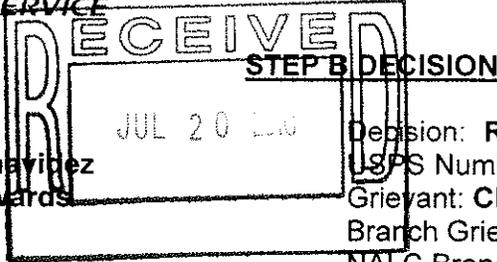


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COPI



Step B Team:
USPS: Rene Benavidez
NALC: Emre Edwards

Decision: **RESOLVE**
USPS Number: **G06N-4G-C 1023 7069**
Grievant: **Class Action**
Branch Grievance Number: **421-451-10**
NALC Branch #: **421**
Installation: **San Antonio**
Delivery Unit: **Cresthaven**
State: **Texas**
Incident Date: **05/21-22/10**
Date Informal Step A: **06/04/10**
Formal Step A Meeting Date: **06/18/10**
Date Received at Step B: **06/29/10**
Step B Decision Date: **07/13/10**
Issue Code: **01.6000**
NALC subject code: **100004**

District:
Rio Grande

Step A Reps:
USPS: **M.Perales**
NALC: **A. Duron**

ISSUE:

Did management violate Article 1.6 of the National Agreement when it allowed 204b Dovalina to perform bargaining unit work on 05/21-22/2010? If so, what is the appropriate remedy?

DECISION:

The Step B Team has mutually agreed to RESOLVE this grievance. Management at Cresthaven Station must comply with the applicable language in the national agreement concerning the furnishing of Form(s) 1723 to the union. Carriers serving as 204b supervisors should not perform bargaining unit work in violation of national agreement and Joint Contract Administration Manual (JCAM) provisions. See DRT Explanation.

EXPLANATION:

The union contends that management at Cresthaven Station violated Article 1.6 of the JCAM when they allowed 204b Dovalina to perform carrier duties on 05/21 and 05/22. The union contends supervisor Musquiz stated 204b Dovalina was not higher level, yet the current P.S. Form 1723 states he is on higher level pay status from 04/24/2010 through 07/02/2010.

The union contends that the employee reports show 204b Dovalina working on route 1314 and on the desk as a closing supervisor. The union contends at no time did management furnish a current P.S. Form 1723 to terminate the higher level assignment. The union further contends a 204b is prohibited from performing bargaining unit work while on a higher level assignment.

The union contends management's reasons for utilizing 204b Dovalina on the days in question were due to staffing and an emergency situation. The union disagreed with management's position and contends management knew of the staffing levels in advance.

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The union requests as a remedy that an award of 16 hours at the overtime rate be paid to the ODL carriers distributed equally amongst them and all payments be completed no later than 10 days from the date of the decision or the grievants be otherwise made whole.

Management contends 204b Dovalina was on higher level on 05/21/2010 from 17:00 hours to 19:21 hours and was not performing bargaining unit work at that time. Additionally, on 05/22/2010 Mr. Dovalina was performing duties within his scope as a PTF carrier. Management contends Mr. Dovalina voluntarily terminated his higher level detail which is his right under Article 41.1.A.2. and contests the union's claim to a remedy.

Management contends Mr. Dovalina was needed to perform his duties as a supervisor during the times in question and when he was needed he was placed on higher level through the use of P.S. Form 1723. Management contends that Article 25 states any employee detailed to higher level work shall be given a written management order, stating the beginning and **approximate** termination.

Management contends the union may not have been provided Forms 1723 in the past, but assures the union this practice will no longer continue and all Forms 1723 will be submitted to the union from this day forward.

Management refutes the union's contention regarding the knowledge of staffing levels and contends management cannot predict when an employee is going to call in sick. Management further contends given the current financial distress in the Postal Service management cannot afford to overstaff for "just in case." Management contends they had two carrier call-ins and had it not been for the unscheduled absences management was properly staffed for the day.

Management contends the union did not offer any specificity to management at the Informal A meeting and is not bargaining in good faith, furthermore management contends the union has entered information in item 16 on the 8190 and this too is not bargaining in good faith.

The DRT reviewed the case file and found it inconclusive regarding the alleged violation of Article 1.6 when carrier/204b Dovalina was worked as a 204b on May 20, allegedly volunteered to terminate his higher level detail and performed bargaining unit work on May 21; casing and carrying route 1314 for eight hours, followed by approximately two hours of supervisory higher level work. Mr. Dovalina performed craft work on May 22 and May 24. The case file did not contain clock rings or other documentation to verify what duties Mr. Dovalina had performed after May 24.

