



STEP B DECISION

 **COPY**

Step B Team:
USPS:
John R. Lomba
NALC:
Emre Edwards

Decision: **RESOLVE**
USPS Number: **G06N-4G-D 0934 9472**
Grievant: **Class**
Branch Grievance Number: **421-906-09**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Thousand Oaks**
State: **TX**
Incident Date: **08/14-20/09**
Date Informal Step A Initiated: **08/28/2009**
Formal Step A Meeting Date: **09/09/09**
Date Received at Step B: **09/28/09**
Step B Decision Date: **10/12/09**
Issue Code: **07.2000; 07.2260**
NALC Subject Code: **100712; 600139**

District:
Rio Grande

ISSUE:

Did Management violate Article 3, 7.2.c, and 19 of the Joint Contract Administration Manual (JCAM) during the period of 8/14 thru 8/20, when they instructed carriers to scan parcels to routes while loading vehicles, remain on Operation 721 while awaiting parcels, sort and pitch parcels and SPRs on Operation 722, and sort ADVO and Houston Chronicles to routes? Also, was the contract violated when management failed to afford the steward reasonable steward time? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management will insure that carriers clock to the proper operation for the work they have been instructed to perform or the activity engaged in. Additionally, cross craft assignments will only be made in accordance with Article 7.2.B and C. The Step B Team mutually agreed that Steward William McCain is awarded a lump sum of \$34.50. The DRT has taken care of the payment via GATS and no further action is necessary. See DRT Explanation below.

EXPLANATION:

The Union contended that Management instructed city carriers to perform work that is part of the clerk craft which is a violation of Article 7.2.c of the National Agreement. The union further contended that management had improperly instructed the carriers to perform this work on operation numbers that were not proper for the task. The union protested that carriers had work available at their cases that could have been done prior to instructing carriers to cross crafts. The steward contended he was denied reasonable steward time and had to perform the steward work off the clock. Specific mention was

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made of carriers being instructed to remain on Operation 721 when they were in the office waiting for mail or casing mail.

Management stated that the scanning of parcels to the carrier's route is a process to improve delivery indicators and insure each parcel is delivered as promised to our customers. Management also stated that carriers were instructed to pull their ADVO and Houston Chronicle due to clerk staffing and in lieu of having the carriers sitting around and waiting for mail. They were kept on Operation 722 since it was the function of withdrawing mail. Management stated that none of the carriers were told to pitch parcels. The bottom line is that management cannot agree to a cease and desist of this practice since emergencies sometimes occur and management cannot neglect their responsibility to keep all employees gainfully employed.

The Step B Team mutually agreed that the proper monetary remedy, if any, for any work performed by city carriers that should contractually have been performed by clerks must be determined by the resolution of grievance(s), if any, filed by representatives of the clerk craft. The DRT was concerned that the steward referenced carriers working in the clerk craft when city carriers had work available. Additionally, if eight hour only and/or work assignment carrier(s) were worked off their assignments on one or more days the union alleged violations of Article 7, the Team questioned the impact this had on alleged Article 8 violations.

The Team mutually agreed that carriers should not be instructed to associate with incorrect or improper operation numbers. Of particular concern to the Team was the allegation that carriers had been assigned work and instructed to associate with operation(s) that had the potential to compromise data for accurate Minor Alternative Interim Route Adjustment Process calculations.

The JCAM addresses this issue in Article 7:

7.2.B B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.

7.2.C C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary. [See Memo, page 135]

Cross-Craft Assignments. Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work. The working of TEs across craft lines is addressed in question 11 of the parties' joint Questions and Answers on TEs. The complete TE Q&As are found on pages 7-10-7-15.

**QUESTIONS AND ANSWERS (42)
NALC TRANSITIONAL EMPLOYEES**

The attached jointly-developed document provides the mutual understanding of the national parties on issues related to NALC Transitional Employees. This document may be updated as agreement is reached on additional matters related to transitional employees.

Date: February 20, 2009

11. May city letter carrier transitional employees be assigned to work in other crafts?

Only under emergency conditions, as defined by Article 3 of applicable collective bargaining agreements.

Insufficient Work. Under Article 7.2.B, management may require an employee to work in another craft at the same wage level due to insufficient work in his or her own craft. This may affect a full-time employee or a part-time regular employee for whom there is "insufficient work" on a particular day to maintain his or her weekly schedule as guaranteed under Article 8.1. Or it may apply to any employee working under the call-in guarantees of Article 8.8—i.e., a regular called in on a nonscheduled day, or a PTF employee called in on any day. This section permits management to avoid having to pay employees for not working.

Exceptional Workload Imbalance. Article 7.2.C provides that under conditions of exceptionally heavy workload in one craft or occupational group and light workload in another, any employee may be assigned to perform other-craft work in the same wage level.

Limits on Management's Discretion to Make Cross-craft Assignments.

A national level arbitration award has established that management may not assign employees across crafts except in the restrictive circumstances defined in the National Agreement. See A8-W-0656 (C-04560), a 1982 national-level award of Arbitrator Richard Bloch. (This decision is controlling although it is an APWU arbitration case; it was decided under the joint NALC/APWU-USPS 1981 National Agreement and the language of Article 7.2.B & C has not changed since then.) Arbitrator Bloch interpreted Article 7.2.B & C as follows (pages 6-7):

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another. Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or

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somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its need on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the fact of pressing circumstances. ...

Remedy For Violations. As a general proposition, in those circumstances in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B&C, a "make whole" remedy involving the payment at the appropriate rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. For example, after determining that management had violated Article 7.2.B, Arbitrator Bloch in case H8S-5F-C-8027/A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the Overtime Desired List should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.


In fashioning the remedy for the alleged violation that insufficient steward time was provided on a timely basis, the DRT reviewed the documentation in the case file. The union contended that the steward had worked an additional two hours off the clock and requested monetary compensation at the penalty overtime rate. Contained in the steward's summary is the following, "asked for 2 hours to review management's contentions including a 22 page arbitration. Management gave me one hour, and I worked two hours at home." The steward then referenced an Item 0-13 (buck slip) and steward time log contained in the file that confirmed the two hours requested and the one hour given. The case file was devoid, however, of a second request or evidence to confirm that the steward had made management aware that an additional two hours for a total of *three* hours would be necessary.

Grievance File Contents:

Table of Contents
Union Additions and Corrections, 5 pages
PS Form 8190
Request for Formal A
Informal Step A Request, 2 each
Union contentions, 3 pages
Carrier Statements, 16 pages
Management's Contentions, 2 pages
National Arbitration, 24 pages
Workhour/Workload Report, 3 pages



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USPS Step B Representative



Emre Edwards
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DRT File