



RESOLVE



STEP B DECISION

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|----------------------|--------------------------|------------------------------|
| Step B Team: | Decision: | <u>RESOLVE</u> |
| USPS: | USPS Number: | G19N-4G-C 2123 2330 |
| Alex Zamora | Grievant: | Class Action |
| NALC: | Branch Grievance Number: | 421-1387-21 |
| Jose Portales | Branch: | 421 |
| | Installation: | San Antonio |
| District: | Delivery Unit: | Leon Valley |
| Rio Grande | State: | TX |
| | Incident Date: | 10/17/2020-10/23/2020 |
| | Informal Step A Meeting: | 12/03/2020 |
| | Formal Step A Meeting: | 05/11/2021 |
| | Received at Step B: | 05/24/2021 |
| | Step B Decision Date: | 06/10/2021 |
| | Issue Code: | 08.5450 |
| | NALC Subject Code: | 120051 |

ISSUE: Did management violate Article 8.5, sections D and G 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 Articles 8.5.D and 8.5.G of the National Agreement. The letter carriers in the table below are compensated in the amounts by their names. The non-ODL carriers who were improperly assigned to work overtime were compensated an additional 100% of their straight time rate and 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 |
|----------|-------------|-------|----------|----------|--------------|-------|----------|
| 03034256 | M. Evaldez | 5.00 | \$147.50 | 03449043 | O. Castrejon | 5.03 | \$148.39 |
| 02200678 | L. Sumlin | 8.10 | \$238.95 | 03357953 | S. Adams | 0.91 | \$26.85 |
| 04113224 | C. Gonzales | 2.53 | \$149.27 | 02259799 | R. Rodriguez | 2.32 | \$136.44 |
| 04217091 | R. Montoya | 2.24 | \$127.29 | 03502404 | T. Scruggs | 4.51 | \$257.39 |
| 03732230 | M. Gomez | 2.71 | \$159.89 | 04321796 | D. Cardiel | 2.45 | \$144.55 |

EXPLANATION: This is a class action grievance filed on behalf of the city letter carriers assigned to the Leon Valley Station in San Antonio, TX. The grievance was filed to protest management working non-ODL and WA carriers on and off their assignments while ODL carriers were available. Unable to resolve the dispute through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B

The union contended at Formal Step A management violated Article 8 of the National Agreement, 8.5.D and 8.5.G of the Joint Contract Administration Manual (JCAM) and M-00884 when they did not maximize the ODL and mandated non ODL/WA carriers to carry overtime on their own routes and carry auxiliary assistance on other routes during the work week of October 17-23, 2020 prior to fully utilizing the ODL and City Carrier Assistants (CCAs). Management contends that the carriers failed to submit PS Form 3996s, however the union requested copies of all the PS Form 3996s and management did not provide any. The carriers also send messages through the scanner when they are of the opinion of needing overtime, which management responds with continue.

The union requested all ODL and CCA carriers be awarded overtime and penalty overtime. The union requested an award of 100% at the straight rate of pay as the remedy requested by the union for the aggrieved non ODL and/or WA. The union requested management be ordered to comply with all Step B decision and Arbitration Awards. The union requested all carriers affected be compensated an additional \$5.00 to ensure contract compliance. The union finally requested management cease and desist violating Article 8.5.D and 8.5.G of the National Agreement.

Management at Formal Step A contended non-ODL carriers were not mandated to work overtime in order to deny overtime opportunities to ODL carriers as claimed by the union. The overtime worked by non-ODL carriers have extenuating circumstances beyond the control of local management such as high numbers of unscheduled absences, plant impacts and employees failing to follow instructions. Management asserts the weekly carrier schedule is preplanned for the next business day. This action helps maintain the efficiency of the operations as there is no willful or deliberate planning to violate the national contract as the union claims. Management further contended when a carrier does not submit a PS Form 3996 management is under the impression the carrier will be able to achieve their primary duties in 8 hours or less. Several carriers did not submit a PS Form 3996 during the week in question. Management asserted the fact those individuals chose not to follow instructions and submit a PS form 3996 shows the overtime used was not only unauthorized but not directed by management.

The DRT reviewed the case file and determined there was a violation of Article 8.5 for the week of October 17-23, 2020 when the overtime among full-time carriers were not assigned in accordance with the provisions of Article 8.5. 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]*


The JCAM addresses the number of hours an employee on the ODL may be required to work 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. [Emphasis Added]

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].

The DRT discussed the union's remedy of an additional payment of \$5.00 to every affected 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.



Alex Zamora
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
USPS Formal Step A F. Cazares

NALC Branch President
NALC Formal Step A R. Rodriguez
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190 (4 pgs)
Union's Charts (10 pgs)
Hours Analysis Report (12 pgs)
OTDL (2 pgs)
Requests for Steward Time (56 pgs)
Arbitrator Barrett's Award (13 pgs)
Management's Contentions (12 pgs)
M-00884 (2 pgs)
Arbitrator Britton's Award (10 pgs)
Arbitrator Gudenberg's Award (12 pgs)
Arbitrator Bahakel's Award (10 pgs)
Requests for Information (6 pgs)
M-01943

Union's Contentions (34 pgs)
Employee Moves Report (24 pgs)
Weekly Schedule (2 pgs)
Time Limit Extensions (13 pgs)
Pre-Arbitration Agreements (18 pgs)
Step B Decisions (40 pgs)
Overtime Alert Report (2 pgs)
Arbitrator Naranjo's Award (8 pgs)
Arbitrator Deinhardt's Award (13 pgs)
Arbitrator Snow's Award (18 pgs)
Request to Meet at Formal Step A
Union's Additions and Corrections (35 pgs)
Table of Contents

Payout Request History for Grievance 21232330

[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> |
|--|--|

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 | \$26.85 | ADAMS | SHAWN | 7654 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$127.29 | MONTOYA | RUBEN | 0567 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$136.44 | RODRIGUEZ | RALPH | 8681 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$144.55 | CARDIEL | DIANA | 1341 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$147.50 | EVALDEZ | MICHELLE | 9183 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$148.39 | CASTREJON | OMAR | 3751 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$149.27 | GONZALES | CHRISTOPHER | 9965 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$159.89 | GOMEZ | MARK | 2174 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$238.95 | SUMLIN | LALINA | 8693 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| New | | 1 | \$257.39 | SCRUGGS | TRACY | 9392 | PP22 FY2020 | KBY9N0 | 06/11/2021 |
| Total New: \$1,536.52 | | | | | | | | | |
| 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 | | | | | | | | | | | |