



STEP B DECISION

COPY

Step B Team:

Rio Grande

USPS: **John R. Lomba**

NALC: **Emre Edwards**

District Grieving:

Rio Grande

Decision: **RESOLVE**

USPS Number: **G06N-4G-C 1010 1350**

Grievant: **Matthew Hernandez**

Branch Grievance Number: **421-060-10**

NALC Branch #: **421**

Installation: **San Antonio**

Delivery Unit: **Northeast Carrier Annex**

State: **Texas**

Incident Date: **01/08-22/10**

Date Informal Step A: **None**

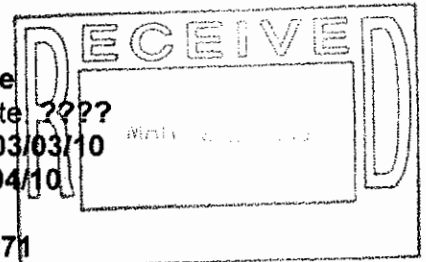
Formal Step A Meeting Date: **???**

Date Received at Step B: **03/03/10**

Step B Decision Date: **03/04/10**

Issue Code: **41.1250**

NALC subject code: **1000271**



ISSUE:

Did management violate Articles 8, 15, and/or 41 of the Joint Contract Administration Manual (JCAM) when the grievant was not allowed to work the posted hours of the grievant's hold-down? If so, what is an appropriate remedy?

DECISION:

The Step B team has mutually agreed to **RESOLVE** this grievance. The case file contained evidence that a settlement on this issue may have already been reached. Management shall comply with pertinent provisions of handbooks and manuals, including the JCAM, regarding the grievant's hold-down until such time as the duration ends. See DRT Explanation.

EXPLANATION:

The union contended that the grievant had a hold-down on a route (which began on approximately 22 August 2009) with a reporting time of 0750 but that he had been instructed to Begin Tour later than that at least ten times between the dates of 8 January 2010 and 22 January 2010. The union further contended that a previous settlement on the same issue filed for the same grievant acknowledges that 0750 is the start time of this assignment.

Management contended that soon after the grievant was awarded the hold-down on the route that he had supplied documentation from his medical provider that restricted him to eight hours per day and forty hours per week. Management further contended that this reason for scheduling the grievant later was discussed/explained with the regular shop steward Etherton and that Etherton had no issue with changing his start time(s) provided he was not moved from the route. One of management's contentions was that the incident date on the PS Form 8190 was wrong since the grievant's start time was changed as early as 12-22-09. Management additionally contended that the regular shop steward was in the workplace when alternate steward Tolle filed this grievance and that it was procedurally defective as a result.

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel, Room 1059
San Antonio, TX 78284-9998
PHONE 210-368-1760, FAX 210-368-8525

The Step B Team reviewed the arguments and documents in the case file. The Team was concerned that many contentions were made by both sides that were not adequately evidenced in the file and/or did not receive a response from the other party. For example, the previous settlement contended by the union to represent a prior settlement on the same issue for the same grievant does not contain the name of the grievant on the document. Additionally, there is no incident date that establishes the day or days of violation that this settlement remedies. It is clear that the settlement calls for a "cease and desist; respect grievant's right under JCAM to work his holddown (3350) on the posted days and the 7:30 start time." Additionally, a monetary remedy was provided in this settlement and it was written and signed on 6 February 2010. The signing date of 6 February establishes that this settlement was entered into after the incident dates of this instant grievance (42-060-10). According to the PS Form 8190, there was no Informal Step A meeting. It is not clear when the Formal Step A meeting took place since there are no signatures of either party at the bottom of the 8190 in blocks 21c or 22c. Consequently, it is not possible for the DRT to establish with certainty that the incident dates covered by grievance # 42-060-10 and grievance # 421-082-10 (settled grievance) do not overlap. Understanding that Branch 421 local grievance numbers are assigned sequentially, the local numbers of the two grievances and the date of settlement (2-06-2010) does indicate that the agreement to cease and desist that is a part of the settlement for #421-082-10 was made after the instant grievance was filed. This indication is further substantiated by the fact that the steward referenced it not as a non-compliance issue but to further establish the reporting time of the grievant.

The essence of the union's alleged violation is that the grievant was improperly not allowed to work the hours of the opted assignment. Though some pertinent excerpts on this issue were included in the file, other applicable passages were not and include the following from the JCAM:

In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3. 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.

As previously detailed, management contended that the regular steward, B. Etherton, was present in the workplace at the time this grievance was filed and that the alternate steward did not have the authority to file this grievance as a result. However, the Informal Step A Request for Documentation and Steward Time form in the case file establishes that the steward both requested information and notified management of the request to meet at Informal Step A on 1-22-10. The essence of management's argument on this issue is that regular steward Etherton was present during the incident date(s) of this grievance as opposed to the filing date of this dispute. Documents in the file established that steward Etherton was in the workplace from January 2-8, 2010 (PP2 week 1). There were no documents in the file that established whether or not steward Etherton was in the workplace on the filing date of this grievance (1-22-10). Both regional awards submitted by

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel, Room 1059
San Antonio, TX 78284-9998
PHONE 210-368-1760, FAX 210-368-8525

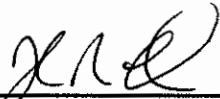
management on this issue address the filing date and/or work performed on grievances as the determining factor in the alternate steward procedural issue, not the incident date that gave rise to the grievance.

Management's contentions alluded to an eight-hour per day, forty hour per week limitation recommended by the grievant's doctor but the case file was devoid of any document that would have established any medical restrictions of the grievant that might have limited his availability to perform the duties of the assignment. Similarly, the case file was devoid of any evidence, absent the contention itself, that this issue was discussed with another steward and previously settled nor did management address the PS Form 8190 in the file that was purported to have settled this issue during a different timeframe.

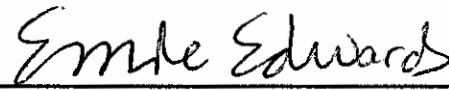
The union did not address or rebut management's contentions regarding the eligibility of the alternate steward to have filed this grievance, contentions regarding the grievant's restrictions, contentions about an incorrect incident date, or contentions regarding prior discussion on this issue with regular steward Etherton.

Grievance file content:

PS Form 8190
Mutual Extensions, 3 pages
Request for Formal Step A Meeting
Union Contentions, 2 pages
Item 0-13, Hold-down request
PS Form 1564-A
Settlement of Grievance # 421-082-10
Employee Everything Report, 11 pages
Informal Step A Request for Documentation, 2 pages
Management's contentions, 3 pages
Routing Slip – Vaughn/Vaughn
Hours Type Inquiry Report, 2 pages
Employee Everything Report - Hernandez, 7 pages
Employee Everything Report - Etherton, 3 pages
Hours Type Inquiry Report, 2 pages
Dorshaw award, 4 pages
Johnson award, 13 pages



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
Kathy Baldwin, NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster, San Antonio, Texas
NALC Branch President
USPS Formal A Representative, (S. Vaughn)
NALC Formal A Representative, (R. Tolle)
DRT File