



STEP B DECISION

CAPITAL METRO AREA
NALC/USPS STEP B
DISPUTE RESOLUTION TEAM

DISTRICTS

BALTIMORE

CAPITAL

NORTHERN VIRGINIA

USPS REPRESENTATIVE
LEOPOLD A. POTSIADLO

NALC REPRESENTATIVE
TONYA L. DETRICK

DECISION: RESOLVED
USPS GATS #: K06N-4K-C 09192780
GRIEVANT: Class Action
BRANCH GRIEVANCE #: 53-2009-MS09
BRANCH: 3825
INSTALLATION: 23-7888
DELIVERY UNIT: Rockville/Twinbrook
STATE: Maryland
INCIDENT DATE: 2/26/2009
INFORMAL STEP A INITIATED: 3/10/2009
FORMAL STEP A MEETING: 4/3/2009
RECEIVED AT STEP B: 4/8/2009
STEP B DECISION DATE: 4/22/2009
ISSUE CODE: 08.5300: 08.5700

ISSUE:

Did Management violate Article 8.5.G of the National Agreement when Overtime Desired List (ODL) employees were not maximized up to twelve (12) hours prior to requiring Non-ODL Carriers to perform 'off assignment' overtime, and if so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team has RESOLVED this grievance. Based on the documentation contained in the case file, the Team has determined that Management did violate the National Agreement in this instance. The following Non-ODL and ODL employee shall be compensated the respective lump sum payments for this violation:

A. Galang	\$37.82	A. Terrell	\$40.95	R. Applegate	\$33.97
V. Garcette	\$25.29	R. Parker	\$33.73	C. Turner	\$43.00
K. Walker	\$35.29	Himmelberger	\$42.88	M. Malik	\$50.47
R. Foard	\$32.76	R. Westlake	\$39.99	S. Lewis	\$39.51
A. Villanueva	\$32.88	M. Newby	\$66.01	J. Schanck	\$24.09
F. Tello	\$18.07	R. Brackman	\$45.29	D. Pham	\$44.81

The Step B Team processed these pay adjustments on the date of decision. No further action is required. No other remedy issued.

EXPLANATION:

On Thursday, February 26, 2009, nine (9) Non-ODL employees were required to work a cumulative 7.83 hours of overtime 'off of their assignments'.

The Union contends that Management continues to violate Article 8.5.G as supported by the multitude of previous Informal Step A, Formal Step A and Step B decisions in the case file, finding violations of this nature and granting monetary remedies. They state that Non-ODL Carriers were required to work 7.83 hours 'off' of their assignments, while the ODL employees were available for 46.10 hours both at the regular and penalty overtime rates. They stipulate that there is not a 'Window of Operations' (WOO) in Rockville, yet, notwithstanding this, the available ODL employees would have been able to perform the work assigned to the Non-ODL and still complete their deliveries by the alleged cut off time of 6:00pm. They add that the Part-Time Flexible (PTF) employees were available to provide 6.77 hours of additional assistance and there was 7.85 hours available from the Transitional Employees (TE's) within their respective work hour limitations. They also provide numerous Arbitration decisions in support of their position that 1) Management, while within their right to establish operational goals, must do so as to not violate other provisions of the National Agreement, as was Article 8.5.G in this case.

Management contends that they agree in part with compensating the Non-ODL employee for the time spent 'off their assignment'; however, these Carriers were given pivots in order to effect time of delivery. They assert that it is the Postal Service's responsibility to service the customer with timely and early delivery. They state It was not possible to pin point the exact time of return of the ODL, PTF and TE's, it was their intent to have all mail delivered within the WOO. By using those Non-ODL employees, this goal was achieved.

After carefully reviewing all the facts and documentation in this case, the Team finds that Management did violate Article 8.5.G of the National Agreement in this instance. The Team determined from the included TACS Employee Everything Reports (EER) and the PS Form 3996's that the work performed by the Non-ODL employees was 'off assignment'. The TACS reports also demonstrated that the ODL employees cited by the Union were not worked to nine (9) or ten (10) hours. This is in conflict with the following provision in the JCAM:

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.

Although local Management argued a need to adhere to their WOO, the TACS documentation contained in the case file shows that there were numerous ODL Carriers

who were available to work the off-assignment overtime forced on the Non-ODL employees within Management's own alleged WOO hours. Additionally, Management failed to provide any evidence to show a continuing compliance with their established WOO

Lacking any actual documentation from Management successfully challenging the contentions of the Union and supporting their decision to assign the off-assignment overtime work to the Non-ODL employees, the Team is now compelled to find that the Union has evidenced a violation of Article 8 in this instance.

The case file provided that there is a documented history of violations of this nature whereby the Local parties resolved the issue granting the Non-ODL employees an additional 200% compensation for the violation. The Team is finds that it is appropriate to maintain this percentage payment to the Non-ODL employees in this instance.

Management liability in this instance is limited to the number of hours worked 'off assignment' by the Non-ODL employees and payment to the ODL Carriers for the work they should have been assigned, but were not.

Payments to the ODL are not subject to escalating remedies and are always calculated at the appropriate overtime rate at which they would have performed the work. All payments are based on a median City Carrier hourly rate of pay of \$24.09.

Case File Inventory:

PS Form 8190-1 page
Issue Statement-1 page
Union Contentions-7 pages
Mutual Extension-3 pages
Overtime Desired List-1 page
TACS Reports-18 pages
PS Forms 3996-11 pages
Weekly Schedule-3 pages
Daily Schedule-2 pages
TACS Clock Rings-24 pages
Management Contentions-3 pages
Arbitration Decisions & District Labor/Management Meeting Minutes-250+/- pages
Previous Informal Step A, Formal Step A and Step B Decisions-750+/- pages

 4-22-09
Tonya L. Detrick

NALC Step B Representative

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Leopold A. Potsladio

USPS Step B Representative

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