



RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 1907 0005
Robin Gutman	Grievant:	Class Action
NALC:	Branch Grievance Number:	421-1544-18
Ernest Rosas	Branch:	421
	Installation:	Schertz
Grieving District:	Delivery Unit:	MPO
Rio Grande	State:	Texas
	Incident Date:	12/07/2018
	Informal Step A Meeting:	12/17/2018
	Formal Step A Meeting:	No Meeting
USPS Formal A:	Step B Received Date:	12/28/2018
Troy Morgan	Step B Decision Date:	01/09/2019
NALC Formal A:	Issue Code:	08.5700
John English	NALC Subject Code:	120051

ISSUE:

Did management violate Article 8.5 of the National Agreement by mandating non-ODL/Work Assignment carriers to work overtime on assignment when there were available overtime desired list (ODL) carriers? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The file did evidence a violation of Article 8.5 when non-ODL carriers were mandated when there were available ODL carriers.

Payment has been made by the Step B team to the carriers listed below. See DRT Explanation.

03488290	Betts, H	\$37.27	02330345	Sandoval, P	\$42.67
04519591	Aragon, N	\$23.11	02079873	Tullos, O	\$42.67
04420058	Harrell, T	\$28.71	01954621	Martinez, J	\$67.01
02167852	Lewis, E	\$22.34			

EXPLANATION:

This is a class action grievance on behalf of the letter carriers assigned to Schertz, MPO. During the week of 12/01/2018 through 12/07/2018, letter carriers who had not signed the ODL were mandated to carry overtime on their assignments when there were available ODL carriers.

The union filed this grievance to protest management's assignment of overtime to full time letter carriers outside the provisions of the National Agreement. Unable to achieve a resolution through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends management violated Article 8, willfully and deliberately. The union contends management's argument that the carrier overinflated the time their routes need is based solely on DOIS numbers.

The union requests carriers be compensated as identified on the union worksheet and the associated monetary amounts requested be paid.

Management had no contentions in the file.

The DRT reviewed the case file and determined the union's position had merit. The union's contentions were supported by documents in the file and were not sufficiently rebutted by management's contentions.

The DRT determined that there was a violation of Article 8 of the National Agreement when non-ODL carriers were forced to work overtime on assignment when there were available ODL employees. The affected non-ODL carriers were remedied at 50% of the straight-time rate. The ODL carriers who were available for the overtime were paid at the overtime rate. Because this grievance is during the penalty overtime exclusion period, no penalty overtime rates were applicable.

Applicable contract language from Article 8 in the JCAM is shown below in relevant part:

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.*

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

Mandatory Overtime. *One purpose of the Overtime Desired List 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 Overtime Desired List does not provide sufficient qualified fulltime 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.*

Additionally, the JCAM includes the following guidance regarding the assignment of overtime to non-ODL carriers on their own assignments:

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 DRT fashioned the remedy based on the available reports and information in the case file. Based on the review of the case file, the DRT agreed to the decision and remedy above.



Robin Gutman
USPS Step B Representative



Ernest Rosas
NALC Step B Representative

RIO GRANDE DISPUTE RESOLUTION TEAM
10410 Perrin Beitel Road, Rm 1059
San Antonio, TX 78284-9608
PHONE 210-368-5547, 210-368-1760, 210-368-1784, FAX 210-368-8525

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Step A Designee

NALC Branch President
NALC Formal Step A Designee
Manager, Rio Grande District
Postmaster
DRT File

Grievance File Contents:

Request for Formal A
PS Form 8190 (2 pages)
Union Contentions (4 pages)
Union spreadsheet
Guzman off list statement
Union spreadsheet
Carrier schedule
Informal A request
Carrier interviews (2 pages)
Union spreadsheet
Carriers PS Form 50 (2 pages)
Carrier pay schedule

Union spreadsheet
Carriers PS Form 50 (8 pages)
Union cover sheet
OTDL list
Union work sheet
Employee TACS reports (11 Pages)
PS Form 3996 (4 pages)
Performance reports from DOIS (14 pages)
Employee Everything Report (70 pages)

Payout Request History for Grievance 19070005

[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		1	\$22.34	LEWIS	EDDIE	6061	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$23.11	ARAGON	NELLIE	2328	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$28.71	HARRELL	TADARIAN	8486	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$37.27	BETTS	HEATHER	0296	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$42.67	TULLOS	OSCAR	2433	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$42.67	SANDOVAL	PATSY	2479	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
New		1	\$67.01	MARTINEZ	JAVIER	5272	PP25 FY2018	KMGQXV	01/11/2019	<input type="button" value=" Details"/>
Total New: \$263.78										
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											