

UNION: Disputed Facts and Contentions

Grievant: NALC
Grievance # 50-2007-SL10
Formal A meeting: 3-27-07
Completion of the 8190: 3-27-07

Management violated Article 8 Section 5G of the National Agreement and pages 8-14 through 8-19 of the 2005 edition of the JCAM in this case.

This grievance should not have to go to Step B. This issue has been resolved with many recent precedent setting Step B's (See enclosed)

On Friday, February 9, 2007 eighteen NON-ODL Carriers were forced to carry overtime off their assignment on their regularly scheduled day. The NON-ODL'S worked as follows; J. King has route 050036 and worked 1.23 hours of overtime on route 050060, C. Munro has route 050025 and worked 1.38 hours of overtime on route 050022, T. Shah has route 050053 and worked 2.00 hours of overtime on route 050022, K. Schwinn has route 050021 and worked 1.63 hours of overtime on route 050021, R. Weeramunda has route 050050 and worked 2.00 hours of overtime on route 050059, R. Waters has route 050018 and worked 1.67 hours of overtime on route 050017, D. Dunnevant has route 050004 and worked 90 units of overtime on route 050017, T-6 Carrier K. Wang had route 050054 and worked 2.00 hours of overtime on route 050040 (off swing), Gary Bodmer has route 050029 and worked 1.35 hours of overtime on route 050031, V. Quach has route 050019 and worked 2.00 hours of overtime on route 050026, S. Shook has route 050028 and worked 1.62 hours of overtime on route 050026, R. Agboola had route 050009 (had an opt on T-6 assignment and worked off string) and worked 2.48 hours of overtime on routes 050026 and 050017, R. Carroll has route 050024 and worked 2.06 hours of overtime on route 050040, S. Patel has route 050053 and worked 2.10 hours of overtime on route 050059, C. Lyles has route 050038 and worked 1.02 hours of overtime on route 050017, R. Burress has route 050006 and worked 1.18 hours of overtime on route 050016, A.

Braunstein has route 050007 and worked 1.42 hours of overtime on route 050033 and T. Marsh has route 050020 and worked 1.50 hours of overtime on route 050022.

The ODL's had not worked 20 hours of overtime and did not work 12 hours on February 9, 2007. The ODL'S worked as follows on February 9, 2007; L. Kiang 10.51 hours, S. Baik 8.00 hours, S. Lemus 8.00 hours, M. Soo 9.17 hours, C. King 10.57 hours, E. Valdez 10.99 hours, Pejo 10.50 hours, S. Yang 10.50 hours, Choi 8.35 hours, Lignelli 8.00 hours, Norris 8.97 hours, Hsueh 10.50 hours, Jackson 8.00 hours, Deng 10.50 hours, L. Brown 10.82 hours, Moral 7.98 hours, Baick 8.42 hours, Shin 11.09 hours, Watson 7.90 hours, Powell 8.00 hours, Moreno 10.54 hours, Ward 8.00 hours, Velasco 8.41 hours, Escano 9.99 hours, S. Xu 8.46 hours and N. Kong 10.19 hours.

According to Step B decision 52-2003-MC32 dated 4-23-03 (enclosed) management must also maximize the usage of PTF's to 11 and 1/2 hours (12 clock hours) before forcing NON-ODL's to work mandatory overtime on their N/S day or overtime off their assignments. The following PTF's did not work 11 and 1/2 hours on February 9, 2007; Chan 10.13 hours and Andrews 10.59 hours.

This meant that there were 69.94 available hours from the ODL's and 1.88 available hours from the PTF's, totaling 71.82 hours, who could have performed the 29.54 hours of work the NON-ODL's were forced to work improperly. This is a crystal clear violation of Article 8 Section 5G and pages 8-14 through 8-19 of the JCAM.

Article 8 Section 5G states: 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 hours in a day or sixty hours in a service week. The JCAM page 8-14 states: 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. The JCAM page 8-16 states: National Arbitrator Mittenthal ruled in H4N-NA-C-21, April 11, 1986 (C-5860) that an employee on the ODL does not have the option of accepting or refusing work over eight hours on a nonscheduled day, work over six days in a service week or overtime on more than four of the five scheduled days in a service week; instead an employee on the ODL must be

required to work up to twelve hours in a day and sixty hours in a week before management may require employees not on the ODL to work overtime. That language is clear and unambiguous. The 2005 edition of the JCAM is agreed to language by NALC Headquarters and management headquarters at L'Enfant Plaza. This language does not state that the above is contingent on management not invoking a Window of Operations. Had the parties intended that a Window of Operations would negate Article 8 Section 5G, they would have stated such. However, there is no mention of any Window of Operations whatsoever in the JCAM.

