

RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1738 4488
Mike Goden	Grievant:	Class
NALC:	Branch Grievance Number:	421-008-2017
Jim Ruetze	Branch:	421
District:	Installation:	San Antonio
Rio Grande	Delivery Unit:	Thousand Oaks
	State:	TX
	Incident Date:	12/31//2016
USPS Formal A:	Informal Step A Meeting:	02/03/2017
Geri Gonzalez	Formal Step A Meeting:	No Meeting
NALC Formal A:	Received at Step B:	03/03/2016
Daniel Espinosa	Step B Decision Date:	04/10/2017
	Issue Code:	08.5400
	NALC Subject Code:	120050

ISSUES:

Did management violate Article 8.5 of the National Agreement by failing to distribute overtime equitably during the fourth quarter of 2016 (Q4)? If so, what remedy is appropriate?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Overtime was not distributed equitably during Q4 2016. The carriers listed below are remedied as indicated in the table. See the DRT Explanation below.

Carrier	EIN	Payout	Make-up Hours in Q2 2017
Espinosa, D	02072567	---	20.50 hours
Balderas Jr., A	03526832	\$337.50	---
Montoya, R	04217091	---	21.75 hours
Hernandez, KD	02016113	\$	24.25 hours
Morales, W	02403261	\$853.13	22.75 hours
Palmer	03244905	---	14.00 hours
Urias, RC	02178573	---	15.25 hours
Escobar-Ramos, JE	02153597	\$815.63	21.75 hours
Graham, PD	02307248	---	20.75 hours
Isenhour, MA	04233978	---	22.00 hours
Jones, JD	02146806	\$1162.50	31.00 hours
Frias, R	02066830	\$675.00	18.00 hours

EXPLANATION:

Letter carriers in the San Antonio Installation work on rotating day off schedules, which are designated with a letter from A-F. Overtime equitability in San Antonio is tracked by comparing overtime desired list (ODL) carriers with the same letter day off. The union filed this grievance to protest management's alleged failure to distribute overtime hours and opportunities equitably to carriers with rotation schedules **A, C, D, E, and F**. 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 management violated Article 8.5.c of the National Agreement by failing to maintain equitability during Q4, 2016. The union contends also that in December there is no penalty overtime, nor is there a 12 hour limit for ODL carriers. The union goes on to contend management provided no documents and did not maintain an overtime tracking chart. The union further contends the steward reviewed overtime with management weekly and repeatedly advised management to make adjustments that would ensure equitable overtime distribution, but management consistently ignored the union's advice.

The union requests the carriers who were not equitable be compensated for the hours they were shorted, as indicated on the remedy spreadsheet included in the file. The union also requests \$75.00 to cover the cost of printing 525 pages of Hours Analysis Reports and Employee Moves Reports.

Management did not meet at Formal Step A. The file includes a time limit extension for the Formal Step A meeting until 02/23/2017, but no meeting was held; consequently, no management contentions were included in the case file.

The DRT reviewed the case file and determined management had failed to equitably distribute overtime during Q4 2016. The DRT noted it did not receive the grievance in time to afford make-up opportunities in Q1, 2017, so the opportunities are to be made up in Q2, 2017.

The DRT agreed carriers Galvan, Mebrahtu, Roel and Lerma were equitable based on their respective availability throughout the quarter as compared to the high carriers in their strings. The JCAM provides the following relevant language concerning equitable distribution of overtime:

***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

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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..."*

The case file did not include sufficient evidence to support the union's request for \$75.00 to cover the cost of printing documents. The DRT therefore could not agree to reimburse the union for printing. 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 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
Union Contentions
Union Spreadsheets
Employee Moves Report
Hours Analysis Report

Request for Information/Informal A Meeting
Time Limit Extensions
ODL Sign-up Sheets
Union's Remedy Worksheets