



RESOLVE



STEP B DECISION

Step B Team:	Decision:	<u>RESOLVE</u>
USPS:	USPS Number:	G19N-4G-C 2130 5446
Rose Barner	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-2063-21
Jose Portales	Branch:	421
Grieving District:	Installation:	San Antonio
Rio Grande/Texas 3	Delivery Unit:	Beacon Hill
	State:	Texas
	Incident Date:	06/19/2021-06/25/2021
	Informal Step A Meeting:	07/08/2021
	Formal Step A Meeting:	07/15/2021
	Step B Received Date:	07/21/2021
	Step B Decision Date:	08/09/2021
	Issue Code:	08.5000
	NALC Subject Code:	120051

ISSUE:

Did management violate Article 8.5.D and 8.5.G of the National Agreement during the week of June 19-25, 2021 when they forced non-Overtime Desired List (ODL) and Work Assignment (WA) carriers to work overtime off their own assignments while ODL and City Carrier Assistants were available? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case evidenced a violation of Article 8 of the National Agreement. The letter carriers in the table below are compensated in the amounts by their names. Carriers who were improperly assigned to work overtime were compensated an 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 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
02076142	Orta, J.	4.61	\$136.00	02353498	Childress, G.	2.29	\$67.56
02380911	Shelton, M.	1.99	\$58.71	02439335	Gilbert, G.	2.79	\$82.31
03515425	Rohrbeck, M.	2.00	\$59.00	04350847	Romero, J.	1.66	\$48.97
04360805	Mazuca, R.	4.62	\$136.29	04618971	Olivas, D.	1.20	\$35.40
04672288	Beltran, R.	2.48	\$73.16	04707834	Favela, R.	4.81	\$141.90
04759024	Jordan, E.	1.64	\$48.38	03509712	Macias, R.	0.35	\$20.65
01949924	Reyes, R.	3.83	\$184.23	04617357	Rodriguez, R.	0.55	\$32.45
04784975	Delgado, E.	0.96	\$52.36	03593848	Perales, A.	0.79	\$46.32
03103532	Santana, A.	3.28	\$164.02	04298245	Venegas, E.	5.26	\$276.42
04223066	Hernandez, R.	1.26	\$70.51	04647116	Vallejo, Z.	2.44	\$143.96

EXPLANATION:

This grievance concerns the assignment of overtime among full-time letter carriers at the Beacon Hill Station in San Antonio, Texas during the week of June 19-25, 2021. On that date management mandated a non-ODL and WA carriers to work overtime on and off their own assignments while ODL carriers were available at the regular overtime and penalty overtime rates.

The union filed this grievance to challenge management's violation of Article 8 and failure to comply with the Arbitrator Barret's Award. 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 violated Article 8.5.D and 8.5.G of the National Agreement when non- ODL and WA carriers were mandated to work on and off their own assignments while ODL carriers were available at the overtime and penalty overtime rates. The union also contends management violated Article 15.3.A and Postal Policy Letter M-01517 via Article 19 when they failed to comply with Arbitrator Barrett's decision dated 12/30/2019. Arbitrator Barrett's ordered management to fully cease and desist from further violations of Article 8.

The union requests management immediately cease and desist violating the provisions of Article 8 and pay the non-ODLs 125% of pay rate or administrative leave for the time they were mandated on and off assignment and the ODL carriers to be made whole for the time they should have worked. The union also requests management compensate the union \$250.00 for the continued effort and resources needed to process the attached grievance. The union finally requests all carriers affected be compensated an additional \$10.00 for management's failure to comply with Arbitrator Barrett's decision.

Management met at Formal Step A but did not provide any contentions.

The DRT reviewed the case file and determined the overtime among full-time carriers during the week of June 19-25, 2021 was not assigned in accordance with the provisions of Article 8.5. During the week in question the overtime carriers had still not reached the 12/60 hour limit and were still available. Therefore, the non-ODL carriers were compensated even if no remedy was available for the ODL carriers since they reached the 60 hour limit. 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]*

As it pertains to the 12 hours/60 day hours rule, the JCAM states the following on pages 8-19 and 8-20:

On October 19, 1988 the national parties signed the following Memorandum of Understanding (M-00859):

*The parties agree that with the **exception** of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked*

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beyond the 12 or 60 hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of over-time within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenhal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4NNA-C 21 (3rd issue) and H4C-NA-C 27 (C-07323). [Emphasis Added]

The team discussed the remedy of administrative leave to the non-ODL and WA carriers but did not find it appropriate at this time. 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
Rio Grande/Texas 3 HR Manager
Rio Grande/Texas 3 LR Manager
USPS Formal Step A Designee: M.R. Moreno
NALC Formal Step A Designee: R. Hidalgo

NALC Region 10 NBA
NALC Branch President
Manager, Rio Grande/Texas 3
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Union Remedy Worksheet (2 pgs)
Arbitrator Barrett's Award (14 pgs)
Pre-Arbitration Agreements (9 pgs)
Employee Moves Report (21 pgs)
Hours Analysis Reports (13 pgs)

Union's Contentions (27 pgs)
Formal Step A
Informal Step A
Carrier Schedule (2 pgs)
ODL (2 pgs)
Management Contentions (4 pgs)

Payout Request History for Grievance 21305446

[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	\$20.65	MACIAS	ROGELIO	0298	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$32.45	RODRIGUEZ	RICARDO	0199	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$35.40	OLIVAS	DANIEL	5744	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$46.32	PERALES	ALONSO	6676	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$48.38	JORDAN	ETOYYA	8237	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$48.97	ROMERO	JONATHAN	8754	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$52.36	DELGADO	ENRIQUE	3717	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$58.71	SHELTON	MARY	1543	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$59.00	ROHRBECK	MATTHEW	3249	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$67.56	CHILDRESS	GREGORY	8189	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$70.51	HERNANDEZ	RENE	1805	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$73.16	BELTRAN	RAYMOND	4137	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$82.31	GILBERT	GLENN	9639	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$136.00	ORTA	JOE	8333	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$136.29	MAZUCA	ROGER	9471	PP14 FY2021	YSZ1BC	08/10/2021	<input type="checkbox"/>
New		2	\$141.90	FAVELA	RODRIGO	0611		YSZ1BC	08/10/2021	<input type="checkbox"/>

							PP14 FY2021			
New		2	\$143.96	VALLEJO	ZACHARY	8409	PP14 FY2021	YSZ1BC	08/10/2021	
New		2	\$164.02	SANTANA	ANTONIO	9930	PP14 FY2021	YSZ1BC	08/10/2021	
New		2	\$184.23	REYES	RAUL	0743	PP14 FY2021	YSZ1BC	08/10/2021	
New		2	\$276.42	VENEGAS	EMILIO	2177	PP14 FY2021	YSZ1BC	08/10/2021	
Total New: \$1,878.60										
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											