



District: Rio Grande	Decision: USPS Number: Grievant: Branch Grievance Number: NALC Branch #: Delivery Unit: Installation: State: Date Step A Initiated: Date Formal Step A Decision: Date Received at Step B: Date Step B Decision: USPS Issue Code(s): NALC Issue Code(s):	RESOLVE G06N-4G-D 0828 6278 Raymond Weinman 421-621-08 421 Lockhill San Antonio Texas 07/19/08 08/01/08 08/07/08 08/13/08 16.3000; 16.1010 00954; 00056; 00101
Step B Team USPS: John R. Lomba NALC: Tony Boyd		
Step A Designee: USPS: Ayda Alderete NALC: David K. Morrison		

ISSUE:

Did Management have just cause to issue the grievant a Letter of Warning (LOW), dated 07/08/08, for Unacceptable Work Performance-Failure to Follow Instructions/Unauthorized Penalty Overtime? If not, what is the appropriate remedy? →

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management did not have just cause to issue the discipline. Upon receipt of this decision, the LOW will be removed from all records and files of the grievant. See DRT Explanation below.

BACKGROUND:**Union Contentions:**

On 06/06/08, the grievant was assigned to carry his route (#3107). It was his fifth day of work, so any work that he performed beyond eight hours would automatically put him in penalty overtime. This was a fact that management was well aware of. The Employee Everything Report (EER) shows that Carrier Weinman worked 1.59 hours of penalty overtime. The union contends that management was well aware that the lack of clerks that day was causing a penalty overtime situation to develop. The same report also shows that Carrier Weinman had 1.41 hours of idle time (Code 354 and 782 time). The added time put him behind on the route in addition to having to deviate to deliver three express mail pieces. Carrier Weinman performed all the necessary procedures required. The grievant filled out a PS Form 3996 in the morning and stated all the factors involved, however, the union is unable to present this as evidence because management failed to provide us the copy we requested; which is a violation of Article 17 and 31. Carrier Weinman did anticipate he would be going into a penalty overtime situation and called the station within his eighth hour of work. Supervisor Mario Perales even acknowledged in a memo that he did receive the call from the grievant. He also stated that at no point did he authorize penalty overtime, however, he did authorize the grievant to continue to deliver the mail. Informing management that he would need additional time requires management to make a decision as to what action a carrier should take. The reason why the additional time is needed is not pertinent to this case. The grievant made the necessary notification to management within the required time period when he realized he was not going to meet the scheduled return time. The failure of the supervisor to act upon the grievant's notification by providing auxiliary assistance resulted in the additional overtime. Under these circumstances, management cannot conclude that the penalty overtime was unauthorized.

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Carrier Weinman did not violate the contract, therefore the discipline should be rescinded and expunged from all records and files of the grievant immediately.

Additions & Corrections: Management continues to contend that Carrier Weinman did not have a late leaving time merely because there are no values listed on the PS Form 1813. The EER clearly shows that the grievant had 1.41 hours of idle time. Why management fails to acknowledge this is mind-boggling. The grievant did have to deviate for three express mail pieces, which caused additional travel time. Had he not incurred Code 354 and Code 782 time, he may have finished his route in eight hours. The grievant also probably had to fill out another PS Form 3996 when he returned to the office since his original form was nowhere to be found. The factual bottom line is the idle time he had in the office far exceeded any under-time he may have had. The shortage of clerks delayed the mail getting to the carriers. The union believes that an acceptance of management's offer to reduce the discipline to 60 days would be an admission that the carrier committed a violation. The union has done its homework with this grievance as the evidence contained in the package will prove. Carrier Weinman is an exceptional letter carrier and knows what to do to get the job done.

Management Contentions:

On the day in question, Mr. Weinman went into unauthorized/unjustified penalty overtime. The union contends that he left the office late but the late leaving report does not show Route 3107 (which is Mr. Weinman's route) as leaving late on 06/06/08. He needed to have an eight-hour day that day and the route was under by 32 minutes. He was not given anything else to carry that day and he could have delivered the express mail and additional accountables within the 32 minutes of under-time. Mr. Weinman's PS Form 3996 was probably turned in that evening because nothing is approved, nor did he annotate how much time he was requesting as per the M-41, Section 131.43. Bottom line is the route was under, he did not leave late, and he expanded his time on the route. This is what caused him to go into penalty overtime, which was unauthorized. Management offered at the Informal and Formal Step A to reduce the LOW to 60 days from the date of incident, but the union declined. The union needs to do their homework and support the employees who are working hard and caution those that feel they can do as they please without any repercussions, and that there are consequences for large or small infractions.

DRT EXPLANATION:

In discipline cases the burden of proof rest with management. A review of the disciplinary charge letter confirmed that the grievant called the station and advised Supervisor Perales that he needed help. The investigative interview (II) notes and Supervisor Perales memo indicated this as well. The II notes and the memo also stated that the grievant was told to continue delivery and thus substantiated the union's claim of what transpired when the grievant called. Management's contentions merely addressed alleged under-time, whether or not a PS Form 3996 was submitted, late leaving and expansion of street time. The Step B Team concurs with the union's assessment that these issues were irrelevant in relation to the disciplinary charge. The sole issue in this instant case is whether or not overtime (penalty) was authorized. In management's contentions they stated they were aware this was the grievant's fifth day of work. With that being the case, management knew or should have known that authorizing the grievant to work beyond eight hours on his fifth day, would contractually put him into penalty overtime. Although management didn't expressly state penalty overtime was authorized, the authority was inherent when Supervisor Perales told the grievant to continue his delivery. The parties are referred to Step 4 Decision M-00326, which states:

A review of the material submitted at the fourth step level indicates the grievants did inform management of their inability to complete their routes in 8 hours. Further it was demonstrated that they were ordered by management to complete the routes. Although there was

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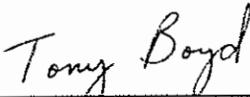
no expressed authorization to complete the delivery of mail on an overtime basis, the permission would be inherent in the authorization to continue delivery after notification that the grievants were unable to complete the routes.

The Step B Team also wishes to address the union's allegation that management violated Article 17 and 31. The Informal Step A Form clearly illustrated that the union requested the grievant's PS Form 3996. Management provided no explanation why this form was not provided. **The DRT strongly advises management to abide by the spirit and intent of Articles 15, 17 and 31 to ensure grievance cases are fully developed. Violations of these articles in the future will result in the grievance being sustained without regard to the merits of the case.** The parties are referred to the following excerpt from page 17-6 of the JCAM, which states in part:

***Right to Information.** The NALC's rights to information relevant to collective bargaining and to contract administration are set forth in Article 31. This section states stewards' specific rights to review and obtain documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses. Steward requests to review and obtain documents should state how the request is relevant to the handling of a grievance or potential grievance. Management should respond to questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for review and/or produce the requested documentation as soon as is reasonably possible.*

GRIEVANCE FILE CONTENTS:

Union Additions & Corrections, 08/05/08
PS Form 8190
PS Form 8190 Continuation Sheet, U1 – U3
Perales Memo, U4
Overtime Alert Report, U5 – U8
Letter of Warning, 07/02/08, Martinez; U9 – U11
Disciplinary Action Proposal, Weinman; U12 - U15
Route/Carrier Daily Performance/Analysis Report, 06/06/08, U16 – U21
Employee Everything Report, 2008-12-2, Weinman, U22
Informal Step A Request, 07/09/08, U23
Request for a Formal Step A Meeting, 07/24/08, U24
Management Contentions, 08/01/08, M1
PS Form 1813, M2 – M3
PS Form 3996, 06/06/08, M4



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