

TB



07/15/11

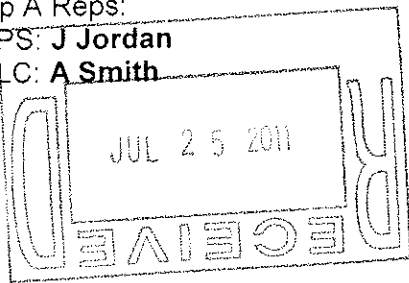
STEP B DECISION

Step B Team:
USPS: **Carl L. Geller**
NALC: **Mark L. Malone**

Decision: **RESOLVED**
USPS Number: **G06N-4G-C 1125 8771**
Grievant: **Class Action**
Branch Grievance Number: **421-345-11**
NALC Branch #: **421**
Installation: **San Antonio**
Delivery Unit: **Arsenal Station 48-7952**
State: **Texas**
Incident date: **05/28/2011**
Date Informal Step A:
Formal Step A Meeting Date: **06/30/2011**
Date Received at Step B: **07/13/2011** (Aus 07/18/2011)
Step B Decision Date: **07/19/2011**
Issue Code: **10.4360, 10.3200**
NALC subject code: **100023, 100265**
Original Step B Received Date: **07/13/2011**
Date Sent to Assisting Team: **07/15/2011**

District:
Rio Grande

Step A Reps:
USPS: **J Jordan**
NALC: **A Smith**



ISSUE: Was there a violation of Article 10 and/or 30 of the National Agreement when requests for 'hot leave' were not approved? If so, what is an appropriate remedy?

DECISION: The dispute resolution team mutually agreed to resolve this dispute. The union has failed to show a violation in regard to the denial of the request for annual leave made by Mr. Soto for April 22nd. Articles 10 and 30 were violated when Mr. Cuevas' request for annual leave was denied prior to the negotiated minimum percentage of carriers being approved annual leave. Management is obligated to approve requests for annual leave up to the minimum negotiated percentages of the LMOU.

EXPLANATION:

The union contends management failed to abide by Article 10 of the National Agreement and the Local Memorandum of Understanding when it failed to properly approve the requests for Hot Leave submitted by the carriers that have in excess of 440 hours of annual leave. Mr. Galindo was tasked by management to complete the choice vacation requests. He failed to incorporate the requests for hot leave in the choice vacation planning list. This was brought to management's attention and the employees were to be given an extension through February to complete their requests by resubmitting their PS Forms 3971. Some employees brought to the union's attention that hot leave requests were still being denied. The union and management spoke concerning the matter and the union was assured that hot leave requests would be approved. Unfortunately this was not the case. On April 28th the parties agreed management would abide by the language of Article 10 and those carriers who had their hot leave denied would be allowed to choose new dates or otherwise made whole. The union contends that management has failed to abide by a previously agreed upon resolution. Article 10.3.B specifically states care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave. Section 2

of the LOMU states:

"Non-choice vacation periods shall be awarded by office wide seniority within each station, branch or merged post office but all annual leave for each employee in excess of 440 hours must be scheduled by January 31, 2011. Hot leave may or may not be granted during the month of December. The determination will be according to the needs of the service..."

As remedy the union requests that hot leave be approved with the only restrictions listed in Article 10 and the LMOU and that those individuals unable to utilize hot leave this calendar year be given administrative leave, hour for hour of any hot leave forfeited, or otherwise make whole.

NOTE: The case file does not contain any Formal Step A position paper by management or other indication of participation being signing the PS Form 8190.

Step B discussion

The file contains three PS Forms 3971. On January 31st I Soto submitted a request of 8 hours for April 22nd. It is unclear whether or not the leave was approved or disapproved; the slip is marked approved and disapproved (*illegible* full/staffing). J Cuevas requested 16 hours for March 7th & 8th; the request is marked approved. J Cuevas requested 40 hours April 11th through April 17th; the request was denied "staffing".

The union's allegation is that management failed to comply with the LMOU when they denied requests for hot leave. The LMOU section 9 states "...all annual leave for each employee in excess of 440 hours must be scheduled by January 31."

In order for the leave to be scheduled by January 31st the request for leave must be received by management no later than the 31st.

The LMOU requires management to approve requests for leave up to the agreed upon percentages. There is no indication that consideration for military leave, sick leave, limited duty or other staffing issues allow for the disapproval of a request for incidental annual leave when the minimum percentage of requests has not been committed; i.e. there are open slots on the board. The LMOU does not require requests for incidental leave be a minimum of 40 hours. Management has demonstrated an understanding of this by the approval of 8 and 16 hour requests in this case file.

Mr. Cuevas' denied request for 40 hours was dated March 23rd and received by management March 23rd; this request could not be scheduled by January 31st and would fall under Section 6 of the LMOU. Section 6 states [in relevant part]: *Ten percent (10%) of the carriers will be allowed annual leave, beginning the first full week of April through the week of Labor Day...* The PS Form 3971 annotates that 4 slots were open and the reason for denial (staffing) does not address the condition of the leave board; i.e. board full.

On the bottom of Mr. Cuevas' 3971 for March 7th and 8th is the statement: *"This particular week Mr. Galindo had already approved me 2 days. I asked if I could take the rest of the week. I was told no."* The case file does not contain a request for leave (PS Form 3971) for the rest of the week. Absent a written request (3971) it can not be shown that a violation of Article 10 or the LMOU occurred.

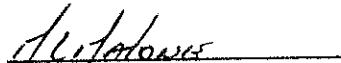
Mr. Soto's request for April 22nd was received by management on January 31st. If there was space (an open slot) on the leave board and if this leave was disapproved it was done so in violation of the LMOU. The case file does not contain a copy of or request for the

leave board. Requests for hot leave do not impose a contractual obligation on management to exceed the negotiated leave percentages.

The file contains no documentation or request for documentation to show carriers' leave balances. Nor does the case file contain a copy of or request for the leave board to show what these carriers were approved during choice selection. The union failed to show that after selecting up to 15 days of choice vacation leave, these employees would still have hot leave, writing 'hot leave' on a PS Form 3971 is not conclusive. If a carrier has 560 hours of annual leave and selects 15 days of leave during choice vacation selection, they no longer have hot leave for this calendar year. The circumstances presented in this case were addressed at Step B due to the lack of a management position; i.e. the union's position is undisputed that these carriers were denied requests for hot leave.



Carl L. Geller
USPS Step B Representative



Mark L. Malone
NALC Step B Representative

cc: Manager, SW Area Labor Relations
Manager, Rio Grande District
Kathy Baldwin, NALC NBA, Region 10
Postmaster, San Antonio, Texas
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Management Formal Step A Designee
NALC Branch President
NALC Formal Step A Designee
DRT File

Grievance file content:

PS Form 8190
Union's position (2 pages)
Request for information
JCAM pages 10-6/7

LMOU pages 5 & 6
PS Forms 3971 (3 pages)
Statement Soto (2 pages)
Extension agreement