



MEMORANDUM OF UNDERSTANDING

The San Francisco Postal Installation and Golden Gate Branch 214 of the National Association of Letter Carriers met and are in agreement on the following points regarding the reinstatement of Flex Time installation wide in San Francisco as result of pre-arbitration settlement agreement to NALC Branch 214 grievance# A-80381-SF/USPS# F06N - 4F - C 09185749:

1. "Flex Time" shall be implemented installation wide no later than February 20, 2010 *(the parties mutually agreed to extend the dates for distribution of the Flex Time Schedule Change forms and the re-start of the "Flex Time" program to no later than February 20, 2010 due to joint training and joint stand-ups necessary for proper re-implementation).*
2. Participation in "Flex Time" will not entitle the participating letter carrier to out of schedule pay premium for the time worked out of and instead of his or her regular schedule as a result of the flexible starting time.
3. Joint training and stand-ups shall be conducted at all stations in the San Francisco Installation where "Flex Time" shall take effect no later than February 20, 2010.
4. All letter carriers working in the San Francisco installation who were previously allowed to participate in the "Flex Time" program will continue to be allowed to participate. Collection drivers, relay-parcel combo drivers, and PTF carriers not holding opts, did not have "Flex Time" before and will continue to be excluded.
5. Letter carriers who wish to participate in "Flex Time" must fill out the Request for "Flex Time" Schedule Change form, a copy of which is attached to this Memorandum.
6. Letter carriers participating in "Flex Time" shall abide by all the requirements in the Request for "Flex Time" Schedule Change form.
7. Letter carriers shall be given opportunity to sign up for "Flex Time" Schedule Change and their status shall continue unless they choose to opt out or their privileges revoked. In the event that either of those occurs, those carriers shall be provided opportunity to again participate in the "Flex Time" program by submitting the Request for "Flex Time" Schedule Change form on January 1st or July 1st.
8. Letter carriers bidding in from other stations or newly appointed carriers will be afforded the opportunity to sign up for the "Flex Time" programs within five (5) working days from the day that their bid or appointment takes effect.

A handwritten signature in cursive script, reading "Lili Beaumont".

Lili Beaumont, President
Golden Gate Branch 214
National Association of Letter Carriers

A handwritten signature in cursive script, reading "Noemi Luna".

Noemi Luna, Postmaster
San Francisco Installation
United States Postal Service

STEP B DECISION

Step B Team Walker & Drugan
South Florida District

RECEIVED

SEP 20 2009

Decision:	Impasse
USPS Number:	F06N-4F-C09310953
Grievant:	Organizational
Branch Grievance Number:	A-90708-SL
Branch Number:	214
Installation:	San Leandro
Delivery Unit:	South
State:	California
Date of Incident:	04/25/2009
Date Step A Initiated:	07/03/2009
Date Step A Meeting:	07/31/2009
Date Received at Step B:	08/31/2009
Step B Decision Date:	09/17/2009
Issue Code:	41.2260
NALC Subject Code:	100047

ISSUE STATEMENT

Did management violate Articles 41.2.B.3 and 4 of the National Agreement when they improperly ended the grievant's opts by having them start later than the regular start time for the hold-down that they had properly opted on?

DECISION

The Dispute Resolution Team has decided to **IMPASSE** this grievance. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report. The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

EXPLANATION

UNION'S POSITION

The union argues that management is in violation of Article 41.2.B. 3 and 4. The union states: PTF's who were on successful opts, Antonio, Crisostomo, Alvarez, and Pagdanganan were instructed to start tour at 9:30. The regular start time is 7:30. Twelve (12) regular carriers's worked O.T. on 4/25/09. Management continues to disregard Article 41 in regards to bumping PTF's from scheduled start time. The Over Time Alert report clearly shows there was nearly 14 hours of O.T. worked on 4-25-09. If there is undertime on a given day, PTF's should still be allowed to start a regular time but then be instructed to end tour early.

The union has listed the undisputed facts. 1.) The start time for the four grievant's opts is 7:30 am. 2.) All four grievant's were instructed to start at 9:30 am. 3.) TE Carrier R. Delacruz was scheduled and worked 5.91 hours on the date that the grievant's were instructed to start later than the regular start time for their hold down assignments. 4.) Full-time carriers at South Station worked 13.94 hours of overtime at South Station; including Full-time carriers that cased the hold down assignments (Full-time Carrier Jose Alcazar cased on route 7833 and worked 1.99 hours of overtime, and Full-time carrier Ignacio cased on route 7833 and worked 1 hour of overtime. 5.) Five (5) other TE employee were also scheduled to work on the date that the grievant's were instructed to report later than the start time for the hold-down assignments.

The union goes on to state: *...Not only were the grievant's not allowed to work the assignment as posted, but some were also worked off of the assignment on other routes, which should be paid as out of schedule pay; and they all worked past the end time for the hold down assignment for which they had opted on. Based upon the time that the grievants [sic] should have started their assignments, 07:50 hours, the time past their end of tour for the hold down assignments for which they had properly opted on, 16:00 hours, should be counted as overtime and paid at 1.5x their normal rate of straight time pay.*

Management does not dispute the claim made by the union, in fact Management's Formal Step A designee failed to provide any contentions in violation of Article 15 of the National Agreement and the spirit and intent of the Dispute Resolution Process.

