



**STEP B DECISION**

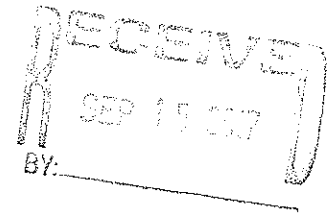
**Step B Team:**  
 USPS:  
**Alex Zamora**  
 NALC:  
**Karrie Kimbrell**

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**  
**G11N-4G-C 1755 6244**  
**Class**  
**421-539-17**  
**421**  
**San Antonio**  
**AMF**  
**TX**  
**05/27/2017-06/02/2017**  
**07/11/2017**  
**07/27/2017**  
**08/02/2017**  
**09/05/2017**  
**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 16018, 16019, 16034, and 16037 during the week of May 27 – June 2, 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. Lump sum payments were made to the carriers shown below as this file evidenced those carriers were not worked for up to 8 hours on the hold-downs. See DRT explanation.

EIN	NAME	AMOUNT	EIN	NAME	AMOUNT
04476727	Martinez, C	\$66.00	04356680	Wilson III, G	\$60.89
04462169	Ortegon, G	\$72.11			

**EXPLANATION:**

Carriers Martinez, Lopez, Ortegon, and Wilson 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 May 27 – June 2, 2017. These CCA employees should have been scheduled at 6:00 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 6:00 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.

The union argued there was 8 hours of work for the CCA employees on the assignments they opted on. Management argued other full-time carriers were provided work off those assignments due to undertime and referred to reports that were supposed to support that contention; management did not provide any reports for the dates cited in this grievance that could support that contention. A violation of not providing up to 8 hours of work on the CCA hold-downs was evidenced.

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*

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*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.*

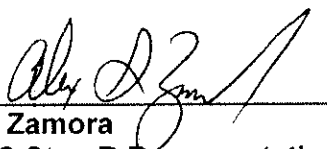
The case file evidenced management did not work the CCA employees at the scheduled hours of the opted assignment. Management's contentions suggested the decision to schedule the CCAs outside the hours of the opted-for vacancy resulted from lack of awareness of the opting rules in Article 41.2.B rather than egregious or deliberate disregard for those provisions. On most of the days in question, the CCA employees involved did not work 8 hours on the opted assignments. Those carriers were made whole for the 8 hours they otherwise should have worked.

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  
Overtime Alert Report  
Hold-down Request  
Employee Everything Report

Step B Decision  
Management Contentions  
Union Remedy  
Formal Step A Request  
Informal Step A Request  
Moratorium Request

cc: Area Manager of Labor Relations, Southern Area  
NALC NBA, Region 10  
District Manager, Rio Grande District

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DRT File