



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G16N-4G-C 2110 5991
Rose Barner	Grievant:	Class
NALC:	Branch Grievance Number:	421-1245-21
Jim Ruetze	Branch:	421
	Installation:	Eagle Pass
	Delivery Unit:	MPO
	State:	TX
District:	Incident Date:	01/20/2021
Rio Grande	Informal Step A Meeting:	01/29/2021
	Formal Step A Meeting:	02/04/2021
	Step B Received:	02/11/2021
	Step B Decision Date:	03/09/2021
	Issue Code:	07.2400
	NALC Subject Code:	100882

ISSUE: Did management violate Article 7 of the National Agreement by assigning letter carrier work to a custodian when city carriers were available to perform these duties on January 20, 2021? 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 Article 7. Management may not assign city carrier craft work to a custodian outside of an emergency as defined in Article 3.F of the National Agreement. Carrier R Perez (EIN 02194666) is compensated \$14.75 for the violation. See the DRT Explanation below.

EXPLANATION: Management at the Main Post Office in Eagle Pass, Texas assigned letter carrier work to a custodian on January 20, 2021 while city carriers were available to perform these duties. The union filed this grievance to protest the cross-craft 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 at Formal Step A contends management instructed custodian Alvarado to perform city letter carrier duties on city routes 052-002 and 052-017 at the Eagle Pass Post Office on January 20, 2021. The Employee Everything Report shows that city carriers were available to perform the city carrier work performed by an employee from a different craft. Management failed to work all available letter carriers before making the decision to work employees across craft lines on January 20, 2021.

The union requests management cease and desist violating Articles 7 Section 2 of the National Agreement. Management make a lump sum payment equivalent to the number of hours worked across craft lines at the overtime rate to the affected available letter carriers.

Management contends the union failed to provide any and/or all relevant documentations under Article 15.2 at Informal or Formal A meeting. Management contends on January 14, 2021 the union steward was asked to provide a copy of the Article 7 settlement made with Postmaster Contreras during the summer of 2020. Steward J. Valdez responded he did not have to provide a copy because management should have it. Management then proceeded to use the custodian because they were understaffed due to carriers on annual, sick and Wounded Warriors Leave. Management contends insufficient work was not “created,” nor was overtime taken away from the carrier craft. Mail was being transported, “ready for delivery” to the city carriers so they could deliver it. Management contends they were not crossing crafts because the custodian was transporting mail and not performing delivery duties for the carrier craft, just like the plant transports the mail to offices.

The **DRT** reviewed the case file and determined management violated Article 7 of the National Agreement by assigning the custodian to perform city carrier work. Provisions in the National Agreement concerning crossing crafts are found in Article 7.2. Page 7-33 in the JCAM provides the following concerning assigning city carrier work to other crafts:

Article 7.2 of the JCAM provides, in relevant part:

7.2.B In the event of insufficient work on any particular day or days in a full-time or part-time employee’s own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee’s knowledge and experience, in order to maintain the number of work hours of the employee’s basic work schedule.

7.2.C During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Cross-Craft Assignments. Article 7, Sections 2.B and 2.C set forth two situations in which management may require career employees to perform work in another craft. This may involve a carrier working in another craft or an employee from another craft performing carrier work.

Insufficient Work. Under Article 7.2.B, management may require an employee to work in another craft at the same wage level due to insufficient work in his or her own craft. This may affect a full-time employee or a part-time regular employee for whom there is “insufficient work” on a particular day to maintain his or her weekly schedule as guaranteed under Article 8.1. Or it may apply to any employee working under the call-in guarantees of Article 8.8—i.e., a regular called in on a nonscheduled day, or a PTF employee called in on any day. This section permits management to avoid having to pay employees for not working.

Exceptional Workload Imbalance. Article 7.2.C provides that under conditions of exceptionally heavy workload in one craft or occupational group and light workload in another, any employee may be assigned to perform other-craft work in the same wage level.