The PTF's were improperly moved off their opt assignment to accommodate Full time employees who allegedly had less than eight hours on April 25, 2009. The union further argues that PTF's R. Pagdanganan, A. Antonio, A. Crisostomo and C. Alvarez were on successful hold-down assignments. The grievant's were instructed to report later than the routes scheduled start time for the assignment that they had opted on. The grievant's were instructed to work on assignments that were not part of the hold down assignments that they had successfully opted on, on the day that they were instructed to report later than the scheduled start time of their opt.

The case file reveals that PTF Antonio had a temporary bid on route 7814, PTF Pandanganan had a temporary bid on route 7830, PTF Crisostomo had a temporary bid on 7817 and PTF Alvarez had a temporary bid on 7833. The scheduled reporting time for these routes is 7:30. The PTF's were instructed to report to work 9:30 on April 25, 2009.

The TACS Employee Everything Reports shows that PTF Antonio carried on the street 1.25 units of route 7815. PTF Pagdanganan carried on the street 2.50 units on routes 7815 and 7725. PTF Crisostomo carried on the street 2.03 units of routes 7815 and 7725 and PTF Alvarez carried on the street 1.74 units on routes 7839 and 7750.

A review of the Route/Carrier Daily Performance/Analysis Report for April 25, 2009 lists W. Melton as the regular on route 7810, F. Manansala as the T-6 on route 7806, J. Alcaraz as the regular on route 7822 and A. Ignacio as the T-6 on 7832. The report shows that W. Melton worked in the office casing on route 7830, PTF Pagdanganan's opt bid for .22 minutes and worked a total of eight hours on April 25, 2009. The report shows that F. Manansala worked in the office casing on route 7814, PTF Antonio's opt bid for 45minutes and worked a total of eight hours on April 25, 2009. The reports shows J. Alcazar worked in the office casing on route 7817, PTF Crisostomo opt bid for 1 hour and worked a total of 9.99 hours on April 25, 2009 and the reports shows A. Ignacio worked in the office casing on route 7833, PTF C. Alvarez's opt bid for 29 minutes and worked a total of 9 hours on April 25, 2009.

It must be noted that the case file reveals that almost fourteen (14) hours of overtime was used on April 25, 2009. Based on the TACS Reports the four PTF's worked a total of 7 hours and 52 minutes on the street off of their opt assignments on routes 7815, 7725, 7839 and 7750. The union argues that management should have used the four regular employees to carry the street assignments on either of the routes listed above.

The record reveals that the four regular employees improperly worked a total of 1 hour and 96 minutes on the PTF's opt bid assignments. The record reveals that there were 21 hours and 52 minutes available on April 25, 2009 more than enough hours to provide sufficient work to cover the 1 hour and 96 minutes that the four regulars were short on April 25, 2009. 1 hour and 96 minutes of the 21 hours and 52 minutes available could have been assigned to the four regulars to bring them up to eight hours without denying the PTF's the right to worked the hours of their opt bid and violating Article 41. The four PTF's should have been allowed to case the additional minutes on their opt assignment. The TACS Report indicates PTF Alvarez worked a total of 7.08 hours, PTF Crisostomo worked a total of 7.50 hours, PTF Alvarez worked a total of 7.50 hours and PTF Pagdanganan worked a total of 8.47 hours. There was plenty of work available for the four regular employees. In fact, the four PTF's could have case their opt assignment and carried their assignments and still provide auxiliary assistance.

The JCAM is clear bumping should be the last resort. There was at least seven (7) hours of street delivery on routes 7815, 7725, 7839 and 7750, not including the overtime used on April 25, 2009 which would have been sufficient to ensure that the four regulars worked eight (8) hours on April 25, 2009.

The JCAM on page 41-13 states in relevant part: *...Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day... Bumping is still a last resort, as reflected in a Step 4 settlement. (H1N-5D-C7441, October 25, 1983, M-0293), which provides that: A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold down" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.*

The JCAM on pages 41-13 and 41-14 goes on to state: *Employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment. (See H8N-1M-C23521, June 2, 1982, M-00239)...An employee who successfully opts for a hold-down assignment is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier...Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.*

The Material Reference System contains several Step 4 decisions that support the union's position. (M-00239) June 2, 1982, H8N-1M-C23521 states: *A part-time flexible who, pursuant to Article 41, Section 2.B of the 1978 National Agreement, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration. This includes the daily hours of the assignment. See also M-01394.*

Step 4 decision (M-00404) February 21, 1980, N8-W-0216 states: *Employees assuming the temporary assignment will assume the work schedule of the regular carrier including off-days and reporting times.*

USPS# F06N-4F-C09310953
NALC# A-90708-SL
Grievant: Organizational
Page 4

Step 4 decision (M-00293) October 25, 1983, H1N-5D-C7441 states: *A PTF, temporarily assigned to a route under Article 41 Section 2B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time employee could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF opted, may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work. Absent the above conditions, the PTF who exercised a bid preference and was awarded the assignment in accordance with Article 41, Section 2B4, shall work that duty assignment for its duration.*

To avoid improper pivoting, it is widely agreed that an employee should complete all of his or her assignment. No one else should complete any duties on that route on the service day. This is not to mean a carrier must case and deliver his or her entire assignment before being assigned to pivot. Documentation in the case file show that other carriers performed duties on the PTF's routes during the service days in question.

