



STEP B DECISION

STEP B TEAM:	DECISION:	RESOLVED
USPS REPRESENTATIVE	USPS GATS #:	K06N-4K-C 11159618
DENISE CARBONE	GRIEVANT:	Class Action
NALC REPRESENTATIVE	BRANCH GRIEVANCE #:	SS-128-11
ANNETTE L. TAYLOR	BRANCH:	2611
	INSTALLATION:	Silver Spring
	DELIVERY UNIT:	Main Office
	FINANCE NUMBER	23-8478
	STATE:	Maryland
	INCIDENT DATE:	03/11/2011
DISTRICT GRIEVING:	INFORMAL STEP A INITIATED:	03/23/2011
	FORMAL STEP A MEETING:	07/01/2011
CAPITAL	RECEIVED AT STEP B:	07/05/2011
	STEP B DECISION DATE:	07/13/2011
	ISSUE CODE:	08.5750
	NALC SUBJECT CODE:	N/A
	ORIGINAL STEP B RECEIVED DATE:	N/A
	DATE SENT TO ASSISTING TEAM:	N/A

ISSUE: Did Management violate Article 8.5.C.2.A and 8.5.D of the National Agreement by not maximizing the available Overtime Desired List (ODL) Carriers before requiring Non-ODL employees to work overtime off of their assignments, and if so, what is the appropriate remedy?

DECISION: The Dispute Resolution Team has RESOLVED this grievance. The Team has determined that Management did violate Article 8 in this instance. The following employees will be paid respective Lump Sum Payments for this violation:

Senftle	\$555.00	D. Walker	\$427.75	Morris	\$516.00
Anthony	\$1422.26	Robison	\$1000.00	Loving	\$270.75
Brown	\$733.25	Enkuhawariat	\$286.50	Gainey	\$249.00
Diggins	\$961.25	Vieira	\$255.00	Calliste	\$685.00
Stewart	\$698.26	Stuckwisch	\$660.75	Washington	\$165.00
Jackson	\$498.25	Hand	\$111.75	Peoples	\$804.50
Harris	\$193.00	Speight	\$920.38	Hailemeleket	\$725.39
Kirk	\$784.28	Uong	\$526.51	Mann	\$871.15
Cazahuatl	\$690.89	Haug	\$682.01	Snelnick	\$818.76
Adams	\$768.77	Love	\$120.63	Dixon	\$411.38
R. Taylor	\$858.02	Young	\$366.50	Chase	\$493.28
Desperitt	\$503.03	Bibbs	\$555.02	Teasley	\$598.89
Baez	\$579.88	St. Hill	\$586.88	Khatta	\$649.50
Harrison	\$559.25	Okoosi	\$258.13	Arnold-Omakor	\$730.76
Day	\$169.38	Plater	\$393.14	Turner	\$442.63
Moskowitz	\$123.88				

The Step B Team has processed these pay adjustments in the Grievance Arbitration Tracking System (GATS). No further action is required. Management is directed to adhere to the provisions set forth in Article 8 of the National Agreement when assigning overtime. No other remedy is granted.

In addition to this grievance, the following grievance has been independently reviewed and identical Article 8 violations were found. Their remedies are included in this decision:

USPS Gats	NALC #	Grievant	Issue/Violation
K06N-4K-C 11159599	SS-127-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11159612	SS-129-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11169766	SS-133-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11207687	SS-201-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11208089	SS-212-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11208098	SS-216-11	Class Action	Failure to Maximize OTDL
K06N-4K-C 11208126	SS-218-11	Class Action	Failure to Maximize OTDL

EXPLANATION: The Union is alleging that from March 5 - 11, 2011, Management required Non-ODL employees to work overtime off of their assignments and on non-scheduled days in the Silver Spring Main Office on three days. The case file demonstrates there were ODL employees that were not maximized to twelve (12) hours at both the regular and penalty overtime rates while Non-ODL employees worked overtime 'off' of their assignments and on non-scheduled days.

Included in the case file are TACS Employee Everything Reports (EER), clock rings for the cited Non-ODL employees for each date grieved and TACS Overtime Alert Reports (OAR) identifying the ODL employees the Union alleges to be available. Also included are daily schedules, hourly overtime assignments and a copy of the Overtime Desired List. Management claims that all ODL employees were maximized to the Window of Operations (WOO).

This instant dispute was initiated, advanced through each step of the Dispute Resolution Process (DRP) with mutual time extensions, where it was received by the Cap/Metro Step B Team on July 5, 2011.

