

Date Received at Step B (MM/DD/YYYY)



## USPS-NALC Joint Step A Grievance Form

### INFORMAL STEP A – NALC Shop Steward Completes This Section

1. Grievant's Name (last, First, Middle initial) Local Union		2. Home Telephone No.	
3. Seniority Date (MM/DD/YYYY)	4. Status (Check one) XXFT <input type="checkbox"/> FTF <input type="checkbox"/> PTR <input type="checkbox"/> PTF <input type="checkbox"/> TE		5. Grievant's SSN
6. Installation/ Work Unit Montgomery Village, MD 20886			7. Finance Number
8. NALC Branch No. 3825	9. NALC Grievance No. 79-07-CC114	10. Incident Date (MM/DD/YYYY) 06/18/2007	11. Date discussed with Supervisor (filing Date) 06/29/2007
12a. Companion MSPB appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		12b. Companion EEO appeal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
13a Supervisor's Printed Name and Initials (Completed by Supervisor)		13b Steward's Printed name and Initials (Completed by Steward)	

### FORMAL STEP A – Formal Step A Parties Complete This Section

14. USPS Grievance No.

15. Issue Statement/ Provide Contract Provision(s) and Frame the issue(s)

Was it a violation of Art. 8.5.G when non-ODL carriers Lee, Starks, Marthaller and Tien were scheduled and worked their NS day, and if so, what is the appropriate remedy?

16. Undisputed Facts (List and attach all supporting Documents)

Attachments?  No  Yes Number \_\_\_\_\_

Non ODL carriers D. Lee, C. Starks, J. Marthaller and H. Tien were scheduled and worked their non-scheduled day on June 18, 2007.

17. UNION'S full, detailed statement of disputed facts (attachments as necessary)

Attachments?  No  Yes Number \_\_\_\_\_

The local union has no dispute with local management concerning the operational "window" for delivery operations in Montgomery Village. The union agrees with management that carriers can not be scheduled in earlier than 06.50 unless there has been a significant curtailment of mail on the previous day or days. There is also agreement with management's position that the last available transportation for collection mail to the processing plant leaves the unit at 18.25. Therefore the ODL carriers could have been and should have been scheduled to begin their tour at 6.50, return to the office by 18.25 and end their tour at 18.50. This would have enabled the ODL carriers to work 11.50 hours each. On this date management failed to work the ODL carriers within this recognized operational window.

The scheduled ODL carriers worked the following hours indicated: Brown, **8:00**; Hicks, **8.90**; Stradley, **9.65**; Sweeney, 10.51; Gillis, **9.63**; Kinol, **9.38**; Sanchez, 10.43; Asbury, 10.01; Ortega, **9.98**; Desai, 10.12; Ho, 10.00; Muse, 10.02; Ruiz, **9.06**; Hammond, **9.99**.

The ODL carriers had the following begin time, return to office time and end tour time: Ortega, 750-1766-1798; Gills, 750-1757-1763; Ruiz, 804-1741-1760; Brown, 808-1646-1658; Stradley, 750-1692-1765; Ho, 750-1773-1800; Asbury, 750-1790-1801; Muse, 800-1798-1852; Hicks, 870-1786-1810; Sweeney, 700-1758-1801; Sanchez, 700-?-1801; Hammond, 752-1787-1801

Not a single ODL carrier was scheduled in at 06.50 and only two (Sweeney & Sanchez), of the fourteen scheduled ODL carriers, were scheduled in at 7:00. No ODL carrier was worked on the street until 18.25 and only one ODL carrier was worked until 18.50 (18.52, Muse). This shows a complete disregard for compliance with Article 8.5.G and management's own operational considerations.

Had the ODL carriers been scheduled within the stated operational "window" with a begin time of 6:30 AM, they would have **been available to work an additional 25.32 hours** as follows: Brown, 3.50; Hicks, 2.60; Stradley, 1.85; Sweeney, .99; Gillis, 1.87; Kinol, 2.12; Sanchez, 1.07; Asbury, 1.49; Ortega, 1.52; Desai, 1.38; Ho, 1.50; Muse, 1.48; Ruiz, 2.44; Hammond, 1.51. The four non-ODL carriers who were scheduled to work this date worked a total of **29.63 hours**.

The ODL carriers should have been scheduled in at 06.50 so that they would have been available to work 25.32 of the 29.63 hours that the four non-ODL carriers were assigned to work. This would have left 4.31 hours that would have been justifiably assigned to a non-ODL carrier. (Also on this date, management assigned 3.22 hours of off assignment overtime to three non-ODL carriers working on their regularly scheduled day. This is the subject of a separate grievance.) This shows that there was 7.53 hours of overtime that management was unable to cover without assigning the work to a non-ODL carrier. For this reason, management had justification to schedule one of the four non-ODL carriers who were required to work this date.

