

TB



RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Rose Barner
 NALC:
Jim Ruetze

District:
Rio Grande

Decision: **RESOLVE**
 USPS Number: **G16N-4G-C 2038 3328**
 Grievant: **Class Action**
 Branch Grievance Number: **421**
 Branch: **421-522-20**
 Installation: **San Antonio**
 Delivery Unit: **Frank Tejada Station**
 State: **TX**
 Incident Date: **05/02/2020-05/08/2020**
 Informal Step A Meeting: **06/16/2020**
 Formal Step A Meeting: **08/04/2020**
 Received at Step B: **09/04/2020**
 Step B Decision Date: **10/01/2020**
 Issue Code: **08.5450**
 NALC Subject Code: **120051**

ORIGINAL COPY

ISSUE: Did management violate Articles 8.5.D and 5.G of the National Agreement when working non-Overtime Desired List (ODL) and Work Assignment (WA) carriers on and off their routes by improperly assigning overtime during the week of May 2-8, 2020? 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. The letter carriers in the table below are compensated in the amounts by their names. Non-carriers who were improperly assigned to work overtime were compensated an additional 100% of their straight time rate. ODL carriers were compensated for the missed overtime opportunities at the rate of pay they would have earned if they had performed the work. Management shall assign overtime consistent with the provisions of Article 8.5. All payments associated with these remedies have been processed at Step B through GATS. See the DRT Explanation below.

Carrier	EIN	REMEDY	Carrier	EIN	REMEDY
Ramirez, G	01995567	\$135.41	Cerbantes, A	01946280	\$19.47
Z-Martinez, J	04266517	\$87.91	Gutierrez, F	03043580	\$15.34
Aleman, J	04202881	\$68.74	Escobar, J	02210178	\$149.27
Aguilar, M	02054924	\$56.64	Valenzuela, C	04395518	\$64.90
Maya, S	02305067	\$67.56	Hernandez, N	03500264	\$118.00
Vlaun, C	02313685	\$101.78	Esquivel, M	03516200	\$165.20
Williams, C	02413352	\$54.58	Bell, T	02252297	\$64.90

RIO GRANDE DISPUTE RESOLUTION TEAM
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Steward, A	04057422	\$79.36	Castaneda, F	04307735	\$152.66
Mesquias, J	04319309	\$78.47	Mata, R	04395429	\$85.26
Navaira, R	04288615	\$34.22	Garcia, N	04142980	\$51.92
Escobar, L	04347158	\$38.35	Garza, M	04143102	\$175.53
Chavez, F	04348774	\$161.07	Ramirez, E	04462174	\$157.53
Vazquez, C	04619477	\$88.21	Ramirez, DG	04018097	\$43.81
Poudyal, A	04469407	\$130.83	Uribe, G	04023629	\$81.42
Peralta, A	02437072	\$111.51	Muñoz, M	04516454	\$104.43
Gonzales, A	04220511	\$70.80	Townsend, B	04339692	\$118.00
Perez, F	04249339	\$59.00		TOTAL:	\$2,992.04

EXPLANATION:

This grievance concerns the assignment of overtime among full-time letter carriers at Frank Tejada Station in San Antonio, Texas during the week of May 2-8, 2020. During the week cited, management assigned overtime to non-ODL and WA carriers off their assignments while ODL carriers were available at the regular overtime rate, and ODL carriers were available at the penalty overtime rate.

The union contended at Formal Step A management violated Article 8 of the National Agreement, 8.5.D and 8.5.G of the Joint Contract Administration Manual (JCAM) and M-00884 when they did not maximize the ODL and mandated non ODL/WA carriers to carry overtime on their own routes and carry auxiliary assistance on other routes during the work week of May 2-8, 2020 prior to fully utilizing the ODL and City Carrier Assistants (CCAs).

The union requested all ODL and CCA carriers be awarded overtime and penalty overtime. The union requested an award of 100% at the straight rate of pay as the remedy requested by the union for the aggrieved non ODL and/or WA.

