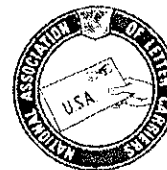


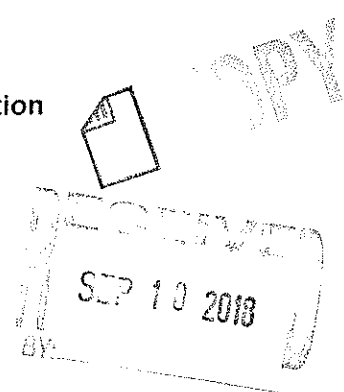


RESOLVE



STEP B DECISION

Step B Team: USPS: Robin Gutman NALC: Katherine L. Ruffo District: Rio Grande USPS Formal A: Ayda Alderete NALC Formal A: Kelvin Bosley	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 1838 0063 Eric Herrera 421 42183818 San Antonio Heritage Station Texas 08/02/2018 08/15/2018 08/24/2018 08/28/2018 09/05/2018 39.1100 100271
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ISSUE:

Did management violate Articles 15 and 41 of the National Agreement when they removed the grievant from his opt (hold down) on 08/02/2018 and failed to comply with previous Step B decisions? If so, what is the appropriate remedy?

DECISION:

Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Management violated Article 41.2.B by removing the grievant from route 45089. Management shall schedule employees holding down temporarily vacant duty assignments under Article 41.2.B according to the hours and days of the opted-for assignment. Although the DRT agrees a violation of Article 15 occurred, the team could not agree that a monetary remedy was warranted at this time. The grievant is compensated \$55.25, less applicable deductions, for the violation. This payment has been processed at Step B. See the DRT Explanation below.

NAME	EIN	REMEDY
Herrera, E	04655918	\$55.25

EXPLANATION: The grievant, CCA Eric Herrera, holds an opt (Hold Down) on route 45089. On 08/02/2018 he was instructed to report to Hackberry Station at 9:30 am. The file does not indicate how route 45089 was carried this day.

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 bumped the grievant from his hold down. The union contends they never agreed that there was under time in the unit. The union goes on to contend there are two (2) auxiliary routes at this station and the time from those routes should be used for the alleged under time instead of bumping carriers from their hold downs. The union contends that bumping carriers off opts should only occur as a last resort. The

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union goes on to state that on this day the unit used 26.97 hours of overtime, 2.78 hours of penalty overtime.

The union requests the carrier be paid for the mileage, 17 Miles, from his hold down station to the Hackberry Station. They also request \$50.00 for removing him from his hold down.

Management contends that Heritage had over 16 hours of under time on this day. They state they found the grievant work at another station. Management goes on to contend that when they bump a CCA off a hold down, they do it on a rotating basis. Management contends that they must provide eight (8) hours of work for regulars, so they have no choice but to bump CCA's off opts in order to provide that work to regulars.

The DRT determined the case file evidenced management had violated Article 41 when they did not allow the CCA Herrera to work the regularly scheduled day and the daily hours of the assignment he opted on. The JCAM (Joint Contract Administration Manual) clearly states "the employee is temporarily "bumped" on a day-to-day basis. **Bumping is still a last resort**". The JCAM goes on to state, "Part-time flexible employees and city carrier assistants may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Management only contends that it is done on a rotating basis. The team cautions management to rotate the CCA's without hold downs and not to include the CCA's with hold-downs in the future. There is no compensation for mileage, as the CCA belongs to the instillation not the Station, and can be moved within the instillation with no compensation.

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 under Article 41 pages 41-14 and 41-15 states the following about removal from a hold down:

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 parttime 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). In such situations, the part-time flexible or city carrier assistant employee's opt is not terminated. Rather, the employee is temporarily "bumped" on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that: A PTF or city carrier assistant, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF or city carrier assistant opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.*

The JCAM page 41-16 states:

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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.*

The file does not evidence any data to show the unit properly captured under time. There is no performance data to show that the carriers, on this particular day, had under time which was captured in the office. Management contends a decline in mail volume during the summer months. Management might want to consider temporary schedule changes, unit wide in the future, to avoid continued contract violations.

Management needs to be highly aware of the Remedy for this violation, should it continue and the possibility of a compensatory award for future violations.

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.*

Grievance G16N-4G-C 1835 8967 dated 08/30/2018 was filed as a class action and involved the grievant. The grievant has already been paid \$12.75 in out of schedule pay for 08/02/2018. Therefore, the payment above is the remainder of the proper out of schedule compensation 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 Branch President

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NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Formal Step A Designee
District Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Request for documentation
Union Contentions (3 pages)
Management Contentions (3 pages)
Work Hour Work Load Report 08/02/2018
NALC Moratorium
Request Formal A meeting
Carrier hold-down request

Carrier Statement
Carrier schedule
spreadsheet
Employee Everything Report (2 pages)
Step B decisions (7 pages)
Supervisor interview
Hours Analysis report (12 pages)