



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G19N-4G-C 2127 3326
Rose Barner	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-2009-21
Jose Portales	Branch:	421
	Installation:	San Antonio
	Delivery Unit:	Nimitz
	State:	TX
District:	Incident Date:	05/15/2021-05/21/2021
Rio Grande/Texas 3	Informal Step A Meeting:	06/19/2021
	Formal Step A Meeting:	06/22/2021
	Step B Received:	06/23/2021
	Step B Decision Date:	08/03/2021
	Issue Code:	08.5450
	NALC Subject Code:	120051

ISSUE: Did management violate Article 8.5 of the National Agreement by mandating Work Assignment (WA) carriers and non ODL carriers off their assignments when overtime desired list (ODL) carriers were available? If so, what is the appropriate remedy?

DECISION: The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of the National Agreement. The letter carriers in the table below are compensated in the amounts by their names. Non-ODL carriers who were improperly assigned to work overtime were compensated at additional 100% of their straight time rate. ODL carriers were compensated for the missed overtime opportunities at the rate of pay they would have earned if they had done the work. Management shall 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.

Employee	EIN	Hrs @100%	OT Hours	POT Hours	Remedy
Moreno, M.	03464787	0.45			\$13.28
Zellers, A.	04281807	0.40			\$11.80
Benavides,	04409367	0.50			\$14.75
Garcia, E.	02264565		0.50		\$22.13
Herrera, C.	04540623		0.85		\$37.61

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at Nimitz Station in San Antonio, Texas during the week of May 15-21, 2021. Management assigned overtime to non-ODL and WA carriers off their assignments while ODL carriers were available at the regular and penalty overtime rates.

The union filed this grievance to protest the improper overtime 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 contends management violated Articles 8.5.D and G, and the Letter Carrier Paragraph, when they assigned overtime to carriers who were not on the ODL while ODL carriers were available to perform the work. The union further contends the question of whether a remedy is appropriate for non-ODL carriers improperly forced to work overtime has been settled in the union's favor innumerable times over a period of several years.

The union requests all ODL carriers be paid at the appropriate overtime rate, up to and including penalty overtime, for management's decision to bypass them in favor of non-ODL carriers. The union also requests the non-ODL carriers be either compensated an additional 100% of their straight time rate or granted administrative leave equal to the amount of time they were improperly mandated.

Management contends the union failed to perform a thorough investigation. Management provided the Performance/Analysis Report showing in the morning the ODL carriers were projected to have 12 hours of work. It is not feasible to assign them more than that on the assumption they will get it done faster. Management maintains the unit has six ODL carriers, and two of them (Whaley and Anderson) are medically restricted from walking, which leaves four qualified ODL carriers. Management asserts these four carriers get all the overtime they want, and more. The union failed to ask for any PS Form 3996s and failed to review or request the Route/Carrier Daily Performance/Analysis Report. Moreover, management contends no carriers at Nimitz are interested in filing grievances for overtime, yet the union refused to interview any of them to verify this. Management contends Carrier Moreno is on medical restrictions and extended his street time by 52 minutes. Carrier Zellers saved 23 minutes in the office but extended his street time by 1:07. Carries Moreno and Zellers never informed management they would not be able to complete their assignments in 8 hours. Carrier Benavides was given a pivot to provide him with 8 hours of work. However, Carrier Benavides extended his street time by 41 minutes and had over an hour of stationary events. The overtime carriers were maxed out and these non-ODL carriers extended their routes and pivots on the days in question.

The DRT reviewed the case file and determined there was a violation of Article 8.5 during May 15-21, 2021 when the overtime among full-time carriers was not assigned in accordance with the provisions of Article 8.5. During that week the overtime carriers did not reached the 12/60 hour limit and were still available.

Management contended Carriers Moreno and Zellers did not inform management of their need for auxiliary assistance. However, the Route/Carrier Daily Performance/Analysis report evidenced these carriers were projected to work over eight hours. Therefore, the team agreed based on the reliance on that DOIS report apparent in management's contentions, they were aware the carriers would be over by at least the amount projected on the reports. Management also maintained non-ODL Carrier Benavides was provided with an assignment on other route to provide him with eight (8) hours of work. However, without the PS Form 3996s for that assignment it was considered violations.

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 ODL. 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 Mittenenthal 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.

CCAs are considered as auxiliary assistance. Accordingly, management must seek to use CCAs at either the straight-time or regular overtime rate prior to 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:

- PTFs at the straight-time or regular overtime rate
- CCAs 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 ODL 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 ODL 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. [Emphasis Added]

The assignment of overtime to non-ODL carriers off their assignments or on a non-scheduled day is also discussed on page 8-15:

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-5547, 210-368-1760, 210-368-1784, FAX 210-368-8525

*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]*

For Work Assignment carriers, the following JCAM language from page 8-21 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 nonscheduled 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 ODL—They may only be required to work overtime under the provisions of Article 8.5.D. [Emphasis in Original].

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 HR Manager
Rio Grande/Texas 3 LR Manager
USPS Formal A: L.F. Ossont

NALC Branch President
NALC Formal A: R. Reyes
Manager, Rio Grande/Texas 3
Postmaster
DRT File

Grievance File Contents:

PS Form 8190 (2 pgs)
Step B Decisions (11 pgs)
Hours Analysis Report (7 pgs)
Request to Meet at Formal Step A
Employee Moves Report (27 pgs)
Hours Analysis Report (7 pgs)
Route/Carrier Daily Performance/Analysis Report (24 pgs)

Union's Contentions (19 pgs)
Union's Charts (6 pgs)
Request for Information (2 pgs)
Weekly Schedule
Management's Contentions (12 pgs)
Breadcrumb Details (27 pgs)
Overtime Alert Report (2 pgs)

Payout Request History for Grievance

[HELP](#)

21273326

no data

Not Processed By Payroll

- New (Not yet sent to Payroll)
- Pending (Not back from Payroll)
- Submitted (Received acknowledgment from Payroll, awaiting processing)

Payroll Processed

- Paid (Back from Payroll without error)
- Payroll Error (Back from Payroll with error)

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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	\$11.80	ZELLERS	AARON	5155	PP11 FY2021	YSZ1BC	08/05/2021	Details
New		1	\$13.28	MORENO	MICHAEL	9950	PP11 FY2021	YSZ1BC	08/05/2021	Details
New		1	\$14.75	BENAVIDES	MARCO	6353	PP11 FY2021	YSZ1BC	08/05/2021	Details
New		1	\$22.13	GARCIA	EDWARD	6319	PP11 FY2021	YSZ1BC	08/05/2021	Details
New		1	\$37.61	HERRERA	CRISTINA	8270	PP11 FY2021	YSZ1BC	08/05/2021	Details
Total New: \$99.57										
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											