



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G16N-4G-C 1811 5097
Alex Zamora	Grievant:	Nellie Aragon
NALC:	Branch Grievance Number:	421-006-18
Jim Ruetze	Branch:	421
	Installation:	Schertz
District:	Delivery Unit:	MPO
Rio Grande	State:	TX
	Incident Date:	12/12/2017
	Informal Step A Meeting:	01/05/2018
	Formal Step A Meeting:	01/11/2018
USPS Formal A:	Received at Step B:	01/21/2018
Troy Morgan	Step B Decision Date:	02/07/2018
NALC Formal A:	Issue Code:	41.3130
John English	NALC Subject Code:	600198

ISSUE:

Did management violate Article 41.2.B of the National Agreement by temporarily removing the grievant from his opt/hold-down on route 5412 on December 12, 2017? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation when management did not work the grievant the scheduled hours of his opt/hold-down assignment on December 20, 2017. Carrier Aragon (EIN 04519591) is awarded a lump sum payment in the amount of \$136.00; payment was completed at Step B. Management is required to honor the opting provisions in Article 41. See the DRT Explanation.

EXPLANATION:

The grievant in this case is Nellie Aragon, a City Carrier Assistant (CCA) assigned to the Schertz, TX Main Post Office with relative standing of 07/08/2017. During the week of December 9-15, 2017, the grievant was holding down route 5412 in Schertz under Article 41 or the National Agreement due to a temporary vacancy on that assignment. Wednesday, December 20, 2017 was a regularly scheduled day for the hold-down, but management instructed the grievant to take that day off. The union filed this grievance to protest management's failure to permit the grievant to work the hours and days of the vacant assignment. Unable to resolve the dispute through the Informal A and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends the grievant had a contractual right under Article 41.2.B to work the day in question, and should therefore be compensated for that day.

Management did meet at the Formal Step A level but did not provide any contentions.

The DRT agreed the case file evidenced a violation. 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.

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

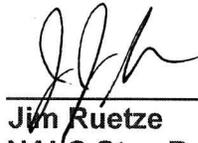
consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy. (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. The DRT did not mutually agree to the additional lump sum requested by the union at this time for the violation; however, future violations may be met with an additional remedy, consistent with the JCAM language quoted above.

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



Alex Zamora
USPS Step B Representative



Jim Ruetze
NALC Step B Representative

Grievance File Contents:

PS Form 8190
Employee Moves Report
Union Contentions
Workhour Workload Report
Employee Everything Report
Copy of Employee Pay Stub

Formal Step A Request
Time Limit Extension
Weekly Schedule
Copy of Text Message
Informal Step A Request
Hours Analysis Report

cc: **Area Manager of Labor Relations, Southern Area**
NALC NBA, Region 10
District Manager, Rio Grande District
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File

Payout Request History for Grievance 18115097

[HELP](#)

no data

<u>Not Processed By Payroll</u>	<u>Payroll Processed</u>
<input checked="" type="checkbox"/> New (Not yet sent to Payroll)	<input checked="" type="checkbox"/> Paid (Back from Payroll without error)
<input checked="" type="checkbox"/> Pending (Not back from Payroll)	<input checked="" type="checkbox"/> Payroll Error (Back from Payroll with error)
<input checked="" type="checkbox"/> Submitted (Received acknowledgment from Payroll, awaiting processing)	

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	\$136.00	ARAGON	NELLIE	2328	PP26 FY2017	KBY9N0	02/09/2018	<input type="button" value="Details"/>
Total New: \$136.00										
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
No Data											
Total Paid: \$0.00											
Total Error: \$0.00											