

DALLAS DISTRICT DISPUTE RESOLUTION TEAM

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Kimetra Y. Lewis  
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RESOLVED



STEP B DECISION

Step B Team: Kimetra Lewis  
James Chandler

Grieving District:  
Rio Grande

District: Dallas

Formal Step A Parties

NALC: John Kruthof  
USPS: Michael Moreno

Decision: RESOLVED

USPS Number: G11N-4G-C 14285870

Grievant: Class Action

Branch Grievance Number: 421-520-14

Branch Number: 421

Installation: San Antonio

Delivery Unit: Cedar Elm

State: Texas

Incident Date: 06/07 – 07/05/2014

Date Informal Step A Initiated: 06/21/2014

Formal Step A Meeting Date: 08/29/2014

Date Received at Step B: 09/05/2014

Step B Decision Date: 09/18/2014

USPS Issue Code: 15.000/41.3130

NALC Issue Code: 505000/600198

Original Step B Received Date:

Date Sent to Assisting Team:

ISSUE:

- 1) Did Management violate Articles 3, 15, 19 and 41 of the National Agreement by denying CCA Snipes the opportunity to opt on Routes 4949 and 4029? If so, what is the appropriate remedy?
- 2) Did Management violate Article 15 of the National Agreement when Management failed to comply with prior grievances decisions? If so, what is the appropriate remedy?

DECISION: The Dispute Resolution Team (DRT) agreed to **RESOLVE** this grievance. A violation occurred. Management must cease and desist with failing to award properly submitted requests for hold-down (opt) assignments in accordance with Article 41 of the National Agreement. For this violation, Carrier Snipes will be compensated a lump sum amount of \$195.00. The lump sum amount will be input into GATS at the Step B level.

EXPLANATION: CCA Snipes exercised the rights under Article 41 by submitting a request to opt on Route 4949 during its vacancy for the weeks of June 7, 2014 through June 20, 2014. However, instead of Management honoring the request of CCA Snipes, the carrier was sent to four other stations to work during this time

period. CCA Snipes also exercised his rights under Article 41 by submitting a request to opt on Route 4029 during its expected vacancy for the week of June 23, 2014 through July 5, 2014. Yet, on June 20<sup>th</sup>, Management transferred and reassigned CCA Snipes to AMF Station.

The Union argued Management violated Article 41 of the National Agreement by not awarding Routes 4949 and 4029 to CCA Snipes. The Union also argued that Management failed to comply with previous grievance decision by denying CCA Snipes the request to opt on Routes 4949 and 4029.

Management argued CCA Snipes had recently reached his 90 day probationary tenure and had not been trained on casing mail and the responsibilities entailed on maintaining a regular route. Management argued each route has a T-6 who could be utilized to case and carry those particular routes with CCA Snipes performing the street duties when available. Management further argued that CCA Snipes was moved to the AMF on a permanent basis due to the work availability at that station on June 20, 2014.

According to Article 41 of the National Agreement:

**41.2.B.3** Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.

5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

The JCAM provides the following:

**Opting on Temporary Vacancies.** Article 41.2.B.3, 41.2.B.4 and 41.2.B.5 provide a special procedure for exercising seniority in filling temporary vacancies in full-time duty assignments. This procedure, called "opting," allows carriers to "hold-down" vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days. Full-time reserve, full-time flexibles and unassigned full-time letter carriers may opt on vacancies of fewer than five days where there is an established local past practice. (Article 41.2.B.3).

**Eligibility for opting.** Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, part-time flexible carriers, and city carrier assistants may all opt for hold-down assignments. Opting eligibility for CCAs is further addressed by the parties' joint Questions and Answers 2011 USPS/NALC National Agreement, dated March 6, 2014. The complete joint Q&As are found on JCAM pages 7-20 through 7-30.

**65. Is there a waiting period for a new CCA (no former experience as a career city letter carrier or city carrier transitional employee) before the employee can opt on a hold-down?**

Yes, 60 calendar days from the date of appointment as a CCA. Once the CCA has met this requirement there is no additional waiting period for applying for/being awarded a hold-down when the employee is converted to career.

Some employees are not permitted to opt. Probationary employees may not opt (H8N- 2W-C 7259, November 25, 1980, M-0594). However, this restriction was modified with the following question and answer from the Questions and Answers 2011 USPS/NALC National Agreement:

**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.

**Removal From Hold-Down.** There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees and city carrier assistants 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 parttime or city carrier assistant employees if there is not sufficient work available for them on a particular day (H1N-5D-C 6601, September 11, 1985, M-00097).

In such situations, the part-time flexible or city carrier assistant employee’s opt is not terminated. Rather, the employee is temporarily “bumped” on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that: A PTF or city carrier assistant, 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 “hold-down” to which the PTF or city carrier assistant opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

The opting (hold-down) rules for CCAs are further addressed by the parties’ joint Questions and Answers 2011 USPS/NALC National Agreement, dated March 6, 2014. The complete joint Q&As are found on JCAM pages 7-20 through 7-30.

#### **QUESTIONS AND ANSWERS 2011 USPS/NALC NATIONAL AGREEMENT**

**66. Is there a difference in the application of opting (hold-down) rules between part-time flexible city carriers and CCAs?**

No.

**67. Can a CCA be taken off an opt (hold-down) in order to provide a part-time flexible employee assigned to the same work location with 40 hours of straighttime work over the course of a service week (Article 7, Section 1.C)?**

Yes, a CCA may be “bumped” from an opt if necessary to provide 40 hours of straight-time work over the course of a service week to part-time flexible letter carriers assigned to the

same work location. In this situation the opt is not terminated. Rather, the CCA is temporarily taken off the assignment as necessary on a day-to-day basis.

**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. 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.


On page 41-12 of the Joint Contract Administrative Manual (JCAM);

**An employee does not become entitled to a hold-down assignment until the “anticipated” vacancy actually occurs. Thus, an employee who successfully opts for a vacancy that fails to materialize is not guaranteed the assignment.**

According to the language on page 41-12 of the JCAM, CCA Snipes was not guaranteed the opt assignment on Route 4029 until the vacancy actually occurred. It was stated that the vacancy for Route 4029 was to begin on June 23, 2014. According to the undisputed record, CCA Snipes was transferred and reassigned to the AMF Station on June 20, 2014 prior to the date of the beginning of the vacancy for Route 4029; therefore, CCA was not entitled to the hold-down assignment.

Based on the contents of the grievance file, the Dispute Resolution Team (DRT) agreed to the decision stated above.

  
Kimetra Y. Lewis  
NALC Step B Representative

  
James Chandler  
USPS Step B Representative

cc: Rio Grande District DRT

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