Pivoting is addressed in the POM Section 646.1 and in the Labor Management Meeting Memo of August 13, 1981. The guidelines in the POM Section 646.1 states in part: *"Pivoting is utilizing the under-time of a carrier or several carriers to perform duties on a vacant route or to cover absences. To achieve under-time non-preferential mail may be curtailed on the vacant route and/or the route or routes of the carriers being pivoted."*

The August 13, 1981 Memo states in part: *"The pivoting of routes will be done on under-time or overtime. The employee will complete his assigned duties prior to pivoting. This is not to be construed as having the entire route cased and delivered before the employee can be assigned to pivot."*

Article 15.3.A states: *The parties expect that good faith observance, by their respective representative, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contractual Administration Manual (JCAM).*

The Labor Relations Training For Supervisors/Managers Participant's Workbook Development series TD-9B Course 22260-00 states under Contract Compliance: *Emphasis must be placed on the corporate objective that all managers and supervisors must give the highest priority to compliance with our collective bargaining agreements with the various unions. No manager or supervisor at any level of this organization has the authority to override the terms of those agreements. Those collective bargaining agreements represent the commitment of the Postal Service; that is, the commitment of each of us to abide by the terms contained therein, in our dealings with our employees.*

Based on the above as well as the contentions raised by the union at the previous steps, cease and desist violations of Article 41, make PTF's Pandanganan, Alvarez, Crisostomo, and Antonio whole for each hour that they were worked outside of their hold down assignment schedule and each hour that they were not allowed to work the hold down assignment.

MANAGEMENT'S POSITION

Management's position is that union has not met its burden of proof when they allege management was in violation of Article 41.2.B.3 of the National Agreement when PTF Letter Carriers who were on Hold-Down assignments worked outside of that assignment's scheduled starting time. As a contractual grievance, the union bears the burden of providing clear and convincing evidence that a contractual violation occurred. No such evidence has been proffered by the union.

The union contends on April 25, 2009, four PTF Letter Carriers from the San Leandro South Station, who were on successful hold-downs assignments, were instructed to report later than the scheduled starting time for the assignment they had opted on. All four hold-down assignments have a 7:30 am. starting times. On this date, the four identified PTF employees (A. Antonio, R. Pandanganan, A. Crisostomo, and C. Alvarez) reported to work at 9:30 am.

The union's Formal A Representative contends management was in violation Article 41.2.B.3 of the National Agreement when they instructed four PTF Letter Carrier's to start at 9:30 am. The union further contends that TE Carrier R. Delacruz was scheduled and worked 5.91 hours on the date the grievant's were instructed to start later than the regular time for their hold-down assignments. Full-Time carriers at the South Station worked 13.94 hours of overtime, including Full-Time carrier J. Alcazar who cased on route 7817 and worked 1.99 hours of overtime, and Full-Time carrier Ignacio, who cased on route 7833, and worked one hour of overtime. In addition, the union contends that five other TE employees were also scheduled to work on 4/25/09. The union's Formal A Representative notes "Management claims that "under-time" existed on Saturday, April 25, 2009, and that they were able to predict that the under-time would exist when they instructed the grievant's to report later than the start time for the hold-down assignments that they had properly opted on". Not only did the projected under-time not pan out, notes the union, but a total of 13.94 hours of overtime worked at the South Station including 2.99 hours worked by Full-Time carriers Alcazar and Ignacio, two of the carriers that cased on the hold-down assignments of the grievants. The union is requesting that management cease and desist from violations of the contract. The identified PTF employee's be made whole for all lost wages, including overtime, lost for the time that they were not allowed to report to work at the regularly scheduled start time for the hold-down assignments, which they had properly opted on. The union is further requesting an additional payment at the overtime rate for all hours these employees worked past the end of tour of the hold-down assignment.

In a union's Informal Step A worksheet provided in the case file, it reveals management's position as follows: *"No one worked O.T due to double casing. People pivoted routes to case. Supervisor Parker also cited arbitration settlement from 2-24-09. Overtime was not due to the fact of PTF's not working. It was due to the fact of sick calls. The PTF's demonstrated, as well as regulars, that there was under time.*

Also included in the case file is an Interview with John Parker. The union asked "What was your reason for starting the PTF's at 9:30 on 5/24 and 5/25 instead of their scheduled time of 7:30? The response was "Workload history and undertime". "Looking back on 4-25-09 where there was nearly 14 hrs of O.T and quite a few routes down, do you consider it a mistake in not bringing in the 4 PTF's at their normal starting time of 7:30? The response was "No, I don't think it was a mistake".

