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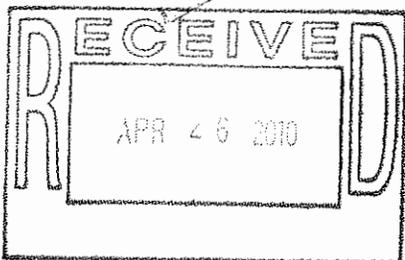


STEP B DECISION

Step B Team:
USPS:
Yvonne G Lopez
NALC:
Emre Edwards

Decision: **AMENDED**
USPS Number: **G06N-4G-C 1017 2796**
Grievant: **Homer Hernandez**
Branch Grievance Number: **421-253-10**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Cresthaven**
State: **TX**
Incident Date: **03/22/10**
Date Informal Step A Initiated: **04/01/10**
Formal Step A Meeting Date: **None**
Date Received at Step B: **04/15/10**
Step B Decision Date: **04/21/10**
Issue Code: **01.6000**
NALC Subject Code: **600111**

District:
Rio Grande



ISSUE:

Did management violate Articles 1.6, 7 and 15 of the Joint Contract Administration Manual (JCAM) when they performed bargaining unit work and/or instructed clerk(s) to cross crafts and/or failed to meet at the Formal Step A level of the grievance process? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management violated Article 15 of the National Agreement when no arrangements were made to meet at the Formal Step A within the seven day timeframe outlined in the JCAM. Additionally, management will cease performing bargaining unit work and will comply with the language found in Article 7 of the JCAM regarding crossing crafts.

The documents in the case file did not provide sufficient evidence to support a monetary remedy in this case. See DRT Explanation.

EXPLANATION:

The union contended management performed bargaining unit work by casing on route 1303. Management made a self made case for route 1303 due to burned down bank for 1700 Vance Jackson, apartments 101 to 2116. Grievant came in from his assigned route and observed management casing on the self made case for route 1303. Management was also observed at grievant's case casing. Grievant notified management that he should be casing on the self made case at the station even if it was on street time. In interviews the grievant conducted, management stated that this was **caller service** and was now the duty of the clerks. Grievant stated that management's actions prevented him from 1.5 hours of overtime by not allowing him to case his own mail.

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Grievant contended several witnesses, carriers Duron, Irwin, and Franco, along with clerks White and Stapper observed management casing on both grievant's route 1303 and the self made case.

Grievant interviewed supervisor Musquiz and he stated he could not remember if he observed manager casing mail, but stated she was separating mail for the window and he considered it caller service.

Grievant stated the manager told him clerk Stapper was the employee casing on 1303 to the self made case and clerk Stapper submitted a statement attesting to that fact. In addition, clerk Stapper states she observed management casing when she didn't do it.

The union's contentions end there and it appears at least one page is missing from the case file because the page identified as a continuation of block # 17 of the PS 8190 ends in an incomplete sentence with the words "allowing a clerk to." The space on the PS Form 8190 to indicate how many pages are attached for block # 17 is blank.

The union included a cover sheet explaining that management failed to remit to the union documentation requested on 3/30/2010. The information was requested again after the Informal Step A meeting and it wasn't until 4/6/2010 that the union received the requested documents. Additionally, the union stated that management failed to meet at the Formal Step A level of the process. The union pointed out that the supervisor acknowledged that all time lines had been met on this grievance. The union acknowledged that the supervisor asked for an extension but the union explained that due to fact that the Formal Step A had 7 days to meet, there was no extension needed at the time.

The union wrote that he suggested to the supervisor between 4/10 and 4/14/2010 that it would be in the best interest for both parties to find a replacement for the Formal Step A meeting but he never did. On 4/15/2010, the manager came to work and was asked by the alternate Steward if they were going to meet and the response given was no. The union stated the supervisor told him the manager went home sick.

Grievant/Alternate Steward contended he was left with no choice but to continue the process without management's cooperation since they had over 14 days to meet or have a replacement designee but management failed to work in good faith with the Alternate Steward and the union.

The DRT reviewed the case file and was able to ascertain from the file enough information to render a decision even though the parties failed to meet at the Formal Step A level of the process.

The Formal Step A Request to Meet form has an annotation on the top left side of the document stating that the Formal Step A would be out due to sick leave from 4/5 to 4/12/2010, all timelines have been met at the Informal level and that the grievance will continue when station manager returns. It is signed and dated 4/8/10 by the supervisor.

The file contains several statements addressed by the Step B Team. Clerk Stapper's statement provides that she has "sorted" mail for 1700 Jackson Keller almost everyday

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since the boxes burned down, approximately 5 weeks ago. On the days she did not sort the mail, she observed management "sorting" mail.

The second statement (dated 3/30/2010) is from carrier Irwin who wrote that on 3/10/2010 he returned to the station at about 1625 and observed manager Jordan casing on route 1303. The third statement from carrier Franco details that on March 16, 2010 while having lunch at the unit he observed the manager casing mail at a small case at the end of the 1st row behind route 4 and asked the manager if this was a new auxiliary route. He stated that the manager responded that the mail room on route 3 had burned down and rather than going through buckets of mail to find a customer mail it was cased in sequence to save time.

Clerk White offered a statement that on March 22, 2010, he witnessed supervisor Polanco casing mail for 1700 Jackson Keller. He provided a second statement which states that between 4/12 to 4/14 he, himself, cased mail for 1700 Jackson Keller as directed by management.

Carrier Duron submitted a statement dated 03/27/2010, which said on or about 3/26/2010, he heard the supervisor advise grievant that he was instructed by manager Jordan not to case mail for the burned bank from 1700 Jackson Keller since the mail is now considered caller service.

