



RESOLVE



**STEP B DECISION**

**Step B Team:**  
USPS:  
**Alex Zamora**  
NALC:  
**Louise K. Jordan**

District:  
**Rio Grande**

USPS Formal A:  
**No Meeting**  
NALC Formal A:  
**Kelvin Bosley**

Decision:  
USPS Number: **RESOLVE**  
G11N-4G-C 1755 6294  
Grievant: **Adolph Flores Jr.**  
Branch Grievance Number: **421-737-17**  
Branch: **421**  
Installation: **San Antonio**  
Delivery Unit: **Heritage Station**  
State: **TX**  
Incident Date: **07/05/2017**  
Informal Step A Meeting: **07/15/2017**  
Formal Step A Meeting: **No Meeting**  
Received at Step B: **07/31/2017**  
Step B Decision Date: **08/07/2017**  
Issue Code: **41.3130**  
NALC Subject Code: **100271**

**ISSUES:**

Did management violate Article 41, Sections 2.B.4 and 5 of the National Agreement by not permitting City Carrier Assistant (CCA) Adolph Flores Jr. to work the scheduled hours of his opt/hold-down assignment on 07/05/2017, at the Heritage 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, 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. Documentation in the file did not support the request for a compensatory remedy. See the DRT Explanation below.

**EXPLANATION:**

The grievant in this case is Adolph Flores Jr., a CCA assigned to Heritage Station in San Antonio, TX with a relative standing date of 03/14/2015. Under Article 41.2.B.4 of the National Agreement, the grievant had a hold down on Route 5005 at Heritage. The hold down period was from 06/21/2017 thru 07/10/2017 while the regular carrier was on vacation. Management notified the grievant that on 07/05/2017 he would be assigned to a different route with a different reporting time. This was a regularly scheduled day for route 5005 and the hold down vacancy period was not completed.

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 Step A and Formal Step A 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 07/05/2017, 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 also requests, in an effort to persuade management to comply with its requirements, an additional monetary remedy of \$200.00.

**Management** did not meet at the Formal Step A and did not provide any contentions.

**The DRT** reviewed the case file and determined management was in violation of Article 41.2.B.5. 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.

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*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*

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*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.*

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

  
Alex Zamora  
USPS Step B Representative

  
Louise K. Jordan  
NALC Step B Representative

**Grievance File Contents**

PS Form 8190  
Union Contentions (1 pg)  
Request for Formal Step A Meeting  
Informal Step A Request for Documentation  
Employee Everything Report (2 pgs)  
Grievant Hold Down Request

**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