Had a violation been conclusively established by the case file, the DRT would have been unable to determine which carrier(s) may have been contractually eligible for a monetary remedy due for the violation. There were no other employee reports in the case file. The DRT also could not determine who was on the ODL since no ODL list was contained in the case file. There was no dispute that a remedy had been discussed and potential recipients identified at the Informal Step A meeting but the union claimed that it was not necessary or mandatory to share that information with the appeal to Formal A. If the information regarding the remedy was written and existed at the time of the Formal A meeting, it falls within the following provision of the JCAM and should have accompanied the appeal to Formal A:

*The steward appeals a grievance to Formal Step A by filling out the Informal Step A portion of the NALC-USPS Joint Step A Grievance Form (Form PS 8190) and sending it to the installation head or designee **along with all supporting documentation available at the time.** (emphasis added)*

If the information regarding the remedy was not written, it should have been committed to writing with supporting documentation attached no later than the appeal to Step B in order for the DRT to consider it.

However, Management is cautioned that if this issue arises in the near future and the case file does in fact demonstrate a violation, there may be a monetary remedy awarded if the case file is ultimately appealed to the Step B team.

The following are excerpts from the JCAM (with pertinent passages emphasized):

25.3 Section 3. Written Orders

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

1.6.A Section 6. Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

- 1. in an emergency;*
- 2. for the purpose of training or instruction of employees;*
- 3. to assure the proper operation of equipment;*
- 4. to protect the safety of employees; or*
- 5. to protect the property of the USPS.*

The prohibition against supervisors performing bargaining unit work also applies to acting supervisors (204b). The PS Form 1723, which shows the times and dates of the 204b detail, is the controlling document for determining whether an employee is in a 204b status. A separate PS Form 1723 is used for each detail. A single detail may not be broken up on multiple PS Forms 1723 for the purpose of using a 204b on overtime in lieu of a bargaining unit employee. Article 41.1.A.2 requires that a copy of the Form 1723 be provided to the union at the local level.

An acting supervisor (204b) may not be used in lieu of a bargaining unit employee for the purpose of bargaining-unit overtime. An employee detailed to an acting supervisory position will not perform bargaining unit overtime immediately prior to or immediately after such detail on the day he/she was in a 204b status unless all available bargaining unit employees are utilized. However, an employee may work bargaining unit overtime, otherwise consistent with the provisions of Article 8, on the day before or the day after a 204b detail. (Step 4, HON-5R-C 13315, August 30, 1993, M-01177) . . . The Settlement Agreement NC-E-4716, November 24, 1978 (M-00206) between the NALC and USPS, which was intended to be of general application, provides that "where additional work hours would have been assigned to employees but for a violation of Article 1.6.A, and where such work hours are not de minimis, the employee(s) whom management would have assigned the work, shall be paid for the time involved at the applicable rate." ("De minimis" means "trifling, unimportant, inconsequential.")

An emergency is defined in Article 3.F as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."

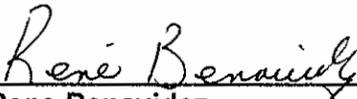
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The DRT mutually agrees that both the carrier acting as 204b and the manager who authorizes the higher level detail have the right to terminate such a detail. It is logical that if the carrier terminates the detail, it may not be possible for management to provide the union with a revised Form 1723 in advance if management has no advance notice of the carrier's intent to return to the craft. The union's contention that management is bound by a previously provided Form 1723 does not take into account the carrier's right to terminate the detail prior to the ending date previously anticipated. The case file did contain a Form 1723 that had been revised and provided to the union after the time the 204b returned to the craft. The case file did not reflect that the 204b had performed bargaining unit work on overtime the day of or the day after the detail was terminated. Care should be taken, however, to avoid the appearance of circumventing the contract by supplying multiple Forms 1723 in order to break up a single detail.

The parties are strongly cautioned that they are to bargain in good faith. Documents must be exchanged in accordance with Article 15. The JCAM is clear that the parties are to jointly develop the case file and exchange documents relied upon. The undisputed facts are to be developed jointly. If there are changes or additions to documents previously provided, the altered documents must be exchanged between the parties. There should be ONE joint file sent to the Team comprised of joint documents, documents submitted by the union attached as part of item # 17, and documents submitted by management attached as part of item # 18. Care should be taken to avoid duplicate documents. The total number of pages attached to sections 17 and 18 should be annotated in the blocks contained in sections 17 and 18 on the PS Form 8190 designed for that purpose. It is suggested that both Formal A parties initial all of the pages in the case file. This will allow the parties to have mutual knowledge of the contents of the file being appealed to Step B.

Grievance file contents:

Management's Response to Additions & Corrections, 2 pp	
Additions & Corrections, 2 pp & copy	JCAM excerpts, 2 pp
JCAM excerpts, 2 pp & copy	Forms 1723, 5 pp
Dovalina statement	Employee Everything, 4 pp
Request for Formal Step A Meeting	Unit Daily Record, 2 pp
PS Form 8190	Management Contentions, 2 pp
Informal Step A Request form	Forms 3972, 4 pp
Union contentions	PS Form 8190 from Informal meeting



Rene Benavidez
USPS Step B Representative



Emre Edwards
NALC Step B Representative

cc: Manager, Labor Relations, Southwest Area
District Manager, Rio Grande District
Kathy Baldwin, NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster, San Antonio, Texas
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File