



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1405 0633
Michael Goden	Grievant:	Luis Amescua
NALC:	Branch Grievance Number:	421-1075-13
Karrie Blough	Branch:	421
	Installation:	San Antonio
	Delivery Unit:	NE Carrier Annex
District:	State:	TX
Rio Grande	Incident Date:	12/03/2013-01/01/2014
	Informal Step A Initiated:	12/17/13
Formal Step A Reps:	Formal Step A Meeting :	01/09/14
USPS: Arnold Pena	Date Received at Step B:	01/21/14
NALC: Bill Etherton	Step B Decision Date:	01/24/14
	Issue Code:	29.4000
	NALC Subject Code:	100060

ISSUE:

Did management violate Article 29 of the National Agreement by failing to provide the grievant with non-driving duties, or pay in lieu thereof, after his driving privileges were revoked/suspended? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of the National Agreement. The grievant's driving privileges have already been reinstated. **As remedy, the grievant will be made whole for the period of time he was forced to use annual leave and LWOP when non-driving duties were not offered.** Annual leave in the amount of 49.49 hours and LWOP in the amount of 31.73 hours will be adjusted by management at the unit to reflect administrative leave within 7 days of the receipt of this decision. Proof of the adjustment will be provided to the grievant and the union immediately upon completion of the adjustment. See DRT Explanation.

EXPLANATION:

The union contends the grievant's driving privileges were suspended by the acting station manager Arnold Pena. Mr. Pena stated the grievant's driving privileges were not suspended per Article 29 and that he was complying with the court order made by Bexar County, Texas Adjudication. The grievant had complied with all aspects of the court order. The order did not say an ignition interlock device needed to be installed in his postal vehicle. The order gave two choices; his vehicle or the vehicle most regularly driven by him. Mr. Pena argued that management's interpretation was that it was to be the vehicle most regularly driven by the grievant. The grievant provided further documentation that specifically said installing the device in his personal vehicle was acceptable. Management still would not reinstate his driving privileges.

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The union contends the grievant's privileges were improperly suspended because the incident preceding management's decision happened off duty, not on duty. At no time during this entire event was the grievant's driver's license suspended. Management failed to provide work or pay lieu of work because of the improper revocation of driving privileges. During a meeting with the grievant, Mr. Pena told him to apply for e-reassign now or the USPS would reassign because he cannot do the duties associated with being a letter carrier. This is a complete contradiction of the national agreement.

The grievant was instructed to take leave after casing his route. Management made no effort to allow him to perform other available carrier duties. Furthermore, management made no effort to see if there was carrier work available anywhere within the installation. On December 12, 2013, the grievant put "not at my request" in the remarks section of the PS Form 3971. Mr. Pena became upset and belittled the grievant. The grievant felt threatened when Mr. Pena stated "I'm taking it to the next level" and then directed him to go ahead and leave. The grievant was forced to take annual leave and subsequently LWOP when his leave was expended. The union requests as remedy that the grievant be made whole for all lost wages, benefits, leave, etc. to what it would have been if management hadn't violated his Article 29 rights and assigned him non-driving duties as required and the leave taken be converted to administrative leave.

Management contends the documents from the County Court 8 of Bexar County lists the Terms and Conditions of Community Supervision that the grievant must follow for a period of one year from the adjudication date. The union is trying to interpret the language provided as meaning the ignition interlock device could be installed in either the personal vehicle or on any vehicle must regularly driven by the grievant. The submission of a Criminal Docket that cleared up the language was not provided until the end of December, so the Postmaster could not make a decision until January 2, 2013, after the New Year's Holiday week. It has been past practice for this installation to follow the same procedures in cases like this one.

The union is trying to make something big out of nothing by stating on page 1 of their contentions, "...basically no one from postal management wanted to accept the liability for his privileges to be reinstated." This is not true the way they are trying to state it. Management has an obligation to ensure the safety of our employees and the American Public. Although a couple of meetings took place with the Postmaster, the union never provided anything to change his mind until the month of December was over. Privileges were reinstated because he finally brought documents.

