



STEP B DECISION

Step B Team:
USPS:
Alex Zamora
NALC:
Karrie Kimbrell

District:
Rio Grande

USPS Formal A:
Arnold Pena
NALC Formal A:
Erin McLaughlin

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
G16N-4G-C 1758 7629
Class
421-759-17
421
San Antonio
AMF
TX
07/22/2017-07/28/2017
08/05/2017
08/17/2017
08/28/2017
08/31/2017
41.3130
600198

ISSUE:

Did management violate Article 41.2.B of the National Agreement by not permitting City Carrier Assistant (CCA) employees to work the scheduled hours of their opt/hold-down assignments on routes 16016, 16034 and 16063 during the week of July 22-28, 2017? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file did evidence a violation. Management will schedule CCA employees on opts/hold-downs within the parameters outlined in Article 41 which includes starting those employees at the regularly scheduled begin tour of those routes. A monetary remedy was not agreed upon at this time; however, in accordance with the language found in Article 41, a compensatory remedy may be awarded in future violations. See DRT explanation.

EXPLANATION:

Carriers Lopez, Ortegon, and Castillo all have opts on routes at this station.

The union contends management did not permit the carriers named above to work the scheduled hours of their hold-down assignments during the week of July 22-28, 2017. These CCA employees should have been scheduled at 6:30 am during this week, instead all of them were coming in at 8:00 am. The carriers were not being allowed to come in and perform all the duties and assignments of their routes as it states in the JCAM when carriers opt on hold-downs. The CCAs have the right to assume the scheduled hours and non-scheduled day of the opted assignment. The union requests as remedy that the CCAs be scheduled the regular work hours of the hold-downs immediately and that they be awarded monetary remedies outlined in the contentions provided.

Management contends this is not a contractual issue but an administrative one, and therefore the union should not be using the grievance process as an option in regard to this

matter. The assignment of someone's Begin Tour (BT) is at the sole discretion of management, and the union cannot grieve a BT.

The DRT agreed the case file evidenced a violation. Management's argument that this is not a grievable matter is incorrect. The language outlined in Article 41 on pages 41-11 and 41-16 of the JCAM is clear and states the following in relevant part:

*(41-11) 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".)*

*(41-16) **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 hours" and "daily hours" do include the route's regular begin tour. The union contended all CCA employees involved had hold-downs on routes with a 6:30 am reporting time and that all CCA employees reported to work at 8:00 am. This was inconsistent with the information contained in the file which showed all routes had either a 7:00 am or 7:30 am reporting time, and most days, the CCA employee's begin tours were right at or close to those reporting times. However, there were many days where the CCA employees were scheduled to report outside of that reporting time and not worked on the assignment they had opted on.

Article 41 further states on page 41-17 the following in relevant part:

***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.

The case file evidenced management did not work the CCA employees at the scheduled hours of the opted assignment. Management's contentions suggested the decision to schedule the CCAs outside the hours of the opted-for vacancy resulted from lack of awareness of the opting rules in Article 41.2.B rather than egregious or deliberate disregard for those provisions. Each of the CCA employees involved did work at least 8 hours on each of the days in question.


For these reasons, in addition to the discrepancies in the union's contentions, the DRT agreed the additional lump sum requested by the union was not appropriate at this time for the violation; however, future violations may be met with an additional remedy. The parties are encouraged to resolve grievances at the lowest possible level.

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.

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


Alex Zamora
USPS Step B Representative


Karrie Kimbrell
NALC Step B Representative

Grievance File Contents:

PS Form 8190
Union Contentions
Route/Carrier Performance Report
Unit Daily Record
Hold-down Request
Daily Schedule
Employee Everything Report

Step B Decision
Management Contentions
Union Remedy
Additions and Corrections
Formal Step A Request
Informal Step A Request

cc: Area Manager of Labor Relations, Southern Area
NALC NBA, Region 10
District Manager, Rio Grande District
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File