

TB



STEP B DECISION

COPY

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

Decision: **RESOLVE**
USPS Number: G06N-4G-D 0915 3721
Grievant: **M. Hernandez**
Branch Grievance Number: 421-235-09
Branch: **SAN ANTONIO**
Installation: **N.E.C.A.**
Delivery Unit: **N.E.C.A.**
State: **Texas**
Incident Date: **03/03-04/2009**
Date Informal Step A Initiated: **03/10/2009**
Formal Step A Meeting Date: **03/24/2009**
Date Received at Step B: **03/25/2009**
Step B Decision Date: **03/26/2009**
Issue Code: **39.1100: 39.4800**
NALC Subject Code: **00199: 00308**

District:
Rio Grande

ISSUE:

Did Management violate Article 41 of the Joint Contract Administrative Manual (JCAM) when they moved PTF grievant off his hold down route and sent him to another station for all or a portion of two days? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management did violate Article 41 of the Joint Contract Administration Manual (JCAM). The DRT mutually agreed that an instruction to cease and desist violating Article 41.2.B.5 of the JCAM is appropriate. Additionally, the DRT agreed that the grievant will be compensated the lump sum of \$127.60 to represent the straight-time hours he was due under eight for each day that he should have been worked on his hold-down but was not, also in accordance with the remedy set forth in the JCAM.

NOTE: The DRT has paid the remedy through the Grievance Arbitration Tracking System, no further action is required by the local parties to secure payment.

EXPLANATION:

Management contended that the grievant was sent to another station because of a supervisor's initial review of his CA-17 medical restrictions. After the station manager reviewed the same documentation he agreed that the grievant should be allowed to work the hold down for its duration and notified the supervisor not to send the grievant to another station. Management offered to compensate the grievant for any pay loss due to his temporary reassignment to another unit and to cease and desist from sending Mr. Hernandez to another unit to work unless it was his scheduled day off.



RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-1768, FAX 210-368-8525

The Union contended that the duration of the grievant's hold down was improperly terminated when he was moved to another station. The Union contended that it was a deliberate and egregious action and referenced a conversation with a supervisor who told the steward that it was the area manager's decision to send the grievant to another station despite the two call-ins the station received that day.

Additionally, in their counter to management's statement the steward wrote, "The Union strongly supports the assertion that the actions by management was deliberate and without care or concern of carrier Hernandez' hold down. In the days and weeks following management did not send carrier Hernandez but did send another carrier who had a hold down on another route at Northeast Carrier Annex. This deliberate and blatant violation goes to show that management does not care about the promises they make or the cease and desists made for one carrier, they will move on to another."

The Union requested as remedy that the grievant be paid for the hours that he did not work up to 40 at the overtime rate and at the penalty rate for the hours worked at the other station.

The DRT mutually agreed that the grievant should be compensated in accordance with the remedy set forth in the JCAM:

***Remedies and Opting.** Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4 , an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.*

As well as the following applicable language on this subject from the JCAM:

In circumstances where 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 insure 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 insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The case file did not contain any prior grievance settlements that established a cease and desist from violating this provision of Article 41. The Union's contention that it was a deliberate and/or egregious act to move the grievant was not fully supported by the case file when the confusion regarding the grievant's CA-17 was taken into account as well as the decision within 48 hours time to return the grievant to the station. Accordingly, the DRT mutually agreed that the grievant will receive a lump sum of \$74.73 for the hours worked less than eight on 3-03-09 and \$52.87 for hours less than eight on 3-04-08 for a total of \$127.60.

Grievance File Contents:

PS Form 8190
Attachment, #17, 5 pages
Item 01-13 -- hold-down request
Potter letter
Employee Everything Report, 2 pages
Management's Statement
Union's Counter Contingent
Informal Step A Request for Documentation
Informal Step A Form 8190
Duplicate Attachment, #17, 5 pages
Duplicate Item 01-13 -- hold-down request
Duplicate Potter letter
Duplicate Employee Everything Report, 2 pages
Duplicate Management's Statement
Duplicate Union's Counter Contingent
Duplicate Informal Step A Request for Documentation



John R. Lomba
USPS Step B Representative



Emre Edwards
NALC Step B Representative

cc: **Joseph Jenkins, Manager, Labor Relations, Southwest Area**
Manny Arguello, District Manager, Rio Grande District
Gene Goodwin, NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster, San Antonio
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File