Evidence in the Route/Carrier Daily Performance/Analysis Report for 4/25/09 reveals that out of the thirty-one (31) routes at the San Leandro South Station, twenty-eight (28) of those assignments had less than eight hours of actual total work hours on this day. This more than justifies management's decision to start the PTF employee's at 9:30 am. Again, to stress the fact that over 90 % of the routes worked less than eight total hours, it is management's responsibility to provide all Full-Time regulars with eight hours of work, and to capture the under time evidenced in the case file.

Also included in the case file is a Branch 214 Worksheet-Informal Step A in which the union notes "Delacruz worked 5.91 units on 4/25/09. Again, if no sufficient work, why is a TE getting hours that are supposed to go to a PTF on an opt". It must be noted that included in the case file is an Employee Everything Report which indicated R.V. Delacruz was paid eight hours of sick leave on 4/25/09, therefore was not working on this date. Further addressing TE employees, the parties in item 16 (Undisputed Facts) of the PS Form 8190 states "None of the TE reported earlier than 9:30 am".

PTF employees, whether on a "Hold Down" or not are not guaranteed eight hours a day or forty hours in a service week. In contrast, full-time regulars are guaranteed eight hours a day, and must be provided work for eight hours in order for management to meet its obligation under the contract. PTF carriers, once scheduled to work, are guaranteed four hours of work in a service day. On the day in question, the Employee Everything Report for the four identified PTF employees reveal that carrier A. Antonio worked 7.08 hours, R. Pagdanganan worked a total of 8.47 hours; A. Crisostomo worked a total of 7.50 hours; and C. Alvarez worked a total of 7.50. While carrier Pagdanganan worked 8.47 hours, .47 hours was paid at the overtime rate. All of the above PTF carriers carried their "opt" assignment in full on the street.

The two full-time employees that the union identified working over eight hours, which were utilized to case on the two PTF "opt" assignments, did this work in under time. This was based on the Route/Carrier Daily Performance/Analysis Report dated 4/25/09. Full-Time carrier A. Ignacio worked a total of 7.29 hours on his assignment. Records indicate he cased on route 78033 for 29 minutes, which would bring him up to an eight hour day. Also, Full-Time carrier J. Alcazar worked a total of 7.02 hours on his own assignment (route 78022) and cased for one hour on route 78017. This indicates the two PTF routes were "pivoted" properly and done in under time. In addition, the two other identified PTF "opts" were also cased in under time by Full-Time regulars. Once management "bumps" these PTF employees, management may utilize them with any available work. Time records also reveal that these PTF employees were given additional assignments once they completed their "opt" assignment on the street.

Per the Postal Operations Manual (POM), section 645, Pivoting is addressed as follow:

"Pivoting is defined as a method of utilizing the under time of one or several carriers to perform duties on a temporary vacant route or to cover absences. Non-preferential mail may be curtailed within delivery time standards on the vacant route and/or on the route of carriers being pivoted. Pivoting is not limited to periods when mail volume is light and when absences are high, but also can be utilized throughout the year for maintaining balanced carrier workloads.

Article 3 of the National Agreement states in relevant part: The employer shall have the exclusive right, subject to the provisions of this agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.

The parties at the National level have agreed to language concerning this issue in the Joint Contract Administration Manual which states:

Removal from Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part time employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985, M-0097) In such situations, the part-time flexible employee's opt is not terminated. Rather, the employee is temporarily "bumped" on a day to day basis. Bumping is still a last resort, as reflected in a Step 4 settlement (H1N-5D-C 7441, October 25, 1983, M-0293), which provides that:

A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "hold-down" to which the PTF opted may be pivoted if there is sufficient work available to provide a full-time carrier with eight hours of work.

While the JCAM provides that an employee who successfully opts on a hold-down is said to be guaranteed the right to work the hours of duty and scheduled days of the regular carrier, the JCAM also provides that management may "bump" these PTF's on a hold-down to provide eight hours of work for full-time employees. On 4/25/09, management assigned "parts" of these opts to provide eight hours of work to full-time employees as required above.

While the union also contends these PTF carriers are entitled to overtime on the incident date, only one PTF employee worked over eight hours on the day in question, and was compensated accordingly.

In addition, Page 8-3 of the JCAM states:

Overtime-PTF and Transitional Employees. The overtime rate provisions of Article 8.4.B regarding work in excess of 8 hours in a service day or 40 hours in a service week do apply to part-time flexible and transitional employees-as well as all bargaining unit employees (see Article 8.4.B.)

8.4.B Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

Page 8-4 of the JCAM address' Out-of-Schedule Premium in relevant part:

Only full-time regular and full-time flexible letter carriers may receive out-of-schedule pay. However, this rule does not preclude part-time employees from receiving a monetary remedy for contractual scheduling violations when warranted by fact circumstances (e.g. violations of Article 41.2.B.4).

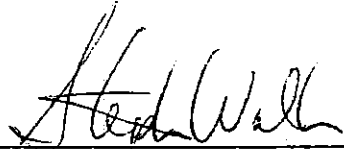
While management may "pivot" full-time employees when there is less than an eight hour assignment, once management determines there is insufficient work for full-time employees on a individual day, a PTF may be "bumped" to provide work for these full-time employees.

