



RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Rose Barner
 NALC:
Jim Ruetze

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:
 Step B Decision Date:
 Issue Code:
 NALC Subject Code:

RESOLVE
G19N-4G-C 2118 8967
Class Action
421-1655-21
421
San Antonio
Nimitz
TX
03/20-26/2021
04/03/2021
04/08/2021
04/16/2021
06/02/2021
08.5450
120051

District:
Rio Grande – Texas 3

ISSUE: Did management violate Article 8.5 of the National Agreement by mandating Work Assignment (WA) carriers and non ODL carriers off their assignments when overtime desired list (ODL) carriers were available? 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 of the National Agreement. The letter carriers in the table below are compensated in the amounts by their names. Non-ODL carriers who were improperly assigned to work overtime were compensated at additional 100% 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 done the work. Management shall assign overtime consistent with the provisions of Article 8.5. All payments associated with these remedies have been processed at Step B through GATS. See the DRT Explanation below.

Employee	EIN	Hrs @100%	OT Hours	POT Hours	Remedy
Moreno, M	03464787	3.48			\$102.66
Bernal, RR	03523860	1.15			\$33.93
Gaona, RF	04235148	5.02			\$148.09
Loera, PR	04571739	2.08			\$61.36
Whitney, MS	04297913	2.81			\$82.90
Flores, E	04629941	2.86	3.54		\$241.02
Tsai, E	04736006	6.00			\$177.00
Lopez, V	03505139	4.29			\$126.56
Benavides, MA	04409367	1.52			\$44.84
Rhoades, DL	04219698	0.50			\$14.75
Portugal, PI	04487802		0.77	4.03	\$271.84
Armeli, MN	04330319		2.53	1.30	\$188.65
Lara Jr, JS	03666287		0.82	3.60	\$248.69
Marin, RC	01977196		1.25	4.53	\$322.58
Herrera, C	04540623		1.04	5.44	\$366.98

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-5547, 210-368-1760, 210-368-1784, FAX 210-368-8525

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at Nimitz Station in San Antonio, Texas during the week of March 20-26, 2021. Management assigned overtime to non-ODL and WA carriers off their assignments while ODL carriers were available at the regular and penalty overtime rates.

The union filed this grievance to protest the improper overtime assignments. 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 management violated Articles 8.5.D and G, and the Letter Carrier Paragraph, when they assigned overtime to carriers who were not on the ODL while ODL carriers were available to perform the work. The union further contends the question of whether a remedy is appropriate for non-ODL carriers improperly forced to work overtime has been settled in the union's favor innumerable times over a period of several years.

The union requests all ODL carriers be paid at the appropriate overtime rate, up to and including penalty overtime, for management's decision to bypass them in favor of non-ODL carriers. The union also requests the non-ODL carriers be either compensated an additional 100% of their straight time rate or granted administrative leave equal to the amount of time they were improperly mandated.

Management contends the union failed to perform a thorough investigation. Management provided the Performance/Analysis Report showing in the morning the ODL carriers were projected to have 12 hours of work. It is not feasible to assign them more than that on the assumption they will get it done faster. Management maintains the unit has six ODL carriers, and two of them (Whaley and Anderson) are medically restricted from walking, which leaves four qualified ODL carriers. Management asserts these four carriers get all the overtime they want, and more. Moreover, management contends no carriers at Nimitz are interested in filing grievances for overtime, yet the union refused to interview any of them to verify this. Management insists there have been no grievances in 17 months thanks to arrangements made between management and the union to assign overtime based on daily volunteering by all carriers. Furthermore, management argued Carrier Zellers had not submitted a 3996 for the overtime worked on March 22.

The DRT reviewed the case file and determined there was a violation of Article 8.5 during March 20-26, 2021 when the overtime among full-time carriers was not assigned in accordance with the provisions of Article 8.5. During that week the overtime carriers did not reach the 12/60 hour limit and were still available.

Management indicated all the non-ODL carriers volunteered for overtime, but the case file contained insufficient evidence to support this claim. Management also contended all the ODL carriers were scheduled into penalty overtime, but the case file contained no PS Forms 3996 confirming this. Management's contention that Carrier Zellers had not submitted a PS Form 3996 for the overtime on his or her own assignment was not controverted by the union. Because DOIS records cannot form the sole basis for a carrier's leaving or returning time, and because the ODL carriers' actual time worked was significantly less than the Performance/Analysis Report projections, the DRT could not agree the ODL carriers had all been assigned 12 hours of work, or that management was aware Zellers would need overtime. There were only four occasions where ODL carriers worked more than ten hours during the week in question, and they were all on Monday, March 22. No carrier worked up to 11 hours.