The violation of Art. 8.5.G has been an ongoing issue in Montgomery Village over the past several years. Violations in 2003 were settled at Step B with the non-ODL carrier who was forced to work their NS day being awarded an additional 50% compensation at their regular rate of pay. Violations in subsequent years were settled at Step A with the non-ODL carrier working their NS day receiving an additional 75% and then an additional 100%, or 8 hours of administrative leave. The additional 100% was awarded in 2006 for over 85 violations that occurred on 43 days from June 19 through September 30, 2006.

The continuing violations of Art. 8.5.G in light of these previous violations and settlements, requires that the settlement request for this grievance be increased from that of former settlements. Repeated specific violations of the contract by management should result in an escalated remedy amount for those violations. Letter carriers can expect an increase in the severity of discipline for continued infractions of company work rules and management should be held to the same standard for their continued disregard for specific contractual provisions.

18. MANAGEMENT'S disputed facts and contentions (List and attach all supporting documents)

Attachments?  No  Yes Number \_\_\_\_\_

See Attachment # 1.

19. Remedy Requested/ Offered

Pay the three senior non-ODL carriers, D. Lee, J. Marthaller and C. Starks an additional 125%, at their regular rate of pay for all hours worked.

Pay the available ODL carriers, at their regular overtime rate of pay, for the hours worked by these three non-ODL carriers as follows: Brown, 3.50; Hicks, 2.60; Stradley, 1.85; Sweeney, .99; Gillis, 1.87; Kinol, 2.12; Sanchez, 1.07; Asbury, 1.49; Ortega, 1.52; Desai, 1.38; Ho, 1.50; Muse, 1.48; Ruiz, 2.44; Hammond, 1.51

20. Disposition and Date (Check one)

Resolved     Withdrawn     Not Resolved

Date of Formal Step A Meeting (MM/DD/YYYY)

10/19/2007

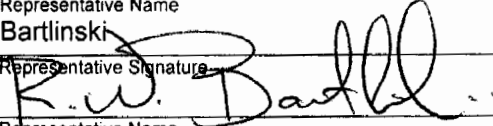
21a. USPS Representative Name

Ron Bartlinski

21b. Telephone No. (Include Area Code)

301-208-3781

21c. USPS Representative Signature



21d. Date (MM/DD/YYYY)

10/24/07

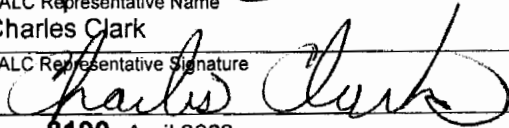
22a. NALC Representative Name

Charles Clark

22b. Telephone No. (Include Area Code)

301-641-1872

22c. NALC Representative Signature



22d. Date (MM/DD/YYYY)

10-24-2007



Grievant: Class Action  
Post Office: Montgomery Village Br.  
MGMT #  
UNION # 79-07-CC114  
Incident Date: June 18, 2007

This is in reply to the above referenced Informal Step A grievance appeal dated 6-29-07. On October 19, 2007, I met with Charles Clark to discuss above captioned grievance at the Formal Step A of our contractual grievance procedure.

At issue in this grievance is whether management violated Article 8.5.G of the National Agreement by forcing non-odl carriers to work overtime before maximizing all overtime desired list (OTDL) carriers to 12 hours.

The Union's position is that management is always under any and all circumstances required to work available ODL and PTF carriers to the maximum extent possible prior to having non-ODL carrier's work either their non scheduled day or overtime on a regularly scheduled day. Their position is that clock rings showing that employees who are not on the list worked overtime is de facto proof of a violation which requires no further investigation or proof. This reasoning is faulty. Article 8.5.G is not absolute and is subject to circumstances and grounded in the events leading to the grievance. There are situations in which management may go off the list.

On June 23, 2003, the District Manager established a "window of operation" for the Capital District. This was done to improve customer service by way of consistent, timely delivery to our customers. Other impacts that were considered were the security of mail being left in mailboxes overnight due to late delivery, carrier safety because of reduced visibility during evening hours, and finally to ensure all collection mail would meet the closeout dispatches for the mail processing facilities. It is very important to the mail processing facilities that we provide as much mail as possible prior to 1800 in order to facilitate outgoing mail in a timely manner.

The Montgomery Village Branch has achieved a 98.96% year to date percentage of routes completed by 1800 as of 6/18/2007. This number shows that we are meeting the goal more than 70% of the time. Numerous regional arbiters have decided that a bona fide window exists where management is meeting the return time by 70%. Ref: Jonathan Klein Case No. C01N-4C-C 03200698 agreed that an operational window could be established without 100% compliance. Numerous other arbiters have followed suit. Yes, there may be days that we fail to meet the window but our argument is bottomed on the consistency of the operations that we meet this goal more than 70% of the time. It should be noted that the 1984 negotiations that inserted the 12 hour per day/60 hours per week limitations and penalty pay also included in a MOU in the back of the contract on overtime and why the parties came to an agreement. The MOU provides for a bona fide window of operations from time to time. Certainly, the timely delivery of mail to our customers is our total existence. How would you feel if you got your check after the bank closed and now an additional expense may be incurred simply because the carrier was late delivering the mail? The timely delivery of mail cannot be overstated. We simply must deliver the mail in a timely manner. Our jobs depend on it. The MOU has other factors to be considered and that is the overtime list was created to keep employees who do not wish to work the overtime from working the overtime. Article 8.5G does not contain any additional contractual commitments beyond the provisions of Article 8. The provision of Article 8 section 5G was not intended to change the way management used the non-overtime or mandatory provisions of the contract. This MOU specifically spells this out. In some cases management specifically sought out help with auxiliary assistance rather than requiring employees to work mandatory overtime. In order to achieve our window of carriers off the street by 1800 the non-list employees were required to work off the route or work their non-scheduled day in order to meet the window.

