

RESOLVE



STEP B DECISION

Step B Team:
 USPS:
Richard Ketchum
 NALC:
Jose Portales

Dispute Resolution Team:
Rio Grande
 District:
Texas 3

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

RESOLVE
G19N-4G-C 2210 2782
Class Action
421
421-2718-21
San Antonio
NECA
TX
12/04-07/2021
No meeting
No meeting
02/08/2022
03/02/2022
08.5450
120051

ISSUE: Did management violate Articles 8.5.D and 5.G of the National Agreement when working non-Overtime Desired List (ODL) and Work Assignment (WA) carriers on and off their routes into overtime during the week of December 4-7, 2021? 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 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. Steward Nefford will be paid two hours at the overtime rate for working the grievance off the clock. 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	REMEDY
Nefford, M.	03461916	7.67	2.00	\$314.77
Welch, D.	03504761	1.64		\$48.38
Bailey, J.	03515981	4.43		\$130.69
Guzman, F.	04070303	1.25		\$36.88
Rodriguez, D.	04357039	5.96		\$175.82
Akeroyd, A.	01973506	7.70		\$227.15
Ramirez, C.	01969786	1.06		\$31.27
Saldana, A.	01991826	2.35		\$69.33
Graham, F.	02021921	1.37		\$40.42
Tolle, R.	02093962	3.40		\$100.30
Dela Garza, R.	02106895	0.41		\$12.10
Kelly, J.	02328172	1.72		\$50.74
Bachiller, E.	03254052	1.25		\$36.88
Garza, R.	04085694	1.43		\$42.19

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Hazelton, P.	02394934	1.73		\$51.04
Case, G.	02117612		0.92	\$40.71
Calhoun, H.	03328511		3.41	\$150.89
Roel, A.	04065998		13.38	\$592.07
Yeakel, R.	02282873		1.20	\$53.10
Reyes, R.	01949924		3.14	\$138.95

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at North East Carrier Annex (NECA) Station in San Antonio, Texas during the week of December 4-7, 2021. During the week cited, management assigned overtime to non-ODL and WA carriers on and off their assignments while ODL carriers and CCAs were available at the regular overtime rate, and penalty overtime rate.

The union contended management violated Article 8 by mandating non-ODL and WA carriers to work on and off their assignments prior to maximizing the ODL carriers, city carrier assistants (CCAs) and part-time flexibles (PTFs). The union contends both groups were harmed when the non-ODL and WA carriers were mandated. In addition, the non-ODL and WA carriers lost time outside of the workplace. The union emailed a request to meet at Formal Step A on December 29, 2021; however, management never responded. The union texted and informed the Formal Step A manager about the email on December 30, 2021. The union steward approached the Formal Step A manager again, five days later, to inquire about the Formal Step A meeting, but the manager just walked away. The union steward spent three hours off-the-clock preparing this grievance.

The union requested all ODL and CCA carriers be awarded overtime and penalty overtime. The union requested an award of 100% at the straight rate of pay for the aggrieved non ODL and/or WA carriers. The union finally requested Union Steward M. Nefford be compensated 3 hours at the overtime rate for working on this grievance at home or whatever the Step B team deems appropriate.

Management did not meet at the Formal Step A.

The DRT reviewed the case file and determined there was a violation of Article 8.5 for the week of December 4-7, 2021 when the overtime among full-time carriers were not assigned in accordance with the provisions of Article 8.5.

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 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

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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:*

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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 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]*

Article 17 of the JCAM provides the following relevant language, on pages 17-4, on stewards rights:

Steward Rights. Article 17, Sections 3 and 4 establish several steward rights:

- The right to investigate and adjust grievances and problems that may become grievances;
- The right to paid time to conduct those activities;
- The right to obtain management information;
- Superseniority concerning being involuntarily transferred;
- An employee's right to steward representation during an Inspection Service interrogation.

Article 17, pages 17-5 and 17-6, of the JCAM provides the following relevant language regarding steward time on the clock:

Right to Steward Time on the Clock. Although a steward must ask for supervisory permission to leave his or her work area or enter another one to pursue a grievance or potential grievance, management cannot unreasonably deny requests for paid grievance-handling time.

