



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G19N-4G-C 2118 2954
Laurie Nichols-Marshall	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-1665-21
Jose Portales	Branch:	421
	Installation:	San Antonio
Grieving District:	Delivery Unit:	Beacon Hill
Rio Grande	State:	Texas
	Incident Date:	02/27/2021
	Informal Step A Meeting:	03/18/2021
	Formal Step A Meeting:	04/01/2021
	Step B Received Date:	04/12/2021
	Step B Decision Date:	05/17/2021
	Issue Code:	08.5000
	NALC Subject Code:	120051

ISSUE:

Did management violate Article 8.5.D and 8.5.G of the National Agreement on February 27, 2021, when they forced non-Overtime Desired List (ODL) and Work Assignment (WA) carriers to work overtime off their own assignments while ODL and City Carrier Assistants were available? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case evidenced violations of Articles 8 and 15 of the National Agreement. The letter carriers in the table below are compensated in the amounts by their names. Carriers who were improperly assigned to work overtime were compensated an 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 performed the work. Management must 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.

EIN	Employee	Hours	Remedy	EIN	Employee	Hours	Remedy
04350847	Romero, J.	1.78	\$52.51	04660659	Garcia, D.	1.64	\$96.76
04759024	Jordan, E.	1.43	\$42.19	04726788	Bjork, H.	3.33	\$98.24
04659422	Morales, A.	0.99	\$58.41	01949924	Reyes, R.	2.39	\$141.01
01988799	Rodriguez, R.	1.41	\$83.19	04707834	Favela, R.	0.75	\$22.13
04466169	Castaneda, J.	1.74	\$51.33				

EXPLANATION:

This grievance concerns the assignment of overtime among full-time letter carriers at the Beacon Hill Station in San Antonio, Texas on February 27, 2021. On that date management mandated a non-ODL and WA carriers to work overtime on and off their own

assignments while ODL carriers were available at the regular overtime and penalty overtime rates.

The union filed this grievance to challenge management's violation of Article 8 and failure to comply with the Arbitrator Barret's Award. Unable to resolve the dispute through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends management violated Article 8.5.D and 8.5.G of the National Agreement when non- ODL and WA carriers were mandated to work on and off their own assignments while ODL carriers were available at the overtime and penalty overtime rates. The union also contends management violated Article 15.3.A and Postal Policy Letter M-01517 via Article 19 when they failed to comply with Arbitrator Barrett's decision dated 12/30/2019. Arbitrator Barrett's ordered management to fully cease and desist from further violations of Article 8.

The union requests management immediately cease and desist violating the provisions of Article 8 and pay the non-ODLs 125% of pay rate or administrative leave for the time they were mandated on and off assignment and the ODL carriers to be made whole for the time they should have worked. The union also requests management compensate the union \$250.00 for the continued effort and resources needed to process the attached grievance. The union finally requests all carriers affected be compensated an additional \$10.00 for management's failure to comply with Arbitrator Barrett's decision.

Management met at Formal Step A but did not provide any contentions.

The DRT reviewed the case file and determined the overtime among full-time carriers on February 27, 2021 was not assigned in accordance with the provisions of Article 8.5. On the day in question the overtime carriers had still not reached the 12/60 hour limit and were still available. 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 Mittenenthal 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]*

As it pertains to the 12 hours/60 day hours rule, the JCAM states the following on pages 8-19 and 8-20 :

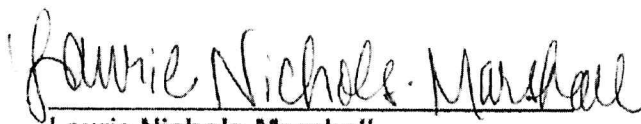
On October 19, 1988 the national parties signed the following Memorandum of Understanding (M-00859):

*The parties agree that with the **exception** of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.*

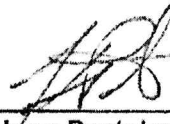
RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-1760, 210-368-5547, FAX 210-368-8525

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of over-time within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4NNA-C 21 (3rd issue) and H4C-NA-C 27 (C-07323). [Emphasis Added]

The team discussed the remedy of administrative leave to the non-ODL carriers and the additional payment of \$10.00 per carrier 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.



Laurie Nichols-Marshall
USPS Step B Representative



José 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: M.R. Moreno
NALC Formal Step A Designee: R. Hidalgo

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

Grievance File Contents

PS Form 8190
Arbitrator Barrett's Award (14 pgs)
Pre-Arbitration Agreements (9 pgs)
Employee Moves Reports (14 pgs)
Informal Step A
ODL (2 pgs)

Union's Contentions (26 pgs)
Vice President Gould's Statement
Union's Charts (4 pgs)
Request to Meet at Formal Step A
Carrier Schedule (2 pgs)

Payout Request History for Grievance
21182954

[HELP](#)

<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>	
<p>< 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		1	\$22.13	FAVELA	RODRIGO	0611	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$42.19	JORDAN	ETOYYA	8237	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$51.33	CASTANEDA	JAIRO	7233	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$52.51	ROMERO	JONATHAN	8754	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$58.41	MORALES	ADAM	2276	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$83.19	RODRIGUEZ	RENE	2960	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$96.76	GARCIA	DAVID	3635	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$98.24	BJORK	HARLEY	1049	PP6 FY2021	XCNXF0	05/18/2021	C
New		1	\$141.01	REYES	RAUL	0743	PP6 FY2021	XCNXF0	05/18/2021	C
Total New: \$645.77										
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												