



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1757 0784
Richard Ketchum	Grievant:	Jorge Valdez
NALC:	Branch Grievance Number:	421-790-17
Jim Ruetze	Branch:	421
District:	Installation:	Eagle Pass
Rio Grande	Delivery Unit:	MPO
	State:	Texas
USPS Formal A:	Incident Date:	07/31/2017
Ernesto Saucedo	Informal Step A Meeting:	08/15/2017
NALC Formal A:	Formal Step A Meeting:	08/17/2017
Gilberto Martinez Sr.	Received at Step B:	08/18/2017
	Step B Decision Date:	09/18/2017
	Issue Code:	08.9990
	NALC Subject Code:	100006

ISSUE:

Did management violate Article 41 of the National Agreement by failing to ensure that Mr. Valdez took an afternoon break? If not, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Management will ensure that breaks are taken and that the carriers are not working on their breaks. See the DRT Explanation below.

EXPLANATION:

The grievant in this case is Jorge Valdez, a full time regular letter carrier assigned to the Main Post Office in Eagle Pass, TX with seniority dating to 06/06/2013. On 07/31/2017 Postmaster Ernesto Saucedo performed a route inspection on Carrier Valdez. The PS Form 3999 for the 07/31/2017 inspection indicates Valdez did not take a break. Carrier Valdez reported for work the following day and spoke with his steward, after which he went home sick. He also called in the next day, and returned to work on 08/03/2017 with a doctor's note written in Spanish.

The union filed this grievance to protest management's denial of Carrier Valdez' street break. Unable to resolve the grievance through the Informal A and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends Carrier Valdez was denied an afternoon break by Postmaster Saucedo. The union also contends Postmaster Saucedo gave Carrier Valdez an instruction that if he were to be taking as long in the restroom as he did that morning, then he couldn't take any other breaks. The union contends that a restroom break does not constitute a work break. Carrier Valdes followed the postmaster's instructions and did not take a break in the afternoon.

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The union requests that both days the grievant took as sick leave be changed to Administrative Leave. The union also requests that the grievant be given \$300.00 for pain and suffering, and for doctor expenses, medication, etc. The union also requests that the grievant be approved for two additional days of administrative leave of his choice. Furthermore, the union would respectfully request for management to adhere to safe practices and work in conjunction with the union to make this a better work place.

Management contends that Carrier Valdez was not told that he could not take his afternoon break. He was informed by Postmaster Saucedo that if he was going to take 15 minutes in the restroom every day that management would consider that time as his office break in the future.

The DRT reviewed the case file and determined that Handbook M-39, 252.34 and Article 41 of the National Agreement are the controlling elements in this dispute. Handbook M-39 states that carriers will receive two 10-minute break periods and that reasonable comfort stops will not be deducted from the carrier's actual time. The Arbitration running on page 41-28 of the JCAM makes it management's responsibility to ensure that employees stop working during breaks.

Handbook M-39, 252.34

*The carriers at the delivery unit will receive **two 10-minute break periods**. The local union may annually opt to have either (a) both breaks on the street or (b) one of the 10-minute breaks in the office and one break on the street. If two 10-minute breaks are taken on the street, they will be separate from each other. Breaks must be separate from the lunch period. The carrier shall record on Form 1564-A, Delivery Instructions, the approximate location of the break(s). Reasonable comfort stops will not be deducted from the carrier's actual time.*

JCAM Page 41-27

41.3.K Supervisors shall not require, nor permit, employees to work off the clock.

JCAM Page 41-28

Rest Breaks. National Arbitrator Britton ruled that the Postal Service must ensure that all employees stop working during an office break. **Contractual breaks must be observed** and cannot be waived by employees (H4N-3D-C 9419, December 22, 1988, C-08555). (Emphasis added)

The DRT was unable to agree that the doctor's note included in the file supported the union's position, or that it was intended for the grievant, since no patient name appeared on it. Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Richard Ketchum
USPS Step B Representative



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, Eagle Pass, Texas
DRT File

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Grievance File Contents

PS Form 8190
Request for Formal A Meeting
Excerpt from JCAM
TACS rings
PS FORM 1767
Statement Jorge Valdez

Request To See Steward
Request for Information & Meeting
1838C and 3999
Note from Doctor
Heat Illnesses standup