Page 8-19 of the JCAM states: 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.

Page 8-18 of the JCAM states: As a means of facilitating the foregoing, (Article 8 Section 5G) the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. This language is clear and unambiguous. "Once a full-time employee reaches 20 hours of overtime", cannot possibly be interpreted to mean that management could plan to work ODL's 20 hours of overtime by the end of the week, and thus, avoid maxing the ODL's until they reach 20 hours of overtime within the week.

In a meeting July 8, 2003 between District Manager Tim Haney and other Capital District Labor Relations staff, and presidents of NALC branches within the Capital District along with NALC Region 13 RAA Tim Dowdy, the following commitments were made by the District Manager; Tim Haney reinforced his expectation that the ODL carriers should be maximized, including using them to split up the routes of the non-scheduled non-ODLs to the extent possible. (Haney's written policy passed out near the end of the meeting reinforced this stated position.)

Through discussion, Haney confirmed that his stated window (6:30AM-6:00PM) did not mean that the ODL carriers could not perform work outside of these hours in an effort to maximize using them and minimize requiring mandatory overtime among the non-ODLs. He clarified that he did not want managers intentionally scheduling or planning to have carriers on the street delivering mail after the window cut off time, and

efficient use of the ODL carriers-including bringing them in early where possible, and splitting up routes among them, could and should be done.

Through discussion, the union's position was made clear by a couple of the NALC officials present, that an effort to get carriers off the street earlier, and an effort to get more consistent delivery times was not an issue and the union supports those interests- but the union cannot support and will not ignore violations of Article 8.5G as a method of advancing those interests. See hi-lited sections for the rest of the pertinent comments and commitments made in the SUMMARY OF KEY POINTS OF THE MEETING BETWEEN USPS CAPITAL DISTRICT AND NALC BRANCH PRESIDENTS July 8, 2003 paper (enclosed.)

Also at the July 8, 2003 meeting management passed out a paper titled ANSWERS BY CATEGORY (Questions Submitted by Ken Lerch). These were in response to agenda items submitted. Agenda item number 7 reads; Window of Operations update. Management wrote; Top leadership has been out to many units, such as C.C., Silver Spring, Rockville, and the 207 areas. During these visits, we have been inquiring with management to ensure that the otdl is maxed prior to utilizing non-otdls.

On June 23, 2003 a Labor/Management meeting was called by District Manager, Tim Haney. Other Capital District Labor Relations staff, and presidents of NALC branches within the Capital District were also present. The minutes of the meeting were typed up by management and sent to the presidents with a cover letter dated June 30, 2003 that states; To: Postmasters 200-209, Station Managers Attendee's Re: Article 8/Window of Operations. On page six Mr. Haney responds to a question about using NON-ODL's improperly. He states; That is not our intent- we want to maximize ODL first before going off the list- minimize NWD (NON WORK DAY) for non-ODL. Haney- Acknowledges this is a problem- some supervisors are not scheduling properly. In Mr. Haney's closing remarks on the last page he states; Wants to only work non ODL employees to the minimal- only to meet needs of service to our customers. Mr. Haney goes on to state; Will use the NWD (NON WORK DAY) as a minimal.

The next document is the Capital District's own rules for supervisors to use concerning Article 8. This is titled;

Managing Overtime within Article 8 For Delivery Units. On the first page management writes; EXAMPLE: If 8 hours are open tomorrow, and there are no overtime volunteers to schedule in on their off day, managers may first plan to split up the eight hours amongst overtime volunteers on their regularly scheduled work day in lieu of simultaneous scheduling.

The next document is a letter dated July 1, 2003 to Jerry Lane, Vice President of Area Operations written by NBA Richard Gentry of region 13. Richard Gentry wrote the following to Jerry Lane; He (Tim Haney) confirms that the 12 hour ODL list letter carriers will not be utilized in an effort to eliminate, or minimize to the extent possible, the necessity of working the non-ODL employees on their non-scheduled days. This stated position and plan, is notice of the intent to ignore and circumvent the requirements of Article 8.5G of the National Agreement.

The national JCAM (Joint Contract Administration Manual, November 2005 edition) of which USPS Headquarters is joint author with NALC, clearly states (on page 8-11) that a national arbitration confirmed that management must utilize ODL carriers and split up routes (to the extent the numbers of ODLs make possible) rather than requiring non-ODL carriers to work their non-scheduled days. The Haney policy refused to comply with what USPS headquarters requires in writing in the JCAM.

