



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 2040 1591
Rose Barner	Grievant:	Cody Leibengood
NALC:	Branch Grievance Number:	421-1124-20
Jose Portales	Branch:	421
	Installation:	San Marcos
District:	Delivery Unit:	MPO
Rio Grande	State:	TX
	Incident Date:	08/25/2020
	Informal Step A Meeting:	09/05/2020
	Formal Step A Meeting:	09/10/2020
	Step B Received Date:	09/18/2020
	Step B Decision Date:	10/01/2020
	Issue Code:	41.3130
	NALC Subject Code:	600198

ISSUE:

Did management violate Article 41.2 of the National Agreement when they removed the grievant from his opt/hold-down on 08/25/2020? If so, what is the remedy?

Did management violate Article 15.3.A of the National Agreement when they failed to comply with Step B decision G16N-4G-C 1765 1209? If so, what is the remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation when management removed the grievant from his opt/hold-down on 08/25/2020. Management will cease and desist failing to honor the opting provisions in Article 41. See the DRT Explanation.

EXPLANATION:

The grievant in this case is Cody Leibengood, a City Carrier Assistant (CCA) assigned to the Main Post Office (MPO) in San Marcos, TX. On 08/25/2020, the grievant worked on his opt/hold-down on route 6608 for a total of 5 hours and 39 minutes; however, the grievant was not allowed to carry the remainder of his opt/hold-down.

The union filed this grievance to protest management's failure to permit the grievant to work the scheduled hours of his assignment on route 6608. Unable to resolve the dispute through the Informal A and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends the grievant was successfully awarded the opt/hold-down on route 6608. However, the grievant was not allowed to work the regularly scheduled hours for his opt/hold-down on route 6608. The union contends there was no reason to remove the grievant from his opt/hold-down on 08/25/2020. The union contends the Rio Grande District Standard Operating Procedure (SOP) regarding the completion of collection routes does not give management the right to circumvent the provisions of Article 41. The union also contends management failed to comply with Step B decision G16N-4G-C 1765 1209 and

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Postal Policy Letter M-01517. Finally the union contends management is flagrantly and intentionally violating Article 41.2.B of the National Agreement.

The union requests management cease and desist violating Article 41, Section 2 of the National Agreement. The union requests the grievant be paid a lump sum equal to the difference between the number of hours he actually worked and the number of hours he would have worked had the grievant not been removed. The union further requests as an incentive to ensure future compliance, the grievant be paid a lump sum of \$25.00 or whatever the Step B or Arbitrator deems appropriate.

Management contends they cannot be expected to allow a CCA to stay on a route when they are splitting multiple routes and still have a collection route open. It does not make sense to consistently use full day overtime (FDOT) simply because carriers are not reporting to work. Management also contends the CCAs that are being utilized are working over half of their own routes and getting overtime at the end of the day.

Management contends the remedy requested by the union cannot be granted as there will always be situations where, due to call-ins or volume, a CCA will be required to complete the collection route. Management contends all CCAs with hold-downs work their respective assignments unless there is an emergency to carry the collection route. Management contends the grievant worked into overtime this day and any lump sum payment would be punitive. Finally, management contends there can be no remedy for this situation as it will simply tie management's hands.

The DRT agreed the case file evidenced a violation of Article 41.2 of the National Agreement. The case file also evidenced a violation of Article 15.3.A of the National Agreement. The Step B decision G16N-4G-C 1765 1209 states, "Management is obligated to comply with prior Step B decisions honoring the opting provisions in Article 41." Management must comply with all grievance settlements.

The Joint Contract Manual states on page 15-10:

15.3.A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

The Postal Policy Letter M-01517 states in relevant part:

While all managers are aware that settlements reached in any stage of the grievance/arbitration procedure are final and binding. I want to reiterate our policy on this subject.

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

The Joint Contract Administration States on page 41-14:

Duration of Hold-Down. Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee "shall work that duty assignment for its duration." An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties—for example, to case but not carry mail. [Emphasis Added]

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees and city carrier assistants may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time or city carrier assistant employees if there is not sufficient work available for them on a particular day (H1N-5D-C 6601, September 11, 1985, M-00097).

In such situations, the part-time flexible or city carrier assistant employee's opt is not terminated. Rather, the employee is temporarily "bumped" on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that:

A PTF or city carrier assistant, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF or city carrier assistant opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

The JCAM states on page 41-16:

Schedule Status and Opting. Employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment (H8N-1M-C 23521, June 2, 1982, M-00239). These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

Scheduled Days and Opting. The distinction between the guarantee to work certain scheduled days and the right to specific days off is important. An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier. It must be noted, however, that days off are "assumed" only in the sense that a hold-down carrier will not work on those days unless otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to not work on non-scheduled days. Of course, this is the same rule that applies to the assignment's regular carrier, who may, under certain conditions, be required to work on a non-scheduled day.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down

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may be scheduled to work that day as well, either on or off the opted-for assignment. However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason. To do so would violate the guarantee to work all of the scheduled days of the hold-down. [Emphasis Added]

Page 41-17 of the JCAM discusses remedies for opting violations:

Remedies and Opting. *Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.*

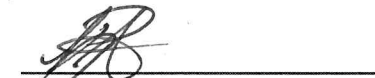
In those circumstances in which a PTF or city carrier assistant worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy. (Emphasis Added)

The team discussed the monetary remedy, but did not find it appropriate at this time. Therefore, based on its review of the case file, the DRT mutually agreed to the decision and remedy above.



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USPS Step B Representative


José Portales
NALC Step B Representative

cc:

LR Manager, SW Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
USPS Formal Step A Troy W. Morgan

NALC Branch President
NALC Formal A Adam J. Reyna
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents

PS Form 8190
Management Contentions
Weekly Schedule
Employee Everything Report (6 pgs)

Union Contentions (6 pgs)
Request for Opt/Hold-Down
Employee Moves Report (6 pgs)
Previous Step B Decision (4 pgs)

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Arbitration Award C#04484 (5 pgs)
M-00097
M-00404 (2 pgs)
M-01517
Request for Information
Informal Step A Resolution Form
Route/Carrier Daily Performance/Analysis
Report

M-00293 (2 pgs)
M-00239 (2 pgs)
M-00531 (2 pgs)
2019 Pay Schedule
Request to Meet at Informal Step A
Request to Meet at Formal Step A
Steward Designation Letter