



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVED</u>
NALC – Bradley K. Ramey	USPS Number:	G11N-4G-C 14048729
USPS – Deborah J. Mejías	Grievant:	Class Action
	Branch Grievance Number:	421-995-13
	Branch:	421
	Installation:	San Antonio
	Station:	Cedar Elm
District:	State:	Texas
Rio Grande	Incident Date:	10/28/13
	Date Informal Step A Initiated:	11/07/13
	Formal Step A Meeting Date:	11/21/13
	Date Received at Step B:	01/02/14
Step A Designees:	Step B Decision Date:	01/08/14
USPS – Michael Moreno	Issue Code:	41.2010
NALC – Michael Irizarry	NALC Subject Code:	600198
	Original Step B Received Date:	11/25/13
	Date sent to Assisting Team:	12/31/13

ISSUE:

Did management violate Article 41 of the National Agreement when they moved T-6 Olivas off his string to bump a CCA carrier with a hold down bid? If so, what is the proper remedy?

DECISION:

The Dispute Resolution Team has **RESOLVED** this grievance finding management violated Article 41 in the instant case. Management is reminded of their obligation to adhere to the language in Article 41.2.B of the 2011 Collective Bargaining Agreement.

EXPLANATION:

The union at Formal A contends CCA Garcia was bumped off of a hold down when management instructed T-6 carrier Olivas to bump Garcia off of route 4936. CCA Garcia had requested and was awarded a hold down from 10/15 through 10/28 on route 4936 while the regular carrier was off on leave. A route on the T-6's string was open (route 4044), but management chose to bump the CCA off of the hold down anyway. The union provides the approved hold down request from Garcia, received by management 10/7/13, the weekly schedule, clock rings, and unit Performance Reports in support of their position.

Management at Formal A contends all delivery managers are responsible for developing and maintaining their units at a high degree of efficiency and for assuring that USPS standards are maintained. Management denies violating any provisions pertaining to Article 41, and that it is not wrong to assign a T-6 to any of their 5 assigned routes on any given day. Management acknowledges a CCA's right to opt on routes, however, the violation being addressed in Article 41 references a REGULAR carrier, which is not the case with CCA Garcia.

The Step B team agrees delivery managers are responsible for developing and maintaining their units at a high degree of efficiency and for assuring that USPS standards are maintained as management argues; however, that obligation is subject to the provisions of the Collective Bargaining Agreement. New language in Article 41.2.B.4 of the 2011-2016 National Agreement allows CCAs to opt on full-time craft assignments that will be open for five (5) days or more in the delivery unit to which they are assigned.

New language from Article 41.2.B.4 states:

"City carrier assistants may exercise their preference (by use of their relative standing as defined in Section 1.f of the General Principles for the Non-Career Complement in the Das Award) for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned that are not selected by eligible career employees."

Employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment. 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. The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

A Carrier Technician (T-6) is allowed to displace an employee who has opted on an assignment on the technician's string if none of the other routes on the string are available. The JCAM 41-13 says, *"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."*

The Step B team agrees this language applies to CCAs as well, but there is no proof there was insufficient work for the T-6 in question in this particular case. Therefore, the Step B team has determined that a contract violation occurred given this set of circumstances. The Step B team must now decide the proper remedy for this proven violation.

The JCAM provides guidance on proper remedies for certain violations, including this one.

JCAM (2009) page 41-15

Remedies and Opting. Where the record is clear that a PTF or city carrier assistant 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.

In those circumstances in which a PTF or city carrier assistant 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. [Emphasis added]


[Changes implemented by 2011-2016 National Agreement with the establishment of the city carrier assistant positions and will be enforced without regard to the actual publishing of these changes in a revised JCAM incorporating these changes – See Appendix B of the 2011 National Agreement, Page 148 - 150]

The Step B team also agrees that "CCA" employees would be handled the exact same way as the PTF example discussed in this section of the JCAM. According to the clock rings and Performance Reports provided in the file, CCA Garcia worked 91.35 hours versus 64.81 hours had the opt been properly awarded, so there is no "make whole" *monetary* remedy available to CCA Garcia.

However, because a contract violation was proven by the union, the proper remedy for this case would be an instructional resolution. Management is reminded that they must adhere to the National Agreement, specifically Article 41.2.B and that future similar violations *could* result in a monetary remedy being awarded depending on the fact circumstance of the case.



Deborah J. Mejias **01/08/14**
USPS TEAM MEMBER **Date**



Bradley K. Ramey **01/08/14**
NALC TEAM MEMBER **Date**

cc: NBA Kathy Baldwin with Original to Originating Step B Team for Copy and Distribution.

Grievance File: 8190, Union Contentions, Hold Down Request, Schedule, JCAM Excerpt, Formal A Resolutions, Extension, Clock Rings, WHWL Report by Route, Performance Reports, Employee Moves Report, Management Contentions, Pivot Plan, Union Requests.