Richard Gentry goes on to write; Mr. Haney has not simply attempted to establish a street delivery cut off time, he has imposed an end-to-end window of time (of less than 12 hours) and directed that no employees work outside of these hours-regardless of contract dictates. Secondly, the non-ODL carriers are to be pre-scheduled to work on their non-scheduled days on the weekly schedule postings, rather than assessing actual daily work loads and availability of ODL carriers on those days, maximizing the usage of the 12 hour ODL carriers first as the JCAM requires, and then requiring mandatory overtime among the non-ODLs only where absolutely necessary.

Richard Gentry goes on to write that the imposition of a district policy which is knowingly in violation of the contract is of great concern to me.

The next document is the Work/Assignment Letter of Intent

dated May 28, 1985 that stipulates a list for carriers to sign indicating a desire to work overtime on their own assignment on their regularly scheduled days.

A Work/Assignment carrier is a NON-ODL. When management works a Work/Assignment carrier on their N/S day or off their assignment on overtime without the ODL's working 12 hours or 20 hours of overtime for the week, management has violated the National Agreement. This also violates the above cited Work/Assignment Letter of Intent dated May 28, 1985. Clearly, the Work/Assignment List is for carriers desiring to work overtime on their own assignment on regularly scheduled days. They can work overtime off their assignment or on their N/S day only if all the ODL's work 12 hours or the ODL's have already worked 20 hours of overtime for the week.

The next document is written by Robert Harnest and is eight pages in length titled Re: Article 8. All of this is incorporated as part of our contentions.

The next document is a copy of the last dispatch of outgoing mail collected by the carriers each day. The last Main Office truck leaves at 7:10 pm each day.

The Rockville installation is an EPM City. Therefore, casing in the pm up to 12 hours to comply with Article 8 Section 5G should not be an issue.

The next set of documents are arbitrations that support and bolster our case. In C-21657 dated February 1, 2001 arbitrator Linda DiLeone Klein writes on page 19; Pursuant to Article 3, management has the right to maintain the efficiency of operations and to determine the method, means and personnel by which those operations will be conducted; the exercise of Management's right to direct the work force is, however, "subject to the provisions of this Agreement", including Article 8. On page 20 arbitrator Klein wrote; ODL employees must be assigned to work overtime for the full extent of their obligation under Article 8.5G. Arbitrator Klein then quotes from National Arbitrator Mittenthal; The non-ODL employees may not be required to work overtime until the ODL employees have exhausted their overtime obligation under Article 8 Section 5G. Arbitrator Klein then wrote; In other words, ODL employees must have exhausted their overtime obligations prior to forcing non-ODL employees to work the

overtime. On page 22 arbitrator Klein wrote; Article 3 gives management the right to establish a window of operations for pick-up and delivery of mail, however, the implementation of such a window must be accomplished in accordance with the provision of Article 8.5 in its entirety. On page 23 arbitrator Klein wrote; In implementing its "Window of Operations", the Postal Service shall cease and desist from forcing non-ODL carriers to work overtime when ODL carriers have not been worked up to the ceilings established in Article 8.5G. All ODL carriers who were denied the opportunity to work overtime to the extent set forth in Article 8.5G shall be compensated at the appropriate overtime rate for the hours improperly assigned to non-ODL carriers.

In arbitration C-08021 arbitrator Raymond L. Britton wrote on page 6; While there is some dispute between the parties as to whether there is an operational "window" at the Birmingham facility, the Arbitrator, even if he were to assume, without deciding, that such an operation exists, could not rightfully find that such advances the position of the Employer here. The objective of management to promote the efficient delivery and dispatch of the mail is, of course, laudatory. However, notwithstanding such commendable objective, the Employer is still obligated to adhere to the terms of the National Agreement as fashioned by the parties during the negotiation process. Pertinent hereto in this regard, is the language of Article 8, Section 5G of the National Agreement which expressly provides that 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."

Arbitrator Britton goes on to write on page 7; It is urged by the Employer that if the work has to be done, it has the right to go to the overtime desired list first, and if others are needed, it can go outside to non-overtime desired list employees and thereby commingle the overtime between overtime desired list personnel and non overtime desired list personnel. Such action, under the circumstances here presented, does not, in the considered judgment of the Arbitrator, comport with the express language of Article 8, Section 5G of the National Agreement.

