



RESOLVE



**STEP B DECISION**

**Step B Team:**  
USPS:  
**Michael Goden**  
NALC:  
**James Kimbrell**

District:  
**Rio Grande**

USPS Formal A:  
**Mike Moreno**  
NALC Formal A:  
**Frank Rascon**

Decision:  
USPS Number:  
Grievant:  
Branch Grievance Number:  
Branch:  
Installation:  
Delivery Unit:  
State:  
Incident Date:  
Informal Step A Meeting:  
Formal Step A Meeting:  
Received at Step B:  
Step B Decision Date:  
Issue Code:  
NALC Subject Code:

**RESOLVE**  
**G16N-4G-C 1765 8533**  
**Class**  
**421-1060-17**  
**421**  
**San Antonio**  
**Cedar Elm**  
**TX**  
**4/01/2017 – 06/30/2017**  
**09/29/2017**  
**10/13/2017**  
**10/23/2017**  
**12/01/2017**  
**08.5400**  
**120050**

**ISSUES:**

Did management violate Article 8.5 of the National Agreement by failing to distribute overtime equitably during the second quarter of 2017 (Q2)? If so, what remedy is appropriate?

**DECISION:**

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Overtime was not distributed equitably during Q2 2017. The carriers listed below will make up the hours in Q1 (January – March) 2017 as indicated in the table. See the DRT Explanation below.

Employee ID	Employee Name	Make-up Hours
02256290	Gamez	2
03506973	Portales	14
02272774	Irrizary	12
02190734	Cannady	28
02255682	Inman	50
04134196	Martinez IV	4
02164510	Flores, RG	35
03159547	Mercereau	20
03474342	Lechuga	18

**EXPLANATION:**

Overtime equitability in San Antonio is tracked by comparing overtime desired list (ODL) carriers by individual string. The union filed this grievance to protest management's alleged failure to distribute overtime hours and opportunities equitably to carriers. 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 the inequitable distribution of overtime in Quarter 2 (April-June) 2017. Management is improperly adding time for carriers who have been on annual or sick leave. The union further contends that only opportunities when carriers were available to work were considered. The union requests that carriers who had a carry-over balance from Q1 be made whole and that the carriers identified by the union be provided a make-up opportunity.

**Management:** Management argues that carriers who are unavailable for overtime is being argued incorrectly by the union. Management states that the union was allowed to control all of the equitability hours and that the union isn't considering hours and opportunities.

The DRT reviewed the case file and determined that a make-up opportunity for the above listed carriers was the correct decision. The case file contained a settlement for Q1 2017 which indicated that any make-up opportunity for that quarter would be done in Q3 2017. Being that this grievance concerns Q2 2017 the DRT couldn't agree to a make-whole remedy for carriers identified in the settlement. 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 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

RIO GRANDE DISPUTE RESOLUTION TEAM  
10410 Perrin Beitel Road, Rm 1059  
San Antonio, TX 78284-9608  
PHONE 210-368-1760, 210-368-1784, FAX 210-368-8525

*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..."*

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



**Mike Goden**  
**USPS 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

**Grievance File Contents**

PS Form 8190  
Time Limit Extensions  
Q1 Settlement Agreement  
Excel Tracking Sheet  
OTDL Sign-up Sheet  
Management Contentions



**James D Kimbrell**  
**NALC Step B Representative**

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

Union Information Request  
Q2 Remedy Request  
Union Contentions  
PS Form 3971  
Employee Moves Report