Thirty pages of Employee Everything Reports for the three management staff and clerk Stapper were included in the case file. They do not reflect any moves to any operation number used by carriers and did not support the union's allegation of bargaining unit or cross craft work performed in violation.

The Step B Team agreed the evidence in the case file was insufficient to determine a monetary remedy. It is clear that a temporary case was set up to house the mail for 1700 Jackson Keller. Statements in the file evidence several dates when management and/or clerks performed the work. The grievant did not contend that he was instructed not to case the mail assigned to 1700 Jackson Keller on the respective route's casing equipment.

The case file did not quantify the amount of time worked by management or clerks in terms of hours and/or units for any of the days referenced in the statements. The statements contained the verbiage that members of management or clerks had been "observed" and "seen" casing/sorting on the "self made" but no duration was given, not even an estimate. For example, a clerk stated that he had cased the mail between 4-12 and 4-14. How long did he spend casing mail? There were no volume or other records in the file that would have enabled the reader to make an educated estimate of the time spent.

Additionally, the steward/grievant contended that he had been "prevented from 1.5 hours of overtime." Was the reader to understand 1.5 hours **total** of overtime or 1.5 hours per day? There was no evidence provided that would have potentially established that it was meant to be understood as 1.5 hours per day. Nothing in the file substantiated that the work denied the grievant was 1.5 hours on any of the days referenced. The case file did not reveal the grievant's status as a work assignment or overtime desired list carrier.

It was not clear whether the grievant had been given any additional duties to comprise his eight-hour day.

The burden of proof lies with the union. Had the case file evidenced the duration and frequency of the letter carrier work performed, the remedy made in this grievance might have been rendered differently.

Let it be noted that on April 16, 2010, the DRT Step B USPS representative received a phone call from the grievant, who addressed himself as the steward for this grievance and noted that management was not bargaining in good faith and failed to meet with him and he was sending the grievance up. The Step B USPS representative (alone in the office on this day) noted to steward that he was the moving party and had to do what was necessary to keep within the time limits set forth in Article 15 of the JCAM.

The parties must participate in the grievance process jointly as outlined in Article 15 of the JCAM. Extensions may be mutually agreed upon by the parties. The case file disclosed that the Formal Step A designee had been ill. This would have been a legitimate reason to agree to an extension or to replace the USPS Formal A designee with an alternate so that grievance deadlines are met.

DRT Note:

Had the Team been unable to reach a decision to resolve this case, the following represents the USPS Step B representative's position and would have been present in management's portion of an impasse of this case:

This grievance is procedurally defective at the Formal Step A level. Article 15 is specific in that the grievant may file and represent him/herself at the Informal Step A level. However, there is no provision at the Formal Step A level for the grievant to represent him/herself unless the grievant is properly designated by the branch president in accordance with the provisions of Article 17. Absent that designation, the grievant at this point shall be represented by the steward, (emphasis added).

Informal Step A, (a):

*Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. This constitutes the Informal Step A filing date. **The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative.***

During the Informal Step A discussion the supervisor and the steward (unless the grievant represents him/herself) have the authority to resolve the grievance. Both parties must use the JCAM as their guide to the contract. A resolution at this informal stage does not establish a precedent. While either representative may consult with higher levels of management or the union on an issue in dispute, this section establishes

that the parties to the initial discussion of a grievance retain independent authority to settle the dispute.

Formal Step A, (c):

15.2 (c) *The installation head or designee will meet with the steward or a Formal Step A (c) Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as a result of discussions or compromise in this Step.*

If the alternate steward filed this grievance acting in the capacity of the grievant at the Informal A level, the JCAM is clear that is acceptable procedure at that step. If that is the case, then he also met and handled the grievance at the Formal A level as the grievant but the file did not contain a letter definitively showing that the grievant was duly designated as the Formal A representative for this grievance.

If the alternate steward filed this grievance at a time when the regular steward was in the workplace, the USPS Step B representative contends that the grievance is procedurally defective at Informal Step A and beyond due to the steward's alternate status.

The case file contained a statement from the unit's regular steward designated under the provisions of Article 17. The alleged date of incident cited on the PS Form 8190 is March 22, 2010. The date of the statement provided by the regular steward was March 27, 2010. It made it clear that the regular steward was also in the workplace on March 26.

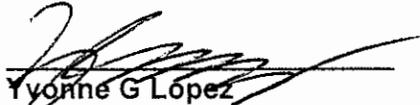
Had this case been Impassed, the USPS Step B member would have argued the absence of a designation notice naming the union representative acting in lieu of the branch president (if the alternate steward was acting in the capacity of grievant) to be a procedural defect sufficient to deny the grievance. Alternatively, if the grievant was acting in his capacity as alternate steward at the Informal A and Formal A steps, the USPS Step B representative contends that this unit is entitled to only one steward under the provision of Article 17. The grievant should only act as an alternate steward when he and the regular steward are not both in duty status.

Grievance File Contents

Cover Sheet
PS Form 8190
Union Contentions
Informal Step A Request
Duron Statement
Hernandez Statement
Employee Everything Report, 4 pgs
Hours Analysis, 2 pgs
Management Contentions, 4 pgs
Musquiz Statement, 2 pgs
USPS Informal A contentions, 3 pgs

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Hours Type Inquiry Report
Form 3997


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Emre Edwards
NALC Step B Representative

cc: Joseph Jenkins, Manager, Labor Relations, Southwest Area
Manny Arguello, District Manager, Rio Grande District
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Manager, Human Resources, Rio Grande District
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Postmaster, San Antonio
NALC Branch President
USPS Formal A Representative (J. Jordan)
NALC Formal A Representative (A. Duron)
DRT File