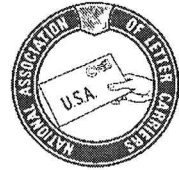


RESOLVE



STEP B DECISION

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

District:
Rio Grande

USPS Formal A:
Arnulfo Jasso
NALC Formal A:
Vanessa Sanchez

Decision:
USPS Number: **G16N-4G-C 1763 0277**
Grievant: **Mateo Lopez**
Branch Grievance Number: **421-948-17**
Branch: **421**
Installation: **San Antonio**
Delivery Unit: **Alamo Heights**
State: **TX**
Incident Date: **09/01/2017**
Informal Step A Meeting: **09/14/2017**
Formal Step A Meeting: **09/28/2017**
Received at Step B: **10/02/2017**
Step B Decision Date: **10/10/2017**
Issue Code: **41.3130**
NALC Subject Code: **600198**

ISSUE:

Did management violate Article 41.2.B of the National Agreement by not permitting City Carrier Assistant (CCA) Mateo Lopez to work the scheduled hours of his requested opt/hold-down assignment on route 09034 on 09/01/2017? 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 in this case. The grievant should have been scheduled and allowed to carry route 09034 on 09/01/2017. Management is obligated to comply with Step B decisions. See DRT explanation.

EXPLANATION:

The grievant is CCA Lopez with a relative standing date of 09/12/2015 assigned to Alamo Heights Station. He requested an opt/hold-down on route 09034, effective 09/01/2017, the day the route became available. A member of management acknowledged receipt of the request and round dated it on 08/12/2017. Supervisor Kopcho stated he did not receive the request and scheduled CCA Lopez to carry another route on 09/01/2017. The grievant was scheduled to begin the hold-down the following day.

The union contends management violated Article 41.2.B.4 of the National Agreement when they did not permit CCA Lopez to begin his requested opt assignment on 09/01/2017. The union contends management again violated Articles 15 and 19 of the National Agreement when they failed to comply with numerous Step B decisions for the San Antonio installation including a city-wide class action to "cease and desist" violating Article 41.2.B.4. The union requests a compensatory remedy of \$175.00 or whatever is deemed appropriate.

Management contends the union cites violations of Article 15 but fails to support the contention with anything where management impeded the grievant. Management contends the union cites a violation of Article 19 but does not cite what handbook or manual was violated. Management contends CCA Lopez was aware that Supervisor Kopcho handles all

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opting requests and states he was not aware of the request to opt. Management challenges the authenticity of the copy of the request signed by the afternoon supervisor, 204-B Vincent Duncan dated 08/12/2017. Management contends this is a simple matter of failure to communicate and it could have been resolved at the initial level. Management also made some comments regarding the steward's personal life.

The DRT agreed the case file did evidence a violation. The union provided proof management was aware of and acknowledged receipt of the opting request on 08/12/2017. It is not the grievant's responsibility to ensure the member of management that received the requests forwards the request to the scheduling manager, Supervisor Kopcho. Supervisor Kopcho in his statement acknowledges he was aware of CCA Lopez claim he had requested a hold-down but did not have any documentation. Provided there were no other requests from regular carriers or CCA employees with a higher relative standing, CCA Lopez' should have been awarded the opt on route 09034 effective 09/01/2017.

CCA Lopez worked a total of 7:25 on 09/01/2017. Route 09034 was split seven ways on the street for a total time of 7:28. From this information, the DRT concluded there was no lost time for CCA Lopez as a result of not being placed on his opt.

The DRT could find no relevance to this case for management's comments concerning Steward Sanchez personal life.

The DRT was unable to agree to a monetary award. The DRT decision referenced by the union (USPS #G11N-4G-C 1717 4493) was not an escalating remedy but rather the payment of lost wages for the grievant not being allowed to carry his opt.

However, the Formal A parties are reminded:

The Arbitration Award Compliance memo which was signed 05/31/2002 by then Vice President Area Operations Patrick Donahoe M-01517, clearly states in part:

"...settlements reached in any stage of the grievance/arbitration procedure are final and binding, I want to reiterate our policy on this subject...Compliance with arbitration awards and grievance settlements is not optional."

Article 15.3.A of the JCAM states:

15.3.A The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

The contract specifically requires that at each step of the grievance/arbitration process the parties review the Joint Contract Administration Manual (JCAM). In the Article 15 Dispute Resolution Process Memorandum, the parties have committed to updating the JCAM at least once each calendar year during the life of the National Agreement.

(Page 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".) (emphasis added)

(Page 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. (emphasis added)

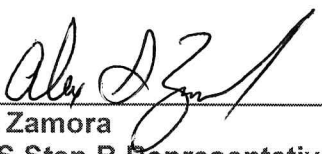
Article 41 further states on page 41-17 the following, in relevant part:


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 remedy is corrective and not punitive, providing a full explanation of the basis of the remedy. (emphasis added)

Based on its review of the case file, the DRT agreed a violation was evidenced in this case.


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USPS Step B Representative


Louise K. Jordan
NALC Step B Representative

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Grievance File Contents:

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|---|--|
| PS Form 8190 | Step B Decisions (10 pages) |
| Union Contentions (2 pages) | Informal Step A Meeting Notes (1 page) |
| Management Contentions (8 pages) | Formal Step A Meeting Notes (1 page) |
| Opt/Hold-down Request (2 pages) | Formal Step A Request |
| Carrier Schedule (1 page) | Informal Step A Request (2 pages) |
| Route Carrier Analysis Report (5 pages) | Extension Request |
| Employee Moves Report (3 pages) | |

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