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STEP B DECISION

Step B Team:

NALC – Bradley K. Ramey
USPS – Deborah J. Mejías

Decision:

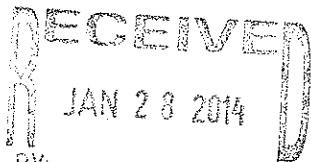
USPS Number:
Grievant:
Branch Grievance Number:
Branch:
Installation:
Station:
State:

RESOLVED

G11N-4G-C 13378521
Class Action
421-899-13
421
San Antonio
Frank Tejeda
Texas

District:

Rio Grande



Incident Date:

09/21 – 10/02/13

Date Informal Step A Initiated:

10/11/13

Formal Step A Meeting Date:

NO MEETING

Date Received at Step B:

01/02/14

Step A Designees:

USPS – Bertha Mertz
NALC – Tony Boyd

Step B Decision Date:

01/16/14

Issue Code:

41.2010

NALC Subject Code:

600198

Original Step B Received Date:

11/26/13

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; a one-time lump sum payment to the CCAs listed below was determined to be the appropriate remedy in accordance with page 41-15 of the JCAM.

Carrier	EID	Pay
Seale, S	04094400	\$109.00
Vasquez, Jr.	04223141	\$43.00

EXPLANATION:

The union at Formal A contends several CCAs were instructed to report to work later than the starting times for the routes they had hold down bids on. Several CCAs submitted statements in the file stating they were not allowed to case the assignments they had hold down bids on. The NALC rep claims management said in the Informal A meeting, "CCAs come in at different times, they are not regulars. We make the determination when they report to work. It does not matter if they have a hold down assignment."

Management at Formal A failed to meet as agreed and did not provide any evidence or contentions to support their position in this case.

The Step B team carefully reviewed the evidence and documentation provided in the file to ensure every effort was made to meet at Formal A and resolve this issue at the lowest possible step. The grievance file contains numerous extensions, e-mail correspondence, and obvious attempts to meet, but no Formal A meeting ever occurred.

The local parties are reminded that it is the union's obligation to request grievance meetings in a timely manner, and management's responsibility to name the date, time and location for the meeting within DRP time limits.

As to the merits of the case – It appears in this case management did not understand CCA hold down rights. The 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 MOU, Re. City Carrier Assistant) 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. With that said, PTF's are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone such as when the route does not provide eight hours work due to pivoting or "undertime".

The other exception to this rule is that a regular carrier could be allowed to displace an employee who has opted on an assignment, including a Carrier Technician (T-6) 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 a full-time employee 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. Fortunately, 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 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 provided in the file, only CCAs Seale and Vasquez worked less than 40 hours during week 2 of pay period 21, 2013, and were not scheduled into work hours of duty of their hold-down assignments.

The file fails to support Management's decision to schedule these two employees in at a later time than the assignment for which they held a hold-down. Therefore, each will be paid a one-time lump-sum payment in GATS by the Step B team for the days in which they were scheduled improperly and worked less than eight hours.

There is no "make whole" *monetary* remedy available to CCAs Blackwell, Garcia, Trejo, Falcon, Machado, or Gomez.



Deborah J. Mejias **01/16/14**
USPS TEAM MEMBER **Date**



Bradley K. Ramey **01/16/14**
NALC TEAM MEMBER **Date**

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

Grievance File: 8190, Formal A Correspondence, Union Contentions, Management Response to Information Request, Information Request, Union Contentions, Additional Information Requested, Shop Steward Statement, CCA Statements, Boyd Statement, CCA Clock Rings, Remedy Request, Extension, Designation Letter, Table of Contents.