In addition, there is a misunderstanding among management employees as well as union representatives regarding the letter carrier paragraph. The letter carrier paragraph and the window of operations are separate conditions of employment. This argument requires the parties at Informal Step A, Formal Step A, and the Step B Team to look at the 4 corners of the agreement. There are "**exceptions**" to Article 8.5G. The first exception is found in Article 8.5.C.2(d) of the National Agreement. It is commonly referred to the *recourse clause* because this language makes it clear that recourse to the overtime list is not necessary when the assignment is to a letter carrier assigned to carry his own route on his bid job on their regularly scheduled days. National Arbitrator Mittenthal referenced this in the letter carrier paragraph national decision stood as an effective **exception for the use of the overtime desired list**. It should be noted that arbitrator Mittenthal stated that the overtime MOU was negotiated by the NALC in order to bring closure this agreement for penalty pay. Management is required "**to seek**" auxiliary assistance prior to using non-volunteers. If the new section of Article 8.5G had superceded the recourse clause there would not have been any need to negotiate the MOU and the letter carrier paragraph. The key words in the letter carrier paragraph is "**to seek**". Auxiliary assistance can be in the form of PTF's, casuals, unassigned regulars at the straight time rate, pivoting, or an **available** ODL employee. In some cases management specifically sought out help with auxiliary assistance rather than requiring employees to work mandatory overtime. In order to achieve our window of 1800 the non-list employees were required to work off the route or work their non-scheduled day in order to meet the window. The window of operations concept is the second exception to the 12 hour rule to maximize the over time list. It carries with a number of responsibilities. This concept is embodied in Article 3 of the National Agreement. It must be consistent with or in accordance with the other provisions of the National Agreement. It recognizes management has a right to set forth a deadline for getting out the mail. This deadline may result in some non-ODL employees being assigned overtime.

On June 18<sup>th</sup> 2007, there were 21.25 vacancy hours with 21 OTDL hours available to cover the vacancies, leaving a deficiency of .25 hours that was needed to get the mail delivered to meet the window of operations. With this in mind, management determined that one carrier was needed to ensure all mail for the day would be delivered and for all collection mail to meet the final dispatch which leaves the station at 1815. This is particularly important because the mail processing facility has critical entry times that must be met in order to process and dispatch the mail back to the stations for the next day's delivery. From a National perspective, the U.S. Postal Service operates within a 24 hour clock frame. The success of this operation starts with the carriers getting back into the office by 1750 to prepare the collection mail for the final dispatch which arrives at 1800. From there, it is expected that 80% of collection mail is processed by 2000 and into our outgoing primary operation. In order for the Postal Service to provide consistent, reliable service, we must ensure that all measures are implemented on a daily basis. Article 8 does not require management to work anyone beyond the hours that are necessary to complete its mission.

The Employer's right to utilize overtime for full-time regulars, is determined by the language of 8.5 of the National Agreement and the Article 8 Memorandum. The utilization of the non-ODTL carriers was necessary to meet a **bona fide operational requirement** of a 1815 dispatch of value. It is management's position that the Employer does have the right, pursuant to the National Agreement, to utilize both the OTDL and non-ODTL carriers for overtime simultaneously when the mail volume on hand, availability of equipment and manpower, and the timetable available for processing and dispatch, due to the operating conditions, so necessitate. This simultaneous scheduling is mentioned in the Memorandum of Understanding (MOU) on page 160 of the National Agreement. It states in part "...The new provisions in Article 8 contain different restrictions than the old language. However, the new language is not intended to change existing practices relating to use of employees not on the overtime desired list when there are **insufficient employees on the list available to meet the overtime needs**." It goes on to give the example "...if there are five available employees on the

overtime desired list and five not on it, and if 10 work-hours are needed to get the mail out within the next hour, ***all ten*** employees may be required to work overtime..." This was the very principal that was relied on when scheduling the non list carriers on this day. There was simply not enough OTDL hours available to meet the overtime needs for the day within the operational window. The Union has failed to identify a single non-list employee that worked in lieu of an OTDL carrier that was available and was not worked.

