



RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Robin Gutman
 NALC:
Jose Portales

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

RESOLVE
G16N-4G-C 2021 5959
Class
421-333-20
421
San Antonio
Beacon Hill
Texas
03/14/2020
03/28/2020
04/09/2020
04/20/2020
05/12/2020
8.4100
100277

Grieving District:
Fort Worth
 Deciding District:
Rio Grande



ISSUE:

Did management violate Article 8.4 of the National Agreement (NA) by not paying out of schedule premium for the date of 03/14/2020? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file did evidence a violation of Article 8.4 of the NA. The full-time carriers' schedules that were changed during the time period covered in this grievance should have been paid premiums consistent with Article 8 of the NA. The carriers in the table below are compensated in the amounts by their names. See the DRT Explanation below.

EIN	Carrier	Remedy	EIN	Carrier	Remedy
01949924	Reyes, R	\$7.38	02439335	Gilbert, G	\$7.38
01966651	Matthies, K	\$7.38	03103532	Santana, A	\$7.38
01977389	Johnson, S	\$7.38	03110662	Rodriguez, G	\$7.38
01988799	Rodriguez, R	\$7.38	03324042	Johnson, D	\$7.38
01998691	Melendez, J	\$7.38	03366084	Hidalgo, R	\$7.38
02076142	Orta, J	\$7.38	03415922	Welch, K	\$7.38
02101173	Wilkins, L	\$7.38	03593848	Perales, A	\$7.38
04618971	Olivas, D	\$7.38	04298245	Venegas, E	\$7.38
02192055	Saucedo, Y	\$7.38	04323581	Bosley, P	\$7.38
02353498	Childress, G	\$7.38	04339668	Montalvo, A	\$7.38
04619804	Hall, M	\$7.38	04717156	Lopez, M	\$7.38
02380911	Childs, M	\$7.38	04350827	Gonzales, E	\$7.38
02386896	Ketchum, L	\$7.38	04360805	Mazuca, R	\$7.38

EXPLANATION:

A few weeks before 03/14/2020 management notified the station that all carriers' reporting times would be changed from 7:00 AM to 7:30 AM on Saturdays only. On 03/14/2020 carriers started at 7:30 AM.

The union filed this grievance to challenge management's failure to pay out of schedule premium for the day in question. 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 announced a few weeks before 03/14/2020 that start time would be changed on Saturdays only. The union contends at the Informal A management admits they changed the start time but believed as long as they gave notice by Wednesday of the preceding week they did not need to do anything else.

The union requests management cease and desist violating Article 8.4 of the NA and pay out of schedule pay when required. The union also requests the carriers affected get out of schedule pay for .50 (30 minutes) on 03/14/2020. The union finally requests each carrier be paid a lump sum payment of \$100.00 for the out of schedule premium not being included in their checks.

Management met at the Formal Step A but did not include any contentions in the file.

The DRT reviewed the case file and determined the file evidenced carriers started at 7:30 AM on Saturday 03/14/2020. The file contained Employee Everything Reports showing carriers with start times of 7:00 AM prior to and after 03/14/2020. Management included no rebuttal to the union's contentions. The temporary schedule changes triggered the premium pay provisions in Article 8. The JCAM provides the following relevant guidance on this issue:

***Out-of-Schedule Premium.** Article 8.4.B refers to the out-of-schedule premium provisions contained in the ELM Section 434.6. They provide that out-of-schedule premium is paid at the postal overtime rate to eligible full-time bargaining unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management.*

Only full-time regular and full-time flexible letter carriers may receive out-of-schedule pay. However, this rule does not preclude part-time employees from receiving a monetary remedy for contractual scheduling violations when warranted by fact circumstances (e.g. violations of Article 41.2.B.4). A full-time flexible employee's "regular" schedule for the purpose of this provision is the schedule established on the preceding Wednesday (Article 7).

An employee does not receive out-of-schedule pay when his or her schedule is changed to provide limited or light duty (National Arbitrator Gamser, N8-NA-0003, March 12, 1980, C-03212), when the employee is attending a recognized training session, or when the employee is allowed to make up time due to tardiness in reporting for duty (ELM Section 434.622).

Note also that letter carriers who fill temporarily vacant Carrier Technician positions under the provisions of Article 25 assume the hours of the vacancy as provided by the prearbitration settlement H8N-3P-C 32705, January 27, 1982, (M-00431), which states:

Details of anticipated duration of one week (five working days within seven calendar days) or longer to temporarily vacant Carrier Technician positions shall be filled per Article 25, 1981 National Agreement. When such temporary details involve a schedule change for the detailed employee, that employee will assume the hours of the vacancy without obligation to the employer for out-of-schedule overtime.

Rules for Out-of-Schedule Premium. *In the letter carrier craft the out-of-schedule premium provisions are applicable only in cases where management has given advance notice of the change of schedule by Wednesday of the preceding service week. In all other cases a full-time employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof and the regular overtime rules apply—not the out-of-schedule premium rules. (Emphasis in original)*

- *If notice of a temporary change is given to a full-time employee by Wednesday of the preceding service week, even if this change is revised later, management has the right to limit the employee's work hours to the hours of the revised schedule and out-of-schedule premium is paid for those hours worked outside of, and instead of, his or her regular schedule.*

- *If notice of a temporary schedule change is not given to a full-time employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule and the out-of-schedule provisions do not apply. In this case any hours worked in addition to the employee's regular schedule are not considered out-of-schedule premium hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.*

Out-of-schedule premium hours cannot exceed the unworked portion of the full-time employee's regular schedule. If employees work their full regular schedule, then any additional hours worked are not instead of their regular schedule and are not considered as out-of-schedule premium hours. Any hours worked which result in paid hours in excess of 8 hours per service day or 40 hours per service week are paid at the overtime rate.