The DRT noted an inconsistency in some documentation in the case file. Management included a CA-17 for ODL carrier Anderson in support of its contention concerning his availability for overtime.

The CA-17 does in fact indicate a medical limitation of eight hours, but TACS records show Anderson worked overtime on four days that week. The DRT considered the CA-17 to be the controlling document, and therefore did not remedy Anderson for missed overtime opportunities. However, the DRT encourages the parties to review Anderson's medical limitations to ensure they are adhered to.

Overtime for non-ODL carriers *on their own assignments* is governed by the Letter Carrier Paragraph, which is found on pages 8-14 and 8-15 of the JCAM:

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 assignment of overtime to non-ODL carriers off their assignments or on a non-scheduled day is also discussed on page 8-15:

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). [Emphasis Added]

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San Antonio, TX 78284-9608
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For Work Assignment carriers, the following JCAM language from page 8-22 addresses the assignment of overtime off their assignment or on a non-scheduled day:

The Work Assignment List was established for full-time letter carriers who only want to work overtime on their own assignment on regularly scheduled days. Signing up for the Work Assignment overtime does not create any entitlement or obligation to work overtime on a non-scheduled day. For purposes of overtime on a non-scheduled day or on other than their own assignment, carriers on the Work Assignment list are treated exactly the same as any other full-time carriers not on the Overtime Desired List—They may only be required to work overtime under the provisions of Article 8.5.D. [Emphasis in Original].

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



Rose Barner
USPS Step B Representative


cc:

LR Manager, Southern Area
NALC Region 10 NBA
Texas 3 District HR Manager
Texas 3 District LR Manager
USPS Formal A L.F. Ossont

Grievance File Contents:

PS Form 8190
Union Contentions - 9 pgs
Violation/Remedy Spreadsheets – 15 pgs
Hours Analysis Report – 7 pgs
Schedule
Employee Moves Report - 13 pgs
Request for Formal Step A Meeting

PS Form 8190
Anderson's CA-17
Union Contentions - 10 pgs
Violation/Remedy Spreadsheets – 11 pgs
Hours Analysis Report – 7 pgs
Schedule - 2 pgs
Request for Information/Steward Time
Employee Moves Report - 13 pgs



Jim Ruetze
NALC Step B Representative

NALC Branch President
NALC Formal A Raul Reyes
Manager, Texas 3 District
Postmaster
DRT File

Request for Information/Time/Meeting
Management Cover Sheet
Management Contentions - 8 pgs
Anderson's CA-17
Performance/Analysis Report - 64 pgs
ODL Signup Sheet

Request for Information/Time/Meeting
Supervisor Comments
Management Contentions - 4 pgs
Supervisor Notes - 5 pgs
Performance/Analysis Report - 24 pgs
ODL Signup - 3 pgs
Request for Formal Step A Meeting - 3 pgs

Payout Request History for Grievance 21188967

[HELP](#)

no data

<p><u>Not Processed By Payroll</u></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><u>Payroll Processed</u></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>
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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	\$14.75	RHOADES	DUSTY	7045	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$33.93	BERNAL	RICHARD	3229	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$44.84	BENAVIDES	MARCO	6353	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$61.36	LOERA	PATRICK	9916	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$82.90	WHITNEY	MATTHEW	4432	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$102.66	MORENO	MICHAEL	9950	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$126.56	LOPEZ	VICTOR	7898	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$148.09	GAONA	RUBEN	1099	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$177.00	TSAI	EDWIN	9050	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$188.65	ARMELI	MATTHEW	7192	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$241.02	FLORES	ERICK	8001	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$248.69	LARA	JAMES	5845	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$271.84	PORTUGAL	PAUL	3792	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$322.58	MARIN	RUBEN	9859	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
New		2	\$366.98	HERRERA	CRISTINA	8270	PP7 FY2021	YSZ1BC	06/03/2021	<input type="button" value="Def"/>
Total New: \$2,431.85										