The language in this above referenced MOU "...the new language is not intended to change existing practices relating to use of employees not on the overtime desired list..." is of great significance when you consider the history of the Postal Services negotiations with the NALC. The NALC and the APWU were both covered under the same Agreement until 1994 where they bargained separately bringing us to our current Agreement. The APWU's current Agreement has a MOU on page 207 that has Article 8 Questions and Answers. The question was posed "Must all employees on the OTDL be utilized 12 hours per day before an employee not on the list works any overtime?" The response: "***Yes, except when there are time-critical processing needs that cannot be met unless non list employees are worked.***" It goes on to give the exact example provided in the NALC MOU. The parties further agreed to complete the Article 8 Q&A's no later than June 1999 in which they did in the Joint Contract Interpretation Manual (JCIM). In the most recent version dated June 2004, Article 8, page 11 in the Questions and Answers, question number fourteen is germane for this discussion. It states "Must all employees on the overtime desired list be utilized twelve hours per day before an employee not on the list work any overtime?" The response: "***Except when there is an operational window that cannot be met unless non-list employees are worked. At such time, list and non-list employees may be scheduled simultaneously.***" This language is evidence of the Postal Services existing practice prior to the split in negotiations of Agreements.

Article 8.5.D further supports the position of simultaneous scheduling of overtime which states "If the voluntary "Overtime Desired" list does not provide sufficient qualified people, full time qualified people not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

The Employer is not required to hold the mail to afford an OTDL carrier additional overtime. Management holds that after the necessary processing and/or dispatch had been achieved, the need for overtime no longer exists. The Employer is never obligated to work any employee overtime unless such a need exists. The last available transportation provided for the Montgomery Village Br. to transport final collection mail to the Suburban Maryland Processing and Distribution Center (P&DC) for cancellation and processing is 1815. The transportation office establishes the dispatch schedules for each office to ensure timely processing of the mail. Management has been instructed by the Capital District leadership not to hold up these trucks further emphasizing the importance of the "24 hour clock" established nationally.

The mail stream process is simple but effective. All of the mail that is picked up from collection is containerized and transported over to the P&DC, which has very strict time tables called critical entry times (CET) and clearance times (CT). The P&DC's mission starts with the collection operations and the need to meet the CT or all downstream operations are negatively impacted. This of course would include mail collected by carriers from customer's mailboxes. The earlier the mail arrives at the P&DC the earlier it can be processed. The end result of this automation process is, if able to perform in a timely manner, the transport of this mail out to our facility to distribute to the carriers the next morning. This rotation is the linchpin of the success or failure of the Postal Service.

Meeting the close-out dispatch time is a bona fide operational requirement. To not utilize these non-OTDL carriers and work OTDL carriers to 12 hours would have resulted in carriers returning after this

last dispatch truck had left our facility. With 6:30 A.M. begin tours; the carriers would need to work to 7:00 P.M., well after the departure of the dispatch of value as well as servicing our customers with unacceptable untimely delivery of their mail. This would also negatively impact the Customer Satisfaction Measurement (CSM) which is a national system that has an external testing of various customer expectations. One of which is consistency of delivery. This customer expectation is not met when we make late delivery in the evening, while delivery of some businesses is jeopardized because they close at 5:00 P.M. The only way the USPS could have the ability to meet the customers needs is through the flexibility of simultaneous scheduling of overtime.

Incurring the great and additional expense of securing another truck and dispatching the collection mail untimely to the P&DC is an unreasonable expectation of the Union merely to gain additional overtime monies for its membership. Conversely, there is not sufficient mail available prior to 6:30 A.M. (since the majority of the mail does not arrive in the unit until 6:00 A.M.) to keep them gainfully employed if the OTDL carriers began their tour earlier than 6:30 A.M. to allow them this 12-hour expectation (*see attached IOP & mail arrival profile*). The OTDL carriers were already scheduled additional office duties and street delivery on overtime thus making them unavailable. This simultaneous scheduling was necessary to meet that dispatch of value at 1825. The OTDL carriers would be carrying their own assignment until a minimum of 4:00 P.M., and again they all had additional street deliveries on overtime assigned. The position of the Union that the OTDL carriers are always entitled to 12 hours overtime daily including the appropriate penalty pay creates an unreasonable and unnecessary financial burden for the Postal Service and is inconsistent with the existing practice of simultaneous scheduling as mentioned in the MOU of the Agreement.

Management maintains that the Article 8 Memorandum, in the JCAM, relates what the parties truly have agreed to and is controlling. The parties, have agreed that; "Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that **bona fide operational requirements** do exist that necessitate the use of overtime from time to time". Nowhere and at no time does it say that management will not and cannot schedule these carriers. Therefore, carriers not on the OTDL may be required to work overtime in order to meet a bona fide operational requirement. Equally as important it continues, "In the event these principles are contravened, the appropriate correction "Shall not obligate the employer to any monetary obligation". It further states; "The parties agree that Article 8, Section 5.G.1, "Does not permit the employer " to require employees on the overtime desired list to work overtime on more than 4 of the employees' 5 scheduled days in a service week, or over 8 hours on a non-scheduled day in a service week, or over 6 days in a service week.

In Case No. H4C-NA-C 30, January 14, 1991, National Arbitrator Mittenthal notes that Article 8.5.G was not intended as a guarantee of work to OTDL carriers; it was intended to protect non-OTDL carriers from being required to work overtime. Based on this, Arbitrator Mark Lurie ruled the remedy of a cash payment to OTDL carriers for breach of 8.5.G is inapt. The remedy requested is excessive, arbitrary, and capricious.

