



RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Robin Gutman
 NALC:
Jose Portales

Grieving District:
Rio Grande

MAY 26 2020

Decision:
 USPS Number:
 Grievant:
 Branch Grievance Number:
 Branch:
 Installation:
 Delivery Unit:
 State:
 Incident Date:
 Informal Step A Meeting:
 Formal Step A Meeting:
 Step B Received Date:
 Step B Decision Date:
 Issue Code:
 NALC Subject Code:

RESOLVE
G16N-4G-C 2022 1760
Class Action
421-398-20
421
Schertz
MPO
Texas
03/28/2020-04/03/2020
04/06/2020
04/17/2020
04/27/2020
05/20/2020
08.5000
120051

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ISSUE:

Did management violate Article 8.5 of the National Agreement when they forced non-overtime desired list (Non-ODL) carriers to work overtime? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The file did evidence a violation of Article 8.5 when non-ODL carriers were mandated, off assignment, when there were available ODL carriers. Non-ODL Carriers who were improperly assigned to work overtime were compensated an additional 50% of their straight time rate. ODL carriers were compensated for the missed overtime opportunities at the rate of pay they would have earned if they had performed the work. Management is instructed to comply with the provisions of Article 8.5 of the National Agreement.

Payment has been made by the Step B team to the carriers listed below. See DRT Explanation.

EIN	Name	Hours @ 50%	Pay	EIN	Name	Hours @ POT Rate	Pay
02946527	Alexander, R	1.40	\$20.65	01194867	Brewer, D	0.95	\$56.05
04406982	Bradwell, D	1.10	\$16.23	02351408	Zengerle, J	1.00	\$59.00
04519591	Aragon, N	1.43	\$21.09	02079873	Tullos, O	1.00	\$59.00
04724410	Puzan, C	1.20	\$17.70	02330345	Sandoval, P	1.33	\$78.47

EXPLANATION:

This is a class action grievance filed on behalf of the city letter carriers assigned to the Schertz Post Office in Texas. The grievance was filed to protest management working non-

ODL and work assignment (WA) carrier's overtime, on and off their assignments, when overtime desired list (ODL) carriers were available.

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 violated Article 8 of the National Agreement when on 03/30/2020 management worked non-ODL carriers off their own routes. The union contends ODL were available to work overtime and penalty. The union contends management could have borrowed city carrier assistants (CCA) from New Braunfels as they have done in the past. The union also contends management admits to not calling in an ODL person who was off on this day. The union contends the Schertz Post Office has a long history of violating Article 8 and these violations are occurring on a weekly basis. The union contends these violations continue despite the fact management has been instructed to cease and desist these violations. The union contends this is the reason they are requesting additional remedy.

The union requests management cease and desist violations of Article 8 and 15 and make whole the ODL who were deprived the overtime assignment. The union also requests a 100% base pay remedy for the non-ODL carriers who were improperly mandated. The union requests an additional \$25 be paid to all ODL carriers for failure to comply.

Management contends Article 3 gives management the exclusive right to manage. Management contends on 03/30/2020 the unit had three unforeseen absences, leaving them with more the 32 hours of earned time route time with no one to carry the mail. Management contends one ODL carrier need to leave and was unavailable for additional overtime. Management contends that they do not have a phone number for one of the ODL carriers who was off on this day and because the other ODL off on this day never answers when management calls they have stopped trying to reach him. Management contends they made the best decisions to service the customer on this day, including the timely dispatch of outgoing mail.

The DRT reviewed the case file and determined the union's position has merit. The team agrees management violated Article 8 when they required non-ODL and WA carriers to carry overtime off their own assignments prior to maximizing the ODL. The team agreed there was 4.28 hours available within the ODL to reach maximization, for this reason the team agreed management violated Article 8. The affected carriers were remedied at the appropriate rates.

Applicable contract language from Article 8 in the JCAM is shown below in relevant part:

*8.5.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.*

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

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.

(The complete text of this memorandum is reprinted at the end of this article.) National Arbitrator Mittenthal ruled in H4N-NA-C 21, June 26, 1986 (C-06297), that the letter carrier paragraph is an enforceable obligation.

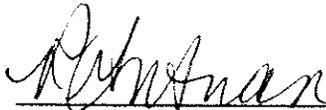
Implementing Memorandum on "Letter Carrier Paragraph." *A memorandum of understanding signed December 20, 1988 (M-00884) further explained the requirement to seek to use auxiliary assistance before requiring letter carriers not on the ODL or Work Assignment List to work overtime on their own route on 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.

The team agrees management must follow the provisions of the National Agreement. The file contained past Step B decisions with the latest one addressing a violation of Article 8 on 09/13/2019. The team discussed the additional remedies, proposed by the union at Formal Step A, for continued violations but did not find it appropriate at this time.

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



Robin Gutman
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:

LR Manager, Southern Area
Rio Grande District HR Manager
Rio Grande District LR Manager
USPS Formal Step A Designee: Arthur Sanchez
NALC Formal Step A Designee: Dennis Alltop

NALC Region 10 NBA
NALC Branch President
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Union Contentions (10 pages)
Informal Step A Request
Request for Steward Time
ODL
Employee Everything Report (10 pages)
Written Sheet
Workload Status Report (2 pages)
PS Form 3996 (4 pages)
Daily Schedule

Formal Step A Appeal
Time Limit Extension
Union Cover Sheet
Previous Formal Step A (135)
Previous Step B Decisions (114 pages)
Regional Arbitration (8 pages)
Pre-Arbitration Decision (4 pages)
Patrick Donahoe Letter
John Potter Letter (2 pages)
Previous Step B Decisions (11 pages)

Payout Request History for Grievance

20221760

[HELP](#)

<p>Not Processed By Payroll</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> New (Not yet sent to Payroll) <input checked="" type="checkbox"/> Pending (Not back from Payroll) <input checked="" type="checkbox"/> Submitted (Received acknowledgment from Payroll, awaiting processing) 		<p>Payroll Processed</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Paid (Back from Payroll without error) <input checked="" type="checkbox"/> Payroll Error (Back from Payroll with error) 	
<input type="button" value=" < Back"/>		<input type="button" value=" Show History"/>	

New, Pending and Submitted Requests

Status	GATS Code	App Seq	Request Amount	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested
New		2	\$16.23	BRADWELL	DAVID	1874	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$17.70	PUZAN	CHRISTOPHER	0370	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$20.65	ALEXANDER	ROBERT	9854	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$21.09	ARAGON	NELLIE	2328	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$56.05	BREWER	DAVID	7193	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$59.00	TULLOS	OSCAR	2433	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$59.00	ZENGERLE	JASON	5712	PP8 FY2020	KMGQXV	05/21/2020
New		2	\$78.47	SANDOVAL	PATSY	2479	PP8 FY2020	KMGQXV	05/21/2020

Total New: \$328.19

Total Pending: \$0.00

Total Submitted: \$0.00

Paid and Errors from Finance

Status	Error or Warning	App Seq	Request Amount	Amount Paid	PP Paid	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested
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No Data

Total Paid: \$0.00

Total Error: \$0.00