



RESOLVE



STEP B DECISION

USPS Step B: Laurie Nichols-Marshall	Decision:	RESOLVE
NALC Step B: Jose Portales	USPS Number:	G16N-4G-C 2107 2143
	Grievant:	Class
	Branch Grievance Number:	421-1084-21
	Branch:	421
	Installation:	Eagle Pass
District: Rio Grande	Delivery Unit:	MPO
	State:	TX
	Incident Date:	12/19/2020-12/25/2020
	Informal Step A Initiated:	12/30/2020
	Formal Step A Meeting:	01/05/2020
	Received at Step B:	01/06/2020
	Step B Decision Date:	01/21/2020
	Issue Code:	08.5450
	NALC Subject Code:	120051

ISSUE: Did management violate Article 8.5 of the National Agreement when they mandated non-Overtime Desired List (ODL) carriers to work on and off assignment prior to maximizing all ODL carriers and City Carrier Assistants (CCA)? If so, what is the appropriate remedy?

Did management violate M-01916 when they worked a Temporary Carrier Assistant (TCA) prior to utilizing all CCAs at the straight time rate and prior to utilizing all ODL carriers at the overtime rate? 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 50% 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. The CCA was compensated at the straight time rate for the violation of M-01916. Management shall assign overtime consistent with the provisions of Article 8.5 and M-01916. All payments associated with these remedies have been processed at Step B through GATS. See the DRT Explanation below.

Carrier	EIN	Remedy
Perez, R	02194666	\$80.98
Valdez, J	04226476	\$98.68
Rodriguez, O	04233586	\$175.23
Rodriguez, G	04299439	\$159.74
Cervera, J	04721317	\$10.33
Hernandez, J	02166875	\$7.38

EXPLANATION: This grievance concerns the assignment of overtime among full-time letter carriers at the Main Post Office in Eagle Pass, Texas during the week of 12/19/2020 through 12/25/2020. During that week, management assigned off-route overtime to letter carriers who were either on the

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work assignment overtime desired list or were not on any overtime desired list. Management also assigned overtime work to a TCA during this week.

The union filed this grievance to protest the improper overtime assignments. Unable to achieve a resolution through the Informal or Formal Step A levels of the grievance process, the union appealed the grievance to Step B.

The union at Formal Step A contends a non-ODL carrier was mandated to work his/her own overtime while ODL carriers had not been maximized. The union contends there is no reason for a non-ODL carrier to be working overtime on their own route during the Christmas season, as there is no penalty overtime pay (POT) and daily or weekly work hour limits. The union contends a work assignment (WA) carrier was mandated to work on his SDO while ODL and CCA carriers were still available. The union also contends management improperly assigned overtime work to a TCA on Thursday prior to utilizing all CCAs at the straight time rate and all ODL carriers at the overtime rate. The union contends even though management mentions carriers on annual leave, leave for COVID-19 and on a detail there were still available ODL carriers and CCAs.

The union requests management cease and desist violating Article 8.5 of the National Agreement. The union requests the non-ODL carriers be compensated an extra 50% of their straight time rate for the violations. The union also requests the ODL and CCA carriers be compensated at the appropriate rates for the missed work opportunities they should have received.

Management at Formal Step A contends one carrier was on sick leave during the week in question, two carriers were on annual leave, two carriers were out due to COVID-19 and one carrier was in Pecos on detail. The TCA was working daily because of the 2 carriers that tested positive with COVID-19. Thus, for the needs of the office all remaining carriers were mandated to work overtime. Management contended "needs of the office" included mandating carriers for the threshold time of the evening dispatch truck.

Management further contends the union failed to provide proof of work assignment carriers performing off-route overtime. Also, there are only two non-ODL carriers on the eight (8) hour only list. Management finally contends the rule of reason was applied to the non-ODL carrier who worked .50 units of overtime on his own route.

