



RESOLVE



STEP B DECISION

| | | |
|--------------------------|--------------------------|----------------------------|
| Step B Team: | Decision: | RESOLVE |
| USPS: | USPS Number: | G19N-4G-C 2205 1257 |
| Richard Ketchum | Grievant: | Class Action |
| NALC: | Branch Grievance Number: | 421 |
| Jose Portales | Branch: | 421-2655-21 |
| Dispute Resolution Team: | Installation: | San Antonio |
| Rio Grande | Delivery Unit: | NECA |
| District: | State: | Texas |
| Texas 3 | Incident Date: | 11/27-30/2021 |
| | Informal Step A Meeting: | 12/01/2021 |
| | Formal Step A Meeting: | 02/09/2022 |
| | Step B Received Date: | 02/28/2022 |
| | Step B Decision Date: | 03/04/2022 |
| | Issue Code: | 08.5000 |
| | NALC Subject Code: | 120051 |

ISSUE: Did management violate Articles 8.5.D and 8.5.G of the National Agreement on the days of November 27, 29 and 30, 2021, when they forced non-Overtime Desired List (ODL) and Work Assignment (WA) carriers to work overtime off their own assignment while ODL and City Carrier Assistants (CCAs) 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 an additional 100% of their straight time rate. 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 | 100% Hrs | OT Hrs | POT Hrs | REMEDY |
|---------------|----------|----------|--------|---------|-----------------|
| Welch, D. | 03504761 | 1.36 | | | \$40.12 |
| Bailey, J. | 03515981 | 2.09 | | | \$61.66 |
| Guzman, F. | 04070303 | 4.08 | | | \$120.36 |
| Rodriguez, D. | 04357039 | 0.90 | | | \$26.55 |
| Akeroyd, A. | 01973506 | 2.19 | | 1.10 | \$129.51 |
| Saldana, A. | 01991826 | 1.17 | | | \$34.52 |
| Tolle, R. | 02093962 | 1.68 | | | \$49.56 |
| Garza, R. | 04085694 | 1.98 | | | \$58.41 |
| Case, G. | 02117612 | | 0.76 | 4.20 | \$281.43 |
| Roel, A. | 04065998 | | | 1.36 | \$80.24 |
| Yeakel, R. | 02282873 | | | 1.30 | \$76.70 |
| Coronel, J. | 01954010 | | | 1.26 | \$74.34 |

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| | | | | | |
|------------|----------|--|--|------|-----------------|
| Palmer, M. | 03244905 | | | 4.88 | \$287.92 |
| Reyes, R. | 01949924 | | | 1.03 | \$60.77 |

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at the NECA Station in San Antonio, Texas on the days of November 27, 29 and 30, 2021. The union filed this grievance to challenge management’s violation of Article 8. Unable to resolve the dispute through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union at Formal Step A contended management violated Article 8.5.D and 8.5.G of the National Agreement when non-ODL and WA carriers were mandated to work overtime on and off their assignments while ODL carriers were available at the overtime rate and penalty overtime rate.

The union requested management at all levels immediately cease and desist violating the provisions of Article 8. The union also requested non-ODL and WA carriers be compensated 100% of their straight time for the time they were mandated to work on and off their own assignment. The union finally requested the ODLs and CCAs be made whole for the time they should have worked.

Management at Formal Step A contended Article 3 of the National Agreement gives management the right to use non-ODL to complete its’ mission to maintain the efficiencies of the operation.

The union has depicted a picture that is misleading and misinterpreted. One cannot determine what has transpired on any given day by only looking at total hours worked. Each day has its own account of what transpired.

The non-ODL carriers did not submit PS Form 3996s requesting overtime on their own assignments as required.

