

DALLAS DISTRICT DISPUTE RESOLUTION TEAM

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RESOLVED



JUL - 6 2016
BY: _____

STEP B DECISION

Step B Team: Laura Maglaris
Schenequa Neal

Decision: RESOLVED

USPS Number: G11N-4G-C 16286061

Grievant: Class Action

Branch Grievance Number: 421-266-16

Branch Number: 421

Installation: San Antonio

Delivery Unit: Citywide

State: Texas

Incident Date: 4/2/2016 & continuing

Informal Step A Meeting Date: 4/11/2016

Formal Step A Meeting Date: 5/3/2016

Date Received at Step B: 5/13/2016

Step B Decision Date: 5/25/2016

USPS Issue Code: 15.1000/41.3130

NALC Issue Code: 505000/600198

District Grieving: Rio Grande
District Deciding: Dallas

Formal Step A Parties:
Rene Benevidez, USPS
Tony Boyd, NALC

ISSUE: Did management violate Articles 3, 15, 19 and/or 41 of the National Agreement by forcing newly converted FTR carriers to assume the assignments to residual vacancies to which they were assigned upon conversion to FTR, thereby removing them from their opted assignments? If so, what is the appropriate remedy?

DECISION: The DRT **RESOLVED** this grievance. The case file established violations occurred when newly converted FTR carriers were forced to assume the assignments to which they were assigned upon conversion to FTR. Management will cease and desist removing carriers from opted assignments upon their conversion to career status and assignment to a residual vacancy. Management will adhere to the following:

JCAM, Page 41-14:

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.

All carriers that were improperly removed from an opted assignment will be returned to that assignment if it has not been permanently filled either by the return of the incumbent carrier or by award of a bid pursuant to Article 41.1.C.1. In addition, the following carriers will be paid a \$100.00 lump sum to be input into GATS at the Step B level.

NAME	EMPLOYEE ID	AMOUNT
Mark Ramos, Jr.	04299134	\$100.00
Daniel Leech	04255387	\$100.00
Erin McLaughlin	04302698	\$100.00
Emilio Venegas	04298245	\$100.00
German Lizalde	04292173	\$100.00
Roger Navaira	04288615	\$100.00

EXPLANATION: Background: On 4/2/2016, eighteen (18) CCA carriers were converted to career Full Time Regular (FTR) status. Per Article 41.1.A.7, those carriers were allowed to exercise their preference by use of their seniority as to which residual vacancy they would be assigned.

JCAM, Page 41-4:

7. Unassigned full-time carriers and full-time flexible carriers may bid on duty assignments posted for bids by employees in the craft. If the employee does not bid, assignment of the employee may be made to any vacant duty assignment for which there was no senior bidder in the same craft and installation. In the event there is more than one vacancy due to the lack of bids, these vacancies may be filled by assigning the unassigned full-time carriers and full-time flexible carriers, who may exercise their preference by use of their seniority. In the event that there are more unassigned full-time carriers and full-time flexible carriers than vacancies, these vacancies may be filled by assigning the unassigned employees by juniority.

Ultimately, six (6) of those carriers were involuntarily removed from their opted assignments and instructed to report to the station of the routes to which they had been assigned.

The Union contends management violated Article 41.2.B.5 when they removed those six (6) carriers from their opted assignments. The Union contends management violated Article 15 by not complying with previous Step B decisions which ordered management to cease and desist removing carriers from opted assignments. The Union contends this is a blatant and repetitive violation.

Management contends there was no violation, as this grievance does not pertain to Unassigned Regular carriers (UAR); but does apply to former CCAs who were identified for promotion and polled by their relative standing to select an assignment from a list of residual vacancies. Management contends the question in this grievance is whether or not the soon to be promoted carriers may continue to serve as an opting employee as CCAs or whether they are to assume the duties of their full time duty assignments by preference. Management contends there is a loss of efficiency and flexibility when formerly non-career employees are promoted and fail to report to their preferential bid assignment. Management contends the National parties did not intend for management not to have the

latitude to require newly promoted CCAs to report to their new full time assignments. Management contends the Union's interpretation creates an undue restriction and burden on the agency. Management contends the duration clause has long been a hindrance to promoting the efficiency and economical operation when it has been improperly interpreted at so many levels. Management contends the exercise of preference by seniority per Article 41.1.A.7 constitutes a "bid"; therefore, the opt is terminated and they must be placed into the new position.

