



RESOLVE



STEP B DECISION

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|--------------------------------|--------------------------|----------------------------|
| Step B Team: | Decision: | <u>RESOLVE</u> |
| USPS: | USPS Number: | G19N-4G-C 2117 4247 |
| Laurie Nichols-Marshall | Grievant: | Class Action |
| NALC: | Branch Grievance Number: | 421-1216-21 |
| Jose Portales | Branch: | 421 |
| | Installation: | San Antonio |
| District: | Delivery Unit: | Serna |
| Rio Grande | State: | TX |
| | Incident Date: | 01/15/2021 |
| | Informal Step A Meeting: | 03/30/2021 |
| | Formal Step A Meeting: | 04/01/2021 |
| | Received at Step B: | 04/05/2021 |
| | Step B Decision Date: | 05/06/2021 |
| | Issue Code: | 08.5450 |
| | NALC Subject Code: | 120051 |

ISSUE: Did management violate Article 8.5 of the National Agreement when they mandated non-overtime desired list (ODL) and work assignments (WA) letter carriers to work overtime on and off their assignments while ODL carriers were still available? If so, what is the remedy?

DECISION: The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of the National Agreement. The assignment of overtime during the week in question was inconsistent with the requirements in Article 8.5. Non-ODL and WA carriers received compensation equal to 100% of their straight time rate for the hours they were improperly assigned to work overtime. ODL carriers were compensated at the appropriate overtime rate for the missed opportunities. Management must assign overtime consistent with the provisions of Article 8.5. See the DRT Explanation below.

| EIN | Employee | Hours | Remedy | EIN | Employee | Hours | Remedy |
|----------|----------------|-------|----------|----------|----------------|-------|----------|
| 02083002 | Mancha, H. | 1.68 | \$49.56 | 03590096 | Greene, K. | 1.75 | \$51.63 |
| 04623458 | Wilbanks, S. | 5.65 | \$166.68 | 04611318 | Cochrane, | 1.19 | \$35.11 |
| 04573020 | Messer, J. | 1.83 | \$53.99 | 04579039 | Loredo, C. | 1.04 | \$30.68 |
| 02438803 | Segovia, C. | 0.89 | \$51.04 | 02225378 | Valencia, R. | 1.04 | \$46.02 |
| 04161374 | Washington, B. | 1.32 | \$58.41 | 02012307 | Martinez, P. | 1.83 | \$86.14 |
| 02290943 | Villanueva, D. | 0.96 | \$54.13 | 04345972 | Clem, M. | 2.16 | \$107.23 |
| 02286356 | Beatty, R. | 1.55 | \$80.24 | 02241366 | Hernandez, J. | 1.51 | \$66.82 |
| 04440598 | Lerma, N. | 1.07 | \$59.15 | 02102434 | Atterberry, X. | 0.81 | \$47.64 |

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at the Serna Station in San Antonio, Texas during the week of January 09-15, 2021. During this week non-ODL and WA carriers worked overtime on and off their assignments while ODL carriers were available.

The union filed this grievance to protest the improper overtime assignments. Unable to achieve a resolution through the Informal or Formal A levels of the grievance process, the union appealed the grievance to Step B.

The union contended at Formal Step A management violated Article 8.5 when they worked non-ODL and WA carriers on and/or off their assignment when ODL and CCA letter carriers were available to work the overtime at the appropriate overtime rate. While some under time was captured the resulting overtime for non-ODL carriers resulted in a violation. The union contended when non-ODL carriers are forced to work overtime when ODL letter carriers are available to work, a contract violation occurs causing harm to each group of letter carriers. ODL letter carriers lose their bargained right to earn extra money and letter carriers forced to perform overtime work lose time outside of the workplace that was bargained for.

The union requested administrative leave or 100% at the straight rate of pay for the aggrieved non-ODL and WA carriers. The union also requests payment to ODL carriers at the overtime rate they would have been paid.

Management met at Formal Step A. However, did not provide contentions.

The DRT reviewed the case file and determined there was a violation of Article 8.5 during the week of January 09-15, 2021 when the overtime among full-time carriers was not assigned in accordance with the provisions of Article 8.5. Therefore, the team fashioned a remedy based on the information provided in the file. The assignment of overtime to non-ODL carriers on their assignments is governed by the Letter Carrier Paragraph, which is discussed 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.

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.

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).

The memo goes on to state that “the determination of whether management must use a carrier from the ODL to provide auxiliary assistance must be made on the basis of the rule of reason.” For example, **management is not required to use a carrier from the ODL when the travel time would be excessive for the amount of assistance being given.** The full text of the memorandum is reprinted at the end of this article. [Emphasis Added]

The assignment of overtime to non-ODL and WA carriers, off their own assignment(s), is stated on page 8-17 of the JCAM:

Mandatory Overtime. One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime. However, if the Overtime Desired List does not provide sufficient qualified fulltime regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a rotating basis starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation. [Emphasis Added]

For Work Assignment carriers and Carrier Technicians on work assignment, 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]

The JCAM states on page 8-18:

Article 8.5.G provides that employees on the Overtime Desired List may be required to work up to 12 hours per day and 60 hours per week. It further provides that the 12 and 60 hour restrictions do not apply to employees on the Overtime Desired List during the month of December.

