



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1836 8602
Robin Gutman	Grievant:	Jose Pantaja
NALC:	Branch Grievance Number:	421-818-18
Katherine L. Ruffo	Branch:	421
	Installation:	San Antonio
District:	Delivery Unit:	Valley HI
Rio Grande	State:	Texas
	Incident Date:	07/24/2018
USPS Formal A:	Informal Step A Meeting:	08/08/2018
Eva Ulanoff	Formal Step A Meeting:	08/14/2018
NALC Formal A:	Received at Step B:	08/20/2018
Kelvin Bosley	Step B Decision Date:	09/04/2018
	Issue Code:	39.1100
	NALC Subject Code:	600198

ISSUE:

Did management violate Articles 41.2.B of the National Agreement by not allowing the grievant to work the hours on his opt/hold-down on route 27013? 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 when management did not work the grievant the scheduled hours of his opt/hold-down assignment starting 07/21/2018. Carrier Pantaja (04518019) is awarded a lump sum payment in the amount of \$133.35; payment was completed at Step B; no further action is needed. See DRT explanation below.

NAME	EIN	REMEDY
Pantaja, J.	04518019	\$133.35

EXPLANATION: On 07/19/2018 the grievant submitted to have a Hold down on route 27013 starting on 07/20/2018. Although the date of the available hold down was 07/21/2018 management failed to address and clarify what the grievant was asking for. There is evidence in the file that past practice at this unit has been to award the hold down as it becomes available as long as the employee makes known their intent to opt on the available route.

The union filed this grievance to protest management's actions and 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 that management improperly denied the grievant the hold down on the route based on the fact that the schedule was already posted.

Management contends they spoke to carrier and let him know that the route would not start until the following week because the schedule was already posted. Management also contends the carrier was not eligible for the hold down as he was still on another hold down which ended on 07/21/2018.

The **DRT** determined the case file evidenced management had violated Article 41 when they did not assign the grievant to route 27013 on the first day it became available.

Article 41 Section 41.2.B.3 of the national Agreement states in relative part:

City carrier assistants may exercise their preference (by use of their relative standing as defined in Section 1.f of the General Principles for the Non-Career Complement in the Das Award) for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned that are not selected by eligible career employees.

The JCAM actually addresses the situation where there is no clear cut procedure set out by the local unit for opting or awarding those opts. There was no evidence in the file there is a procedure at this unit. There is evidence in the file to assert past practice as the procedure in this case.

The JCAM (Joint Contract Administration manual) page 41-13 state:

Posting and Opting. *The National Agreement does not set forth specific procedures or announcing vacancies available for hold-downs. However, procedures for announcing vacancies and procedures for opting for hold-down assignments may be governed by local Memorandums of Understanding (LMOU) or past practice (Memorandum, February 7, 1983, M-0446). The LMOU or past practice may include: method of making known the availability of assignments for opting, method for submission, a cutoff time for submission, and duration of hold-down. In the absence of an LMOU provision or mutually agreed-upon local policy, the bare provisions of Article 41.2.B apply. In that case, there is no requirement that management post a vacancy, and carriers who wish to opt must learn of available assignments by word of mouth or by reviewing scheduling documents.*

The DRT agree the employee should have been awarded the hold down as soon as it became available. As such the employee was entitled to the hours and work days of the hold down. Management made a statement that once the scheduled is posted it cannot be changed, but in the case of CCA's it is done almost daily and is not a violation of the contract.

The JCAM page 41-16 states:

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.*

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Although the team agrees that the grievants paid hours were not harmed, as the grievant worked more than 40 hours this week, his scheduled was harmed and the appropriate remedy has been applied.

The JCAM pages 41-16 and 41-17:

***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.*

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



Robin Gutman
USPS Step B Representative



Katherine L. Ruffo
NALC Step B Representative

cc:

LR Manager, Southern 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
District Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
National Moratorium on time limits
Request for Formal A meeting
Request for information
Union Contentions (3 pages)
Carrier statement
Employee Everything Report (17 pages)

JCAM pages (4 Pages)
Management contentions (2 Pages)
Carrier schedule
Union Statements (3 pages)
Supervisor Statement
Vacation Schedule