



**RESOLVE**



**STEP B DECISION**

<b>Step B Team:</b>	<b>Decision:</b>	<b><u>RESOLVE</u></b>
<b>USPS:</b>	<b>USPS Number:</b>	<b>G16N-4G-C 1924 3036</b>
<b>Rose Barner</b>	<b>Grievant:</b>	<b>Jose Rodriguez Jr.</b>
<b>NALC:</b>	<b>Branch Grievance Number:</b>	<b>421-496-19</b>
<b>Jim Ruetze</b>	<b>Branch:</b>	<b>421</b>
	<b>Installation:</b>	<b>San Antonio</b>
<b>District:</b>	<b>Delivery Unit:</b>	<b>Beacon Hill</b>
<b>Rio Grande</b>	<b>State:</b>	<b>TX</b>
	<b>Incident Date:</b>	<b>04/11/2019</b>
<b>USPS Formal A:</b>	<b>Informal Step A Meeting:</b>	<b>04/18/2019</b>
<b>Leo Rodriguez</b>	<b>Formal Step A Meeting:</b>	<b>05/03/2019</b>
<b>NALC Formal A:</b>	<b>Received at Step B:</b>	<b>05/10/2019</b>
<b>Rigoberto Hidalgo</b>	<b>Step B Decision Date:</b>	<b>05/23/2019</b>
	<b>Issue Code:</b>	<b>41.3130</b>
	<b>NALC Subject Code:</b>	<b>100271</b>

**ISSUE:**

Did management violate Article 41 of the National Agreement by denying the grievant the right to work the hours of his opted-for assignment on 04/11/2019? If so, what is the remedy?

**DECISION:**

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of Article 41 of the National Agreement, which requires management to schedule the successful opting employee according to the hours and days of the vacant assignment. The employee will be paid a lump of \$146.32. This payment has been processed at Step B through GATS. Management will adhere to the opting provisions of Article 41, Sections 2.B.4 and 2.B.5. See the DRT Explanation below.

**EXPLANATION:**

The grievant in this case is Jose Rodriguez, Jr., a City Carrier Assistant (CCA) assigned to Beacon Hill Station in San Antonio, TX. During the week of 04/06/2019 the grievant had an "opt" on route 28063 and was instructed on 04/11/2019 to take the day off. In doing so, management removed the grievant from the awarded opt hold-down.

The union filed this grievance to challenge management's decision to involuntarily remove the grievant from the opted assignment on the day in question. 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 CCA Jose Rodriguez, Jr. has a hold down (opt) on route 28063 at Beacon Hill Station. Jose Rodriguez, Jr. was scheduled to come in and deliver his route on Thursday, 04/11/2019, which was a regularly scheduled day. On the morning of 04/11/2019 management instructed him to take the day off and return to work on Friday, 04/12/2019. In doing so they removed the grievant from the opt assignment. The union requests management cease and desist violating Article 41.2.B.4. The union further requests the grievant be compensated for 8 hours at

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the overtime rate, \$216.00. In addition, the union requests a monetary remedy of \$250.00 in order to persuade management they must comply with the Step B decisions included in the case file.

**Management** contends the CCAs are not guaranteed 8 hours, but are guaranteed to carry at least 4 hours of their opted hold down.

The DRT reviewed the case file and determined the grievant was the successful opting employee for route 28063, and as such was entitled to work the hours and days of the vacancy. The appropriate remedy in this case is to compensate the grievant for the hours he should have worked but did not because of management's instruction.

Article 41.2.B states the following in relevant part:

*4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and 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. 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.*

*5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.*

*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".)*

**Duration of Hold-Down.** *Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee "shall work that duty assignment for its duration." An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail.*

Page 41-17 of the JCAM discusses remedies for opting violations:

**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.*

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*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)*

The case file evidenced management did not work the grievant for the scheduled hours of the opted assignment. The grievant was made whole by way of a lump sum payment for that time.

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

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Rose Barner  
USPS Step B Representative



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Jim Ruetze  
NALC Step B Representative

cc:  
LR Manager, SW 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  
Manager, Rio Grande District  
Postmaster  
DRT File

**Grievance File Contents**

PS Form 8190  
Union Contentions (6 pgs)  
Request for Formal Step A Meeting  
Employee Statements (2 pgs)  
Request for Informal A Meeting

Carrier Schedule (2 pgs)  
Employee Everything Report (2 pgs)  
Work hour Workload Report (2 pgs)  
Prior Grievance Resolutions (36 pgs)