



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1420 8696
Alex Zamora	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-262-14
Jose Portales	Branch:	421
	Installation:	San Antonio
District:	Delivery Unit:	Alamo Heights
Rio Grande	State:	Texas
	Incident Date:	05/26/2014
	Informal Step A Meeting:	05/30/2014
	Formal Step A Meeting:	06/19/2014
	Received at Step B:	06/20/2014
	Step B Decision Date:	06/24/2014
	Issue Code:	11.6300
	NALC Subject Code:	506002

ISSUE: Did management violate Article 11.6 of the National Agreement when they failed to poll full-time carriers for the holiday on 05/26/2014 and instead only worked city carrier assistants (CCAs)? 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 11.6 of the National Agreement. 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. Carriers J. Kimbrell (03524359), G. Rodriguez (03708074) and Jesse Miranda (02381765) will be compensated \$216.00 each for not being polled/permitted to work on the holiday. The payments has been processed through GATS at Step B. See the DRT Explanation below.

EXPLANATION: This is a class action grievance filed on behalf of the city letter carriers assigned to the Alamo Heights Station in San Antonio, Texas. Management did not use volunteers for the holiday on 05/26/2014 and instead only worked CCAs. This grievance was placed on Hold, on 09/15/2014, 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 conducted a poll for full-time regulars who wanted to work the designated holiday (05/24/2014). The schedule was posted on Tuesday of the preceding week, but management failed to poll/seek any full-time volunteers to work on the actual holiday (05/26/2014) in violation of the pecking order. The union contends there was three full-time carriers who volunteered to work on the actual holiday. However, on the day in question two (2) CCAs from Alamo Heights worked for a total of 13.72 hours. In fact, there were four (4) other carriers, two (2) from Laurel Heights and two (2) from the Serna Station, who also worked this day at Alamo Heights. There is no evidence to support management's contentions that the routes on holidays can only be six (6) hours long. Finally, the union contends management failed to

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follow the pecking order as stated in the National Agreement and the Local Memorandum of Understanding (LMOU).

The union requests management cease and desist violating Article 11.6 of the National Agreement. The union also requests the volunteers be compensated eight (8) hours each for the denied opportunities or otherwise made whole.

Management contends they followed the provisions of the LMOU regarding the holiday poll for 05/26/2014. On 05/26/2014 only Amazon parcels were being delivered and the union and management at headquarters agreed to utilize CCAs to deliver Amazon Parcels. The parcels were routed the exact same way as they do for the Sunday Amazon operation. Management contends the routes created by the Dynamic Routing Tool are not 8-hours and cannot be combined. The pecking order identified by the union has no bearing in this case as the MOU M-01835 clearly identifies CCAs will be utilized to deliver Dynamic Routing Amazon parcels. Management contends there was no delivery of mail or regular parcels on this day. However, management will not poll or utilize volunteers to work on Sundays or holidays in which Dynamic Routing is utilized for Amazon parcel deliveries. The union's argument that management even utilized CCAs from other stations is correct. This is a conscientious business decision to allow for rotation of CCAs who work on either Sundays or holidays to deliver Amazon parcels. Management does not have the ability to control or create how many routes are created of their length. Management finally contends the union's claim that management can combine routes is baseless and not factual. Management does not agree with the union's contentions, citations or opinions.

The DRT reviewed the case file and determined management violated Article 11.6 of the National Agreement when they failed to poll and utilize volunteers for the actual holiday (05/26/2014). The case file provided the Employee Everything Report for two (2) CCAs who worked on 05/26/2014 for a total of 13.72 hours. The union contended there were four (4) other CCAs who also worked on this day. The Formal Step A manager did not deny this contention. The DRT agreed management scheduled six (6) CCAs to work on this day indicating there was a need for eight (8) or more hours of work available. The case file evidenced a statement by three full-time carriers volunteering to work on 05/26/2014. 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.

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- 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.
- 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:*

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]

M-09137 states in relevant parts:


*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.



Alex Zamora
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:
LR Manager, Southern Area
NALC Region 10 NBA
Texas 3 HR Manager
Texas 3 LR Manager
Management Formal A Rene Benavidez

NALC Branch President
NALC Formal A Karen Schoolcraft
Manager, Texas 3
Postmaster, San Antonio, Texas
DRT File

Grievance File Contents

PS Form 8190
Request to Meet at Formal Step A
LMOU Excerpts (3 pgs)
Management's Contentions (2 pgs)
Employee Everything Report (6 pgs)
Grivant's Statements (3 pgs)
Holiday Poll

Request for Information
Union's Contentions (4 pgs)
M-01835 (2 pgs)
Status Update
J. Mendiola's Letter
Weekly Schedule (4 pgs)

Payout Request History for Grievance 14208696

[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>
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New, Pending and Submitted Requests

Status	GATS Code	App Seq	Request Amount	Last Name	First Name	SSN	Relevant PP	Requested By	Date Requested	
New		2	\$216.00	MIRANDA	JESUS	6382	PP12 FY2014	KBY9N0	06/25/2021	<input type="button" value=" Details"/>
New		2	\$216.00	KIMBRELL	JAMES	1893	PP12 FY2014	KBY9N0	06/25/2021	<input type="button" value=" Details"/>
New		2	\$216.00	RODRIGUEZ	GEORGE	5582	PP12 FY2014	KBY9N0	06/25/2021	<input type="button" value=" Details"/>
Total New: \$648.00										
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											