



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G19N-4G-C 2210 2810
Richard Ketchum	Grievant:	Class Action
NALC:	Branch Grievance Number:	421
Jose Portales	Branch:	421-0031-22
	Installation:	San Antonio
Dispute Resolution Team:	Delivery Unit:	NECA
Rio Grande	State:	TX
District:	Incident Date:	12/27-28/2021
Texas 3	Informal Step A Meeting:	01/11/2022
	Formal Step A Meeting:	01/18/2022
	Received at Step B:	02/08/2022
	Step B Decision Date:	03/02/2022
	Issue Code:	08.5450
	NALC Subject Code:	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, when they worked non-ODLs, part-time flexible (PTF) carriers and city carrier assistants (CCAs) over 11.50 hours on December 27 and 28, 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 carriers in the table below will be compensated the listed amounts. 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. The carriers listed in the 12/60 column will be compensated an additional 50% of their straight time rate for exceeding their daily work limits. Management will ensure the 12-hour limit is enforced for all letter carriers. All payments associated with these remedies have been processed at Step B through GATS. See the DRT Explanation below.

Employee	EIN	100% Hrs	12/60	OT Hrs	REMEDY
Nefford, M.	03461916	0.99			\$29.21
Bailey, J.	03515981	2.73			\$80.54
Guzman, F.	04070303	2.22	0.70		\$75.82
Rodriguez, D.	04357039	1.81			\$53.40
Case, G.	02117612	9.04			\$266.68
Thomson, C	03499986		0.62		\$9.14
Calhoun, H.	03328511			3.81	\$168.59
Yeakel, R.	02282873			1.74	\$77.00
Coronel, J.	01954010			1.73	\$76.55
Palmer, M.	03244905			4.00	\$177.00
Morales, A.	06128728		1.56		\$23.01
Van Fleet, D.	06135081		1.58		\$23.31
Jaso, E.	06248113		1.05		\$15.49

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Garcia, G.	06217945	0.69	\$10.18
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EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at North East Carrier Annex (NECA) Station in San Antonio, Texas on December 27 and 28, 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. Additionally, several carriers worked more than 11.5 hours, which resulted in exceeding 12 total hours of service on that day.

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 (PTF). 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 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.

Management contended management disagrees with the total of \$1500.00 in violations. Management requested to settle at a lower payment to resolve the matter, however; the union disagreed. Due to simultaneous scheduling, we had no choice but to utilize all available employees.

The DRT reviewed the case file and determined there was a violation of Article 8.5 on December 27 and 28, 2021 when the overtime among full-time carriers were not assigned in accordance with the provisions of Article 8.5. During the week in question the overtime carriers had not reached the 12/60 hour limit and therefore, were still available.

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 Mittenhal 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):

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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]*

Article 8.5.G provides that employees on the ODL may be required to work up to 12 hours per day and 60 hours per week. It further provides that the 12-hour and 60-hour restrictions do not apply to employees on the ODL during the penalty overtime exclusion period (December). Accordingly, management may, but is not required to, assign ODL Letter Carriers to work in excess of the Article 8.5.G limits during the penalty overtime exclusion period (December).

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]*

Management must adhere to the maximum daily work hour limits as provided on pages 8-20 and 8-21 of the JCAM provide, which state in relevant part:

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Maximum Hours—12 Hour Limit. *The overtime limits in Article 8.5.G apply only to full-time regular and full-time flexible employees. However, ELM Section 432.32 provides the following rule that applies to all employees:*

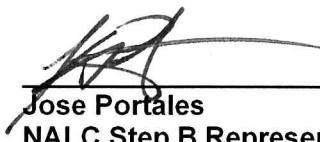
Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.

Because this language limits total daily service hours, including work and mealtime, to 12 hours, all letter carriers not on the ODL or Work Assignment List (including PTFs and CCAs) are effectively limited to 11½ hours per service day. This is true whether a meal break is taken. This rule also applies during the penalty overtime exclusion period (December). [Emphasis Added]

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: Raul Reyes
Manager, Texas 3
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Managements contentions
Employee Moves Report (15 pgs)
Hours Analysis Report (10 pgs)
Request for Information

Step A settlement on a 16.7
Union's Contentions (10 pgs)
Overtime Desired List
M-01548
Union's Chart of Violations (8 pgs)
Carrier Schedule (2 pgs)

Payout Request History for Grievance

22102810

[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	\$9.14	THOMSON	CHRISTOPHER	9784	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$10.18	GARCIA	GARY	5967	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$15.49	JASSO	ERASMO	0503	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$23.01	MORALES	ADAM	8275	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$23.31	VAN FLEET	AUSTIN	4301	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$29.21	NEFFORD	MICHAEL	1540	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$53.40	RODRIGUEZ	DAVID	6879	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$75.82	GUZMAN	FRED	1439	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$76.55	CORONEL	JOSE	5589	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$77.00	YEADEL	ROBERT	8568	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$80.54	BAILEY	JONATHAN	9598	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$168.59	CALHOUN	HEATHER	4020	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$177.00	PALMER	MICHAEL	5415	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
New		1	\$266.68	CASE	GREG	1836	PP1 FY2022	VY5GH0	03/03/2022	Details	Delete	Edit
Total New: \$1,085.92												
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												