

## DALLAS DISTRICT DISPUTE RESOLUTION TEAM

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Kimetra Lewis  
NALC Representative



# RESOLVED



### STEP B DECISION

Step B Team: Kimetra Lewis  
James Chandler

District: Rio Grande  
Deciding District: Dallas

Formal Step A Parties  
NALC: Richard Gould  
USPS: Doris McDowell

Decision: RESOLVE  
USPS Number: G11N-4G-C 15352809  
Grievant: Leo Monsavaïs  
Branch Grievance Number: 421-693-15  
Branch Number: 421  
Installation: San Antonio  
Delivery Unit: Leon Valley  
State: Texas  
Incident Date: 09/23/2015  
Date Informal Step A Initiated: 10/07/2015  
Formal Step A Meeting Date: 10/15/2015  
Date Received at Step B: 10/21/2015  
Step B Decision Date: 10/30/2015  
USPS Issue Code: 41.3130/15.0000  
NALC Issue Code: 600198/505000  
Original Step B Received Date:  
Date Sent To Assisting Team:

### ISSUE:

- 1) Did Management violate Article 41 of the National Agreement when Management removed the grievant from an awarded opt assignment? If so, what is the appropriate remedy?
- 2) Did Management violate Articles 15 and 19 of the National when Management failed to comply with multiple Step B decisions regarding opting? If so, what is the appropriate remedy?

**DECISION:** The Dispute Resolution Team (DRT) has agreed to **RESOLVE** this grievance. A violation has occurred. Management must 'cease and desist' with the practice of violating Article 41.2.B.4. For management's failure to comply with prior Step B decisions, the grievant, Leo Monsavaïs, (EIN 04287163) will be compensated a lump sum amount of \$100.00 to ensure future compliance to grievance decisions regarding opting.

**EXPLANATION:** On August 31, 2015, the grievant, Leo Monsavaïs, a City Carrier Assistant, submitted a request to Management to opt on Route 38030 at the Leon Valley Station during the period of its vacancy. Receipt of the request was acknowledged by Management on that day.

The Union contends on September 23, 2015, the grievant was removed from the opt assignment and was instructed to report to Route 40027 at the Cedar Elm Station. The Union contends by their actions Management violated Article 41.2.B.4 and Articles 15 and 19 when Management failed to adhere to the multiple Step B decisions regarding opting. The Union contends the Step B decisions have issued at least two 'cease and desist' orders, provided language reminding Management of their obligation to adhere to the language in Article 41.2.B and provided monetary incentives (\$195.00) in order to encourage Management to comply; yet, Management continued to violate this agreement. For this continual violation, the Union requested that Management is issued an instructional 'cease and desist' for violating Article 41.2.B.4 and an addition the Union request that a monetary award of \$250.00 be assessed to persuade Management that they must comply with the Step B decisions; or otherwise make whole.

While the signature of a member of management is affixed to the PS Form 8190, the case file did not contain any written contentions from Management.

Article 41.2.B.4 of the National Agreement states the following:

**41.2.B.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.**

Page 41-16 and Page 41-17 of the JCAM provides:

**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.

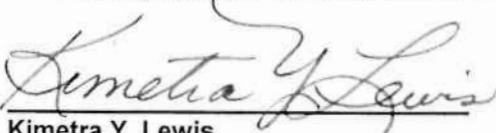
Of course, this is the same rule that applies to the assignment's regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

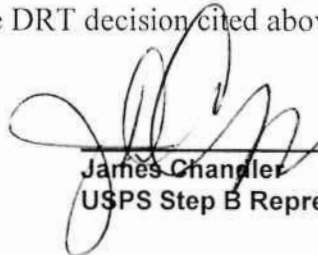
**Remedies and Opting.** Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee 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.

The monetary compensation of \$195.00 for Grievance #G11N-4G-C 14285870 referenced by the Union was awarded based on the evidence presented within that grievance file. The record of the file demonstrated that Carrier Snipes worked less hours on the assignments given to him during the weeks of June 7, 2014 – June 20, 2014 than he would have worked on Route 4949 during that same time frame; therefore, Carrier Snipes was entitled to the difference which equated to \$195.00.

In this instant case, the record indicates the grievant worked more hours at the Cedar Elm Station than he would have worked at the Leon Valley Station; therefore, an instructional 'cease and desist' was contractually in order. However, there is still the Union's argument regarding the non-compliance of the prior Step B decisions concerning Management's removal of employees from awarded opt assignments. As stated by the Union, multiple Step B decisions have been rendered for the San Antonio Installation regarding opting. The Union argued that Management is continually failing to comply with Step B decisions regarding opting. The evidence presented within the grievance file along with Management's failure to offer an explanation for their actions led to the DRT decision cited above.

  
Kimetra Y. Lewis  
NALC Step B Representative

  
James Chandler  
USPS Step B Representative

cc: Rio Grande DRT

**Contents:**

- PS Form 8190
- NALC Formal Step A Contentions
- Statement from Grievant
- Leon Valley Weekly Schedule
- Employee Everything Reports
- Route/Carrier Daily Performance/Analysis Report
- Step B Decision – G11N-4G-C 13248682

Leo Monsavais  
G11N-4G-C 15352809  
421-693-15

- Step B Decision – G11N-4G-C 14048729
- Step B Decision – G11N-4G-C 14285870
- Step B Decision – G11N-4G-C 14322282
- Step B Decision – G11N-4G-C 15124733
- Grievance Settlement – 421-457-15
- Request for Documentation and Steward Time
- Delivery Units
- Request for Documentation and Steward Time (3)
- Delivery Units
- Request for Documentation and Steward Time
- Delivery Units
- NALC Formal Step A Designation
- Request for Documentation
- Statement from Richard Gould
- Email Traffic from Richard Gould to Doris McDowell
- Request for Documentation and Steward Time
- Fax Cover Sheet
- Fax Receipt
- Request for A Formal Step A Meeting

**Payout Request History for Grievance**[HELP](#)**15352809**

no data

**Not Processed By Payroll**

- ☒ New (Not yet sent to Payroll)
- ☒ Pending (Not back from Payroll)
- ☒ Submitted (Received acknowledgment from Payroll, awaiting processing)

**Payroll Processed**

- ☒ Paid (Back from Payroll without error)
- ☒ Payroll Error (Back from Payroll with error)

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Show History

**New, Pending and Submitted Requests**

Status	GATS Code	App Seq	Request Amount	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested	
New		1	\$100.00	MONSIVAIS	LEO	5741	PP21 FY2015	VCMRB0	10/30/2015	<a href="#">Details</a>
Total New: \$100.00										
Total Pending: \$0.00										
Total Submitted: \$0.00										

**Paid and Errors from Finance**

Status	Error or Warning	App Seq	Request Amount	Amount Paid	PP Paid	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested
No Data											
Total Paid: \$0.00											
Total Error: \$0.00											