Accordingly, a national level arbitration decision is precedent setting and binding on the parties as well as regional arbitrators. National arbitration decisions have the force and weight of National Agreement provisions.

Arbitrator James Searce in Case No. S4N-3V-C40788 writes the following in reference to the mission of the service and recognizing bona fide operational requirements referenced by the parties in the Memorandums. "Clearly it is not the intent of the drafters of this agreement or the

memorandum to delay mail delivery or processing in order to provide overtime work opportunities. Neither can the service make wholesale rearrangements of work schedules to accomplish the same end. In case #S4N-3R-C42990 Searce developed operational window standards. The standard relates to the availability of a carrier to work overtime. They indicate that a carrier would not be available if the overtime would require the carrier to work after dark, to miss the dispatch of value, or it would result in the mail being delivered untimely.

Arbitrator Jerome Ross cites the general rule is Management must maximize the OTDL before using non-OTDL carriers. However, management can use non-OTDL carriers before exhausting the OTDL carriers in order to meet a window of operation, where all OTDL carriers have been scheduled to that operational window. In such cases Management retains the right to determine how the overtime will be covered, either by calling the junior carrier on a rotating basis or by calling in a non-OTDL carrier for 8 hours on his or her non-scheduled day. There is no contractual restriction against management exercising this choice prior to dividing the overtime between the carriers who are working their regularly scheduled days. It is undisputable that the bona fide operational requirement of making the last dispatch for collection mail exists.

Arbitrator J. Earl Williams concludes "There is little doubt, however, that paragraph 2 of the article 8 Memorandum embodies (the operational window) concept. It essentially recognizes the right of Management to set a deadline for getting out the mail. This deadline may result in some non-OTDL employees being assigned mandatory overtime. In Case No. S4C-3T-C 15663, Arbitrator Schedler recognized the concept, when he concluded that the choice was to meet required standards using non-OTDL employees or to ignore the service standards and allow the grievant to work overtime.

Arbitrator Hardin in Case No. S4N-3V-C 1244 stated that a strong evidentiary base would be required to support the Union's argument that the service standard was merely an effort to evade full utilization of overtime volunteers. He concluded that the decision that mail delivery is to be accomplished by 6:00 P.M. each day is a decision that lies close to the very core of Managements right to determine the levels of standards of service. Arbitrator Britton in S4N-3W-D14560 upheld the concept of the operational window when he denied the overtime that the grievant was seeking for if he had been so assigned, the 6:00 P.M. window would have been missed and the mail delayed.

Utilizing Arbitrator J. Earl Williams again, he concludes assuming that such a window exists, it is clear that the operational window closes when the time for completion of mail delivery occurs and at the time immediately preceding the dispatch of value for the delivery unit. Reiterating an earlier point, this means that a carrier is not available to work overtime if such overtime would cause the carrier to miss the dispatch of value, or it would result in the untimely delivery of the mail.

Finally, the remedy requested isn't in line with contractual provisions outlined in the MOU on page 161 of the contract. Furthermore, Arbitrator Gansler ruled in NC-S-5426 that the Postal Service must pay employees for failure to comply with article 8.5.C.2 when proven, in part, "a willful disregard or defiance of the contractual provision". Management is simply guided by the principles outlined in article 3.c&d of the contract while referencing section 661.21.4 of the ELM and article 8.5.d of the national contract. The Union's only contention presented at Formal A was that management must maximize ODL carriers to 12 hours before requiring NON-ODLs to work.

In the case of this grievance, all OTDL carries worked within the window of operations and all carriers had completed delivery by 1798-as outlined in the window of operations. With this in mind, the OTDL carriers were in fact not available as they were working simultaneously with the non-OTDL carriers.

The Union has the burden to show that striving to have all mail delivered, all collection mail finalized, and all carriers back by 6:15 P.M. final dispatch, is unreasonable, nor did they identify an OTDL carrier that was available and was not worked.

The circumstances presented by the Union and the appropriate contractual provisions have been reviewed. Upon full discussion and consideration, it is hereby determined that the Union failed to demonstrate any violation of the National Agreement.

In view of the foregoing, I find no contractual violation. Accordingly, this grievance is denied.

Ron Bartlinski  
Formal A Designee

## STEP B DECISION

**Step B Team: Olsavsky & Sherry**  
**District: Capital Metro**

**Decision: RESOLVED**  
**USPS Number: K01N-4K-C07332061**  
**Grievant: Class Action**  
**Local Grievance #: 79-07-CC114**  
**Branch #: 3825**  
**Finance #: 23-3528**  
**Installation: Gaithersburg, MD.**  
**Delivery Unit: Montgomery Vil, 20877**  
**Date Step A Initiated: 06/29/07**  
**Step A Meeting Date: 10/24/07**  
**Date Received at Step B: 12/27/07**  
**Step B Decision Date: 02/12/08**  
**Issue Code: 08.5300**

**ISSUE:** Did Management violate Article 8 of the National Agreement when they forced non-ODL Carriers off of their assignment when ODL Carriers were available? If so what shall the remedy be?

