

# RESOLVE



## STEP B DECISION

<b>Step B Team:</b>	Decision:	<b>RESOLVE</b>
USPS:	USPS Number:	<b>G16N-4G-C 1836 4169</b>
<b>Alex Zamora</b>	Grievant:	<b>Class</b>
NALC:	Branch Grievance Number:	<b>421-744-018</b>
<b>Jim Ruetze</b>	Branch:	<b>421</b>
	Installation:	<b>San Antonio</b>
District:	Delivery Unit:	<b>Laurel Heights</b>
<b>Rio Grande</b>	State:	<b>TX</b>
	Incident Date:	<b>07/01/2018</b>
USPS Formal A:	Informal Step A Meeting:	<b>07/18/2018</b>
<b>No meeting</b>	Formal Step A Meeting:	<b>No meeting</b>
NALC Formal A:	Received at Step B:	<b>08/10/2018</b>
<b>Ernest Rosas</b>	Step B Decision Date:	<b>08/27/2018</b>
	Issue Code:	<b>08.5400</b>
	NALC Subject Code:	<b>120050</b>

### ISSUE:

Did management violate Article 8.5 of the National Agreement by failing to equitably distribute overtime hours and/or opportunities in Quarter 2, 2018? If so, what remedy is appropriate?

### DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation. The carriers in the table below will be awarded make-up opportunities in the amounts listed by their names. The DRT agreed the term "make-up opportunities" means each listed carrier should be above the average of ODL overtime used in Quarter 3, 2018 by the amount of the make-up opportunity listed. See the DRT Explanation below.

Carrier	EIN	Make-up Opportunity Q3 2018
Mead, D	02330764	<b>16.75 hours</b>
Hawkins, J	02813760	<b>33.38 hours</b>

### EXPLANATION:

Following the April-June 2018 quarter, the union filed a grievance protesting the inequitable distribution of overtime in that quarter. 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 assigned overtime to carriers inequitably during Q2, 2018. The union contends that overtime was not distributed equitably on days when carriers were available. The union also argued that when carriers were available that equitable opportunities were not provided by management. The union requests that carriers be paid for the hours they were shorted as a result of management's failure to properly distribute overtime hours and opportunities.

**Management** did not meet at Formal Step A and did not provide any contentions.

The DRT reviewed the case file and determined overtime hours and opportunities were inequitably distributed in Q2, 2018. The DRT agreed to make up opportunities in Q3, 2018. 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:

**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).*

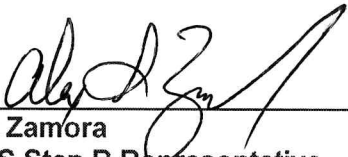
*Since full-time flexible employees may have flexible reporting locations within an installation (Article 7), determining whether overtime has been "equitably" distributed can become complex. Of course, if a full-time flexible works within the same overtime "section" for an entire quarter, determining 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*

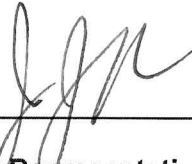
RIO GRANDE DISPUTE RESOLUTION TEAM  
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*week, only work over eight hours on the sixth day is counted in determining whether overtime has been equitably distributed among carriers on the list (Article 41.2.B.3).*

**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..."*

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

  
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**Alex Zamora**  
USPS Step B Representative

  
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**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  
DRT File

**Grievance File Contents**

PS Form 8190  
PS Form 3972  
Union Contentions  
Overtime Sign-Up Sheet  
Excel Tracking Sheet

Formal A Decision  
Statement from Carrier  
Time Limit Extension  
Employee Moves Report