



STEP B DECISION

Step B Team:
USPS:
Rene Benavidez
NALC:
Karrie Blough

District:
Rio Grande

Formal A Representatives:
USPS
M. Perales
NALC
R. Gould

Decision: **RESOLVE**
USPS Number: **G06N-4G-C 1217 6777**
Grievant: **Class**
Branch Grievance Number: **421-329-12**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Lockhill**
State: **TX**
Incident Date: **04/18/12**
Date Informal Step A Initiated: **04/24/12**
Formal Step A Meeting Date: **05/02/12**
Date Received at Step B: **05/07/12**
Step B Decision Date: **05/21/12**
Issue Code: **10.0000, 10.4360**
NALC Subject Code: **507800, 507399,
100023**



ISSUE:

Was there a violation of Articles 10 & 19 of the National Agreement and the LMOU when management denied incidental leave requests without meeting the 10% requirement outlined in the LMOU? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team, (DRT), agreed to **RESOLVE** this grievance. Carriers Camacho and Perez are to be awarded up to 40 hours of leave of their choosing by the end of the year regardless of slots available on the leave board as long as they give management notice before the posting of the schedule for the week in question and it is not in conflict with the LMOU provisions concerning choice leave for the full week prior to and the full week of Christmas which only allows 3% off for annual leave. The requests subject of this dispute is to be approved by management on receipt. See DRT explanation below.

EXPLANATION:

The union contends management violated the contract by denying incidental leave requests for Connie Camacho and Jose Perez for the week of April 23-29, 2012. This station has been allotted 10% (6 slots) for this week as detailed on the 2012 vacation schedule. According to the PS Forms 3971 submitted for this time frame as well as the carrier schedule for the week, only three employees were on scheduled annual leave for the week prior to the requests made by these carriers. This is only 5% of what was allowable for this week, and there were 3 slots still available. The number of slots were agreed to prior to the beginning of 2012 between the local parties at Lockhill Station.

Management listed all the carriers out on extended sick leave and vacant routes. The union referred to Step B decision GATS# 1139 4764 which stated, "Annual leave does not include military leave, sick leave, LWOP, OWCP or enforced leave pending the outcome of disciplinary action... The LMOU allows for 10% of carriers requesting annual leave to be granted annual leave." The remedy fashioned by this agreement restored the 10% that was required by the provision. The vacant routes are irrelevant and cannot be considered as occupying vacant slots as management seems to believe. Management has an obligation to honor the 10% annual leave granted under Article 10 of the LMOU.

The union refutes management's contention that Carrie Camacho should not be considered because it is a request for hot leave. This request was not for the month of December, therefore this argument is irrelevant. Hot leave or not, it is incidental leave and should have been granted.

Management also argues that employees must give a two week prior notification as per the LMOU, however the section referred to by management is in regard to leave involving one's birthday. This employee is not requesting leave for his birthday; therefore this argument is irrelevant and does not apply to this case.

The fact remains that the two incidental leave requests were properly filled out. Management was aware of the enclosed decision regarding incidental leave requests but flat out refused to abide by it. There is no requirement for incidental leave requests to be made 2 weeks in advance. The union requests as remedy that Carriers Perez and Camacho be allowed to submit a request for up to 40 hours each for any time slot and in addition to the normal number of time slots or otherwise be made whole.

Management contends that Carrier Perez did not meet the requirements of requesting incidental leave when he did not request the leave two weeks in advance. Carrier Camacho's request for hot leave was received on April 4, 2012 which is well beyond the required date of January 31, 2012 according to the LMOU concerning submissions for hot leave.

According to the Lockhill Carrier Schedule for the week in question, had 4 carriers on FMLA leave, 3 carriers on annual leave, 4 vacant routes, 1 vacant T-7 string, 1 employee on detail, and 3 auxiliary routes with a value of 8:22 hours which is equivalent to over on full route or carrier. Lockhill Station had the equivalent of over 14 carriers that were not available for this week placing Lockhill at 28% of its compliment, well over the 10% authorized for annual leave. If the two grievants were to be included, that would leave Lockhill with the equivalent of 16 carriers out placing Lockhill at 32% of its compliment out. Based on this information, the carrier's leave was denied due to staffing because of the needs of the service. Article 3 paragraph C gives management the right to maintain the efficiency of the operations. Efficiency is not exclusively based on workhours used, but also includes the amount of compensation associated with the hours used; to include having enough carriers available not to violate Article 8.