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### **DECISION: RESOLVED**

The Step B Team has agreed that the National agreement was violated. Management will CEASE and DESIST forcing non-ODL Carriers prior to their non-scheduled day when ODL Carriers are available to do the necessary work. Management will compensate the ODL Carriers that were available for additional work to be determined by the responsible Union and Management representatives. The non ODL Carriers forced to work on their non-scheduled day will receive an additional 50% premium at the appropriate rate for every hour worked.

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**EXPLANATION:** On Monday June 18, 2007 Management forced non-ODL Carriers Starks, Marthaller and Tien to work their non-scheduled day.

The B Team initially had reached agreement on the core issue however could not agree on an appropriate remedy and subsequently placed the case on hold until a conference call on the issue with AMLR and NBA's Offices was held. As a result of a great deal of discussion on the issue, the parties help facilitate the resolve and remedy that is the outcome of those deliberations.

**In contract cases the Union has the burden of proving that Management violated the National Agreement.**

In reviewing all of the presented attachments and positions of the Formal Step A parties, the DRT shall render a decision based on the provisions of the National Agreement and how they apply to the grievance at hand.

Management contends that in this instance Article 8.5.G is not absolute and is subject to the fact circumstances leading to the grievance. There are situations in which Management may go off the list when there are insufficient employees on the list available to meet the overtime needs.

Management contended that there were 21.25 hours to be delivered with 21 hours available to cover the vacancies. Management also contended that there is not sufficient mail available prior to 6:30 AM (since the majority of the mail does not arrive in the unit until 6:00 AM) to keep them gainfully employed if the ODL began their tour earlier than 6:30 AM.

Several references are made by Management to routes being completed by 17:00 however there is no

declaration of the Window of Operation (WOO) as actually being 17:00 PM. Opposite that fact page 7 and 8 of Management's contentions indicate that "*all carriers had delivery completed by 18:00 as outlined in the Window of Operations*"

The Step B Team agrees that the fact circumstances surrounding the issue are a contributing cause of the issue in dispute. One of the fact circumstances that Management contends is the Montgomery Village Post Office had **insufficient employees on the list available to meet the overtime needs**. Management also contends that the office is 7 Carriers short according to the TACS Hours Inquiry Report (Management attachment #5); In addition in attachment # 6 Management indicates that using an equivalent of just 35 Carriers that report to work with 41 routes and a 6 hour aux. This corroborates that there are related staffing issues that contributed to the infraction.

While there are legitimate reasons that can justify Management going off the list, they are limited to emergencies and issues that are not expected to be of a reoccurring nature. The DSSA shows that the installation is entitled to a complement of 50 Carriers. Thirty-five Carriers, falls well short of that compliment. Management obviously new well in advance of prime time vacations that there would be additional Carrier shortfalls and a need to staff for this temporary intermittent service condition.. Management obviously had knowledge of this condition prior to the day in question and chooses to force non-ODL Carriers in lieu of ODL Carriers.

While Management has the responsibility of making sure that each Postal customer receives proficient, reliable service and the responsibility for the safety of its employees. Article 3 of the National Agreement gives Management the right and responsibility to maintain the efficiency of the Service. However, these rights are subject to the provisions of Article 8 of the National Agreement. Arbitrators have consistently ruled that Management has the right to establish operational times that need to be adhered to in order to initiate delivery on any given day and to conclude delivery on the same day within a reasonable time frame. **If, for operational reasons, Management establishes a Window of Operation, then it is incumbent upon it to consistently adhere to those times while staffing the Installation to accomplish that goal with out violation of Article 8 of the National Agreement.** So, if the Postal Service decides to make an operational change that requires all mail in a delivery unit to be delivered by a stated window of operation, regulations clearly indicate Management must staff accordingly. That includes starting the ODL Carriers early if productive work is available.

Management contended that there is no work available before 6:30 AM. The Union does not refute that point and contends that Management could have utilized Carriers already scheduled that could have started as early as 6:30 AM but did not. In review of the TACS Reports some Carriers did start prior to their scheduled begin tour of 8:00 AM but were not utilized at 6:30 AM **minimizing the amount of mandatory overtime.**

Management also contended that the Union failed to identify an OTDL Carrier that was available and not worked overtime and the Non-ODL. The Union counters that argument by identifying the specific Carriers that were available on the ODL to do the necessary work by listing the Carriers begin tour, move back into the office and end tour that demonstrates the additional work they were available for. Management offered no rebuttal argument.

So given the fact circumstances Management **improperly forced Non-ODL Carriers to work their non scheduled day** in this instance. Management could have scheduled carriers for additional time both before the regular begin tour as well as work assignment and Carriers not desiring to work any overtime already scheduled after they return to the office up to 18:00 to make the last dispatch of value from the installation at 18:15 limiting any forced overtime to 4.31 already scheduled.

