

Dispute Resolution Team
Colorado/Wyoming District
7600 E. 83rd PL, Room 2248
Denver, CO 80286-8401
303-853-6616



STEP B DECISION

Step B Team:
Colorado/Wyoming

NALC: ANTHONY BATTAGLINO
USPS: AMY DOTY

Grieving District:
Mid America

Decision:	RESOLVED
USPS Number:	E06N4EC10265556
Grievant:	Class Action
Branch Number:	KC3010-192
Branch:	30
Installation:	Kansas City
Delivery Unit:	Waldo
State:	Missouri
Incident Date:	6/19/10 – 6/25/10
Date Step A Initiated:	07/03/10
Formal Step A Meeting:	01/08/11
Received at Step B:	01/13/11
Step B Decision Date:	01/21/11
Issue Code:	08.6300
NALC Subject Code:	00446
Original Step B Received Date:	01/07/11
Date Sent to Assisting Team:	01/11/11

ISSUE: Did the Postal Service violate Article 8.5 of the National Agreement when they required Non-ODL carriers to work mandatory overtime off of their assignment when ODL carriers were available? If so, what is the appropriate remedy?

DECISION: The DRT mutually agrees to RESOLVE this grievance by determining management violated the National Agreement. Management is instructed to Cease and Desist. The identified ODL carriers shall be paid the 10.21 hours worked by non-ODL carriers. This payment shall be at the overtime or penalty overtime rate as appropriate. The payments are to be processed as follows:

ODL Carriers

T. Mosby	4.58 hrs at the O.T rate, 0.36 hrs at the Penalty rate.
V. Stewart	1.21 hrs at the O.T rate, 1.15 hrs at the Penalty rate.

S. Mitchell	0.83 hrs at the O.T rate.
M. Kumpf	0.75 hrs at the O.T rate.
R. Kumpf	0.75 hrs at the O.T rate.
A. Summers	0.58 hrs at the O.T rate.

Since this decision was made by the COWY team, payment must be processed by local management. The union shall be provided with a copy of the payment documentation as soon as practicable after this decision.

EXPLANATION: Management required carriers who are not on the ODL to work mandatory overtime off of their bid assignment for a total of 10.21 hours during the week of 6/19/10. This grievance includes the dates of 6/19, 6/21, 6/23, 6/24 & 6/25/10, respectively. The union contends that management violated Article 8 of the National Agreement by requiring these carriers to perform work off of their bid assignment when ODL carriers were available. They explain that management mandated carriers off their assignment because of operational window claims and to reduce the amount of penalty overtime that was paid.

Management argues that it did not violate the National Agreement when it required Non-ODL carriers to work mandatory overtime. They explain that the grievance is without merit and was not timely filed and should be dismissed.

Management also contends that operational conditions dictate that simultaneous scheduling is justified to comply with "time critical situations" such as an overall "operational window" which includes a dispatch of value of 6:00 P.M.

After review of the file, the Step B Team would note that no Undisputed Facts were submitted by the Formal A Parties. Although the union submitted a document titled Undisputed Facts, there is no evidence that the Formal A parties agreed to the contents of this document.

The parties must understand that undisputed facts are statistics, information, data, events or experiences that the parties agree are true and did occur. No case should be appealed without at least some undisputed facts. It probably doesn't seem like it at times, but in most grievances the parties have more in common than it might at first appear. Even in the most contentious of cases, there are many facts that the parties should be able to stipulate are not in dispute. The local union and management designees can go a long way toward resolving those areas in which there is conflict if they first try to identify those relevant facts that are not in dispute.

The parties should at a minimum try to provide a narrative or a list of the events leading to the dispute and describe what happened. Surely, there are facts upon which the parties can agree. Each side has an option of what the facts are they merely need to find out which ones they have in common and list them.

In regards to management's contention that the grievance was untimely filed; it is noted that the instant grievance encompasses an entire week which includes the dates of 6/19/10 through 6/25/10. 6/25 is the last of the days in dispute and is part of the pay week that is

identified. The file reflects that the case was filed at Informal A on 7/3/10 which is eight days following the end of the week. Therefore, we agree that the grievance was timely filed.

The Step B team has applied the following language from page 8-16 of the 2009 JCAM to this case:

8.5.D If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

Mandatory Overtime. One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a nonscheduled day or off his/her own assignment on a regularly scheduled day, **management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime.** However, if the Overtime Desired List does not provide sufficient qualified full-time regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a *rotating basis* starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation.

Management *may* seek non-ODL *volunteers* rather than selecting nonvolunteers on the basis of juniority. Normally, carriers not on the Overtime Desired List may not grieve the fact that they were not selected to work overtime. The provisions of Article 8.5.D do not apply in the case of full-time letter carriers working on their own assignment on a regularly scheduled day. That situation is governed by Article 8.5.C.2.d as amended by the letter carrier paragraph above.

In addition, Article 8.5.G states;

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 over time 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.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

The file presented to the DRT suggests that the last dispatch of value for the Waldo station is 18:00 hours or 6:00 P.M. Although there is no documentary evidence contained in the file to confirm this, management attempts to establish this as fact and the union offers no rebuttal.



The Step B Team agrees that Article 8.5.D requires management to use ODL carriers to the maximum extent prior to mandating non-ODL carriers to work overtime off of their assignment. We also agree that management need not work ODL carriers up to twelve hours in every instance and may in limited circumstances, require carriers not on the ODL to work overtime to achieve the unit's LDOV. However, if the LDOV is consistently ignored, then it is the union's burden of proof to provide such evidence. If the LDOV is not met on a consistent basis, then the 12-hour limit as enumerated in Article 8.5 would be in effect. On the other hand, if the LDOV is consistently obtainable with normal staffing, then management may require the ODL carriers to work only to the scheduled LDOV, unless, such LDOV is not met. Moreover, **the Step B Team agrees that management cannot mandate on a continuous basis just to make the LDOV**. Management must realize that although they have the right to plan their staffing, they must ensure that such a plan does not result in a contractual violation. The National Parties agree as stated on page 8-27 of the JCAM 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. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime-desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime.** The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles, which brought the parties to agreement (**emphasis added**).

