



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G11N-4G-C 1421 5781
Laurie Nichols-Marshall	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-485-14
Jose Portales	Branch:	421
	Installation:	San Antonio
District:	Delivery Unit:	Cedar Elm
Rio Grande	State:	TX
	Incident Date:	05/26/2014
	Informal Step A Meeting:	06/07/2014
	Formal Step A Meeting:	06/24/2014
	Received at Step B:	06/30/2014
	Step B Decision Date:	05/17/2021
	Issue Code:	11.6300
	NALC Subject Code:	506002

ISSUE: Did management violate Article 11 of the National Agreement (NA) and the LMOU when management failed to poll and schedule regular full-time volunteers for the Memorial Day holiday 05/26/2014 and City Carrier Assistants (CCAs) were worked in lieu of? If so, what is the remedy?

DECISION: The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. Based on the settlement of national interpretive case Q11N-4Q-C 1427 0600 and the resulting MOU M-01937 resolution, the case file evidenced a violation of Article 11.6 of the National Agreement. Management must comply with the holiday scheduling "pecking order" provisions of Article 11.6 for the day of the actual holiday. Management must poll for volunteers and post the holiday schedule by Tuesday of the preceding service week in which the holiday falls on. Management will pay a lump sum of \$216.00 to each of the following carriers: R. Flores, J. Kruihof and M. Irizarry, for not being polled/permitted to work on the holiday. Management will provide the union steward with a copy of the GATS payment within seven (7) days of receipt of this decision.

EXPLANATION: This is a class action grievance filed on behalf of the city letter carriers assigned to the Cedar Elm Station in San Antonio, TX. Management did not poll full-time regular carriers for volunteers for the holiday 05/26/2014 and instead only worked CCAs. The Step B placed the grievance on HOLD pending settlement or arbitration of the national interpretive case Q11N-4Q-C 1427 0600. On 01/22/2021 the parties agreed to the MOU M-01937.

The union filed this grievance to protest management's failure to seek and utilize full-time volunteers before working CCAs on the holiday. 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 11.6.A. of the NA and/or Article 11 of the Branch 421 local memorandum of understanding (LMOU) by failing to poll and schedule

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regular full-time volunteers for the Labor Day holiday according to the proper pecking order, by Tuesday of the preceding week. Management also violated Article 11.6.A. of the NA and/or Article 11 of Branch 421 LMOU when they scheduled and worked four (4) CCAs to work the holiday instead of full-time regular volunteers.

The union requests management cease and desist from refusing to poll the full-time carriers for the holiday and to post the schedule by the Tuesday preceding the holiday. The union also request that carriers Irizarry, Kruithof and Flores be paid at the corresponding rate for 8 hours each for the denied opportunities or otherwise made whole.

Management contends there is no notice of how many Amazon packages will arrive. Utilizing CCAs allows management the flexibility to minimize the amount of guaranteed time for the holiday. Management determined there was not going to be 8 hours of work, therefore determined to schedule four (4) CCAs. The union does not determine the work. The Dynamic Routing Tool, used to sort the packages, is what decides the number of routes needed and the workload determined is consistently changing. Management determines the window of operation and determines the window of operation (WOO), not the union. It is not feasible for management to just change the WOO for their behalf. Management also contends USPS is not in the business of “making up” work to fulfil 8 hours.

The DRT reviewed the case file and determined management violated Article 11.6 of the National Agreement when they failed to poll for volunteers for the actual holiday 05/26/2014. The case file provided the Employee Everything Report for four (4) CCAs who worked on 05/26/2014 for a total of 25.44 hours. The DRT agreed management must comply with the holiday scheduling “pecking order” provisions of Article 11.6 or the provisions of a LMOU for the day of the actual holiday. Article 11.6.B of the Joint Contract Administration Manual (JCAM), on pages 11-3 and 11-4, provides the scheduling procedure for holiday assignments in relevant parts:

The intent of Article 11.6 is to permit the maximum number of full-time regular, full-time flexible and part-time regular employees to be off on the holiday should they desire not to work while preserving the right of employees who wish to work their holiday or designated holiday.

*Article 11.6.B provides the scheduling procedure for holiday assignments. Keep in mind that Article 30.B.13 provides that “the method of selecting employees to work on a holiday” is a subject for discussion during the period of local implementation. The Local Memorandum of Understanding (LMOU) may contain a local “pecking order.” In the **absence** of LMOU provisions or a past practice concerning holiday assignments, the following **minimum pecking order should be followed:***

- 1) All part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.*
- 2) **All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their holiday or their designated holiday—by seniority.***
- 3) City carrier assistant employees.*
- 4) All full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have volunteered to work on their non-scheduled day—by seniority.*

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5) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would otherwise be their non-scheduled day—by inverse seniority.

