

RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1754 3855
Mike Goden	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-551-17
Jim Ruetze	Branch:	421
	Installation:	Schertz
District:	Delivery Unit:	MPO
Rio Grande	State:	TX
	Incident Date:	05/27/2017-06/02/2017
USPS Formal A:	Informal Step A Meeting:	06/28/2017
Troy Morgan	Formal Step A Meeting:	07/11/2017
NALC Formal A:	Received at Step B:	07/20/2017
Richard Gould	Step B Decision Date:	07/27/2017
	Issue Code:	08.5450
	NALC Subject Code:	120051

ISSUES:

Did management violate Article 8.5.C,G, and D of the National Agreement by using Non-ODL carriers to perform overtime in lieu of available ODL carriers? If so, what remedy is appropriate?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Management's assignment of overtime during the above week was inconsistent with its requirements under Article 8.5 of the National Agreement. The carriers listed in the following table are compensated in the amounts by their names. The payments associated with this remedy have been processed at Step B via GATS entry. No further action is needed by the local parties to process these payments. See the DRT Explanation below

EIN	Carrier	Remedy	EIN	Carrier	Remedy
01954621	Martinez J	\$87.50	04420058	Harrell T	\$150.00
03649732	English	\$43.50	02079873	Tullos	\$89.25
02307543	Wachsmann	\$26.75	02351408	Zengerele J	\$7.50
01981614	McCollum	\$34.25	02330345	Sandoval P	\$75.00
03488290	Betts H	\$30.38	04174676	Pedroza	\$32.88
02946527	Alexander	\$22.00			

EXPLANATION:

The union contends management was in violation of Article 8.5 from the dates of **05/27/2017 through 06/02/2017** at the Schertz Main Post Office when non-ODL carriers were utilized in lieu of available ODL carriers that could have performed the work.

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The union filed this grievance to challenge management's failure to properly apply the provisions of Article 8.5 of the National Agreement. The union appealed to Step B when efforts to resolve the grievance at lower levels failed.

The Union contends management violated Articles 8.5 of the National Agreement by improperly mandating work assignment (WA) and/or non-ODL carriers to carry auxiliary assistance off their assigned routes and into overtime and/or work on their scheduled day off (SDO). The ODL provided sufficient overtime carriers to cover any and all vacancies. There were enough ODL carrier hours to provide auxiliary assistance up to the limitations prior to mandating non-ODL and WA carriers. The schedule shows that there were multiple ODL carriers that were not scheduled to work on their SDO during the week in question. The union adds that management was well aware in advance of their operational needs, yet failed to schedule enough ODL carriers, which could have enabled them to avoid penalty OT.

Management met at the Informal and Formal A levels but offered no contentions or counter argument to the union's charges found in this case file.

The DRT reviewed the case file and determined the union's position had merit. The union's contentions were supported by documents in the file and were not rebutted by management's contentions. The USPS Formal A designee offered no circumstances or position in this case and remained silent in this instant case.

Assignment of overtime among full time letter carriers is controlled by Article 8 of the National Agreement. The JCAM provides, in relevant part, the following contractual and explanatory language:

8.5.C.2.a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

8.5.C.2.b During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list.

8.5.C.2.c. In order to insure equitable opportunities for overtime, overtime hours worked and opportunities offered will be posted and updated quarterly.

8.5.G G. Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

- 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and*
- 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.*

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

Mandatory Overtime. One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. **Before requiring**

a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime.

However, if the Overtime Desired List does not provide sufficient qualified fulltime regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a rotating basis starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation. (Emphasis added)

*Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment, management **must** seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime (Article 8.5.D).*

Additionally, the JCAM includes the following guidance regarding the assignment of overtime to non-ODL carriers on their own assignments (Emphasis added):

The “Letter Carrier Paragraph.” For many years Article 8.5.C.2.d also gave management the right to require a letter carrier working on his/her own route on a regularly scheduled day to work mandatory overtime rather than assigning the overtime to a carrier from the Overtime Desired List. However, in the Overtime Memorandum first negotiated as part of the 1984 National Agreement, the Postal Service and the NALC added the following qualification, known as the “letter carrier paragraph.”

In the Letter Carrier Craft, where management determines that overtime or auxiliary assistance is needed on an employee’s route on one of the employee’s regularly scheduled days and the employee is not on the overtime desired list, the employer will seek to utilize auxiliary assistance, when available, rather than requiring the employee to work mandatory overtime.

Implementing Memorandum on “Letter Carrier Paragraph.” A memorandum of understanding signed December 20, 1988 (M-00884) further explained the requirement to seek to use auxiliary assistance before requiring letter carriers not on the ODL or Work Assignment List to work overtime on their own route on a regularly scheduled day. Management must seek to use all of the following to provide auxiliary assistance:

- *part-time flexibles at the straight-time or regular overtime rate*
- ***city carrier assistant*** *employees at the straight-time or regular overtime rate*
- *available full-time regular employees such as unassigned or reserve regulars at the straight-time rate*
- *full-time carriers from the Overtime Desired List at the regular overtime rate*

However, the memo states that management does not have to use ODL carriers to provide auxiliary assistance if such an assignment would mean that the ODL carriers would be working penalty overtime. In that limited situation—if no auxiliary assistance is available without going into penalty overtime—management can require full-time regular carriers not on the Overtime Desired List to work overtime on their own routes on a regularly scheduled day. Remember that this limited exception applies only when a full-time non-ODL letter carrier is required to work overtime on his/her own assignment on a regularly scheduled day.

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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, Schertz, TX
DRT File

Grievance File Contents

PS Form 8190
Informal Step A Request
Formal Step A Request
Non ODL Worksheets
Union Remedies

Union Contentions
Employee Moves Report
Employee Everything Report
Overtime Desired List
Weekly Schedule