



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1847 1559
Robin Gutman	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-1269-18
Louise K Jordan	Branch:	421
	Installation:	San Antonio
	Delivery Unit:	Frank Tejada Station
District:	State:	Texas
Rio Grande	Incident Date:	09/29/2018
	Informal Step A Meeting:	10/23/2018
	Formal Step A Meeting:	11/09/2018
USPS Formal A:	Received at Step B:	11/13/2018
Stephanie Olivarez	Step B Decision Date:	11/27/2018
NALC Formal A:	Issue Code:	08.5400
Ralph E. Rodriguez	NALC Subject Code:	120050

ISSUES:

Did management violate Article 8.5 of the National Agreement by failing to equitably distribute overtime hours and/or opportunities in the third quarter (July – September) 2018? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced the third quarter (July – September) 2018 overtime opportunities were not equitably distributed among the overtime desired list (OTDL) carriers. The following carriers are awarded a make-up opportunity in the January – March 2019 quarter. See the DRT Explanation below:

NAME	EIN	TOTAL HOURS	NAME	EIN	TOTAL HOURS
D. Colgrove	02442197	38.68	T. Bell	02255597	27.65
S. Maya	02305067	5.25	B. Townsend	04339692	42.62
J. Costilla	02050937	24.21	C. Mendez	02157092	23.27
A. Cerbantes	01946280	9.34	N. Garcia	04142980	0.93
C. Nagy	04368104	18.41	C. Garcia	03505199	20.77
E. Trejo III	04142256	12.01	M. Garza	04143102	28.23
N. Hernandez	03500264	7.19	J. San Miguel	04048556	16.20
M. Martinez	02050904	8.32	C. Valenzuela	04395518	24.87
A. Steward	04057422	20.74			

EXPLANATION:

This class action grievance concerns the equitable distribution of overtime during the third quarter (July – September) 2018 at Frank Tejada Station in San Antonio, Texas. The Local Memorandum of Understanding (LMOU) for San Antonio divides the OTDL into groups in accordance with the day off for the route. This is called a string and all carriers signing the OTDL will fall onto one string or another. At the end of the third quarter (July – September)

2018, the union questioned whether all carriers had received their equitable share of overtime.

The union filed this grievance to protest management's failure to maintain an equitable distribution of overtime during the third quarter (July – September) 2018. Unable to achieve a resolution through the Informal Step A and Formal Step A of the grievance procedure, the union appealed to Step B.

The union contends management violated Article 8.5.C of the National Agreement by the inequitable distribution of overtime in the third quarter (July – September) 2018 at Frank Tejada Station. The union contended not all carriers in a specific string, on the OTDL, were given equitable overtime compared to other carriers in the string. The union requests that all affected OTDL carriers be compensated as per union included spreadsheet. The union contends management did not maintain and post the carrier overtime tracking and did not even have carriers assigned to the correct string.

Management contends they requested an opportunity to make-up the hours carriers were not equitable in the next quarter and the union refused. Management contends the union is not bargaining in good faith. Management requested an opportunity to make up the hours and states they have updated the overtime strings for tracking.

The DRT reviewed the case file and determined management had failed to equitably equalize the carrier listed above during the third quarter (July – September) 2018. The DRT looked at all available documentation in the file including overtime hours worked and overtime hours missed in an opportunity. The DRT agreed the carriers listed above were not equitable for the hours listed by their names. For this case the DRT agreed to give management the opportunity to make the carriers equitable in the first quarter (January – March) 2019. Any carrier, listed above, not equitable at the end of the first quarter will receive a compensatory monetary award.

The following excerpts from Article 8.5.C of the National Agreement and explanatory JCAM language outline management's responsibilities in assigning overtime among the overtime desired list carriers:

Section 5. Overtime Assignments

*When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing **similar** work in the work location where the employees regularly work in accordance with the following:*

8.5.C.2.a *When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.*

8.5.C.2.b *During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.*

8.5.C.2.c. *In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.*

Equitable Distribution of Overtime Opportunities. *Seniority does not govern the availability of overtime work for those letter carriers who wish to work overtime. Nor is overtime distributed on a rotating basis. Rather, Article 8.5.C.2 provides that for*

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those carriers who sign the Overtime Desired List, overtime “opportunities” must be distributed “equitably” (i.e., fairly). This does not mean that actual overtime hours worked must be distributed equally.

National Arbitrator Bernstein ruled in H1N-5G-C 2988, August 14, 1986 (C-06364), that in determining “equitable” distribution of overtime, the number of hours of overtime as well as the number of opportunities for overtime must be considered. Overtime worked on a letter carrier’s own route on a regularly scheduled day is not counted or considered in determining whether overtime has been equitably distributed among carriers on the list. Missed opportunities for overtime—i.e. one OTDL carrier worked instead of another— must be made up for with equitable distribution of overtime during the quarter unless the bypassed carrier was not available—i.e. the carrier was on leave or working overtime on his/her own route on a regularly scheduled day, etc. (See the explanation under Article 8.5.C.2.d).

Since full-time flexible employees may have flexible reporting locations within an installation (Article 7), determining whether overtime has been “equitably” distributed can become complex. Of course, if a full-time flexible works within the same overtime “section” for an entire quarter, determining whether overtime has been equitably distributed during the quarter is perfectly straight-forward. However, a fulltime flexible letter carrier assigned to another overtime “section” during a quarter may be entitled to sign the Overtime Desired List in the new section immediately if he/she was on the list in the old section (Article 8.5.A). In such cases the right to an “equitable” share of overtime is only in the new section and is only determined from the time the fulltime flexible letter carrier signed the Overtime Desired List in the new section. Overtime worked in the section to which previously assigned is not a consideration. However, full-time flexible employees will not be moved to another overtime section solely to circumvent the provisions of Article 8.5.C above. The same rule applies in the case of full-time regular letter carriers who sign the Overtime Desired List in a new overtime section or a new installation during the quarter (Article 8.5.A). If opting on an assignment under the provisions of Article 41.2.B.3 results in a six day work week, only work over eight hours on the sixth day is counted in determining whether overtime has been equitably distributed among carriers on the list (Article 41.2.B.3).

Remedies. *National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-3200) that the Postal Service must pay employees deprived of “equitable opportunities” for the overtime hours they did not work only if management’s failure to comply with its contractual obligations under Article 8.5.C.2 shows “a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.” In all other cases, Gamser held, the proper remedy is to provide “an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done...”*

Article 8.5.C.2 of the National Agreement 2016-2019 covers the posting of weekly hours and opportunities. Management needs to comply with the National Agreement.

- a. *When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the “Overtime Desired” list.*
- b. *During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the “Overtime Desired” list.*
- c. ***In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated weekly.***

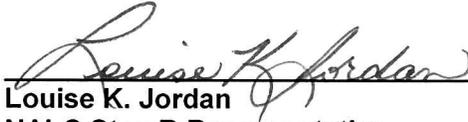
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- d. Recourse to the "Overtime Desired" list is not necessary in the case of a letter carrier working on the employee's own route on one of the employee's regularly scheduled days.
- e. All overtime hours worked by, and all opportunities offered to, employees on the "Overtime Desired" list, regardless of whether the overtime/opportunity is on or off the employee's own route, will be considered and counted when determining quarterly equitability.

Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Robin Gutman
USPS Step B Representative



Louise K. Jordan
NALC Step B Representative

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Branch President
NALC Formal Step A Designee
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

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