

RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Rose Barner
 NALC:
Jose Portales

Decision:
 USPS Number:
 Grievant:
 Branch Grievance Number:
 Branch:
 Installation:
 Delivery Unit:
 State:
 Incident Date:
 Informal Step A Meeting:
 Formal Step A Meeting:
 Step B Received:
 Step B Decision Date:
 Issue Code:
 NALC Subject Code:

RESOLVE
G19N-4G-C 2129 6812
Class Action
421-1878-21
421
San Antonio
Cedar Elm
TX
04/03/2021-4/09/2021
04/23/2021
07/08/2021
07/12/2021
08/04/2021
08.5450
120051

District:
Rio Grande/Texas 3

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 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.

Employee	EIN	Hrs@100%	OT Hrs	POT Hrs	Guaranteed	Remedy
Pucklewicz, K.	02090689	4.25				\$125.38
Guerra, C.	02233338	2.71				\$79.95
Mercereau, A.	03159547	0.27				\$7.97
Calhoun, C.	04281505	6.00			2.00	\$265.50
Lopez, J.	04431997	3.02				\$89.09
Vasquez, A.	04023511			1.05		\$61.95
Razo, F.	04110190			0.88		\$51.92
Nguyen, T.	03077686			1.13		\$66.67
Inman, S.	02255682			1.50		\$88.50
Flores, R. G.	02164510		0.03	2.60		\$154.73
Raigoza, V.	03337289		0.14	0.75		\$50.45
Speer, M.	04335347		0.80	1.25		\$109.15
Simon, N.	03526667		0.71	1.49		\$119.33
Zaragoza, R.	04490379		0.43	1.00		\$78.03
Martinez, C. H.	02436254			1.38		\$81.42

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at Cedar Elm Station in San Antonio, Texas during the week of April 3-9, 2021. Management assigned overtime to non-ODL and WA carriers on and 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 decisions are made daily to determine the most efficient and safest method of delivering the mail along with daily unscheduled absences. Arbitrators on the National level have held meeting window of operations justifies simultaneous scheduling of ODL and non ODL carriers before carriers have been maximized. Management contends in almost all cases the union has done nothing more than list the available hours the carriers on the ODL were available to work. There is no evidence as to how the employees might have been scheduled to use the unions alleged available carriers for whom the remedy is sought and meet the needs of the 5:00 pm window of operations. Management asserts to provide each full-time carrier with gainful employment on any scheduled day for a minimum of 8 hours is a contractual obligation. Management utilizes the undertime to cover open routes in conjunction with utilizing the ODL employees.

The DRT reviewed the case file and determined there was a violation of Article 8.5 during April 3-9, 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 reach the 12/60 hour limit and were still available. 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 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.*

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:

*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

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

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].

The DRT also agreed the grievant who was scheduled to work on his scheduled day off was guaranteed eight hours of work or pay in lieu thereof. The JCAM states the following concerning work hour guarantees:

***8.8.B.** When a full-time regular employee is called in on the employee's non-scheduled day, the employee will be guaranteed eight hours work or pay in lieu thereof.*

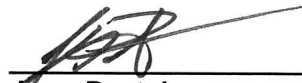
Pay Guarantee For Full-Time Employee on Non-Scheduled Day. *A full-time regular or full-time flexible employee called in on a nonscheduled day is guaranteed 8 hours of work (or pay in lieu thereof). This guarantee also applies on a holiday or designated holiday.*

Waiving guarantees. *The Step 4 settlement H4N-2D-C 40885, November 14, 1988 (M-00879) provides that "Management may not solicit employees to work less than their call-in guarantee, **nor may employees be scheduled to work if they are not available to work the entire guarantee.** However, an employee may waive a guarantee in case of illness or personal emergency." [Emphasis Added]*

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: Travis King

NALC Branch President
NALC Formal A: Ricardo Gonzalez
Manager, Rio Grande/Texas 3
Postmaster
DRT File

Grievance File Contents:

PS Form 8190
Formal A Settlement
Informal Step A Documentation
Union Worksheet
Union Notes – 2 pgs
Union Contentions – 5 pgs
Carrier Schedule

Management Contentions – 3 pgs
Route Carrier Daily Analysis Report – 38 pgs
Prior Settlements – 80 pgs
Employee Moves Report – 5 pgs
ODL – 5 pgs
Remedy Worksheets – 9 pgs
Hours Analysis Report – 13 pgs

Payout Request History for Grievance 21296812

[HELP](#)

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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Show History

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	\$7.97	MERCEREAU	ALEXANDER	2318	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$50.45	RAIGOZA	VINCENT	1575	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$51.92	RAZO	FERNANDO	4514	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$61.95	VASQUEZ	ANDREW	3081	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$66.67	NGUYEN	TRUNG	1961	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$78.03	ZARAGOZA	RANDY	6584	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$79.95	GUERRA	CESAR	0542	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$81.42	MARTINEZ	CARLOS	4032	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$88.50	INMAN	SEAN	8682	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$89.09	LOPEZ	JOSE	5602	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$109.15	SPEER	MARK	8884	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$119.33	SIMON	NATHAN	2514	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$125.38	PUCKLEWICZ	KEVIN	4096	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$154.73	FLORES	RICHARD	0165	PP8 FY2021	YSZ1BC	08/05/2021
New		1	\$265.50	CALHOUN	CHARLES	1766	PP8 FY2021	YSZ1BC	08/05/2021
Total New: \$1,430.04									