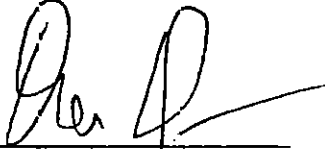
The main issue in this case is management utilizing Full-time employees performing "under time" work to make up a full time assignment.

Further evidence in the Route/Carrier Daily Performance/Analysis Report for 4/25/09 reveals that out of the thirty-one (31) routes at the San Leandro South Station, twenty-eight (28) of those assignments had less than eight hours of actual total work hours on this day. This more than justifies management's decision to bring the PTF' in at 9:30 am. These twenty eight assignments had actual total work hours off less than eight hours. Management is required to provide Full-Time employees with eight hours of work and utilized them on the PTF carrier's assignment. When the four cited PTF employees reported to work at 9:30 a.m., these opted routes were cased in under time, thus no violation of the National Agreement was demonstrated.

The contract provides that management may "pivot" a route on a hold-down to which a PTF opted, and may pivot a route when there is insufficient work available to provide a full time carrier with eight hours of work. Management required full-time regulars to work "parts" or "relays" of routes to make up a full time assignment. As the four identified routes the PTF had opts on were cased by full-time regulars to make up their eight hour day, the union is unable to demonstrate that management violated the contract.

In contractual matters, the burden of proof rest with the union to show that a violation exists. In the instant case, they are unable to meet that burden. There is no evidence contained herein to support the union's contention that management violated the National Agreement. The union is therefore unable to adequately justify their request for PTF employees to be made whole for time there were not allowed to report to work at the regularly scheduled start time for the hold down assignments which they had properly opted on. The case remains at an impasse.


Stephon Walker
NALC Step B Representative
South Florida District


Drew Drugan
USPS Step B Representative
South Florida District

Attachment: DRT Step B List of Documentation in File.

Copies to:

Postmaster
President, Branch 214 NALC
Mr. Patterson, USPS Step A Representative
Mr. Gonzalez, NALC Step A Representative
NALC NBA
Labor Relations, Pacific Area
Manager, Human Resources
Labor Relations/GATS
Files



STEP B DECISION

STEP B TEAM

Sandra K Quick
Chris Verville

District: Tennessee
DRT Number: 487-09

Decision:	RESOLVED
USPS number:	F06N-4F-C-09410421
Grievant:	Class Action
Branch Grievance Number:	A-90929-SL
Branch:	214-SF
Installation:	San Leandro
Delivery Unit:	San Leandro Main Office
State:	California
Incident Date:	08/14/2009
Date Informal Step A Initiated:	08/26/2009
Formal Step A Meeting Date:	11/12/2009
Date Received at Step B:	12/21/2009
Step B Decision Date:	12/23/2009
Issue Code:	41.2260
NALC Code:	100930

ISSUE:

Did the Postal service violate Article 41.2.B.4 of the National Agreement, when Management bumped PTF Carriers off of their successful hold-down opt. assignments? If so, what should the remedy be?

DECISION:

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a "**cease and desist**" and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. The one time lump sum payments listed below shall be processed by the Management Formal Step A representative.

Jones - \$15.55, Xie - \$8.34, Phillips - \$11.00, Pacheco - \$15.00

EXPLANATION:

The PTF carriers on "opted" assignments were instructed the day before and/or by the weekly schedule to report at 9:30 am instead of the 7:30 am scheduled begin time. Management maintained this was to provide work for full-time carriers.

The Unions contentions in part read as follows:

"1. Management continues to violate article 41.2.B.3 every week by scheduled PTFs Carriers that bid on hold-down assignment at 9.50 am rather than 7.50 am. The TE Carriers are instructed to come in at 10.00 am every day by management. 2. Management continues to work ODL Carriers by paying overtime on the days that they are having the PTF Carriers to come in at a later scheduled time and Pivot others carriers to case the routes the PTF Carriers hold-down assignment."

The remedy requested reads as follows:

"Make the grievants' whole for any hours not worked by the PTFs that they should have worked on the dates that they were instructed to report later than their scheduled time of their hold-down assignment. (Out of schedule pay) 2. Make the grievants' whole for all hours work past they scheduled end tour (Overtime Pay 1.5 X normal rate of pay) 3. Cease & Desist scheduling TEs if management anticipates "undertime" 4. Any other remedy deemed appropriate by both parties."

Management's contentions read in part as follows:

"... Assignments and schedules were reviewed by supervisors in the afternoon based on receipt of standard mail for the next day delivery. The PTFs were in fact informed on a day-to-day basis that due to insufficient volume, the reporting time was to be adjusted in order for the Full Time Regular employees to be pivoted on their assignments in the morning to minimize office variance for the FTRs on under-time. ... The grievances that were resolved had incident dates between 3/19/2009 through 6/26/2009. The DRT Decisions were rendered between 9/14/2009 through 10/2/2009. If the remaining Article 41.2.b.3 grievances that were held in abeyance on September 21, 2009 are dated between the same time periods, how could management have complied with the first instructional resolutions that were rendered after September 14, 2009? Subsequent to receiving the different Step B Teams 9/25/2009 decisions, management has adhered to it ..."

