



STEP B DECISION

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

District:
Rio Grande

Step A Reps:
USPS: **A Pena**
NALC: **J Blancarte**

Decision: **RESOLVED**
USPS Number: **G06N-4G-C 1215 3121**
Grievant: **Richard Rivera**
Branch Grievance Number: **421-171-12**
NALC Branch #: **421**
Installation: **San Antonio**
Delivery Unit: **Laurel Heights Station 48-7964**
State: **Texas**
Incident date: **03/03/2012**
Date Informal Step A: **03/15/2012**
Formal Step A Meeting Date: **03/29/2012**
Date Received at Step B: **04/09/2012** (Aus 04/10/2012)
Step B Decision Date: **04/23/2012**
Issue Code: **30.3100**
NALC subject code: **100023**
Original Step B Received Date: **04/09/2012**
Date Sent to Assisting Team: **04/09/2012**

ISSUE: Was there a violation of Article 10 and 30 of the National Agreement when the grievant's request for incidental leave was denied? If so, what is an appropriate remedy?

DECISION: The dispute resolution team mutually agreed there was a violation of Articles 10 and 30 when the grievant's request for incidental annual leave was denied while there were leave slots available on the leave calendar. The grievant will be approved one (1) day of incidental annual leave of his choice prior to December 31, 2012.

EXPLANATION:

The union contends management is denying leave to the carriers at Laurel Heights in violation of Article 10, 30 and ELM 510. The stated reason for the denial of carrier Rivera's request is 'to maintain the efficiency of the operation'. Efficiency is not based on attendance, it is based on performance. The union contends management is also violating Article 3 by abusing their managerial authority. Article 3 rights are not absolute; they are subject to the provisions of the National Agreement. They are subject to the terms of Article 10 and Article 30. The union contends the denials are in retaliation for Article 8 overtime grievance settlements and the aggressive nature of the union steward. According to two employees, a supervisor informed them that management had received instructions to deny all incidental leave requests and that was why the requests were being denied. The LMOU Article 10 Section 6 states: Ten percent of the carriers will be allowed annual leave during the non-choice period. The denied leave requests were submitted for periods when less than 10% of the work force is on leave. Additionally, management fails to acknowledge receipt, sign, approve or disapprove the requests on a routine basis. A supervisor was willing to give the grievant the time off. It is the union's belief that the station manager has so much contempt for carriers that he is unwilling to try and work with the union. The supervisor offered an acceptable remedy, but on return from talking to the manager would

not settle. As remedy the union requests a 'cease and desist' in denying leave without proper justification and comply with the LMOU. The union requests carrier Rivera be provided a day of incidental leave before December 31, 2012. Additionally, management is to contact all carriers denied leave and offer them an alternative leave date or otherwise make whole.

Management contends the union is trying to imply management has rights under Article 3 but can't use them as long as it does not interfere with anything that a carrier wants to do. The CBA was not established for the sole purpose of carriers but also for the benefit of management running the operation. Article 3, as the union quotes, gives management the right to maintain the efficiency of the operation. There is no way possible to maintain the efficiency of an operation when we are not allowed to consider all other factors. The overall operation must be reviewed. If we simply went by 'annual leave' we would never be able to cover the routes without violating Article 8 which means this steward and the DRT would be asking us to do so in order to satisfy one carrier who wants leave. The union is also trying to say the denial is due to Article 8 grievances that were filed in 2011. This too is untrue. The denials took place in 2011 and in 2012 and were done based on a case by case basis. When leave was able to be covered then those individuals were approved, but just because one is approved does not mean all will be approved. Mr. Rivera wanted me to give him off and he would get 5 carriers to agree to split his route while making the steward agree not to file Article 8 violations. The instruction from the supervisor was for March 3rd only, he did not mean it was a standing order nor did he mean it was for every request. For that particular day management reviewed all circumstances and no one would be allowed incidental leave. There were 12 carriers out, 41% of the staffing not available. It is way above and beyond the 10% cited by the union. Whittaker chose annual leave for his military leave. That 10% was fulfilled by Whittaker, case closed. The union did not settle unless Rivera and all others are granted leave for any denied leave request and a cease and desist was done. This is not a class action grievance so the remedy is excessive. The remedy is unfounded and does not match the alleged violation. Management was within their rights based on what took place on that day and what has taken place in the past.

Step B discussion

Management's primary argument addresses Article 3 and the obligation to maintain the efficiency of the operations. The opening language of Article 3 constrains management's rights:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

Articles 10 and 30 are such provisions of the agreement. The current negotiated Local Memorandum of Understanding establishes the negotiated percentage of carriers who will be granted annual leave as 10%.

SECTION 8

All letter carriers, will be granted annual leave for choice vacation periods in accordance with the National Agreement. Ten percent (10%) of the carriers will be allowed annual leave, beginning the first full week of April through the week of Labor Day and the third week of November through the first full week in January of the New Year. However, during the full week prior to and the full week of Christmas, three percent (3%) will be allowed annual leave. And' during June, July, and August, eleven percent (11 %) will be allowed annual leave. A fraction of .5 or more will be rounded up to the nearest whole carrier. Ten per cent of the carriers will be allowed annual leave during the non-choice period. (1996)

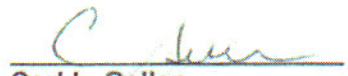
Management addresses carrier Whittaker's use of annual leave for his pay status while on military leave. The LMOU also addresses the exclusion of military leave in the percentage of carriers approved annual leave.


SECTION 12

When a carrier is ordered for military duty during the choice vacation period at the beginning of the leave year, the employee (reservist) has the responsibility to inform management of his/her scheduled active military training. This training period will not be counted as part of the percentage of employees off. He/she shall be entitled to his/her assigned first choice vacation period. (1991)

The case file contains the grievant's request for leave, PS Form 3971, showing a submission date of Thursday, February 23rd for leave on Saturday, March 3rd. The annual leave board, contained in this case file, shows that two of three annual leave slots were occupied; i.e. there was one available slot within the 10% negotiated allowance for annual leave.

In fashioning an appropriate remedy the union's request was considered. This dispute was filed as an individual grievant, any remedy for other than the individual would not be appropriate.


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 (4 pages)
Interview M Stewart
Employee statements (2 pages)
PS Form 3971
Earnings statement
Vacation schedule (6 pages)
Interview Harper
Informal Step A form
Employee everything report
Statement A Whittaker
Carrier schedule
Hours type inquiry report

Hours analysis report (7 pages)
statement – signature illegible (2 pages)
Statement Stewart
PS Forms 3971 (4 pages)
Statement Pena
Request for steward time
Informal Step A forms (4 pages)
Extension agreements (2 pages)
Request for formal meeting
Step B decision (4 pages)
LMOU Sections 6 & 7
Management's position (3 pages)
Additions and corrections – union (3 pages)