

**DALLAS DISTRICT DISPUTE RESOLUTION TEAM**

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# RESOLVED



**STEP B DECISION**

Step B Team: Kimetra Lewis  
Schenequa Neal

District: Rio Grande  
Deciding District: Dallas

Formal Step A Parties  
NALC: Carmichael Lewis  
USPS: Michael Gooden

Decision: RESOLVE  
USPS Number: G11N-4G-C 14322282  
Grievant: Frank Barrientes  
Branch Grievance Number: 421-775-14  
Branch Number: 421  
Installation: San Antonio  
Delivery Unit: Dobie - 78220  
State: Texas  
Incident Date: 09/17/2014  
Date Informal Step A Initiated: 10/01/2014  
Formal Step A Meeting Date: 10/08/14  
Date Received at Step B: 10/15/2014  
Step B Decision Date: 11/10/2014  
USPS Issue Code: 41.2260  
NALC Issue Code: 600198  
Original Step B Received Date:  
Date Sent To Assisting Team:

**ISSUE:** Did Management violate Article 41.2.B.4 of the National Agreement when Management removed the grievant from an opt assignment and assigned the additional work hours associated with the route to another CCA employee? If so, what is the appropriate remedy?

**DECISION:** The Dispute Resolution Team has agreed to **RESOLVE** this grievance. A violation Article 41 occurred when Management involuntarily removed the grievant from the opt assignment on Route 19042. Management must cease and desist with failing to adhere to the provisions of Article 41.2.B.4.

**EXPLANATION:** On October 1, 2014, the Union initiated a grievance on the behalf of the grievant, Frank Barrientes alleging a potential violation occurred when management removed the grievant from an opt assignment on Route 19042 by assigning the additional work hours associated with the route on September 12 to another CCA employee (J. Rosa). The Union contends the grievant was entitled the 1.55 hours worked by Carrier Rosa per the provisions of Article 41. The Union further contends Management is trying to avoid paying penalty overtime to the grievant.

Management contends that they are not trying to avoid paying penalty overtime. Management contends the grievant was not denied the opt assignment. Management contends the Union is using the DOIS projections as evidence the grievant was denied 1:55 hours of work. Management contends the DOIS projections indicate the projected hours for

Route 19042 on September 12, 2014 to be 7:28 hours; the grievant actually worked 7:15 hours. Management contends Carrier Rosa did not use any time on Route 19042 on September 12, 2014. Management further contends there is no requirement to work a CCA at the penalty overtime rate when the work can be performed at the regular overtime rate.

Article 41.2.B.4 reads as follows:

*4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and 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. **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.***

There was no dispute among the parties that a request for the opt assignment was granted to the grievant. A review of the Route/Carrier Daily Performance/Analysis Report indicates that 1:55 hours of street assignment was performed by Carrier Rosa. Management advanced an argument that Carrier Rosa did not perform any of the assignment for Route 19042; however, there was no documentary evidence to validate Management's claim. A review of the clock rings for the grievant indicated that he worked 57.47 hours on Route 19042 during the week of September 6, 2014 through September 12, 2014.

Page 41-13 through Page 41-17 of the JCAM provides the following:

***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.*

***Exceptions to the Duration Clause.** There are situations in which carriers temporarily vacate hold-down positions for which they have opted—for example for vacation. Such an employee may reclaim and continue a hold-down upon returning to duty (Step 4, H4N-3U-C 26297, April 23, 1987, M-00748). If the opting employee's absence is expected to include at least five days of work, then the vacancy qualifies as a new hold-down within the original hold-down. Such openings are filled as regular hold-downs, such that the first opting carrier resumes his or her hold-down upon returning to duty—until the regular carrier returns. An exception to the duration clause for CCAs on a five-day service break between 360-day terms is 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.*

*An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N-5G-C 22641, February 24, 1987, M-00669) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.*

*An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.*

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

**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 for opting"). 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.

Article 41.1.A.7 of the National Agreement states that unassigned fulltime regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenthal ruled that an unassigned regular may not be involuntarily removed from a hold-down to fill a residual full-time vacancy (H1N-3UC 13930, November 2, 1984, C-04484). Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required, and may not volunteer, to work the new assignment until the hold-down ends.

**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 part-time 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.

Another exception occurs if the Local Memorandum allows the regular carrier on a route to "bump" the Carrier Technician to another route when the regular carrier is called in on a non-scheduled day to work on his/her own route. In such cases, the Carrier Technician 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. In such cases a part-time flexible or city carrier assistant employee's opt is not terminated. Rather, he/she is temporarily "bumped" on a day-to-day basis (Step 4, N8-N-0176, January 9, 1980, M-00154).

**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 (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.

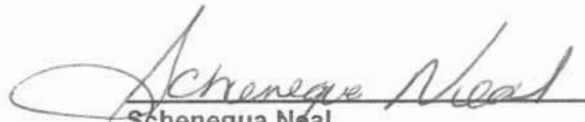
**Scheduled Days and Opting.** The distinction between the guarantee to work certain scheduled days and the right to specific days off is important. An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular 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.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down may be scheduled to work that day as well, either on or off the opted-for assignment. However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason. To do so would violate the guarantee to work all of the scheduled days of the hold-down.

**Remedies and Opting.** 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.

Based upon the record of the case file, the DRT agreed with the decision cited above.

  
Kimetra Y. Lewis  
NALC Step B Representative

  
Schenequa Neal  
USPS Step B Representative

CC: Step A Parties NALC/USPS  
Kathy Baldwin NALC NBA Region 10  
Southern Area Labor Relations  
Diana Bennett  
Darrell Jungman

Mgr. OPS  
POOM  
Mgr. HR Rio Grande District  
John Merritt

Contents:

- PS Form 8190
- NALC Formal Step A Contentions
- Formal Step A Appeal
- Carrier Schedule
- Overtime Alert Report
- JCAM Provisions
- Route/Carrier Daily Performance/Analysis Report
- Request for Documentation and Steward Time
- USPS Formal Step A Contentions
- PS Form 8190
- Request for Documentation and Steward Time
- Formal Step A Appeal
- Route/Carrier Daily Performance/Analysis Report
- Employee Everything Report