The parties agreed to the following on JCAM page 41-13:

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985. M-00097)

This agreement continues on JCAM page 41-14 as follows:

In such situations, the part-time flexible employee's opt is not terminated. **Rather, the employee is temporarily "bumped" on a day-to-day basis.**

Bumping is still a last resort, as reflected in a Step 4 settlement. (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that:
A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "holddown" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

The above noted citations provide for management to "bump" a PTF as a last resort if work is unavailable for a full-time regular. Documentation in the file indicates that Management scheduled the PTF's to be "bumped". A TE worked on the date in question and PTF's without an "opt" assignment worked.

The parties agreed to the following on pages 41-14 of the JCAM:

Schedule Status and Opting. Employees on hold-downs are entitled to work the regularly scheduled *days* and ***the daily hours of duty of the assignment.*** (See H8N-1M-C 23521, June 2, 1982, M-00239.) These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

PTF's that have "opted" on an assignment are entitled to report at the time of that assignment in accordance with the language above.

The parties agreed to the following on page 41-14 of the JCAM:

PTF Pay Status and Opting. Although a part-time flexible employee who obtains a hold-down must be allowed to work an assignment for the duration of the vacancy, he or she does not assume the pay status of the full-time regular carrier being replaced. A part-time flexible carrier who assumes the duties of a full-time regular by opting is still paid as a part-time flexible during the hold-down. While they must be allowed to work the assignment for the duration of the vacancy, **PTF's are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone**

If there is insufficient work for the full-time regulars, PTF's with an "opt" assignment maybe sent home. However, since this is a "last resort" TE's and PTF's without an "opt" assignment should be sent home first.

The parties agreed to the following on page 41-15 of the JCAM:

Remedies and Opting. Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number

of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

Employee Everything Reports and the Route Carrier Daily Performance/Analysis Report indicate the following:

PTF	Hours Worked	Route	Route Hrs/Min
Jones	6.00	79002	6:41
Xie	6.00	7730	6:22
Phillips	5.97	7910	6:28
Crisostomo	5.90	7909	4:09
Pacheco	5.99	7745	6:43
Alvarez	6.90	7724	6:13

PTF Carriers Jones, Xie, Phillips, and Pacheco worked fewer hours than "he/she would have worked".

The parties also agreed to the following on page 41-15 of the JCAM:

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The file included DRT decisions from various teams. Each team determined that a violation existed. However, the earliest decision was rendered on September 25, 2009, since the violation in the instant grievance occurred on August 14, 2009; the DRT agrees that the violation is not "egregious or deliberate."

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a "cease and desist" and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. The one time lump sum payments in the above decision will be paid by the Management Formal A representative.

This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Steward Notes of Revision, 2 pages

- (3) Unsigned Management position, 2 pages
- (4) Payment Request for PTF's, 1 page
- (5) Handwritten Compensation Calculations, 1 page
- (6) Handwritten BT and ET sheet, 1 page
- (7) Overtime Alert Report, 4 pages
- (8) Branch worksheet, 1 page
- (9) Employee Everything Reports, 18 pages
- (10) Route Carrier Daily Performance Report, 11 pages
- (11) Weekly Schedule, 3 pages
- (12) Formal Step A Impasse Decision, 2 pages
- (13) Union Formal Step A position, 2 pages
- (14) Additions & Corrections, 4 pages
- (15) Step B Decisions, 68 pages
- (16) Time limit Extension, 1 page
- (17) List of DRT Decisions, 1 page
- (18) Undisputed Facts, 1 page
- (19) Management Formal A position, 4 pages
- (20) Agreement to "Hold in Abeyance", 2 pages
- (21) List of DRT Decisions, 1 page
- (22) Time Limit Extension, 2 pages

In reaching the above decision, the DRT carefully reviewed each of the documents and placed the appropriate value to each as it applied to the issue in this grievance.



Sandra K Quick
USPS Step B Representative

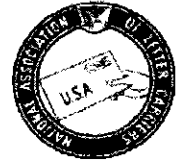


Chris Verville
NALC Step B Representative

DRT grievance # 487-09

cc:

Bay Valley District DRT Team
National Business Agent, NALC
USPS Western Area
Dispute Resolution Team File



STEP B DECISION

STEP B TEAM

Sandra K Quick
Chris Verville

District: Tennessee
DRT Number: 495-09

Decision:	RESOLVED
USPS number:	F06N-4F-C-09409975
Grievant:	Class Action
Branch Grievance Number:	A-90928-SL
Branch:	214-SF
Installation:	San Leandro
Delivery Unit:	San Leandro Main Office
State:	California
Incident Date:	08/04/2009
Date Informal Step A Initiated:	08/13/2009
Formal Step A Meeting Date:	11/12/2009
Date Received at Step B:	12/21/2009
Step B Decision Date:	12/23/2009
Issue Code:	41.2260
NALC Code:	100930

ISSUE:

Did the Postal service violate Article 41.2.B.4 of the National Agreement, when Management bumped PTF Carriers off of their successful hold-down opt. assignments? If so, what should the remedy be?

DECISION:

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a "**cease and desist**" and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. PTF Alvarez will be compensated a one time lump sum payment of \$23.00. The payment shall be processed by the Management Formal Step A representative.