The DRT reviewed the case file and determined a violation occurred during the week in questions. Management stated the ruled of reason was applied to the non-ODL carrier who worked .50 units of overtime on his own route. However, the union interviewed the supervisor who instructed him to carry his own overtime and asked him, "What was the reason why Mr. Hernandez was instructed to carry overtime knowing he is an 8 hour carrier and many 12 hour carriers were available?" The supervisor replied, "Because he had already submitted a 3996 with his projection to finish in 8 hours. Whatever he did not finish is on him management adhered to his request to complete in 8 hours." The assignment of overtime to non-ODL carriers on their assignments is governed by the Letter Carrier Paragraph, which is discussed on pages 8-14 and 8-15 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 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.

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.

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).

*The memo goes on to state that "the determination of whether management must use a carrier from the ODL to provide auxiliary assistance must be made on the basis of the rule of reason." For example, **management is not required to use a carrier from the ODL when the travel time would be excessive for the amount of assistance being given.** The full text of the memorandum is reprinted at the end of this article. [Emphasis Added]*

The union's contention over the WA carrier who was mandated to work on his scheduled day off in this case is addressed on page 8-13 of the JCAM:

Overtime and Holiday Scheduling. *Much of what is often considered "overtime" worked by full-time employees on their holiday or designated holiday is not overtime. Rather it is "Holiday Worked Pay" or "Holiday Scheduling Premium." The only work that is contractually overtime for full-time employees working on a holiday or designated holidays is work beyond eight hours in a day (ELM Section 434.131). Furthermore, work up to eight hours on a non-scheduled day assigned under the provisions of Article 11.6 is not considered in determining equitability. This is because the employees assigned the overtime in such situations are not "selected from the Overtime Desired List" under the provisions of Article 8.5.C.2.a. **Rather, they are selected under the provisions of Article 11.6 and any applicable LMOU provisions.** [Emphasis Added]*

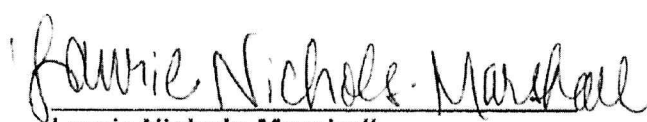
Management also violated M-01916 when the TCA was scheduled to work at the overtime rate prior to utilizing all CCAs at the straight time rate and ODL carriers at the overtime rate.

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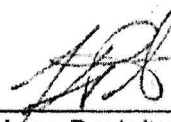
M-01916 states in relevant part:

- Over the course of a service week, the Employer will make every effort to ensure that available city carrier assistants are utilized at the straight-time rate prior to assigning such work to temporary carrier assistants working in the same work location.
- When an opportunity exists for overtime, full-time employees on the appropriate Overtime Desired List will be selected to perform such work prior to assigning temporary carrier assistants to work overtime in the same work location where the employees regularly work. [Emphasis Added]

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



Laurie Nichols-Marshall
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
USPS Formal A Jesus Carrillo

NALC Branch President
NALC Formal A Jorge Valdez
Manager, Rio Grande District
Postmaster Eagle Pass, Texas
DRT File

Grievance File Contents

PS Form 8190
Union Contentions (8 pgs)
Management Contentions (8 pgs)
Employee Everything (55 pgs)
Carrier Overtime Desired List
Carrier Schedule
Overtime Alert Report (2 pgs)
Informal Step A Request

Employee Moves Report
Route/Carrier Daily Perform Report (16 pgs)
PS Form 3996
Employee Statements (3 pgs)
Interviews (2 pgs)
M-01916
M-0919 M-01932
Request for Formal A Meeting

Payout Request History for Grievance
21072143

[HELP](#)

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)

[< Back](#)

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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	\$7.38	HERNANDEZ	JOSE	9786	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
New		1	\$10.33	CERVERA	JORGE	4509	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
New		1	\$80.98	PEREZ	RICARDO	9806	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
New		1	\$98.68	VALDEZ	JORGE	5354	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
New		1	\$159.74	RODRIGUEZ	GABRIEL	7901	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
New		1	\$175.23	RODRIGUEZ	ORLANDO	4459	PP1 FY2021	XCNXF0	01/22/2021	Details	Delete	Edit
Total New: \$532.34												
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												