The DRT determined the case file established that violations did occur. It is undisputed that the carriers were converted to FTR status effective 4/2/2016. It is undisputed that six (6) of the converted carriers had been awarded an opt on a vacant duty assignment per Article 41.2.B.4. It is undisputed that prior to or upon their conversion to FTR status, these carriers were allowed to exercise their preference by use of their seniority as to which residual vacancy they would be assigned. This does not constitute a "bid". There is a clear distinction between bidding on a route and being assigned to a route.

The file contains a listing of residual vacancies, which triggered the conversion of the CCAs to career FTR. There are no contractual provisions for posting residual vacancies for bid once they have been posted and no bids received. These routes were not posted for bid; the newly converted carriers were assigned to these routes and were allowed per Article 41.1.A.7 to exercise their seniority to select which route to which they would be assigned. The language on page 41-14 of the JCAM is clear and unambiguous regarding involuntary removal from an opted assignment.

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.**

The file also contains numerous Step B decisions for the San Antonio Installation regarding failing to honor an opt, improper removal from an opt and the exact same issue as presented in this grievance in Grievance #G06N-4G-C 08252221. The remedies range from instruction to management, cease and desist orders and monetary awards. Contained in the file is an identical case from the San Antonio Installation; Grievance #G06N-4G-C 08252221, DRT members USPS John Lomba and NALC Tony Boyd rendered a decision which ordered management to cease and desist this practice, specifically:

ISSUE: Did management at Laurel Heights Station violate Article 41 of the Joint Contract Administration Manual (JCAM) when the grievants were removed from their opt assignments and forced to report and work on a new residual vacancy assignment? If so what is the remedy?

*DECISION: The Dispute Resolution Team (DRT), Step B, mutually agreed to **RESOLVE** this grievance. Management did violate Articles 41, Section 2.b.5 in this instant case and is instructed to cease and desist this practice immediately. Upon receipt of this decision Carriers T. Garcia and M. Rodriguez will resume their respective opt assignments on Routes 1217 and 1228. They will remain on the opt*

assignment for its duration until the appropriate Article 41 provisions are met to terminate it. See DRT Explanation for the summary.

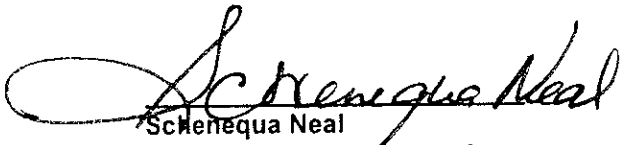
JCAM, Page 41-16:

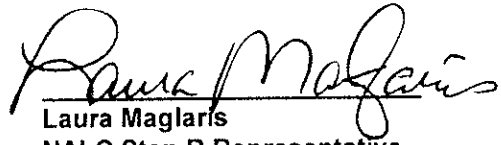
Remedies and Opting. Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would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

Based on the contents of the file, this DRT agreed upon a compromise settlement per Article 15.2 Step B (c).


Schenequa Neal
USPS Step B Representative


Laura Maglaris
NALC Step B Representative

cc: Rio Grande District DRT

Contents: 8190, Seniority Report, Residual Assignments and Awards, NALC Requests, Email Correspondence, Steward Certification, USPS Formal Step A Designation, NALC Contentions, Previous DRT Decisions, USPS Contentions, M-00669, Grievants' Statements, Text Messages

Payout Request History for Grievance 16286061

[HELP](#)

Not Processed By Payroll		Payroll Processed	
<input checked="" type="checkbox"/> New (Not yet sent to Payroll)	<input checked="" type="checkbox"/> Paid (Back from Payroll without error)	<input checked="" type="checkbox"/> Pending (Not back from Payroll)	<input checked="" type="checkbox"/> Payroll Error (Back from Payroll with error)
<input checked="" type="checkbox"/> Submitted (Received acknowledgment from Payroll, awaiting processing)			
<input type="button" value="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	Buttons
New		2	\$100.00	LEECH	DANIEL	1772	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
New		2	\$100.00	NAVAIRA	ROGER	4922	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
New		2	\$100.00	LIZALDE	GERMAN	7974	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
New		2	\$100.00	VENEGAS	EMILIO	2177	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
New		2	\$100.00	RAMOS	MARK	5133	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
New		2	\$100.00	MCCLAUGHLIN	ERIN	8809	PP8 FY2016	KXYCDG	05/25/2016	Details Delete Edit
Total New: \$600.00										
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	Buttons
No Data												