

RIO GRANDE DISPUTE RESOLUTION TEAM

OPT



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-C 0825 2221 Class 421-455-08 421 Laurel Heights San Antonio Texas 05/17/08 Not Conducted 06/20/08 07/01/08 41.2260 00199
Step B Team USPS: John R. Lomba NALC: Tony Boyd		
Step A Designee: USPS: NALC: Pete Velasquez		

ISSUE:

Did management at Laurel Heights Station violate Article 41 of the Joint Contract Administration Manual (JCAM) when the grievants were removed from their opt assignments and forced to report and work on a new residual vacancy assignment? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management did violate Articles 41, Section 2.b.5 in this instant case and is instructed to cease and desist this practice immediately. Upon receipt of this decision Carriers T. Garcia and M. Rodriguez will resume their respective opt assignments on Routes 1217 and 1228. They will remain on the opt assignment for its duration until the appropriate Article 41 provisions are met to terminate it. See DRT Explanation for the summary.

BACKGROUND:**Union Contentions:**

The union contends Article 41 was violated. Part-time Flexible (PTF) Carriers Garcia and Rodriguez successfully opted for a hold-down on Routes 1217 and 1228 respectively. On 05/10/08 both carriers were converted to full-time regular carrier status and assigned a residual vacant route at the station (Route 1253 for Garcia and Route 1230 for Rodriguez). Management took both carriers off of their opt assignment and instructed them to report to work on their new assignments. This is a direct violation of Article 41, Section 2.b.5. Management did not meet to conduct a Formal Step A meeting despite the fact they were given several opportunities to meet. The union requests that on the following day of this decision, both carriers are placed back on their opt assignment until the incumbent returns.

Management Contentions:

No Formal Step A meeting was conducted.

DRT EXPLANATION:

The Step B Team reviewed the union's contentions, a statement from one of the grievant's, and the Employee Moves Report for pay period 11-1. The documents indicated the grievants were moved from their opt assignment and reported to work a new (forced bid) assignment on 05/10/08. No Formal Step A meeting was conducted so; the file did not contain a rebuttal from management. As a result, the union's charge was considered as fact. In the future, additional documentation such as a copy of the opt assignment slip or notice and the conversion/bid award sheet would make it easier for the Step B Team to render a decision. Section 41.2.b.5 requires an

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employee with an opt assignment to work it for the duration. It also restricts the employee from being involuntarily removed from the assignment or volunteering to relinquish the assignment. The only exceptions to this rule is if the employee (full-time regular) successfully bids to a new assignment, volunteers for a temporary assignment as a 204b, or accepts an assignment to a higher level position under Article 25. The parties are referred to the following excerpts from page 41-12 of the JCAM:

Involuntary Reassignment and Hold-Downs. The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

National Arbitrator Bernstein (H1N-3U-C 10621, September 10, 1986, C-6461) held that an employee may not be involuntarily removed from (or denied) a hold-down assignment in order to prevent his or her accrual of overtime pay (See "Eligibility," above). For example, suppose an employee who worked eight hours on a Saturday then began a forty-hour Monday-through-Friday hold-down assignment. Such an employee may not be removed from the hold-down even though he or she would receive overtime pay for the service week.

Article 41.1.A.7 of the National Agreement states that unassigned fulltime regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenenthal ruled that an unassigned regular may not be involuntarily removed from a hold-down to fill a residual full-time vacancy (H1N-3UC 13930, November 2, 1984, C-04484) Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required, and may not volunteer, to work the new assignment until the hold-down ends.

An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N-5G-C 22641, February 24, 1987, M-0669) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

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The DRT strongly encourages management to comply with the spirit and intent of Article 41, Section 2.b.5. Non-compliance with this contractual provision may result in severe monetary sanctions in the future. Refer to the following excerpt from pages 41-14 and 41-15 of the JCAM:

In circumstances when the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to ensure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to ensure the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

GRIEVANCE FILE CONTENTS:

Informal Step A
 PS Form 8190
 PS Form 8190 Block 15, 16, 17 & 19 Attachments
 Formal Step A Request, 1 page
 Velasquez Letter
 Extension Letter, 05/30/08
 Employee Moves Report, 2 pages
 Rodriguez Statement
 Page 41-11 and 41-12 of JCAM


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 USPS Step B Representative

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 DRT File