Management at Formal Step A contended two carriers took FMLA Emergency Sick Leave due to COVID-19 which last for 12 weeks and another carrier did not report work on May 4-5 due to admission to the hospital of a dependent family member. Management contended 5-9 unscheduled leave requests were made throughout the week due to child care, testing for COVID, doctor's orders to stay home all due to the pandemic. Further, there was no availability for assistance from other stations due to their shortage of employees for the same reason. Management requested non ODL employees not be paid again for carrying mail on their own assignments.

The DRT reviewed the case file and determined there was a violation of Article 8.5 for the week of May 2-8, 2020 when the overtime among full-time carriers were not assigned in accordance with the provisions of Article 8.5. Overtime for non-ODL carriers *on their own assignments* is governed by the Letter Carrier Paragraph, which is found on pages 8-14 and 8-15 of the JCAM:

The "Letter Carrier Paragraph." For many years Article 8.5.C.2.d also gave management the right to require a letter carrier working on his/her own route on a regularly scheduled day to work mandatory overtime rather than assigning the overtime to a carrier from the Overtime Desired List. However, in the Overtime Memorandum first negotiated as part of the 1984 National Agreement, the Postal Service and the NALC added the following qualification, known as the "letter carrier paragraph."

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee's route on one of the employee's regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

(The complete text of this memorandum is reprinted at the end of this article.)

National Arbitrator Mittenthal ruled in H4N-NA-C 21, June 26, 1986 (C-06297), that the letter carrier paragraph is an enforceable obligation.

Implementing Memorandum on "Letter Carrier Paragraph." A memorandum of understanding signed December 20, 1988 (M-00884) further explained the requirement to seek to use auxiliary assistance before requiring letter carriers not on the ODL or Work Assignment List to work overtime on their own route on a regularly scheduled day. Management must seek to use all of the following to provide auxiliary assistance:

- part-time flexibles at the straight-time or regular overtime rate
- city carrier assistant employees at the straight-time or regular overtime rate
- available full-time regular employees such as unassigned or reserve regulars at the straight-time rate
- full-time carriers from the Overtime Desired List at the regular overtime rate

However, the memo states that management does not have to use ODL carriers to provide auxiliary assistance if such an assignment would mean that the ODL carriers would be working penalty overtime. In that limited situation—if no auxiliary assistance is available without going into penalty overtime—management can require full-time regular carriers not on the Overtime Desired List to work overtime on their own routes on a regularly scheduled day. Remember that this limited exception applies only when a full-time non-ODL letter carrier is required to work overtime on his/her own assignment on a regularly scheduled day.

The assignment of overtime to non-ODL carriers off their assignments or on a non-scheduled day is also discussed on page 8-15:

*Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment, management **must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime** (Article 8.5.D). [Emphasis Added]*

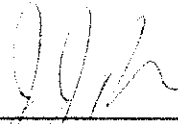
For Work Assignment carriers, the following JCAM language from page 8-22 addresses the assignment of overtime off their assignment or on a non-scheduled day:

The Work Assignment List was established for full-time letter carriers who only want to work overtime on their own assignment on regularly scheduled days. Signing up for the Work Assignment overtime does not create any entitlement or obligation to work overtime on a non-scheduled day. For purposes of overtime on a non-scheduled day or on other than their own assignment, carriers on the Work Assignment list are treated exactly the same as any other full-time carriers not on the Overtime Desired List—They may only be required to work overtime under the provisions of Article 8.5.D. [Emphasis in Original].

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



Rose Barner
USPS Step B Representative



Jim Ruetze
NALC Step B Representative

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
USPS Formal Step A Stephanie Olivarez

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

Grievance File Contents

PS Form 8190
Request for Information
Formal A Request
Steward Designation Letter
Time Limit Extensions
Request for Steward Time
Union Overtime Worksheet/Remedy
Hours Analysis Report

Employee Moves Report
ODL
Weekly Schedule
Prior Grievance Decisions
Carrier Statements
Union Contentions
Management contentions
Additions and Corrections