In arbitration C# 15626 arbitrator Lawrence Roberts writes on page 9; Article 3 provides the Service an inherent right to manage the operation. Part of that right could include a "window

of operation" for delivery and pick up of mail. That method however, must fall within the guidelines of other Articles and Sections, in this case Article 8, Section 5 paragraph G. While I agree that management is responsible to maintain the efficiency of the operation entrusted to it, that broad entitlement cannot be used to undermine the unambiguous language of Article 8, Section 5, Paragraph G. On page 12 Arbitrator Roberts wrote; The remedy offered by the Union is hereby approved. On page 2 the Union requested an additional 50% for the NON-ODL's who were forced to work in violation of Article 8 Section 5G and applicable overtime rate(s) for the ODL's deprived of the work the NON-ODL's worked.

In arbitration C# 13181 A&B Arbitrator Raymond L. Britton wrote on page 8 under OPINION; Specifically applicable hereto is the language of Article 8, Section 5G of the National Agreement. Therein, it is expressly provided that full-time employees not on the "Overtime Desired" list may be required to work overtime "only if all available employees on the" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week." In adopting this language, the parties have clearly expressed their intent to condition the working by Non-ODL employees on overtime on ODL employees working up to twelve (12) hours, and avoiding, as much as possible, requiring that employees perform overtime service contrary to their indicated desires.

Arbitrator Britton goes on to write on page 10; To ensure that all mail is delivered and operational standards are achieved, the rule of reason, according to the Employer, dictates that it is necessary to schedule a minimum of two (2) employees on the day after Thanksgiving, i.e., November 29, 1991. To do otherwise, the Employer contends, would have risked not getting all mail delivered and failing to provide service to its customers. While the Arbitrator is fully cognizant of the concerns of the Employer in this regard, he, nonetheless, cannot rightfully agree that these objectives can properly be achieved by unilaterally ignoring the language of Article 8, Section 5G of the National Agreement. On page one Arbitrator Britton wrote that this grievance is sustained and the relief requested by the Union is granted. On page 2 the relief the Union was requesting reads; The Union requests that non-OTDL carriers be paid an additional 50% for all overtime work performed.

In arbitration C# 5860 National Arbitrator, Richard Mittenthal, stated on page 12; In short, non-ODL employees can be drafted for overtime at precisely the point at which ODL employees have exhausted their overtime obligation. On page 15 Arbitrator Mittenthal goes on to write; My conclusion is that ODL employees do not have the option to accept or refuse overtime beyond the 5F limitations. They can be required to perform such overtime. The non-ODL employees may not be required to work overtime until the ODL employees have exhausted their

overtime obligation under 5G.

In arbitration C# 12669 Arbitrator Thomas J. Erbs wrote on page 14; Management, under the provisions of the National Agreement, is to work ODL employees up to 12 hours before scheduling non-ODL employees. On page 16 Arbitrator Erbs goes on to write; It is therefore the decision of this Arbitrator that the grievance is sustained. The remedy requested in the grievance is that the applicable hours worked by non-scheduled, non-ODL carriers, who were inappropriately assigned to the overtime work should have been spread among the employees on the ODL and that all affected employees should be compensated at the appropriate overtime rate. The remedy therefor is that the employees on the ODL, as identified by the Union, shall be compensated at the appropriate rate for the hours worked by the NS employees in accordance with the Union exhibit submitted at the hearing. In addition those NS, non ODL employees required to work improperly shall be compensated as requested in the grievance. The Union Contentions on page 8 state; Management improperly required non ODL employees to work overtime on their NS days when those on the ODL were not properly utilized in accordance with Article 8.5G. On page 9 the Union requested; As a remedy those carries not on the ODL "who were improperly forced to work overtime be granted an extra 50% of their hourly rate "for all such hours they were required to work and that those on the ODL who were improperly denied the work should be compensated for that work at the appropriate overtime rate.

Arbitration number B01N-4B-C 04104119 with an award date of August 9, 2005 by arbitrator Dennis Campagna, arbitration number B01N-4B-C 05187029 with an award date of August 12, 2006 by arbitrator Dennis Campagna, arbitration number B01N-4B-C 05090671 with an award date of December 13, 2005 by arbitrator Stephen LaLonde, arbitration number B01N-4B-C 06079858 with an award date of November 12, 2006 by arbitrator Barbara Deinhardt, arbitration number A01N-4A-C 06101948 with an award date of August 20, 2006 by arbitrator Joshua Javits and arbitration number E01N-4E C 06042723 with an award date of September 3, 2006 by arbitrator David Dilts are also enclosed in an effort to further bolster the Union's case.

It is important to note that Rockville management and the Union have agreed for the last 19 years that ODL employees must work 12 hours (or have already worked 20 hours of overtime in the

service week) before NON-ODL carriers work their N/S day or work overtime off their assignment on their regularly scheduled days. Any deviation from the above that was brought to the Union's attention during the last 19 years was grieved with payments to the NON-ODL's as well the ODL's.