6) Full-time regular, full-time flexible and part-time regular employees who possess the necessary skills and have not volunteered on what would otherwise be their holiday or designated holiday—by inverse seniority. [Emphasis Added]

Holiday Schedule Posting. The provisions of Article 11.4.A concerning straight-time pay for holiday work apply to all full-time employees whose holiday schedule is properly posted in accordance with this section. If the holiday schedule is not posted as of Tuesday preceding the service week in which the holiday falls, a full-time employee required to work on his or her holiday or designated holiday, or who volunteers to work on such day, will receive holiday scheduling premium for each hour of work, up to eight hours. However, the ELM Section 434.53.c(2) provides that: [Emphasis Added]

ELM 434.53.c(2) In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises that requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) do not receive holiday scheduling premium.

Arbitrator Mittenthal held in H4N-NA-C 21 (2nd Issue), January 19, 1987 (C-06775) that a regular employee who volunteers to work on a holiday or designated holiday has only volunteered to work eight hours. A regular volunteer cannot work beyond the eight hours without supervision first exhausting the ODL. He also ruled that management may not ignore the holiday “pecking order” provisions to avoid the payment of penalty overtime and remanded the issue of remedy for such violations to the parties. The relationship between Article 11 and the overtime provisions of Article 8 is discussed further under Article 8.5.

The JCAM states on page 11-5:

The Memorandum of Understanding dated October 19, 1988 (M-00859) provides:

The parties agree that the Employer may not refuse to comply with the holiday scheduling “pecking order” provisions of Article 11.6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime. The parties further agree to remedy past and future violations of the above understanding as follows.

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.

2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11.6, or pursuant to a Local Memorandum of Understanding, at the rate of pay the employee would have earned had he or she worked on that holiday.

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While Mittenenthal ruled that it was a violation to ignore the "pecking order" to avoid payment of penalty overtime, he did indicate that "...the Postal Service can, of course, choose from among the part-time flexibles (or from among the regular volunteers, etc.) in order to limit its labor cost. That kind of choice would not conflict with the 'pecking order'."

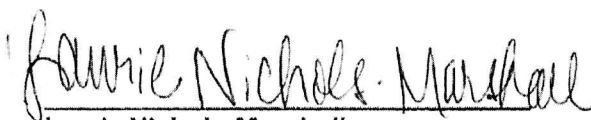
National Arbitrator Fasser ruled in NC-C-6085, August 16, 1978 (C-02975) on the appropriate remedy for violations of Article 11.6. He found that when an employee who volunteered to work on a holiday or designated holiday is erroneously not scheduled to work, "the appropriate remedy now is to compensate the overlooked holiday volunteer for the total hours of lost work." [Emphasis Added]

The MOU, M-09137, provides the following relevant language:


*The Employer determines the number and categories of employees needed for holiday work. In instances where there are **eight or more hours of work available, the normal holiday pecking order is used to schedule employees to work on a holiday.***

*In instances where the holiday pecking order applies and a parcel delivery hub and spoke model is utilize, employees of the installation **where the carriers report and from where delivery originates on the holiday or designated holiday will be scheduled pursuant to the holiday pecking order, and existing local memorandum of understanding (LMOU) provisions regarding the holiday pecking order in that installation will apply.** This does not preclude the scheduling of CCAs from other Post offices consistent with existing contractual provisions. [Emphasis Added]*

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



Jose Portales
NALC Step B Representative

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal A M. A. Moreno

NALC Branch President
NALC Formal A M. Irizarry
Manager, Rio Grande District
Postmaster, San Antonio, Texas
DRT File

Grievance File Contents

PS Form 8190 (2 pages)
Union Contentions (8 pages)
Informal Step A Request (8 pages)
Email (2 pages)
Settled Decision (8 pages)
ITEM 0-13 (2 pages)
Employee Everything Report (9 pages)
Management's Contentions (6 pages)

Request for Formal A Meeting (2 pages)
Statement (4 pages)
Carrier Schedule (2 pages)
Step B Decision (11 pages)
LMOU Impasse Items (7 pages)
Email Michael Moreno (2 pages)
Employee Statement (6 pages)