



RESOLVE



STEP B DECISION

Step B Team:

USPS:

Alex Zamora

NALC:

Jim Ruetze

District:

Rio Grande

USPS Formal A:

Norma Olsen

NALC Formal A:

Raul Reyes

Decision:

USPS Number:

Grievant:

Branch Grievance Number:

Branch:

Installation:

Delivery Unit:

State:

Incident Date:

Informal Step A Meeting:

Formal Step A Meeting:

Received at Step B:

Step B Decision Date:

Issue Code:

NALC Subject Code:

RESOLVE

G11N-4G-C 1718 0523

Michael Comer

421-1105-16

421

San Antonio

NECA

TX

09/29/2016

10/12/2016

10/27/2016

11/07/2016

11/21/2016

41.3130

100271

ISSUES:

Did management violate Article 41 of the National Agreement by removing the grievant from his hold down? If so, what remedy is appropriate?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation. The grievant had successfully opted for a temporarily vacant duty assignment; as such he was entitled to work the hours and days of the opted-for assignment for the duration of the vacancy. Management is obligated to comply with prior Step B decisions honoring the opting provisions in Article 41. The grievant is compensated a lump sum of \$204.00, which has been paid at Step B through GATS. See the DRT Explanation below.

EXPLANATION:

The grievant in this case is Michael Comer, a City Carrier Assistant (CCA) assigned to Northeast Carrier Annex Station (NECA) in San Antonio, TX. The grievant was holding down Route 3351 at Leon Valley under Article 41.2.B.4 of the National Agreement. On Wednesday, 09/28/2016 management notified the grievant not to come in the following day, despite the fact it would be a regularly scheduled day for route 3351.

The union filed this grievance to challenge the propriety of removing the grievant from his hold-down. Unable to achieve a resolution through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends an employee holding down a route under Article 41.2.B.4 shall work the assignment for the duration of the vacancy. The union contends the vacancy had not ended on 09/29/2016, so the grievant should have worked it. The union contends none of the conditions required for removing an employee from a hold-down had been met. The union further contends management has been told in prior Step B decisions to cease and desist removing employees from their hold-downs.

The union requests that management once again be instructed to cease and desist removing employees from hold-downs. The union requests the grievant be compensated for the hours he would have worked had he reported on 09/29/2016. The union also requests, in an effort to persuade management to comply with its requirements, an additional monetary remedy of \$250.00, or whatever the Step B team feels is appropriate.

Management met at Formal Step A, but the case file as appealed by the union did not contain management contentions. A separate envelope arrived at the DRT office with management's contentions included. The DRT placed a joint call to try and get an explanation for why two copies of the grievance were sent to Step B. Based on that call, the DRT determined the Formal Step A meeting had concluded without management's contentions being shared with the union, yet management's Formal Step A representative mailed them to the DRT for consideration. Because the contentions had not been shared with the union at the Formal Step A meeting, the DRT did not consider the file that had been sent by management.

The DRT reviewed the case file and determined management was in violation of not only Article 41.2.B.4, but Article 15 as well due to the prior Step B decisions in the file. The JCAM offers the following relevant language concerning Article 41 and opting:

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."

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 cause 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.

QUESTIONS AND ANSWERS 2011 USPS/NALC NATIONAL AGREEMENT

69. Will the 5-day break in service between 360-day terms end an opt (hold-down)?

No.

70. Does the 5-day break at the end of a 360-day appointment create another opt (hold-down) opportunity?

Only where the break creates a vacancy of five workdays. In such case the opt is for the five day period of the break.

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. (Emphasis added)

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).

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

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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.

In a 1982 Step 4 settlement (M-00237), the national parties agreed to the following:

1. *A temporary vacancy of five (5) days or more that includes a holiday may be opted for, per Article 41, Section 2.B.*

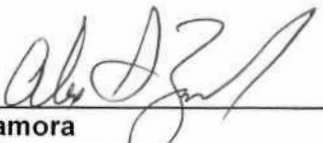
Additionally, page 15-8 of the JCAM includes the following relevant language regarding Step B decisions:

A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.

After reaching its decision, the DRT read the contentions that were sent separately by management. Those contentions acknowledge management changed the grievant's day off, but indicated it had been done to give the grievant a day of rest. Management also seemed to indicate that working the grievant more than six days would contribute to an accident.

The DRT reminds management of the above language and notes the grievant worked on Sunday during the service week in question. While commending management for its commitment to safety, the DRT observed that if management had not scheduled the grievant to work Sunday, he could have gotten rest on that day instead of a regularly scheduled day on his opted-for assignment.

Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Alex Zamora
USPS Step B Representative



Jim Ruetze
NALC Step B Representative

cc:

LR Manager, SW Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Branch President
NALC Formal Step A Designee
Manager, Rio Grande District
DRT File
Postmaster, San Antonio, Texas

Grievance File Contents

PS Form 8190
Union Contentions
Time Limit Extensions
Request for Formal Step A
Request for Information & Meeting
Weekly Schedule

Employee Everything Report
Performance/Analysis Report
Prior Step B Decisions
E-mail Traffic (Boyd/Carr)
Prior Formal Step A Agreement

Payout Request History for Grievance[HELP](#)

17180523

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		2	\$204.00	COMER	MICHAEL	9435	PP20 FY2016	KBY9N0	11/23/2016	Details
Total New: \$204.00										
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											