The DRT reviewed the case file and determined there was a violation of Article 8.5 for the week on the days of November 27, 29 and 30, 2021, when the overtime among full-time carriers were not assigned in accordance with the provisions of Article 8.5. On those days the overtime carriers had still not reached the 12/60 hour limit and were still available. Therefore, the non-ODL and WA carriers were compensated even if no remedy was available for the ODL carriers since they had reached the 60 hour limit later in the week. Overtime for non-ODL carriers *on their own assignments* is governed by the Letter Carrier Paragraph, which is found on page 8-14 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) 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]*

The JCAM provides the following language if the ODL does not provide sufficient full-time regulars required for overtime on pages 8-16 and 8-17:

8.5.D Mandatory Overtime. *One purpose of the ODL 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 ODL does not provide sufficient qualified full-time 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.*

Management may seek non-ODL volunteers rather than selecting non-volunteers on the basis of juniority. Normally, carriers not on the ODL may not grieve the fact that they were not selected to work overtime. [Emphasis Added]

Page 8-18 of the 2021 JCAM provides in pertinent part (with emphasis added at Step B):

8.5.G. *Full-time employees not on the “Overtime Desired” list may be required to work overtime only if all available employees on the “Overtime Desired” list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the “Overtime Desired” list:*

- 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F); and*
- 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week. [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]

Article 15 of the JCAM provides the following relevant language, on pages 15-3 through 15-5, when appealing a grievance to Formal Step A:

The steward appeals a grievance to Formal Step A by filling out the Informal Step A portion of the NALC-USPS Joint Step A Grievance Form (PS Form 8190) and sending it


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to the installation head or designee. The grievance appeal to Formal Step A should include relevant documents that were shared and discussed at the Informal Step A meeting.


When appealing a grievance to Formal Step A, day one is the day following the receipt of the supervisor's oral decision. In appealing any grievance beyond Informal Step A, a union representative has until the last day to send the appeal. Thus, the appeal must be sent (if faxed or e-mailed), postmarked (if mailed), or received (if hand-delivered), on or before the seventh day following the Informal Step A decision (for example, on the tenth if the decision is received on the third). To avoid problems union representatives should not wait until the last day.

The Formal Step A meeting **must** be held between the installation head or designee and the branch president or designee as soon as possible but **no later than seven calendar days** after the installation head receives the Joint Step A Grievance Form (unless the parties agree to an extension). The parties' representatives at Formal Step A shall have the authority to settle or withdraw grievances in whole or in part. Both parties must work together to ensure that each grievance is fully developed. [Emphasis Added]

Based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



Richard Ketchum
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:

LR Manager, Southern Area
District HR Manager
District LR Manager
USPS Formal A: Monee Davis
NALC Formal A: Michael Nefford

NALC Region 10 NBA
NALC Branch President
District Manager
Postmaster
DRT File

Grievance File Contents

Ps Form 8190
M-01548 (7 pgs)
Union' Charts (7 pgs)
Request to Meet at Formal Step A
Employee Moves Report (19 pgs)
Overtime Desired List
Bing Maps Directions and Map (2 pgs)

Union's Contentions (11 pgs)
Management's Contentions (2 pgs)
Time Limit Extension (2 pgs)
Remand Decision (3 pgs)
Hours Analysis Report (10 pgs)
Weekly Schedule (2 pgs)
M-01973

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 | Buttons | | |
|-------------------------|-----------|---------|----------------|-----------|------------|------|-------------|--------------|----------------|---------|--------|------|
| New | | 3 | \$26.55 | RODRIGUEZ | DAVID | 6879 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$34.52 | SALDANA | ALFREDO | 6917 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$40.12 | WELCH | DANIEL | 0635 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$49.56 | TOLLE | RONALD | 9162 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$58.41 | GARZA | ROSALBA | 1034 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$60.77 | REYES | RAUL | 0743 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$61.66 | BAILEY | JONATHAN | 9598 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$74.34 | CORONEL | JOSE | 5589 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$76.70 | YEADEL | ROBERT | 8568 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$80.24 | ROEL | AARON | 7322 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$120.36 | GUZMAN | FRED | 1439 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$129.51 | AKERROYD | AMELIA | 0281 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$281.43 | CASE | GREG | 1836 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| New | | 3 | \$287.92 | PALMER | MICHAEL | 5415 | PP25 FY2021 | VY5GH0 | 03/07/2022 | Details | Delete | Edit |
| Total New: \$1,382.09 | | | | | | | | | | | | |
| 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 | Buttons |
|---------------------|------------------|---------|----------------|-------------|---------|-----------|------------|-----|-------------|--------------|----------------|---------|
| No Data | | | | | | | | | | | | |
| Total Paid: \$0.00 | | | | | | | | | | | | |
| Total Error: \$0.00 | | | | | | | | | | | | |