In examination of the PS Form 8190 the only undisputed facts listed were that the Carriers were scheduled and worked their non-scheduled day, however the case file also includes no less than 43 Formal Step A Settlements for the same offense that awards the Non-ODL Carriers forced to work their non-scheduled day 8 hours of administrative leave to be used by December 1, 2007. Management does not refute this contention either

The following table is a collection of the facts, as presented to the DRT from TACS Employee Everything Reports for June 18, 2007. The additional work is calculated from the time the employee returns to the office

coupled with any work that could have been performed before the Carrier's scheduled begin tour using the 6:30 AM time indicated by both parties.

MONDAY , JUNE 18, 2007 DISPATCH 18.00										
CARRIER	ODL	Scd BT	BT	MV	ET	TOTAL HOURS	OT	Additional Work-MV	Additional Work -BT	Total Additional Work MV+ BT
Ortega	12	8.00	7.50	17.66	17.98	9.98	1.98	.34	+1.00	=1.84
Gillis	10	8.00	7.50	17.57	17.63	9.63	1.63	.43	+1.00	=1.93
Ruiz	12	8.00	8.04	17.41	17.60	9.06	1.06	.59	+1.50	=2.09
Brown	12	8.00	8.08	16.50	16.58	8.00	0.00	1.42	+1.50	=2.92
Stradley	12	8.00	7.50	16.92	17.65	9.65	1.65	1.08	+1.00	=2.08
Ho	12	8.00	7.50	17.65	18.00	10.00	2.00	.35	+1.00	=1.35
Asbury	10	8.00	7.50	17.90	18.01	10.00	2.00		1.00	=1.00
Muse	12	8.00	8.00	17.98	18.52	10.52	2.52		1.50	=1.50
Hicks	12	8.00	8.70	17.86	18.10	8.90	.90		1.50	=1.50
Sweeney	12	8.00	7.00	17.58	18.01	10.00	2.00	.42	+50	=.92
Sanchez-V.	12	8.00	7.00	17.00	18.01	10.43	10.43	1.00	+50	=1.50
Hammond	12	8.00	7.52	17.87	18.01	9.99	1.99		1.00	=1.00
Kinol	12	8.00	7.50	17.17	17.39	9.38	1.38	.83	+1.00	=1.83
Desai	10	8.00	7.00	17.57	17.62	10.12	2.12	.43	.50	=.93
Tieu	12	8.00	8.00	17.98	18.52	10.02	2.00		1.50	=1.50
									<b>Total -&gt;</b>	<b>22.89</b>
Clark	WA	8.00	8.52	16.98	17.25	8.23	.23	1.02	+1.50	=2.52
Olsen	WA	8.00	8.00	17.55	17.83	9.33	1.33	.45	+1.00	=1.45
Smith	WA	8.00	8.00	16.79	17.01	8.51	.51	.45	+1.00	=1.45
Fraker	WA	8.00	8.00	16.45	16.50	8.00		1.55	+1.00	=2.55
Chambers	WA	8.00	8.00	16.88	17.11	8.57	.57	1.12	+1.00	=2.12
De Lorenzo	WA	8.00	7.62	16.92	17.03	8.91	.91	1.08	+38	=1.46
Moore	WA	8.00	16.42	16.50	8.00			1.58	+1.00	=2.58
Yang	WA	8.00	8.00	16.61	17.00	8.50	.50	1.39	+1.00	=2.39
Ro	WA	8.00	7.53	17.46	17.62	9.59	1.59	.54	+50	=1.04
Baldwin	WA	8.00	8.00	11.00	17.15	8.65	.65	.85	+1.00	=1.85
Shiau	WA	8.00	8.00	17.15	17.37	9.36	1.36	.85	+1.00	=1.85
Lee, D.	WA	8.00	7.50	17.37	17.58	9.58	9.58			
Childers	WA	8.00	8.35	17.01	17.37	8.52	.52	1.00	+1.50	=2.50
									<b>Total-&gt;</b>	<b>23.76</b>
Marthaller	0	7.50	8.00	16.96	17.20	8.70	8.70			
Chhoun	0	8.00	8.00	17.34	17.50	9.00	1.00	.66	+1.00	=1.66
Le	0	8.00	8.00	16.90	17.20	8.70	.70	1.10	+1.00	=2.10
Tsui	0	8.00	8.00	16.26	16.42	8.00	0	1.74	+1.00	=2.74
Chang	0	8.00	8.11	13.10	13.72	5.61	S/L			
Tien	0	8.00	8.00		16.50	8.00	8.00			
Price	0	8.00	7.05	15.49	16.50	8.00	0	2.51		=2.51
Starks	0	8.00	7.50	16.75	16.81	8.06	8.00			
Edwards	0	8.00	8.00	16.50	16.59	8.09	.09	1.50	+1.00	=2.50
Arias	0	8.00	14.03	17.07	17.57	3.54	0	.93		=.93
									<b>Total-&gt;</b>	<b>12.44</b>
Zeguiba	PTF	8.00	7.56	17.28	18.02	9.96	1.96	.72	+1.50	=2.22
Steward Jr.	CAS	N/S								
Pido	CAS	8.00	8.08	17.83	18.11	9.53	1.53		1.50	1.50
Hymes	H/L	8.00	6.75		14.75	8.00				
									<b>Total-&gt;</b>	<b>3.7</b>
									<b>Grand Total-&gt;</b>	<b>62.8</b>