Limits on Management’s Discretion to Make Cross-craft Assignments. A national level arbitration award has established that management may not assign

employees across crafts except in the restrictive circumstances defined in the National Agreement (National Arbitrator Richard Bloch, A8- W-0656, April 7, 1982, C-04560). This decision is controlling although it is an APWU arbitration case; it was decided under the joint NALC/APWU-USPS 1981 National Agreement and the language of Article 7.2.B & C has not changed since then. Arbitrator Bloch interpreted Article 7.2.B & C as follows (pages 6-7 of the award):

Taken together, these provisions support the inference that Management's right to cross craft lines is substantially limited. The exceptions to the requirement of observing the boundaries arise in situations that are not only unusual but also reasonably unforeseeable. There is no reason to find that the parties intended to give Management discretion to schedule across craft lines merely to maximize efficient personnel usage; this is not what the parties have bargained. That an assignment across craft lines might enable Management to avoid overtime in another group for example, is not, by itself, a contractually sound reason. It must be shown either that there was "insufficient work" for the classification or, alternatively, that work was "exceptionally heavy" in one occupational group and light, as well, in another.

Inherent in these two provisions, as indicated above, is the assumption that the qualifying conditions are reasonably unforeseeable or somehow unavoidable. To be sure, Management retains the right to schedule tasks to suit its need on a given day. But the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing. To so hold would be to allow Management to effectively cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C. This would be an abuse of the reasonable intent of this language, which exists not to provide means by which the separation of crafts may be routinely ignored but rather to provide the employer with certain limited flexibility in the fact of pressing circumstances. ...

Remedy For Violations. As a general proposition, in those circumstances in which a clear contractual violation is evidenced by the fact circumstances involving the crossing of crafts pursuant to Article 7.2.B & C, a "make whole" remedy involving the payment at the appropriate rate for the work missed to the available, qualified employee who had a contractual right to the work would be appropriate. For example, after determining that management had violated Article 7.2.B, Arbitrator Bloch in case H8S-5F-C 8027/A8-W-0656 (C-04560) ruled that an available Special Delivery Messenger on the Overtime Desired List should be made whole for missed overtime for special delivery functions performed by a PTF letter carrier.

Crossing Crafts in "Emergency" Situations. In addition to its Article 7 rights, management has the right to work carriers across crafts in an "emergency" situation as defined in Article 3, Management Rights. Article 3.F states that management has the right:

3.F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of

circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

This provision gives management a very limited right to make cross-craft assignments. Management's desire to avoid additional expenses such as penalty overtime does *not* constitute an emergency.

The Formal A parties are reminded the requirements set forth in Article 15.2 regarding an appeal of a grievance to Formal A. Pages 15-3 and 15-4 of the JCAM state in relevant part:

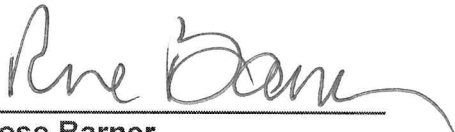
If the parties are unable to resolve the grievance during the Informal Step A meeting the union may file a written appeal to Formal Step A within 7 calendar days after the meeting.

The time limits for filing a grievance at Informal Step A or appealing to Formal Step A may be extended by mutual agreement.

The steward appeals a grievance to Formal Step A by filling out the Informal Step A portion of the NALC-USPS Joint Step A Grievance Form (PS Form 8190) and sending it to the installation head or designee.

The grievance appeal to Formal Step A should include relevant documents that were shared and discussed at the Informal Step A meeting.

Management did not establish any of the conditions in Article 7.2 were present during the period in question. Based on its review of the case file, the DRT agreed to the decision above.



Rose Barner
USPS Step B Representative



Jim Ruetze
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 Step Jesus Carrillo

NALC Branch President
NALC Formal Step A Jorge Valdez
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Union Contentions – 5 pgs
Union A&C – 2 pgs
Management Contentions – 5 pgs
Prior Formal A Settlements – 4 pgs
EER – 14 pgs

Perez Statement
Interview – Luis Alvarado
Formal A Meeting Request
Informal Step A Meeting Request
Request for Steward Time – 3 pgs