Handbook F-401, on pages 9-11, provides the following explanation and examples to clarify the appropriate payment and/or leave entries form temporary out of schedule:

D. Out-of-Schedule Premium

1) Definition: Out-of-schedule premium is paid to eligible full-time bargaining unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management. (See ELM 434.611.)

2) Notification Requirement: If notice of a temporary change is given to an employee *by Wednesday of the preceding service week*, even if this change is revised later, the employee's time can be limited to the hours of the revised schedule and *out-of-schedule premium* is paid for those hours worked outside of, and instead of, his or her regular schedule. (See ELM 434.612a.)

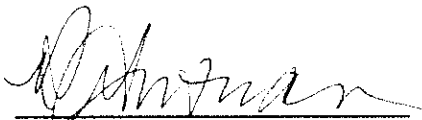
3) Noncompliance with the Notification Requirement:

If notice of a temporary schedule change is *not* given to the employee by Wednesday of the preceding service week, the employee is entitled to work his or her regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" his or her regular schedule. Such additional hours worked are not considered as out-of-schedule premium hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week. (See ELM 434.612b.)

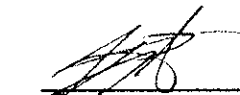
Example: A supervisor plans ahead and notifies an employee by the Wednesday of the preceding service week to work a temporary schedule the following service week from 0600 to 1450, instead of his or her regular schedule from 0800 to 1650. The employee is paid 2 hours out-of-schedule premium for the hours worked from 0600 to 0800 and 6 hours straight time for the hours worked from 0800 to 1450. (See ELM 434.615.)

If the same situation occurred, except that the notification requirement was not met, the time between 0600 and 0800 is postal overtime, and the time between 0800 and 1650 (the regular schedule) is payable as straight time. If the employee was sent home at 1450, he or she must be paid for the 2 hours between 0600 and 0800 at the overtime rate, straight time for the period from 0800 to 1450, and 2 hours administrative leave for the period from 1450 to 1650.

The team discussed the requested remedy of \$100.00 per carrier affected, but did not find it appropriate at this time. Based on its review of the case file, the team agrees to the decision and remedy above.



Robin Gutman
USPS Step B Representative



Jose Portales
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 A: Michael R. Moreno

NALC Branch President
NALC Formal Step A: Rigoberto Hidalgo
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Table of Contents
Union Contentions

EER (114 pages)
Informal Step A Request
Formal Step A Request

Payout Request History for Grievance 20215959

[HELP](#)

<p>Not Processed By Payroll</p> <p><input checked="" type="checkbox"/> New (Not yet sent to Payroll)</p> <p><input checked="" type="checkbox"/> Pending (Not back from Payroll)</p> <p><input checked="" type="checkbox"/> Submitted (Received acknowledgment from Payroll, awaiting processing)</p>		<p>Payroll Processed</p> <p><input checked="" type="checkbox"/> Paid (Back from Payroll without error)</p> <p><input checked="" type="checkbox"/> Payroll Error (Back from Payroll with error)</p>	
<p>< Back</p>		<p>Show History</p>	

New, Pending and Submitted Requests

Status	GATS Code	App Seq	Request Amount	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested
New		2	\$7.38	CHILDRESS	GREGORY	8189	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	WILKINS	LARRY	0968	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	KETCHUM	LESLEY	9276	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	GILBERT	GLENN	9639	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	MELENDEZ	JULIO	7725	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	RODRIGUEZ	RENE	2960	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	REYES	RAUL	0743	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	SAUCEDO	YOLANDA	9523	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	WELCH	KEVIN	0596	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	MATTHIES	KEVIN	8828	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	JOHNSON	DELANO	8715	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	RODRIGUEZ	GUILLERMO	4620	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	SANTANA	ANTONIO	9930	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	HIDALGO	RIGOBERTO	4751	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	JOHNSON	SILAS	4046	PP7 FY2020	KMGQXV	05/13/2020
New		2	\$7.38	ORTA	JOE	8333		KMGQXV	05/13/2020

							PP7 FY2020			
New		2	\$7.38	CHILDS	MARY	1543	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	PERALES	ALONSO	6676	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	VENEGAS	EMILIO	2177	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	BOSLEY	PHILLIP	1194	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	MONTALVO	AMANDA	7067	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	GONZALES	ERNEST	5355	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	MAZUCA	ROGER	9471	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	OLIVAS	DANIEL	5744	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	HALL	MARC	8736	PP7 FY2020	KMGQXV	05/13/2020	
New		2	\$7.38	LOPEZ	MONICA	1384	PP7 FY2020	KMGQXV	05/13/2020	
Total New: \$191.88										
Total Pending: \$0.00										
Total Submitted: \$0.00										

Paid and Errors from Finance

Status	Error or Warning	App Seq	Request Amount	Amount Paid	PP Paid	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested
No Data											
Total Paid: \$0.00											
Total Error: \$0.00											