



STEP B DECISION

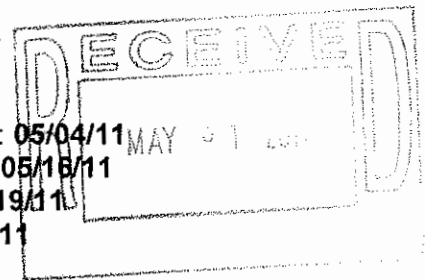
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USPS:
Rene Benavidez
NALC:
David W. Colgrove

District:
Rio Grande

Formal A Representatives:
USPS
A..Jasso
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T. Martin

Decision: **RESOLVE**
USPS Number: **G06N-4G-C 1121 0516**
Grievant: **Edward Raganot**
Branch Grievance Number: **421-263-11**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Highland Hills**
State: **TX**
Incident Date: **04/22/11**
Date Informal Step A Initiated: **05/04/11**
Formal Step A Meeting Date: **05/16/11**
Date Received at Step B: **05/19/11**
Step B Decision Date: **05/26/11**
Issue Code: **41.3110**
NALC Subject Code: **100047**



ISSUE:

Did management violate Article 41 of the national Agreement when the grievant was not allowed to work the schedule/hours of his opt assignment? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team, (DRT), agree to **RESOLVE** this grievance. Management violated Article 41 by not allowing the grievant to work the scheduled hours for his opt assignment. The grievant is awarded a lump sum taxable payment of \$210.00 which will be entered by DRT into GATS, no further action is necessary. See DRT explanation below.

EXPLANATION:

The union contends the grievant has s hold-down (opt) on route 43 since November 2008. (Attachment U4). On Friday, 04/22/11, the grievant at the beginning of the day was near 52 hours for the week. The grievant cased routes 41, 42, 43 and 49 according to the Route/Carrier Daily Performance/Analysis Report.

The bottom line according to the Performance Report, the grievant worked 1:56 on route 43. The route was projected at 8:11 for the day and took a total of 8:58 to complete according to the Route/Carrier Daily Performance/Analysis report. Work over 8 hours is not guaranteed, therefore, the grievant is entitled to 8 hours work on route 43. That leaves 6 hours 4 minutes he is entitled pay for.

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Remedy requested at the informal Step A was to pay the grievant 4 hours of penalty overtime, reducing from the entitled amount for route 43 of 6:04. The informal Step A checked with upper management and offered 3 hours. I informed the Informal Step A that I had already reduced the amount from 6 to 4 hours and would not go further. The grievant is entitled to work the hours of the route up to 8 hours on that assignment. Because he was working on other routes he would be entitled to the 6:04 for pay.

The JCAM states on page 41-14 & 15:

Schedule Status and Opting. Employees on hold-downs are entitled to work the **regularly scheduled days and the daily hours of duty of the assignment.** (See H8N-1M-C 23521, June 2, 1982, M-00239.) These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the **appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.**

An employee who successfully opts for a hold-down assignment is said to be **guaranteed the right to work the hours of duty and scheduled days** of the regular carrier. It must be noted, however, that days off are "assumed" only in the sense that a hold-down carrier will not work on those days unless otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to not work on non-scheduled days. Of course, this is the same rule that applies to the assignment's regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

Additional Employee Everything Reports and Overtime Alert Report are submitted to show comparison of hours worked overtime and non-overtime employees.

The union request as remedy to award the grievant the 6 hours he was entitled to under the opt assignment.

Management contends that the grievant had worked 51.75 hours on week 2 PP 09 2011 and was going to go into Penalty Overtime. Was working four hours to manage the work load and thus eliminated the Penalty Overtime on April 22, 2011.

Management contends that Article 3 of the National Agreement gives management the exclusive to determine the methods, means, and personnel to maintain the efficiency of the unit for the good of the postal Service.

Highland hills on April 22, 2011 had three open routes. The unit had to split two routes and used 43.34 hours of overtime.

The postal Service has lost 2.9 Billion dollars in Quarter one of the FY 2011. The Postal Service can ill afford to pay Penalty Overtime when regular time can be used to show a savings. The grievant is still a PTF employee. The fact that the employee used the option to place a hold down on a vacant position does not make him a regular employee.

The DRT considered the detailed contentions presented by both parties and the JCAM is very clear on the methods and means of opting. Several references will be cited in this decision.

Article 41, starting on page 41-12 of the JCAM:

Duration of Hold-Down. Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee "shall work that duty assignment for its duration." An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail.

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-06461) 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.**

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. **Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week.** Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day.

A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, **unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment.** Additionally, the route of the "holddown" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

Documentation within the case file showed that a Transitional employee (TE) carried the additional time on route 43.

The case file indicated from the Everything report that the grievant worked 4 hours of which only 1.68 was on his opt assignment. The grievant by virtue of his opt assignment

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was entitled to 8 hours on that assignment unless one of the above provisions were used. They were not; therefore the grievant is awarded a lump sum taxable payment of \$210. Management will comply with Article 41 governing opt assignments.

Management cited Article 3 which reads in part:

*The Employer shall have the exclusive right, **subject to the provisions of this Agreement** and consistent with applicable laws and regulations:*

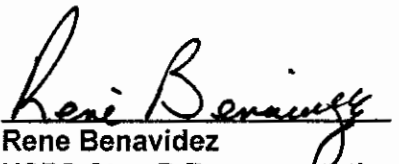
A. To direct employees of the Employer in the performance of official duties;


As show above this National Agreement does not permit this action, management failed to comply with Article 41.

Grievance File Contents:

PS Form 8190
Table of Contents
Union contentions
Opt request
Performance/Analysis Report, 3 pgs
Employee Everything Report, 9pp
ODL list
Overtime Alert Report, 2 pgs
JCAM ref pages, 3pp
Request for Formal A, 2pp
Informal Step A Request, 2pp

Extension
Employee Everything Report, 9pp PS
ODL list
Workhour Workload report, 2pp
Overtime Alert Report, 2 pgs
Opt request
Performance/Analysis Report, 3 pgs
Management Contentions
Request for Formal A
Article 3 NA


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DRT File