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STEP B DECISION

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

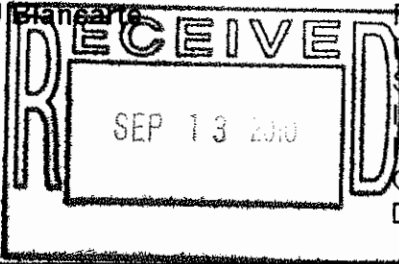
Decision: **Resolved**
USPS Number: **G06N-4G-C 1026 9737**
Grievant: **Class Action**
Branch Grievance Number: **421-635-10**
NALC Branch #: **421**

District:
Rio Grande

Installation: **San Antonio**
Delivery Unit: **Laurel Heights 48-7964**
State: **Texas**

Step A Reps:
USPS:
NALC: **J. Blangarte**

Incident date:
Date Informal Step A: **07/31/2010**
Formal Step A Meeting Date: **None**
Date Received at Step B: **08/26/2010**
Step B Decision Date: **09/10/2010**
Issue Code: **08.5400**
NALC subject code: **120050**
Original Step B Received Date: **08/26/2010**
Date Sent to Assisting Team: **09/03/2010**



ISSUE: Was there a violation of Article 8 when management failed to equitably distribute overtime during the second quarter of 2010 and failed to equalize opportunities for Carrier Ramirez carried over from the first quarter? If so, what is an appropriate remedy?

Was there a violation of the National Agreement when management failed to abide by a Step B decision requiring requested documentation be provided within 72 hours? If so, what is an appropriate remedy?

DECISION: The dispute resolution team mutually agreed to resolve this grievance. Management violated a previous Step B decision requiring requested documentation be supplied within 72 hours. Management will cease and desist in delaying requested documentation. Management failed to equalize overtime opportunities/hours from quarter 1 in quarter 2 for Carrier Ramirez. The carrier listed below is awarded a taxable lump sum payment as indicated. All pay adjustments have been completed at Step B, no further action is required.

D. Ramirez EIN: 02104431 \$525.00

EXPLANATION:

In addition to the equitability issue in this case file the union is alleging several violations relating to management's lack of participation and hindrance of the grievance process. This same allegation has been the subject of numerous grievances from this facility. The Step B team has been notified that a change in management has occurred in this facility and it is hoped that a better labor/management climate will ensue. This will require effort by both sides.

Step A positions

The union contends Carrier Ramirez was not caught up the 15 hours that he was low at the end of the 1st quarter. A Step B decision had instructed that Ramirez would be provided adequate overtime opportunities and hours to accumulate no less than 15 hours of overtime more than Carrier A. Gomez, Jr. during the second quarter. In addition Carriers Nickell and Garcia have not even been looked at by this Steward. This Steward requests that the DRT review the Charts and the Everything Report to determine if a violation exists and determine a remedy. The Steward does not want this grievance sent back to the Formal A representatives. Please review and determine the actual payout for this grievance.

Management did not meet at the Formal Step A and had no contentions in this case file.

Step B discussion

The union steward in this grievance has sent an undeveloped grievance to Step B and asked that it not be remanded. He has further asked that the Step B team look at the data contained in the case file and determine if there are violations and come up with a remedy. It is the responsibility of the steward at the station level to investigate and present grievances. The employer is required to cooperate with the steward as they accomplish their grievance handling jobs. The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order to cease and desist, plus payment to the steward for the time spent processing the grievance off the clock which should have been paid time. If the stewards rights continue to be violated the proper recourse would be an intervention by the National Business Agent/Area Labor Relations. In a contract case it is the responsibility of the union to establish a violation of the National Agreement. It is the responsibility of the Step B team to review case files to determine if the union has met that burden. It is not the responsibility of the Step B team to develop the case.

When looking at an equitability issue there are factors other than just overtime worked that must be taken into consideration. In the San Antonio installation the carriers on the overtime desired list are divided into separate groups based on their regularly scheduled rotating day off. This results in each facility having up to six individual 'overtime desired lists' for equitability purposes. This case file contains a 2nd Quarter Laurel Heights Overtime Equitability Tracking Chart which is virtually blank. While there are two sets of numbers, the chart does not list carriers on the overtime list or identify the groupings all of the overtime desired list carriers would fall into. This would indicate management was not actively involved in the tracking of overtime. Equitability does not happen by accident. It is management's job to ensure overtime opportunities are distributed equitably. The Article 8 obligations are reiterated in the JCAM on page 8-10;

5.C.2.a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

5.C.2.b During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

5.C.2.c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

Article 8 requires management to track the distribution of overtime opportunities and hours, posting that tracking on a quarterly basis. Due to the lack of participation by management in the development of this file, there is no evidence that management complied with this contractual obligation. Although the requirement is to update and post the opportunities/overtime hours worked on a quarterly basis, equitability cannot be achieved, except by accident, if this is not looked at on a daily/weekly basis.

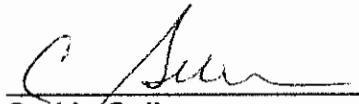
With the except to carriers Ramirez and Gomez, the union has made no specific allegation with regard to equitability in quarter 2 other than to say it is not equitable. Due to a lack of development, the case file contains insufficient evidence to substantiate that overtime in quarter 2 for carriers other than Ramirez and Gomez was not equitably distributed. The proper remedy for inequitably distributed overtime in a quarter is for opportunities/overtime to be made up in the next immediate quarter.

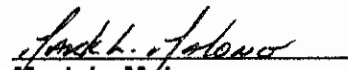
The union has alleged that Carrier Ramirez was not equalized in quarter 2 for overtime/opportunities missed in quarter 1 as stated in Step B decision G06N-4G-C 10185408. This decision stated, in part:

D. Ramirez will be provided adequate overtime opportunities and hours to accumulate no less than 15 hours of overtime more than carrier A Gomez Jr. during the 2nd quarter of 2010. Failure to do so may result in monetary remedy.

Due to the lack of participation by management in the development of this file the union's position is undisputed. The case file evidences that management did not comply with the DRT decision and, therefore, Carrier Ramirez will be compensated for inequitably distributed overtime from quarter 1 in the amount of 15 hours at the overtime rate.

The union's contention that management violated a previous Step B decision by not supplying requested documentation within 72 hours is supported by documentation in the case file. On July 1, 2010 the union requested the Laurel Heights Overtime Tracking Chart. Although it is not clear when this document was given to the union it was printed at 10:06 AM on July 15, 2010. Taking 14 days to supply requested documentation does not comply with the 72 hour requirement. The union's allegation that management refused to provide time on the clock for the steward to develop the case is therefore also undisputed.


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

DRT plea (2 pages)

Informal Step A

Request for Formal Step A

Steward's statement (2 pages)

Carrier statements (2 pages)

PS Form 3996

Extension

RIO GRANDE DISPUTE RESOLUTION TEAM - AUSTIN

PS Form 8190

Union's position (6 pages)

Step B decisions (5 pages)

OTDL

Spreadsheets (2 pages)

Step B decision

OTDL

Spreadsheets (3 pages)

Employee Everything Report (129 pages)

Spreadsheet (10 pages)

Carrier's statement

Informal Step A

Request for Formal Step A

Request for Formal Step A