



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 09200026
GRIEVANT: Class Action
BRANCH GRIEVANCE #: 54-09-RW03
BRANCH: 3825
INSTALLATION: 23-7884
DELIVERY UNIT: Rockville/Potomac
STATE: Maryland
INCIDENT DATE: 1/23/2009
INFORMAL STEP A INITIATED: 2/12/2009
FORMAL STEP A MEETING: 4/10/2009
RECEIVED AT STEP B: 4/15/2009
STEP B DECISION DATE: 4/29/2009
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 on January 23, 2009, 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 employees shall be compensated the respective lump sum payments for this violation:

Griffin	\$15.90	Solis	\$11.92
Tsai	\$24.09	Thompson	\$18.07
Der	\$15.90	Kang	\$11.92
Moh	\$24.57	Knott	\$18.43
Bucy	\$49.63	Gatling	\$37.22
Laryea	\$39.99	S. Yang	\$29.99

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

EXPLANATION:

On Friday, January 23, 2009, six (6) Non-ODL employees were required to work a cumulative 3.53 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 3.53 hours 'off' of their assignments, while the ODL employees were available 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 additional assistance and there were 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 Management, while within their right to establish operational goals, must do so as to not violate other provisions of the National Agreement, such as Article 8.5.G in this case.

Management contends that a WOO has been established in the Capital District in order to improve timely delivery to customers, ensure the security of mails by reducing late delivery, maximize Carrier safety due to reduced visibility during the evening hours and also make sure that all collection mail would be returned to the office by last dispatch. Thus, they cite it is very important to have as much mail at the office as possible prior to 1800, in order to facilitate these goals. They state that the Potomac Office has tried to achieve 70% of Carriers returning to the office by 5:00pm. They provide Arbitration cases to support this determination. In order to achieve these goals, Non-ODL employees had to be simultaneously scheduled to perform overtime along with the ODL. They provide several Arbitration decisions in support of this determination.

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, there were six (6) ODL employees that worked eight (8) hours only on January 23, 2009. Assignment of 'off assignment' overtime work to Non-ODL employees, while ODL employees are limited to eight (8) hours, is not supportive of 'simultaneous scheduling' of overtime.

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, in this instance, it is appropriate to maintain this percentage payment to the Non-ODL employees.

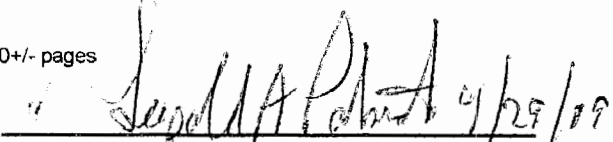
Management's liability, however, is limited to the number of hours worked 'off assignment' by the Non-ODL employees and payment to the ODL Carriers for the work they should have been assigned, but were not.

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 Additions and Corrections-10 pages
- Union Contentions-12 pages
- Mutual Extension-2 pages
- MOU on Sharing of Information-1 page
- Green Day Off Schedule-5 pages
- MOU on WAO Moh-1 page
- Daily Schedule-1 page
- Information Request-1 page
- Requested Information-1 page
- TACS EER Reports & Corresponding PS Form 3996's-56 pages
- Hours Analysis Report-13 pages
- Information Request-1 page
- Mutual Extensions-3 pages
- Arbitration Decisions & District Labor/Management Meeting Minutes-250+/- pages
- Management Contentions-12 pages
- Management Case File-200 +/- pages
- Previous Informal Step A, Formal Step A and Step B Decisions-750+/- pages


Tonya L. Detrick
NALC Step B Representative


Leopold A. Potsiadlo
USPS Step B Representative

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

PO Box 876
Laurel MD 20725-0876
(301)-317-4521
Fax: (301)-604-9350