There have been hundreds and hundreds of violations of Article 8 Section 5G at the Rockville Installation (enclosed). In fact, there have been so many violations of Article 8 Section 5G that the Union is requesting an escalating remedy for the NON-ODL's in this case. We are introducing hundreds and hundreds of prior grievance settlements where the NON-ODL's were paid an additional 50%, then an additional 75% then an additional 100% and then an additional 125%, to justify the remedy requested in this case. These range from Informal A, Formal A, Step B, PRE-ARBITRATION and an ARBITRATION. This was as recent as August 31, 2006 where arbitrator Mark Rosen awarded an additional 125% for the overtime hours the NON-ODL was required to work.

We introduce the following to bolster the Union's case; Pages 8-14 through 8-19 of the JCAM, over 800 clockrings showing Carriers on the street past 1800, HUNDREDS AND HUNDREDS OF GRIEVANCE SETTLEMENTS paying ODL's up to 12 hours AND NON-ODL'S AN ESCALATING REMEDY NOW UP TO AN ADDITIONAL 125% ABOVE THE OVERTIME ALREADY PAID (as recently as August 31, 2006) due to violations of Article 8 Section 5G, SUMMARY OF KEY POINTS OF THE MEETING BETWEEN USPS CAPITAL DISTRICT AND NALC BRANCH PRESIDENTS July 8, 2003, paper titled ANSWERS BY CATEGORY (Questions Submitted by Ken Lerch), letter dated June 30, 2003 Re: Article 8/Window of Operations that included minutes of the June 23, 2003 meeting with Tim Haney, rules for supervisors to follow titled; Managing Overtime within Article 8 For Delivery Units, NBA letter dated July 1, 2003 to Jerry Lane, the Work/Assignment Letter of Intent dated May 28, 1985, the Robert Harnest document titled Re: Article 8, truck run schedule as of July 4, 2003, arbitrations C-21657, C# 08021, C# 15626, C# 13181 A&B, C# 5860 (National Arbitrator Richard Mittenthal), C# 12669, Arbitration number B01N-4B-C 04104119 with an award date of August 9, 2005 by arbitrator Dennis Campagna, arbitration number B01N-4B-C 05187029 with an award date of August 12, 2006 by arbitrator Dennis Campagna, arbitration number B01N-4B-C 05090671 with an award date of December 13, 2005 by arbitrator Stephen LaLonde, arbitration number B01N-4B-C 06079858 with an award date of November 12, 2006 by arbitrator Barbara Deinhardt, arbitration

number A01N-4A-C 06101948 with an award date of August 20, 2006 by arbitrator Joshua Javits, arbitration number E01N-4E C 06042723 with an award date of September 3, 2006 by arbitrator David Dilts and arbitration B01N4BC06072667 by arbitrator Eileen Cenci with an award date of February 16, 2007.

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This meant that there were 69.94 available hours from the ODL's and 1.88 available hours from the PTF's, totaling 71.82 hours, who could have performed the 29.54 hours of work the NON-ODL's were forced to work improperly. This is a crystal clear violation of Article 8 Section 5G and pages 8-14 through 8-19 of the JCAM.

The Union has introduced over 50 settlements (enclosed) where the NON-ODL's were paid an additional 125% for the overtime worked in violation of Article 8 Section 5G. It is painfully obvious that the remedy must be increased in order to get Rockville management to comply with Article 8 Section 5G of the National Agreement.

For all of the above reasons and contentions, we ask that the Step B team sustain this grievance and grant the remedy requested.

#19. Remedy requested: Pay the following NON-ODL's an additional 175% for the overtime worked in violation of the National Agreement on February 9, 2007; J. King 1.23 hours, C. Munro 1.38 hours, T. Shah 2.00 hours, K. Schwinn 1.63 hours, R. Weeramunda 2.00 hours, R. Waters 1.67 hours, D. Dunnevant 90 units, T-6 Carrier K. Wang 2.00 hours, Gary Bodmer 1.35 hours, V. Quach 2.00 hours, S. Shook 1.62 hours, R. Agboola 2.48 hours, R. Carroll 2.06 hours, S. Patel 2.10 hours, C. Lyles 1.02 hours, R. Burress 1.18 hours, A. Braunstein 1.42 hours, Marsh 1.50 hours.

Pay an additional 29.54 hours to the above listed ODL's, as designated by the local Union, at their applicable overtime or penalty rate(s) of pay on February 9, 2007.

Sincerely,

Kenneth Lerch
President NALC 3825