



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1754 4049
Mike Goden	Grievant:	Class
NALC:	Branch Grievance Number:	421-691-17
Jim Ruetze	Branch:	421
	Installation:	San Marcos
District:	Delivery Unit:	MPO
Rio Grande	State:	TX
	Incident Date:	06/27/2017
USPS Formal A:	Informal Step A Meeting:	07/11/2017
Carolyn Carter	Formal Step A Meeting:	07/18/2017
NALC Formal A:	Received at Step B:	07/20/2017
Edward Quinones	Step B Decision Date:	08/07/2017
	Issue Code:	10.4420
	NALC Subject Code:	600113

ISSUE:

Did management violate Articles 3, 5, 10, and/or 30 of the National Agreement by unilaterally changing San Marcos annual leave percentages and canceling approved leave? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Annual Leave that has been approved will be honored, subject to the "emergencies" exception in Article 10.4.D of the National Agreement. Unilateral changes to the leave percentages permitted in the LMOU are not to be made. See the DRT Explanation below.

EXPLANATION:

On 06/27/2017 the San Marcos Postmaster, Carolyn Carter, notified the union of her intent to change the past practice of allowing 12% of the city carriers to be on leave during June, July, and August; and of her intent to change the past practice of allowing 7% of city carriers off during the week before and the week after Christmas. The notice indicates the changes would become effective 07/30/2017.

The union filed this grievance to protest the unilateral action by management. 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 PM Carter's notice stated, "Approved leave in advance will not be honored." The union contends such action is in direct violation of Article 10.4.D of the National Agreement. The alternate steward and the OIC negotiated the percentages for this The union stresses that based on the negotiated percentages already in place when PM Carter took over, carriers requested and were approved for annual leave; then made commitments, financial and otherwise, corresponding to the approved leave. It is therefore highly improper to make such a unilateral change. The union further contends that outside of extreme emergencies, advance commitments for approved leave must be honored.

The union requests PM Carter and management at all levels cease and desist attempting to renegotiate leave rules, and that all advance commitments for leave be honored except in extreme emergencies.

Management contends the percentages were in place during the 1994-1998 LMOU, and that the percentages in the 2006-2011 LMOU are correct and should be adhered to. Those percentages (10% during the choice period except for June-August, when 11% may be off) mean one fewer carrier off in those weeks. Management also contends it has the right under Article 5 of the National Agreement to change existing past practices. Management contends when PM Carter arrived she requested a copy of the LMOU, but the only version she received was the 1994-1998 LMOU. When she received a copy of the 2006-2011 LMOU later, she realized the percentages in place were outdated and decided to make the change. Management contends the high percentage that allows three carriers off results in higher overtime usage and delays in outgoing mail dispatches. Additionally, carriers must be borrowed from neighboring villages to get mail delivered on time. Management requests the union be instructed to cease and desist using the incorrect LMOU.

The DRT reviewed the case file and determined the percentages in place for the 2017 leave year were negotiated by the steward and the installation head. This was consistent with the parties' rights as noted in Article 10.A.6 of the current LMOU, included in the grievance file as part of management's contentions. Although the percentages in the LMOU are as PM Carter describes in her contentions, the LMOU includes the following note, which the DRT agrees controlled in the formulation of the leave calendar for 2017:

In the merged post offices a variance in the established percentage must be agreed upon by the unit steward of NALC Branch 421 and the Postmaster.

The DRT agreed that the leave commitments for 2017 were consistent with the negotiated language in the LMOU. Consequently, it was not a "past practice" as described by PM Carter in her notice to the union and in her contentions. It was a negotiated agreement. Having so negotiated, the parties were bound by the percentages and leave was approved based on those percentages. The JCAM provides the following directive concerning management's ability to cancel previously approved leave

10.4.D *All advance commitments for granting annual leave must be honored except in serious emergency situations.*

Honoring Advance Commitments For Annual Leave. *Article 10.4.D requires management to honor annual leave approved in advance, in nearly all circumstances.*

While the term "emergency" has a commonly understood meaning, the national parties negotiated a specific meaning for purposes of applying the provisions of the National Agreement. Article 3.F of the National Agreement provides the parties' agreed upon definition:

Article 3.F Emergencies. *This provision gives management the right to take whatever actions may be necessary to carry out its mission in emergency situations. An emergency is defined as "an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature."*

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Management made a contention at Formal Step A that one of the effects of using the higher leave percentages is an increase in overtime. The DRT agreed the desire to avoid overtime did not meet the definition of emergency as determined at the national level. Page 7-33 of the JCAM includes the following relevant language addressing this concern:

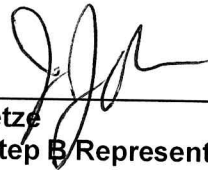
Management's desire to avoid additional expenses such as penalty overtime does not constitute an emergency.

The realization that leave percentages had been incorrectly calculated, even if it were true, was not an "emergency," and therefore did not justify canceling leave.

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



Mike Goden
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, San Marcos, Texas
DRT File

Grievance File Contents

PS Form 8190
Table of Contents
Union Contentions
Request for Information & Steward Time
Request for Formal Step A Meeting
PM Carter Notification to Union
LMOU Excerpt
Statement from Alternate Steward

2017 Annual Leave Board
Union Interview of Supervisor Wallace
Carrier Statements
JCAM Excerpt Re: Change Past Practice
Management Contentions
2006-2011 LMOU
Excerpts from Expired LMOUs