The union is saying that management ONLY has the right to suspend or revoke a carrier's driving privileges ONLY under Article 29 and that is not correct. Article 29 does not cover a carrier's court ordered mandate to install an IIS as a result of a DWI case. Management followed the court order. The USPS is not in the practice of refusing to follow court orders like the union is trying to get the parties to agree to. A decision based on the union's interpretation that the one word "or" means something else would place the USPS and the public in jeopardy of an injury, serious legal battle(s) and/or possibly death if the Step B parties agree that management does not have to abide by court orders.

The DRT reviewed the file and determined that a violation was established in this case. At the point the grievant's driving privileges were suspended by management; Article 29

is automatically invoked, which means the provisions as set forth are also invoked. Article 29 states the following concerning this issue:

ARTICLE 29 LIMITATION ON REVOCATION OF DRIVING PRIVILEGES

An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards.

*The report of the Safe Driver Award Committee cannot be used as a basis for revoking or suspending an employee's driving privileges. When a revocation, suspension, or reissuance of an employee's driving privileges is under consideration, only the on-duty record will be considered in making a final determination. An employee's driving privileges will be automatically revoked or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. **Every reasonable effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts. In the event such revocation or suspension of the State driver's license is with the condition that the employee may operate a vehicle for employment purposes, the employee's driving privileges will not be automatically revoked.** When revocation or suspension of an employee's driving privileges is under consideration based on the on-duty record, such conditional revocation or suspension of the state driver's license may be considered in making a final determination.*

Revocation or Suspension of Driving Privileges. "Driving privileges" is a relatively new term in the Postal Service. For many years USPS issued special postal "Operator's Identification Cards" known as the OF-346 and, before that, the SF-46. This practice has been discontinued and currently there is no special postal driver's certificate.

Management may suspend or revoke a carrier's driving privileges under certain specified circumstances:

• Automatically, concurrently with the suspension or revocation of the employee's state driver's license. Automatic reinstatement of postal driving privileges must follow reinstatement of the state driver's license.

VI. Suspension and Revocation of Driving Privileges

2. When a suspension, revocation, or reissuance of an employee's driving privileges is under consideration, only the on duty record may be considered when making the final determination. However, an employee's driving privileges will automatically be suspended or revoked concurrently with an suspension or revocation of State driver's license and restored upon reinstatement. It is the responsibility of the employee to provide documentation that the State license has been reinstated. If such suspension or revocation includes the condition that the employee may operate a vehicle for employment purposes, the driving privileges will not be automatically suspended or revoked. When suspension, revocation, or reissuance of an employee's driving privileges is under consideration based on the on-duty record, such conditional suspension or revocation of the State driver's license may be considered in making the final determination.

Every Reasonable Effort to Reassign. Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other

crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.

National Arbitrator Snow held in 194N-4I-D 96027608, April 8, 1998 (C-18159) that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

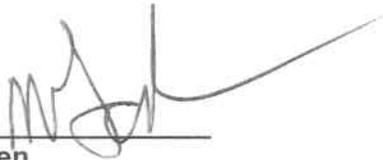
- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.

- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.

- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

Management focused their argument on the language as stipulated in the court order. Regardless the reasoning behind suspending the grievant's driving privileges in the Postal Service; the burden still remains the same in attempting to provide the grievant with non-driving duties. The evidence provided did not establish an attempt was made at doing so according to the pecking order provided by the Snow Award.

The Snow Award states "it is management's responsibility to seek to find suitable work." Considering there was nothing provided that explained the suspension management to begin with as it was clear by the contents of the file that the grievant's state issued driver's licenses had not been suspended, it certainly was the case that work should have been provided in the form of non-driving duties or pay in lieu thereof. The DRT mutually agreed the appropriate remedy is listed on page one of this decision.



Michael Goden
USPS Step B Representative



Karrie Blough
NALC Step B Representative

Grievance File Contents:

Union Additions & Corrections (2 pgs)	Work Completed by the Grievant
Grievant Statement	Employee Everything Report (8 pgs)
PS Form 8190 (2 pgs)	PS Forms 3971 (3 pgs)
Union Contentions (4 pgs)	Grievant Statement
Formal A Request	Copies of Pay Stubs (2 pgs)
Time Limit Extension	Management Contentions (3 pgs)
Informal A Request	DWI Ignition Interlock Providers
Court Order (4 pgs)	Case Inquiry (2 pgs)
Installation Receipt	Notice of Suspension
Criminal Docket (3 pgs)	Letter from Attorney
Driver License Information	Table of Contents
Copy of Email	

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