



RESOLVE



STEP B DECISION

Step B Team:
USPS:
Alex Zamora
NALC:
James D Kimbrell

District:
Rio Grande

USPS Formal A:
Arnulfo Jasso
NALC Formal A:
Katherine L Ruffo

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 1734 1572
Analicia Nanez-Guerra
421-1331-16
421
San Antonio
Highland Hills
TX
12/16/2016
12/30/2016
01/25/2017
02/03/2017
02/09/2017
41.3130
100271



ISSUES:

Did management violate Article 41, Section 2.B.4 and 5 of the National Agreement by not permitting City Carrier Assistant (CCA) Analicia Nanez-Guerra to work the scheduled hours of her opt/hold-down assignment on December 16, 2016, at the Highland Hills station in San Antonio? If so, what is the appropriate remedy?

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, she 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 Analicia Nanez-Guerra, a City Carrier Assistant (CCA) assigned to Highland Hills Station in San Antonio, TX. The grievant was holding down Route 2357 at Highland Hills under Article 41.2.B.4 of the National Agreement. On Friday, 12/16/2016 management notified the grievant that she was being sent home, despite the fact it was a regularly scheduled day for route 2357.

The union filed this grievance to challenge the propriety of removing the grievant from her 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 12/16/2016, 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 she would have worked had she been allowed to work on 12/16/2016. The union also requests, in an effort to persuade management to comply with its requirements, an additional monetary remedy of \$100.00, or whatever the Step B team feels is appropriate.

Management contends that if the grievant had been allowed to work on the day of infraction the grievant would have gone into a penalty overtime status. Management contends that Article 3 gives them the exclusive right to manage, subject to the provisions of the National Agreement. Management contends that the grievant is a CCA and worked on Sunday of the service week so a day off had to be provided to avoid penalty overtime.

The DRT reviewed the case file and determined management was in violation of not only Article 41.2.B.5, 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 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.*

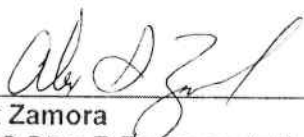
Additionally, page 15-8 of the JCAM includes the following relevant language regarding Step B decisions:

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.

Management argued that the grievant would be in a penalty overtime status had they not changed her schedule. The DRT reminds management that the violation occurred in December and penalty overtime is excluded during that month. Relevant language from page 8-8 of the JCAM states:

Penalty Overtime for Other Employees. Excluding December, Article 8.4.E requires the payment of penalty overtime at two times the base straight-time rate (Article 8.4.C) for all work beyond ten hours in a service day or 56 hours in a service week. Article 8.4.E applies to part time flexible and city carrier assistant employees. Part-time regular employees are in the same category as PTFs for penalty overtime purposes

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



Alex Zamora
USPS Step B Representative



James D Kimbrell
NALC Step B Representative

Grievance File Contents

PS Form 8190
Union Contentions (3 pgs)
JCAM Excerpt (2 pgs)
Employee Moves Report
Unit Daily Record (6 pgs)
Prior Settlement (2 pgs)
Union Information Request (2 pgs)
Formal A Meeting Request
Prior Settlements (30 pgs)

Table of Contents
Management Contentions (2 pgs)
Overtime Alert Report (2 pgs)
Employee Everything Report (2 pgs)
Grievant Statement
Hold-down request
Informal Step A Discussion
Time Limit Extensions (3 pgs)

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

Payout Request History for Grievance

[HELP](#)

17341572

<p>Not Processed By Payroll</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> New (Not yet sent to Payroll) <input checked="" type="checkbox"/> Pending (Not back from Payroll) <input checked="" type="checkbox"/> Submitted (Received acknowledgment from Payroll, awaiting processing) 		<p>Payroll Processed</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Paid (Back from Payroll without error) <input checked="" type="checkbox"/> Payroll Error (Back from Payroll with error) 	
<p>< Back</p>		<p>Show History</p>	

New, Pending and Submitted Requests

Status	GATS Code	App Seq	Request Amount	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested	
New		3	\$204.00	NANEZ-GUERRA	ANALICIA	6755	PP26 FY2016	KBY9N0	02/09/2017	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											