The JCAM provides the daily and weekly workhour limitations on page 8-19:

Maximum Hours—60 Hour Limit. *National Arbitrator Mittenhal ruled in H4N-NA-C 21 “Fourth Issue,” June 9, 1986 (C-06238) that the 12- and 60-hour limits are absolutes—a full-time employee may neither volunteer nor be required to work beyond those limits. Limitations regarding part-time employees are governed by the ELM Section 432.32 (See Maximum Hours-12 Hour Limit).*

The 12/60 limitations are inclusive of all hours, including any type of leave taken, consistent with the 20-hour overtime limit (see M-00859 below).

The JCAM also provides the following relevant language on pages 8-20 and 8-21:

Article 8.5.G Violations During a Service Week. *The remedy of 50 percent of the base hourly straight-time rate provided in the Memorandum above applies for each hour worked in excess of twelve on a service day (excluding December) by a full-time employee. The remedy of 50 percent of the base hourly straight-time rate also applies for each hour worked by a full-time employee in excess of the sixty during the same service week (excluding December) in which the full-time employee has exceeded twelve hours in a service day. For example, if during the same service week a full-time employee worked 14 hours on Monday and ended up with 62 hours for the week on Friday, four hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be four hours of pay at 50 percent of the base hourly straight-time rate—two for Monday and two for Friday. In this example, the carrier should have been instructed to “clock off” and go home on Friday when the sixtieth hour was reached. The employee would then be paid any applicable guarantee time for the remainder of the service day.*

Maximum Hours—12 Hour Limit. *The overtime limits in Article 8.5.G apply only to full-time regular and full-time flexible employees. However, Section 432.32 of the Employee and Labor Relations Manual (ELM) provides the following rule that applies to all employees:*

*Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, **and mealtime**, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions. (Emphasis added)*

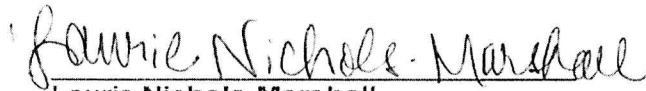
Because this language limits total daily service hours, including work and mealtime, to 12 hours, an employee is effectively limited to 11½ hours per service day of work plus a ½-

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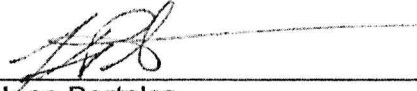
hour meal. However, the ELM also permits the collective bargaining agreement to create exceptions to this general rule.

The application of the ELM Section 432.32 to CCAs is addressed by the parties' joint Questions and Answers 2011 USPS/NALC National Agreement, dated March 6, 2014. The complete joint Q&As are found on JCAM pages 7-20 through 7-30.

Based on its review of the case file, the DRT 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
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
USPS Formal Step A Ernesto Saucedo

NALC Branch President
NALC Formal Step A Mark Isenhour
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190 (2 pgs)
Union's Charts (5 pgs)
ODL (3 pgs)
Employee Everything Report (12 pgs)
Employee Moves Report (8 pgs)
Pre-Arbitration Agreements (7 pgs)
Union's Notes
Management's Daily Worksheets (4 pgs)

Union's Contentions (7 pgs)
Time Limit Extension (2 pgs)
Weekly Schedule (3 pgs)
Overtime Alert Report (6 pgs)
Statement Requesting to get off the ODL
Request to Meet at Informal Step A
Request to Meet at Formal Step A

Payout Request History for Grievance
21174247

[HELP](#)

| | |
|---|---|
| <p>Not Processed By Payroll</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>Payroll Processed</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 | \$30.68 | LOREDO | CARLOS | 7606 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$35.11 | COCHRANE | AMELIA | 4091 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$46.02 | VALENCIA | ROMEL | 4284 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$47.64 | ATTERBERRY | XAVIER | 5620 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$49.56 | MANCHA | HENRY | 1773 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$51.04 | SEGOVIA | CARLOS | 7261 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$51.63 | GREENE | KEVIN | 4595 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$53.99 | MESSER | JUNGRAE | 1254 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$54.13 | VILLANUEVA | DANIEL | 5245 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$58.41 | WASHINGTON | BRIAN | 5071 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$59.15 | LERMA | NATHAN | 4163 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$66.82 | HERNANDEZ | JUAN | 5220 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$80.24 | BEATTY | RAYMOND | 7868 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$86.14 | MARTINEZ | PAUL | 2238 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$107.23 | CLEM | MITCHELL | 0512 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| New | | 1 | \$166.68 | WILBANKS | SHELLY | 0574 | PP2 FY2021 | XCNXF0 | 05/07/2021 |
| Total New: | | | \$1,044.47 | | | | | | |
| Total Pending: | | | \$0.00 | | | | | | |
| Total Submitted: | | | \$0.00 | | | | | | |