The Letter Carrier Paragraph and the Implementing Memorandum on the Letter Carrier Paragraph guides Management in scheduling of overtime and forced overtime. Giving consideration to those provisions the available Casuals and PTFs could have scheduled to perform **3.72** hours of additional work. Curiously there is a Casual that is not scheduled on this particular day; however neither parties addresses the issue. Followed by the 10 and 12 hour ODL that was available for an additional **22.89** hours. Those hours alone total **26.61** enough to cover the four forced Carriers. If that did not provide the Carriers needed to perform the necessary work, then and only then, would Management be able to force work assignment Carriers already scheduled for an additional **23.76** hours and the no overtime Carriers already scheduled for **12.44** hours of additional work. In this instance Management scheduled Carriers that sign no on the ODL prior to June 18 even before exhausting the aforementioned options. Accordingly the applicable provisions are found on pages 8-14 and 8-15 of the JCAM emphasis underlined and emboldened.

### **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:

- casuals
- part-time flexibles at the straight-time or regular overtime rate
- transitional 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. See 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.


**Point of information:** In future cases, the Formal Step A parties will adhere to the following; the number of attachments should be indicated in the appropriate block on the PS Form 8190 in blocks 16, 17, or 18. Those

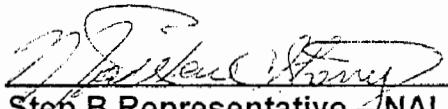
documents should be numbered consecutively and indicate ownership by marking each document. For example mark a **U-1** for a Union attachment, **M-1** for a Management attachment, or **J-1** for a Joint attachment. Additionally all documents should be initialed in the upper or lower most corner, next to the number, confirming to the Step B Team that both parties have read and reviewed them and prevents submission of documents in the case file that have not been entered. When either party makes an argument they should cite the specific attachment that supports or refutes that argument, this eliminates confusion on the part of either party by assuring more clear and concise arguments. The parties will also address one another contentions inclusively, unless they are in agreement with them, in which case they should be listed in the **Undisputed Facts**. If the parties agree to an extension of the time limits it will be sign off by representatives on a separate attachment.

According to Article 15.2 (c) The Step B Team will attach a list of all documents included in the case file.

1. Step B Decision – 4 pages
2. PS Form 8190 – 1 page
3. Union's disputed facts- attachments –66 pages
4. Management's disputed facts –69 pages
5. Joint attachments – 0 pages

The total number of documents in case file is 399 pages.

  
**Step B Representative -USPS**  
**Michael A. Olsavsky**

  
**Step B Representative -NALC**  
**Matthew C. Sherry**

Cc: Area Labor Relations, District Labor Relations, District Manager, National Business Agent, Postmaster and Step A Parties.

## Dispute Resolution Settlement

### NATIONAL ASSOC. OF LETTER CARRIERS / UNITED STATES POSTAL SERVICE

UNION REP.: C. Clark

MANAGEMENT REP.: R. Bartlinski

GRIEVANT: Local Union

OFFICE: Mont. Village, Gaithersburg, MD

LOCAL UNION NO.: 79-07-CC114

DATE: March 13, 2008

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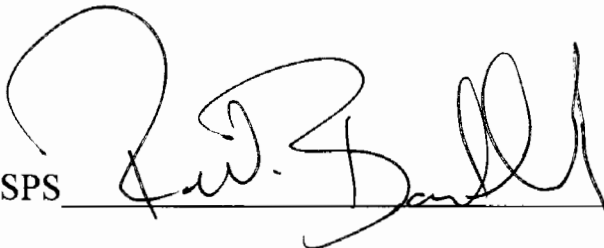
The Step B decision for NALC grievance #79-07-CC114 (an article 8.5.g violation on 6/18/2007) stipulated that the local parties identify the letter carriers to be paid the overtime hours worked by the non-ODL carriers and that the non-ODL carriers be paid an additional 50% premium for every hour worked.

As a result of our discussion on this date, it is mutually agreed that the above-cited grievance is resolved in accordance with the following:

Non-ODL carriers will be paid as follows: Tien, 4.00 hours of regular pay; D. Lee will be paid 4.79 hours of regular pay; Starks will be paid 4.03 hours of regular pay; Marthaller will be paid 4.35 hours of regular pay.

The following ODL carriers will be paid the hours indicated at their regular overtime rate of pay: Brown, 3.50; Hicks, 2.60; Stradley, 1.85; Sweeney, .99; Gillis, 1.87; Kinol, 2.12; Sanchez, 1.07; Asbury, 1.49; Ortega, 1.52; Desai, 1.38; Ho, 1.50; Muse, 1.48; Ruiz, 2.44; Hammond, 1.51; Tieu 1.50

USPS



Date

3-13-08

NALC



Date

3-13-08