

DALLAS DISTRICT DISPUTE RESOLUTION TEAM

USPS Representative

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Darrell Pope
NALC Representative



RESOLVED



STEP B DECISION

Step B Team: Darrell Pope
James D. Chandler

District: Rio Grande
Deciding District: Dallas

Formal Step A Parties
NALC: Erin McLaughlin
USPS: Francisco Cazares

Decision: RESOLVED
USPS Number: G11N-4G-C 16192709
Grievant: Mitchell Clem
Branch Grievance Number: 421-321-16
Branch Number: 421
Installation: San Antonio
Delivery Unit: AMF
State: Texas
Incident Date: 04/08/2016
Date Informal Step A Initiated: 04/20/2016
Formal Step A Meeting Date: 04/21/2016
Date Received at Step B: 05/02/2016
Step B Decision Date: 05/03/2016
USPS Issue Code: 41.3130
NALC Issue Code: 100271
Original Step B Received Date:
Date Sent to Assisting Team:

ISSUE: Did Management violate Article 41.2.B of the National Agreement by **not** allowing the Grievant to work the scheduled hours of the opt/hold down assignment on April 8, 2016? If so, what is the appropriate remedy?

DECISION: The Dispute Team (DRT) has mutually agreed to **RESOLVE** this grievance. Management did violate the national agreement by denying the grievant the right to work the assignment on regular scheduled days. Management will **cease and desist** from violating (the provisions of Article 41.2.B) opting rights of CCA employees and will adhere to the national agreement.

EXPLANATION: The grievant was awarded an opt (hold-down) on route 16043. During the week of April 2 – 8, 2016. Management scheduled the grievant to work the non-schedule day of the route which was Monday April 4th 2016 and told the grievant not to work the regular schedule day on April 8th 2016.

Union's Position:

The union contended management violated the DAS award when they improperly removed the grievant from their hold-down OPT assignment.

Management's Position:

Management argues the union states they have verbally informed management and now want to file for non-compliance. "It is unknown to me but I will cease and desist this type of violation."

According to Article 41 of the National Agreement:

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.**

General opting 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.

According to Step 4 Agreement, M-01833:

66. Is there a difference in the application of opting (hold-down) rules between part-time flexible city carriers and CCAs? No.

68. What is the pecking order for awarding hold-down assignments? Hold-down assignments are awarded to eligible career letter carriers by highest to lowest seniority first and then to eligible CCAs by highest to lowest relative standing in the installation.

Although Article 12.3 of the National Agreement provides that "an employee may be designated a successful bidder no more than seven (7) times" during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, M-00513) establishes that these restrictions do not apply to the process of opting for vacant assignments. Moreover, opting is not "restricted to employees with the same schedule as the vacant position" (H1N-1J-C 6766, April 17, 1985, M-00843). **Rather, an employee who opts for a hold-down assignment assumes the scheduled hours and non-scheduled day of the opted assignment. (See "Schedule Status and Opting".)**

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.

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.

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.

Out-of-Schedule Premium. Article 8.4.B refers to the out-of-schedule premium provisions contained in the ELM Section 434.6. They provide that out-of-schedule premium is paid at the postal overtime rate to eligible full-time bargaining unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management.

Only full-time regular and full-time flexible letter carriers may receive out-of-schedule pay. **However, this rule does not preclude part-time employees from receiving a monetary remedy for contractual scheduling violations when warranted by fact circumstances (e.g. violations of Article 41.2.B.4).** A full-time flexible employee’s “regular” schedule for the purpose of this provision is the schedule established on the preceding Wednesday (Article 7).

Rules for out-of-schedule Premium. In the letter carrier craft the out of-schedule premium provisions *are applicable only in cases where management has given advance notice* of the change of schedule by Wednesday of the preceding service week. In all other cases a full-time employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof and the regular overtime rules apply—not the out-of-schedule premium rules.

JCAM PAGE 41-17

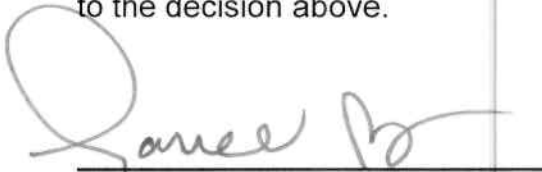
Remedies and Opting. Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a “**make whole**” remedy in which the employee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

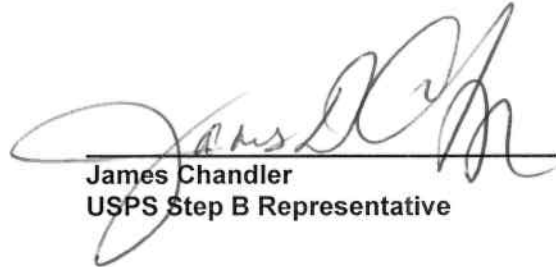
In those circumstances in which a PTF or city carrier assistant worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional **"cease and desist"** resolution would be appropriate. This would also be an appropriate remedy in those circumstances 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.

The file shows the grievant worked 54.13 hours for the week and there is no documented evidence of a previous violation. Therefore based on the documentation presented in this grievance the Dispute Resolution Team agreed to the decision above.



Darrell Pope
NALC Step B Representative



James Chandler
USPS Step B Representative

cc: Step A Parties NALC/USPS

Contents: PS Form 8190, Union Contentions, Grievant's Statement, Calendars, Table of Contents, Formal Step A Request Form, Informal Step A Request Forms, Employee Moves Report, Carrier Schedule, End.