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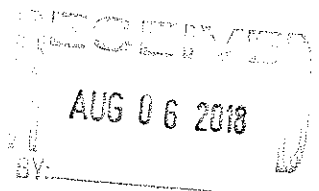


# RESOLVE



## STEP B DECISION

<b>Step B Team:</b>	Decision:	<b>RESOLVE</b>
USPS:	USPS Number:	<b>G16N-4G-C 1829 9185</b>
<b>Alex Zamora</b>	Grievant:	<b>James Guzman</b>
NALC:	Branch Grievance Number:	<b>421-547-18</b>
<b>Jim Ruetze</b>	Branch:	<b>421</b>
	Installation:	<b>Schertz</b>
District:	Delivery Unit:	<b>MPO</b>
<b>Rio Grande</b>	State:	<b>TX</b>
	Incident Date:	<b>05/10/2018</b>
	Informal Step A Meeting:	<b>06/09/2018</b>
	Formal Step A Meeting:	<b>06/22/2018</b>
USPS Formal A:	Received at Step B:	<b>06/25/2018</b>
<b>Troy Morgan</b>	Step B Decision Date:	<b>07/25/2018</b>
NALC Formal A:	Issue Code:	<b>41.3130</b>
<b>John English</b>	NALC Subject Code:	<b>600198</b>



### 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 May 10, 2018? 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 May 10, 2018. Carrier Guzman (EIN 04651959) is awarded a lump sum payment in the amount of \$207.36; payment was completed at Step B. Management is responsible for knowing which employees are holding down temporarily vacant duty assignments under Article 41.2.B, and is required to honor the opting provisions in Article 41. See the DRT Explanation.

### EXPLANATION:

The grievant in this case is James Guzman, a City Carrier Assistant (CCA) assigned to the Schertz, TX Main Post Office with relative standing of 09/16/2017. During the week of May 5-11, 2018, the grievant was holding down route 5412 in Schertz under Article 41 or the National Agreement due to a temporary vacancy on that assignment. Thursday, May 10, 2018 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.

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The DRT reviewed the case file and found it to be almost identical to three other Step B decisions from Schertz that were included in the file. The DRT could not reconcile what it believed to be clear instructions in those decisions with the identical violation evidenced in this case. Consequently, the DRT agreed a joint call to Postmaster Troy Morgan and Steward John English would be appropriate to ascertain whether the instructions in the prior decisions were not understood by the scheduling supervisor or the postmaster. The call was also intended to flesh out how this grievance got through the Informal Step A and Formal Step A meetings without being resolved, since there were three Step B decisions in the file guiding the parties as to the appropriate resolution.

In the call, Postmaster Morgan said he didn't resolve the grievance because he thought if the employee worked 40 hours in a week then no monetary remedy would be due for a violation. Responding to a follow-up question by the DRT, he acknowledged that he is responsible for complying with the opting provisions of Article 41 even if an employee reaches 40 work hours for the week. Postmaster Morgan then said he was unaware the grievant was on a hold-down, and *that* was the reason he scheduled the grievant off on the day in question. Postmaster Morgan assured the DRT that he and his supervisor will know which employees are holding down assignments under Article 41 prior to making the schedule, and would assign such employees according to the hours and days of the opted-for assignment.

Relieved at Postmaster Morgan's commitment to contract compliance, the DRT ended the call and wished the parties well. The DRT nonetheless reminds the parties of the JCAM provisions of Article 41.2.B, which include 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,*

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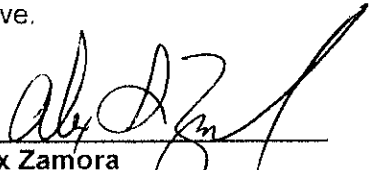
*but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.*

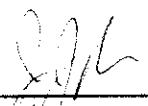
*In those circumstances in which a PTF or city carrier assistant worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances 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. Based on the assurance Postmaster Morgan made regarding knowing who was on an opt and scheduling appropriately, the DRT did not agree to the additional lump sum requested by the union for the violation; however, consistent with the JCAM language quoted above, future violations are likely to result in an additional compensatory remedy to encourage compliance with the National Agreement.

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

  
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**Alex Zamora**  
**USPS Step B Representative**

  
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**Jim Ruetze**  
**NALC Step B Representative**

**Grievance File Contents:**

PS Form 8190  
Union Contentions  
Employee Everything Report  
Time Limit Extension  
PS Form 50  
DRT Decisions

Hold-Down Request  
Formal Step A Request  
Weekly Schedule  
Informal Step A Request  
Hours Analysis Report

**cc:**

LR Manager, Southern 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

**Payout Request History for Grievance**  
18299185

[HELP](#)

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

**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	\$207.36	GUZMAN	JAMES	2015	PP10 FY2018	KBY9N0	08/02/2018	<a href="#">Details</a>
Total New: \$207.36										
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											