Management may not determine in advance how much time a steward reasonably needs to investigate a grievance (National Arbitrator Garrett, MB-NAT-562/MB-NAT-936, January 19, 1977, C-00427). Rather, the determination of how much time is considered reasonable is dependent on the issue involved and the amount of information needed for investigation

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purposes (Step 4, NC-S-2655, October 20, 1976, M-00671).

Steward time to discuss a grievance may not be denied solely because a steward is in overtime status (Prearbitration Settlement, W4N-5C-C 41287, September 13, 1988, M-00857). It is the responsibility of the union and management to decide mutually when the steward will be allowed, subject to business conditions, an opportunity to investigate and adjust grievances (Step 4, N-S-2777, April 5, 1973, M-00332).

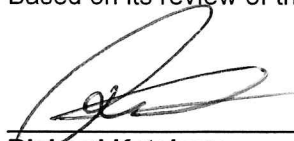
If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. Likewise, the steward has an obligation to request additional time and give the reasons why it is needed (Step 4, NC-C-16045, November 22, 1978, M-00127).

An employee must be given reasonable time to consult with his or her steward, and such reasonable time may not be measured by a predetermined (Step 4, H1C-3W-C 44345, May 9, 1985, M-00303).

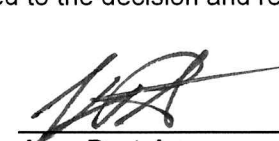
Although Article 17.4 provides that the grievant and a steward shall be paid for time actually spent in grievance handling and meetings with management, there are no contractual provisions requiring the payment of travel time or expenses in connection with attendance at a Formal Step A meeting (Step 4, N8-S-0330, June 18, 1980, M-00716). Nor does the National Agreement require the payment of a steward who accompanies an employee to a medical facility for a fitness-for-duty examination (Step 4 Settlement, NC-N-12792, December 13, 1978, M-00647).

The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time factor (Step 4, H1C-3W-C 44345, May 9, 1985, M-00303).

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



Richard Ketchum
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:
LR Manager, Southern Area
NALC Region 10 NBA
Texas 3 HR Manager
Texas 3 LR Manager
USPS Formal Step A: Monee Davis

NALC Branch President
NALC Formal Step A: Michael Nefford
Manager, Texas 3
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Emailed request to meet
Employee Moves Report (24 pgs)
Hours Analysis Report (10 pgs)
Request for Information

Union's Contentions (4 pgs)
Overtime Desired List
Carrier Schedule (2 pgs)
Union's Chart of Violations (8 pgs)

Payout Request History for Grievance
22102782

[HELP](#)

<p>Not Processed By Payroll</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>Payroll Processed</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>
<p>< Back</p>	<p>Show History</p>

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		1	\$12.10	DELAGARZA	RUBEN	3875	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$31.27	RAMIREZ	CARMEN	8864	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$36.88	BACHILLER	EDGAR	7902	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$36.88	GUZMAN	FRED	1439	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$40.42	GRAHAM	FRANK	1741	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$40.71	CASE	GREG	1836	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$42.19	GARZA	ROSALBA	1034	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$48.38	WELCH	DANIEL	0635	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$50.74	KELLY	JOSEPH	4041	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$51.04	HAZELTON	PAUL	4919	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$53.10	YEAKEL	ROBERT	8568	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$69.33	SALDANA	ALFREDO	6917	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$100.30	TOLLE	RONALD	9162	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$130.69	BAILEY	JONATHAN	9598	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$138.95	REYES	RAUL	0743	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$150.89	CALHOUN	HEATHER	4020	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$175.82	RODRIGUEZ	DAVID	6879	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$227.15	AKERROYD	AMELIA	0281	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$314.77	NEFFORD	MICHAEL	1540	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$592.07	ROEL	AARON	7322	PP26 FY2021	VY5GH0	03/03/2022	Details	Delete	Edit