

RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1720 0585
Mike Goden	Grievant:	Class
NALC:	Branch Grievance Number:	421-1125-16
Jim J Ruetze	Branch:	421
	Installation:	San Antonio
District:	Delivery Unit:	Highland Hills
Rio Grande	State:	TX
	Incident Date:	09/30/2016
USPS Formal A:	Informal Step A Meeting:	11/09/2016
Arnulfo Jasso	Formal Step A Meeting:	01/12/2017
NALC Formal A:	Received at Step B:	03/03/2017
Katherine L. Ruffo	Step B Decision Date:	04/04/2017
	Issue Code:	08.5400
	NALC Subject Code:	120050

ISSUE:

Did management violate Article 8.5 of the National Agreement by failing to equitably distribute overtime hours and/or opportunities during Quarter 3, 2016? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of the National Agreement. Jeffrey Peddle (EIN 03461906) will be granted make-up opportunities in Quarter 2, 2017 (April-June) in the amount of 49.5 hours. This means that at the end of the quarter, Peddle's overtime totals after adjusting for availability should be 49.5 hours higher than all other carriers on his string. See the DRT Explanation below.

EXPLANATION:

The union filed this grievance to protest the distribution of overtime hours and opportunities during the July-September quarter of 2016. Unable to achieve a resolution through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends this grievance was resolved in part at Informal Step A, but the issue of whether grievants Jeffrey Peddle and Nathan Divin were equitable remained in dispute. The union contends they were both significantly short of the overtime worked by Edward Raganot, the high carrier among those with the same day off. The union contends that the partial resolution at Informal Step A resulted in a payment to that grievant, so the inequitable distribution of overtime to Divin and Peddle should logically also result in a payout rather than make-up opportunities.

The union requests that Divin be compensated \$2,245.00 and Peddle be compensated \$2,162.00 for being deprived of overtime opportunities.

Management met at Formal Step A, but no management contentions were included in the file even after it had been remanded.

The DRT reviewed the case file and determined Carrier Peddle was not provided equitable hours and opportunities. However, when the DRT compared the days where management had the opportunity to assign overtime to either Divin or Raganot and determined overtime was equitably distributed between those two carriers. Divin's shortfall appeared to be attributable to annual leave he took. Overtime worked by Raganot when Divin was unavailable is not considered in calculating Divin's missed opportunities. The JCAM includes the following concerning overtime equitability:

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.

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.

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 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..."*

National Arbitrator Benjamin Aaron ruled in H8N-5B-C-17682, April 12, 1983 (C-03319), that management violated Article 8.5 when it assigned a carrier not on the Overtime Desired List to carry a route on overtime on his non-scheduled day rather than splitting up the route between available carriers from the list. Aaron ruled that management must have "good cause" before going off the list.

8.5.C.2.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.*

Not Counted Toward "Equitability." *Article 8.5.C.2.d provides that "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." As a consequence, overtime accrued by a carrier working on the carrier's own route on a regularly scheduled day is not considered or counted in determining whether overtime has been "equitably" distributed among carriers on the list.*

Additionally, overtime not worked because a carrier is working overtime on his/her own route on a regularly scheduled day is not considered an "opportunity missed" and is not made up to maintain equitability. This is because the carrier was not available to work the overtime. This situation is controlled by the prearbitration settlement of H8N-5D-C 18624, July 1, 1982 (M-00135), which states in relevant part:

1) Overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an overtime opportunity for the purposes of administration of the Overtime Desired List.

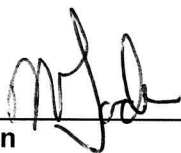
2) Overtime that is concurrent with (occurs during the same time as) overtime worked by a letter carrier on the employee's own route on one of the employee's regularly scheduled days is not counted as an "opportunity missed" for the purposes of administration of the Overtime Desired List.

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Carrier Technicians. Overtime worked by a Carrier Technician on the Overtime Desired List on the specific route to which properly assigned on a given day, is not counted or considered in determining whether overtime has been "equitably" distributed among carriers on the list.

Overtime worked by a Carrier Technician on the Overtime Desired List is counted in the consideration of the equitable distribution of overtime hours at the end of the quarter when: a) the overtime is not on a regularly scheduled day or b) the overtime is worked on any route in the delivery unit other than the specific route to which properly assigned on a given day (Step 4, C94N-4C-C 98099737, October 2, 1998, M-01323).

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



Mike Goden
USPS Step B Representative



Jim J Ruetze
NALC Step B Representative

cc:

LR Manager, SW 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, San Antonio, Texas
DRT File

Grievance File Contents

PS Form 8190
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Steward Statement
Step B Remand
Request for Formal Step A Meeting
Time Limit Extensions
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Employee Moves Report
ODL Signup Sheet
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