EXPLANATION:

The PTF carriers on "opted" assignments were instructed the day before and/or by the weekly schedule to report at 9:30 am instead of the 7:30 am scheduled begin time. Management maintained this was to provide work for full-time carriers.

The Unions contentions in part read as follows:

"1. Management continues to violate article 41.2.B.3 every week by scheduled PTFs Carriers that bid on hold-down assignment at 9.50 am rather than 7.50 am. The TE Carriers are instructed to come in at 10.00 am every day by management. 2. Management continues to work ODL Carriers by paying overtime on the days that they are having the PTF Carriers to come in at a later scheduled time and Pivot others carriers to case the routes the PTF Carriers hold-down assignment."

The remedy requested reads as follows:

"Make the grievants' whole for any hours not worked by the PTFs that they should have worked on the dates that they were instructed to report later than their scheduled time of their hold-down assignment. (Out of schedule pay) 2. Make the grievants' whole for all hours work past they scheduled end tour (Overtime Pay 1.5 X normal rate of pay) 3. Cease & Desist scheduling TEs if management anticipates "undertime" 4. Any other remedy deemed appropriate by both parties."

Management's contentions read in part as follows:

"... Assignments and schedules were reviewed by supervisors in the afternoon based on receipt of standard mail for the next day delivery. The PTFs were in fact informed on a day-to-day basis that due to insufficient volume, the reporting time was to be adjusted in order for the Full Time Regular employees to be pivoted on their assignments in the morning to minimize office variance for the FTRs on under-time. ... The grievances that were resolved had incident dates between 3/19/2009 through 6/26/2009. The DRT Decisions were rendered between 9/14/2009 through 10/2/2009. If the remaining Article 41.2.b.3 grievances that were held in abeyance on September 21, 2009 are dated between the same time periods, how could management have complied with the first instructional resolutions that were rendered after September 14, 2009? Subsequent to receiving the different Step B Teams 9/25/2009 decisions, management has adhered to it. ..."

The parties agreed to the following on JCAM page 41-13:

Removal From Hold-Down. There are exceptions to the rule against involuntarily removing employees from their hold-downs. Part-time flexible employees may be "bumped" from their hold-downs to provide sufficient work for full-time employees. Full-time employees are guaranteed forty hours of work per service week. Thus, they may be assigned work on routes held down by part-time employees if there is not sufficient work available for them on a particular day. (H1N-5D-C 6601, September 11, 1985, M-00097)

This agreement continues on JCAM page 41-14 as follows:

In such situations, the part-time flexible employee's opt is not terminated. **Rather, the employee is temporarily "bumped" on a day-to-day basis. Bumping is still a last resort, as reflected in a Step 4 settlement.** (H1N-5D-C 7441, October 25, 1983, M-00293), which provides that:

A PTF, temporarily assigned to a route under Article 41, Section 2.B, shall work the duty assignment, unless there is no other eight-hour assignment available to which a full-time carrier could be assigned. A regular carrier may be required to work parts or "relays" of routes to make up a full-time assignment. Additionally, the route of the "holddown" to which the PTF opted may be pivoted if there is insufficient work available to provide a full-time carrier with eight hours of work.

The above noted citations provide for management to "bump" a PTF as a last resort if work is unavailable for a full-time regular. Documentation in the file indicates that Management scheduled the PTF's to be "bumped". A TE worked on the date in question and PTF's without an "opt" assignment worked.

The parties agreed to the following on pages 41-14 of the JCAM:

Schedule Status and Opting. Employees on hold-downs are entitled to work the regularly scheduled days and **the daily hours of duty of the assignment.** (See H8N-1M-C 23521, June 2, 1982, M-00239.) These scheduling rights assumed by all hold-down carriers, whether full-time or part-time, create some of the most perplexing problems in the opting process. In the area of schedule status, two key distinctions must be considered. First, there is a difference between a guarantee to work and a right to days off. The second distinction involves the appropriate remedy when an opting employee is denied work within the regular hours of a hold-down.

PTF's that have "opted" on an assignment are entitled to report at the time of that assignment in accordance with the language above.

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If there is insufficient work for the full-time regulars, PTF's with an "opt" assignment maybe sent home. However, since this is a "last resort" TE's and PTF's without an "opt" assignment should be sent home first.

The parties agreed to the following on page 41-15 of the JCAM:

Remedies and Opting. Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4 , **an appropriate remedy would be a "make whole" remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.**

In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional "cease and desist" resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

Employee Everything Reports and the Route Carrier Daily Performance/Analysis Report indicate the following:

PTF	Hours Worked	Route	Route Hrs/Min
Jones	6.00	7902	7:46
Xie	7.25	7730	6:55
Phillips	7.17	7914	3:49
Pagdanganan	6.97	7745	6:21

Jones is the only carrier that worked fewer hours than "he/she would have worked".

The parties also agreed to the following on page 41-15 of the JCAM:

In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The file included DRT decisions from various teams. Each team determined a violation existed. However, the earliest decision was rendered on September 25, 2009, since the violation in the instant grievance occurred on August 4, 2009; the DRT agrees that the violation is not "egregious or deliberate."

