or damaged the equipment while it was in its possession. Therefore, the Motor Carrier is responsible for the payment of the disputed invoices.

CASE REVIEWED AND DECIDED BY

BEN BANKS

Motor Carrier Panel Member

STEVEN CHAVEZ

Rail Panel Member