

TB



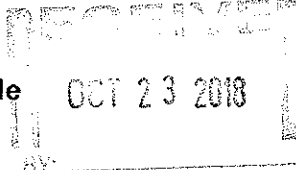
RESOLVE



STEP B DECISION

Step B Team:
USPS:
Alex Zamora
NALC:
Jim Ruetze

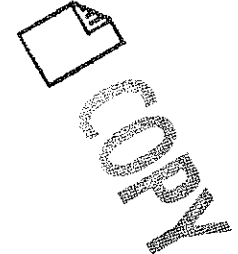
District:
Rio Grande



USPS Formal A:
Edmundo Mata
NALC Formal A:
Adam Reyna

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

RESOLVE
G16N-4G-C 1844 4135
Nestor Guzman
421.1114.18
421
Universal City
MPO
TX
09/20/2018
09/28/2018
10/04/2018
10/12/2018
10/17/2018
41.2260
600198



ISSUE:

Did management violate Article 41.2.B.5 of the National Agreement by not permitting the grievant, a City Carrier Assistant (CCA), to work the scheduled hours of his opt/hold-down assignment on 09/20/2018? If so, what is the appropriate 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 her opt/hold-down assignment on September 20, 2018. Carrier Nestor (EIN 04596072) is awarded a lump sum payment in the amount of \$142.24; 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 Nestor Guzman, a City Carrier Assistant (CCA) assigned to the Universal City, TX Main Post Office with relative standing of 01/07/2018. During the week of September 15-21, 2018, the grievant was holding down route 4812 in Universal City under Article 41 of the National Agreement due to a temporary vacancy on that assignment. Thursday, September 20, 2018 was a regularly scheduled day for the hold-down, but the grievant was not scheduled to work. 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 placed a bid for an opt/hold-down on route 4812 and was awarded the position; the opt has not ended. The scheduled hours for this route for the week in question were 07:30 am to 4:00 pm with a non-scheduled day of 09/20/2018. The grievant was not permitted to work those hours on 09/20/2018 and was scheduled off.

The union requests as remedy that management cease and desist violating Article 41.2 of the National Agreement and that the grievant work the regular scheduled hours of his hold-down immediately. Also, the union requests that he be made whole for the hours he would have worked on 09/20/2018 had he not been improperly taken off his hold-down. An additional remedy of \$100.00 should be awarded to the grievant to ensure compliance in following the contract.

Management contends the grievant may have to work on Sundays under unforeseen circumstances and management is within their obligation to meet Article 3 responsibly to manage the operation. Management contends since the grievant worked Sunday he asked the grievant if he would like two days in row off which would be Wednesday and Thursday. The grievant accepted the offer and did not come in on Thursday to which would have been his regular scheduled day. Management contends Article 3 gives him the right to schedule accordingly.

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.*

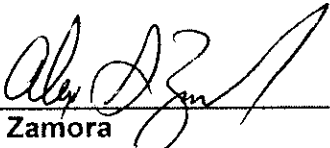
RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel, Room 1059
San Antonio, TX 78284-9998
PHONE 210-368-1760, 210-368-1784, FAX 210-368-8525

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.

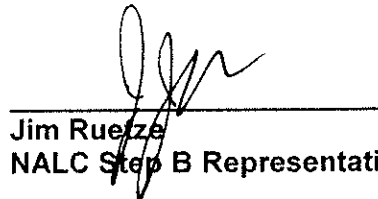
In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, 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 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
Steward Designation
Union Contentions
Carrier Schedule
Informal Step A Request
Interview for Grievant
Employee Moves Report

PS Form 50
Management Contentions
Item 0-13 Opt Request
Request for Formal Step A
Informal Step A Resolution
Employee Everything Report
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