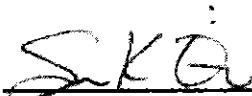
The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a "cease and desist" and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. PTF Alvarez will be compensated a one time lump sum payment of \$23.00. The payment shall be processed by the Management Formal Step A representative.

This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Branch Worksheet, 1 page
- (3) Handwritten BT and ET sheet, 1 page
- (4) Handwritten Compensation Calculations, 1 page
- (5) Steward Notes of Revision, 2 pages
- (6) Unsigned Management position, 2 pages
- (7) Payment Request for PTF's, 1 page

- (8) Overtime Alert Report, 4 pages
- (9) Weekly Schedule, 3 pages
- (10) Employee Everything Reports, 18 pages
- (11) Unit Daily Pivoting, 1 page
- (12) Route Carrier Daily Performance Report, 10 pages
- (13) Formal Step A Impasse Decision, 2 pages
- (14) Union Formal Step A position, 2 pages
- (15) Additions & Corrections, 4 pages
- (16) Step B Decisions, 76 pages
- (17) Time limit Extension, 2 pages
- (18) List of DRT Decisions, 1 page
- (19) Undisputed Facts, 1 page
- (20) Management Formal A position, 4 pages
- (21) Agreement to "Hold in Abeyance", 2 pages
- (22) List of DRT Decisions, 1 page
- (23) Time Limit Extension, 2 pages

In reaching the above decision, the DRT carefully reviewed each of the documents and placed the appropriate value to each as it applied to the issue in this grievance.



Sandra K Quick
USPS Step B Representative

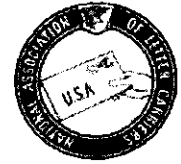


Chris Verville
NALC Step B Representative

DRT grievance # 485-09

cc:

Bay Valley District DRT Team
National Business Agent, NALC
USPS Western Area
Dispute Resolution Team File



STEP B DECISION

STEP B TEAM

Sandra K Quick
Chris Verville

District: Tennessee
DRT Number: 488-09

Decision:	RESOLVED
USPS number:	F06N-4F-C-09410416
Grievant:	Class Action
Branch Grievance Number:	A-90927-SL
Branch:	214-SF
Installation:	San Leandro
Delivery Unit:	San Leandro Main Office
State:	California
Incident Date:	08/12/2009
Date Informal Step A Initiated:	08/26/2009
Formal Step A Meeting Date:	11/12/2009
Date Received at Step B:	12/21/2009
Step B Decision Date:	12/23/2009
Issue Code:	41.2260
NALC Code:	100930

ISSUE:

Did the Postal service violate Article 41.2.B.4 of the National Agreement, when Management improperly bumped PTF Carriers off of their successful hold-down opt. assignments? If so, what should the remedy be?

DECISION:

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a **"cease and desist"** and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. PTF Jones will be compensated a one time lump sum payment of \$16.15. The payment shall be processed by the Management Formal Step A representative.

EXPLANATION:

The PTF carriers on "opted" assignments were instructed the day before and/or by the weekly schedule to report at 9:30 am instead of the 7:30 am scheduled begin time. Management maintained this was to provide work for full-time carriers.

The Unions contentions in part read as follows:

"1. Management continues to violate article 41.2.B.3 every week by scheduled PTFs Carriers that bid on hold-down assignment at 9.50 am rather than 7.50 am. The TE Carriers are instructed to come in at 10.00 am every day by management. 2. Management continues to work ODL Carriers by paying overtime on the days that they are having the PTF Carriers to come in at a later scheduled time and Pivot others carriers to case the routes the PTF Carriers hold-down assignment."

The remedy requested reads as follows:

"Make the grievants' whole for any hours not worked by the PTFs that they should have worked on the dates that they were instructed to report later than their scheduled time of their hold-down assignment. (Out of schedule pay) 2. Make the grievants' whole for all hours work past they scheduled end tour (Overtime Pay 1.5 X normal rate of pay) 3. Cease & Desist scheduling TEs if management anticipates "undertime" 4. Any other remedy deemed appropriate by both parties."

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of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

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Crisostomo	6.50	7909	5:28
Pacheco	7.78	7745	6:33
Alvarez	6.38	7724	6:14

Jones is the only carrier that worked fewer hours than "he/she would have worked".

The parties also agreed to the following on page 41-15 of the JCAM:

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The file included DRT decisions from various teams. Each team determined that a violation existed. However, the earliest decision was rendered on September 25, 2009, since the violation in the instant grievance occurred on August 12, 2009; the DRT agrees that the violation is not "egregious or deliberate."

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. Management violated Article 41.2.B.4 of the National Agreement when PTF carriers were directed to start later than the normal duty hours for the opted assignment. Management is issued a **"cease and desist"** and is instructed to start PTF's with valid hold-down assignments at the regular reporting time of the assignment. PTF Jones will be compensated a one time lump sum payment of \$16.15. The payment shall be processed by the Management Formal Step A representative.

This grievance file contained the following documents:

- (1) PS Form 8190
- (2) Branch Worksheet, 1 page
- (3) Payment Request for PTF's, 1 page