The Union contends Management violated the National Agreement when they forced Non-ODL employees to carry overtime off of their assignments and on non-scheduled days without properly maximizing ODL Carriers to the ten (10) and twelve (12) hour requirements in Article 8. On three (3) days, Management violated Article 8 by forcing Non-ODL Carriers to work overtime on their non-scheduled days and off their assignments on regularly scheduled days without proper maximization of the ODL. They provide previous Step B decisions finding similar violations and granting remedies of 100% additional compensation to the Non-ODL and payment at the appropriate overtime rate to the ODL. As a remedy, the Union requests that Non-ODL carriers receive one day of Administrative leave to be used within one year of the decision and that one additional space on the leave calendar be made available for this purpose. Additionally, the Union requests that the remedy for Non-ODL be escalated to an additional 125%.

Management contends that all ODL employees were scheduled to the Window of Operations (WOO). They provide an arbitration decision # K06N-4K-C 09154999, in support of their position, as well as several prior Step B decisions. Management asserts that the ODL brought in were not sufficient to cover the vacant assignments, therefore Management required Non-ODL to work overtime to meet the Window of Operation. Management further states that they are taking action on employees who fail to report to work as scheduled and missed opportunities for overtime are documented on the Overtime Worksheet. Management states that ODL carriers called back to request additional time to complete the assignments they had been given and assigning additional work would not have allowed the ODL to make the final dispatch of value. Management notes that Non-ODL carrier Sentfle is on limited duty, ODL carrier Teasley received discipline for his absence from overtime on March 9, 2011, and Non-ODL carrier Enkuhawariat is on Leave without Pay pending removal. Management further contends that it is an inappropriate remedy to compensate the Union administrative leave or to allow more than the contractual amount off on any given day.

After carefully reviewing all the facts and documentation in this case, the Step B Team agrees that Management violated the following provisions of the National Agreement, when they failed to schedule the ODL employees accordingly:

8.5.C.2.a:

When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected from the "Overtime Desired" list.

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. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation.

Management did contend they scheduled employees within an alleged WOO but failed to provide any factual documentation specific to the office in support of this assertion. The case file demonstrates that this contention is not supported by the Overtime Alert Report and the other documentation contained in the case file. The documentation also supports that the cited Non-ODL employees worked on their non-scheduled day and on assignments other than their own on their regularly scheduled day and were approved on the schedule for later return times, relative to the work performed, and that not all of the ODL were worked to the alleged WOO. When ODL employees were not utilized in accordance with the above, prior to the scheduling of non-scheduled day or 'off assignment' overtime for Non-ODL employees, a violation of the National Agreement occurred.

The Union documented that the current remedy for this type of violation is 100% additional payment to the Non-ODL employees for all hours worked. The Team agrees that maintaining this remedy is appropriate in this instance. Payments to the ODL employees are calculated at the appropriate, overtime rate, *regular or penalty*, for whichever they are available. All payments are based on a median hourly City Carrier rate of \$25.00 in effect on the incident date.

The Team agrees that it is wholly appropriate in this instance to render the above stated DECISION.

Case File Inventory: K06N-4K-C 11159618
PS Form 8190 -1 page
Union Contentions and Documentation – 100 pages
Management Contentions and Documentation – 56 pages

Case File Inventory: K06N-4K-C 11207687
PS Form 8190 -1 page
Union Contentions and Documentation – 93 pages
Management Contentions and Documentation – 29 pages

Case File Inventory: K06N-4K-C 11159599
PS Form 8190 -1 page
Union Contentions and Documentation – 103 pages
Management Contentions and Documentation – 52 pages

Case File Inventory: K06N-4K-C 11208089
PS Form 8190 -1 page
Union Contentions and Documentation – 116 pages
Management Contentions and Documentation – 65 pages

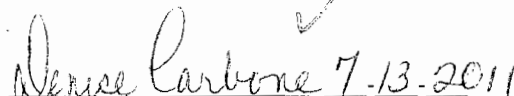
Case File Inventory: K06N-4K-C 11159612
PS Form 8190 -1 page
Union Contentions and Documentation – 120 pages
Management Contentions and Documentation – 63 pages

Case File Inventory: K06N-4K-C 11208098
PS Form 8190 -1 page
Union Contentions and Documentation – 116 pages
Management Contentions and Documentation – 40 pages

Case File Inventory: K06N-4K-C 11169766
PS Form 8190 -1 page
Union Contentions and Documentation – 109 pages
Management Contentions and Documentation – 63 pages

Case File Inventory: K06N-4K-C 11208126
PS Form 8190 -1 page
Union Contentions and Documentation – 105 pages
Management Contentions and Documentation – 57 pages


Annette V. Taylor
NALC Step B Representative


Denise Carbone
USPS Step B Representative

USPS GATS #: K06N-4K-C 11159618

CC: Step A Parties
District Labor Relations
National Business Agent
Capital Metro Labor Relations