Management feels that every reasonable effort was made to approve the requested leave without violating another aspect of the contract or hindering the needs to the service. Management would consider future leave requests from the grievants when the station is better postured with staffing and will again make every reasonable effort to

approve that leave. In order to avoid a conflict of interest, management requests that NALC Step B representative Richard Gould not preside over any grievances for Lockhill Station.

The DRT reviewed the entire case file and, based on the documentation and contentions provided, determined that Carriers Camacho and Perez should have been awarded the leave they requested. **The case file did not evidence any information that management made any reasonable effort to consider awarding the leave before denying the request.**

Management contends that Article 3 requires them to maintain the efficiency of the operation. While this statement is not disputed, Article 3 obligates management to maintain the efficiency of the operation while complying with the remaining provisions of the agreement.

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

Article 30 addresses the local party's right to negotiate specific provisions of the agreement.

JCAM page 30-1:

Article 30 of the National Agreement enables the local parties to negotiate over certain work rules and other terms and conditions of employment. Since the start of full postal collective bargaining in 1971, most of letter carriers' contractual rights and benefits have been negotiated at the national level. However, some subjects have been left to the local parties to work out according to their own preferences and particular circumstances. A period of "local implementation," has followed the completion of each National Agreement.

Local leave programs are one of the work rules open for local negotiations.

Article 30.B.4 Formulation of local leave program

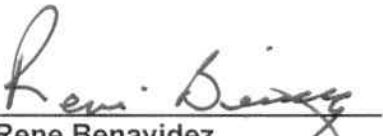
In this case (installation) the relevant negotiated LMOU provision is the Article 10 Section 6.A:

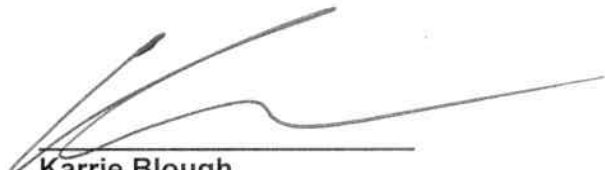
All letter carriers will be granted annual leave for choice vacation periods in accordance with the National Agreement. Ten percent (10%) of the carriers will be allowed annual leave, beginning the first full week of April through the week of Labor Day and the third week of November through the first 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) [Emphasis added]

NOTE: The full week prior to and the full week of Christmas will be December 15 through December 28 in 2008, December 14 through December 27 in 2009, December 13 through December 26 in 2010, December 19 through January 1, 2012 and December 17 through December 30 in 2012. In the merged post offices a variance in the established percentage must be agreed upon by the unit steward of NALC Branch 421 and the Postmaster. (2007)

"Annual leave" does not include military leave, sick leave, LWOP, OWCP or enforced leave pending the outcome of disciplinary action.

The LMOU allows for 10% of carriers requesting annual leave to be granted annual leave. Consideration was given to the LMOU provisions for annual leave during the month of December. Remedy was fashioned to restore the 10%. The DRT mutually agreed the appropriate remedy is listed on page one of this decision based on the language contained in the LMOU.


Rene Benavidez
USPS Step B Representative


Karrie Blough
NALC Step B Representative

Grievance File Contents:

PS Form 8190 (2 pgs)
Union Contentions (2 pgs)
PS Form 3971 (7 pgs)
Carrier Schedule (4 pgs)
Prior Settlement (9 pgs)
Copy of LMOU (3 pgs)

Vacation Schedule (6 pgs)
Formal A Request (2 pgs)
Informal A Request
Management Contentions (2 pgs)
Hours Analysis Report (4 pgs)
Mgmt Designation Letter

cc: **Manager, Labor Relations, Southwest Area**
District Manager, Rio Grande District
NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster, San Antonio
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File