



**RESOLVE**



**STEP B DECISION**

<b>Step B Team:</b>	Decision:	<b>RESOLVE</b>
USPS:	USPS Number:	<b>G19N-4G-C 2129 6839</b>
<b>Rose Barner</b>	Grievant:	<b>Class Action</b>
NALC:	Branch Grievance Number:	<b>421-1986-21</b>
<b>Jose Portales</b>	Branch:	<b>421</b>
	Installation:	<b>San Antonio</b>
District:	Delivery Unit:	<b>Serna</b>
<b>Rio Grande</b>	State:	<b>TX</b>
	Incident Date:	<b>05/24/2021</b>
	Informal Step A Meeting:	<b>06/25/2021</b>
	Formal Step A Meeting:	<b>06/30/2021</b>
	Received at Step B:	<b>06/12/2021</b>
	Step B Decision Date:	<b>08/16/2021</b>
	Issue Code:	<b>08.5450</b>
	NALC Subject Code:	<b>120051</b>

**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	Hrs	Remedy	EIN	Employee	Hrs	Remedy
01187430	Phillippi, C.	1.42	\$41.89	02178018	Noggle, J.	1.42	\$41.89
02241366	Hernandez, J.	1.22	\$35.99	03590096	Green, K.	1.91	\$56.35
04345656	Kester, J.	1.12	\$33.04	04623458	Wilbanks, S.	0.69	\$20.36
02438803	Segovia, C.	1.20	\$70.80	04476681	Comer, M.	0.43	\$25.37
04103140	Callaham, A.	0.80	\$47.20	02290943	Villanueva, D.	1.18	\$69.62
02286356	Beaty, R.	1.23	\$72.57	04747401	Vasquez, J.	0.50	\$29.50
04433574	Lopez, M.	1.03	\$60.77				

**EXPLANATION:** This grievance concerns the assignment of overtime among full-time letter carriers at the Serna Station in San Antonio, Texas on May 24, 2021. On this day 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 also made the supervisor aware on Saturday (05/22/2021) there was a ODL carrier available to work but scheduled off. However, the supervisor was concerned about maintaining everyone on that string equitable and therefore, would not be using the ODL carrier that was scheduled off.

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 and contended non-ODL Carrier Sanchez did not submit a PS Form 3996. The union also failed to do a proper investigation by not reviewing the Route/Carrier Daily Performance/Analysis Report and the call-in log. On the day in question there were a total of four (4) carriers who called in sick and later in the day another carrier left early because she was ill. The union contended an ODL carrier could have been called in to work on the day in question however, the supervisor gave that individual the day off because he had the most hours and opportunities on his string.

**The DRT** reviewed the case file and determined there was a violation of Article 8.5 on May 24, 2021 when the overtime among full-time carriers was not assigned in accordance with the provisions of Article 8.5.

The Formal Step manager contended non-ODL Carrier Sanchez failed to submit a PS Form 3996 requesting auxiliary assistance on the day in question, which was unrefuted by the union. Therefore, the team could not agree this was a violation. Management also contended there was an unanticipated event when a carrier had to leave early that day due to being ill. The team agreed prior to this carrier leaving early there were less than eight (8) hours of work available to seek the assistance from the ODL carrier that was scheduled off. 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 Mittenthal 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-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.



**Rose Barner**  
**USPS Step B Representative**



**Jose Portales**  
**NALC Step B Representative**

**cc:**

LR Manager, Southern Area  
NALC Region 10 NBA  
Rio Grande/Texas 3 District HR Manager  
Rio Grande/Texas 3 LR Manager  
USPS Formal Step A: Steven Gonzalez

NALC Branch President  
NALC Formal Step A: Mark Isenhour  
Manager, Rio Grande/ Texas 3  
Postmaster  
DRT File

**Grievance File Contents**

PS Form 8190 (2 pgs)  
Union's Contentions (7 pgs)  
Hours Worksheets (3 pgs)  
Weekly Schedule (3 pgs)  
OTDL (2 pgs)  
Overtime Alert report (6 pgs)  
Request to Meet at Formal Step A  
Leave Usage Log List  
Route/Carrier Daily Performance/Analysis  
Report (9 pgs)

Management's Contentions (2 pgs)  
Request for Information  
Equitability Chart for Strings D, E, F  
AM/PM Control Sheet Week PP-12-1  
Text Messages (2 pgs)  
Employee Moves Report (7 pgs)  
Pre-Arbitration Agreements (7 pgs)  
Employee Everything Report (12 pgs)

## Payout Request History for Grievance 21296839

[HELP](#)

no data

<p><b><u>Not Processed By Payroll</u></b></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><b><u>Payroll Processed</u></b></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		1	\$20.36	WILBANKS	SHELLY	0574	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$25.37	COMER	MICHAEL	9435	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$29.50	VAZQUEZ ORTIZ	JEAN	7593	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$33.04	KESTER	JUSTIN	0685	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$35.99	HERNANDEZ	JUAN	5220	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$41.89	NOGGLE	JEFFERY	6099	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$41.89	PHILLIPPI	CHARLES	2458	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$47.20	CALLAHAM	APOLLO	0197	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$56.35	GREENE	KEVIN	4595	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$60.77	LOPEZ	MATTHEW	4485	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$69.62	VILLANUEVA	DANIEL	5245	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$70.80	SEGOVIA	CARLOS	7261	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
New		1	\$72.57	BEATTY	RAYMOND	7868	PP12 FY2021	YSZ1BC	08/20/2021	<input type="button" value="D"/>
Total New: \$605.35										
Total Pending: \$0.00										
Total Submitted: \$0.00										