The following is a breakdown of the specific elements for each of the days in question:

The file reflects that on 6/19/10, five Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of 4.73 hours. The file further reflects that ODL carrier Stewart only worked .79 units of overtime and ODL carrier Mosby was not utilized for any overtime. We would agree that these carriers could have performed the work in question. It is also noted that it appears the station did not achieve the LDOV on this date.

On 6/21/10, two Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of 1.66 hours. ODL carriers Mitchell and Mosby worked only eight hours and were not utilized for overtime work. We would agree that these carriers could have performed the work in question and returned to the facility in time for the last dispatch.

On 6/23/10, two Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of .97 hours. ODL carriers Wagner and Mosby were not utilized for any overtime. Additionally, the file suggests that ODL carrier Mitchell who was working her N/S day only worked a total of 6.25 hours. No further explanation is given for this. We would agree that the aforementioned carriers could have performed the work in question and returned to the facility in time for the last dispatch.

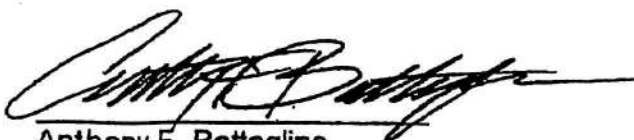
On 6/24/10, Two Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of .58 hours. Seven ODL carriers were not utilized for any overtime on this day. We would agree that any of these carriers were available to perform the work in question and return to the facility in time for the last dispatch.

On 6/25/10, Three Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of 2.27 hours. Several ODL carriers were not utilized up to the LDOV and were available to perform the work in question and return to the facility in time for the last dispatch.


Management does not provide any evidence that there were additional mitigating factors that should have been considered that would give them cause to simultaneously schedule ODL and Non-ODL carriers.

Based upon the information contained in the case file, the DRT agrees that if available ODL and carriers were properly utilized, the need to require non-ODL carriers to work overtime would not have existed. Therefore, we would agree that improper mandates of Non-ODL carriers did occur in violation of Article 8 of the National Agreement.

The DRT mutually agrees to **RESOLVE** this grievance by determining management violated the National Agreement. The identified ODL carriers shall be paid the 10.21 hours worked by non-ODL carriers. This payment shall be at the overtime or penalty overtime rate as appropriate.



Anthony F. Battaglino
NALC Step B Representative
Dispute Resolution Team



Amy Doty
USPS Step B Representative
Dispute Resolution Team

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STEP B DECISION

Step B Team:
Colorado/Wyoming

NALC: ANTHONY BATTAGLINO
USPS: JASON TAT

Grieving District:
Mid America

Decision:	RESOLVED
USPS Number:	E06N4EC10333402
Grievant:	Class Action
Branch Number:	KC3010-271
Branch:	30
Installation:	Kansas City
Delivery Unit:	Waldo
State:	Missouri
Incident Date:	08/19/10, 08/20/10
Date Step A Initiated:	08/28/10
Formal Step A Meeting:	01/06/11
Received at Step B:	01/13/11
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ISSUE: Did the Postal Service violate Article 8.5 of the National Agreement when they required Non-ODL carriers to work mandatory overtime off of their assignment when ODL carriers were available? If so, what is the appropriate remedy?

DECISION: The DRT mutually agrees to **RESOLVE** this grievance by determining management violated the National Agreement. Management is instructed to **Cease and Desist**. Additionally, the identified ODL carriers shall be paid the 2.72 hours worked by non-ODL carriers. This payment shall be at the overtime rate. The payments are to be processed as follows:

ODL Carriers

B. Hartman	0.95 hours at the O.T. rate
Y. Starks	0.95 hours at the O.T. rate
D. Bruner	0.82 hours at the O.T. rate

Since this decision was made by the CO/WY team, payment must be processed by local management. The union shall be provided with a copy of the payment documentation as soon as practicable after this decision.

EXPLANATION: Management required carriers who are not on the ODL to work mandatory overtime off of their bid assignment for a total of 2.72 on 8/19/10 & 8/20/10 respectively. The union contends that management violated Article 8 of the National Agreement by requiring these carriers to perform work off of their bid assignment when ODL carriers were available. They explain that management mandated carriers off their assignment because of operational window claims and to reduce the amount of penalty overtime that was paid.

Management also contends that operational conditions dictate that simultaneous scheduling is justified to comply with "time critical situations" such as an overall "operational window" which includes a dispatch of value of 6:00 P.M.

After review of the file, the Step B Team would note that no Undisputed Facts were submitted by the Formal A Parties. Although the union submitted a document titled Undisputed Facts, there is no evidence that the Formal A parties agreed to the contents of this document.

The parties must understand that undisputed facts are statistics, information, data, events or experiences that the parties agree are true and did occur. No case should be appealed without at least *some* undisputed facts. It probably doesn't seem like it at times, but in most grievances the parties have more in common than it might at first appear. Even in the most contentious of cases, there are many facts that the parties should be able to stipulate are not in dispute. The local union and management designees can go a long way toward resolving those areas in which there is conflict if they first try to identify those relevant facts that are not in dispute.

The parties should at a minimum try to provide a narrative or a list of the events leading to the dispute and describe what happened. Surely, there are facts upon which the parties can agree. Each side has an option of what the facts are they merely need to find out which ones they have in common and list them.

The Step B team has applied the following language from page 8-16 of the 2009 JCAM to this case:

8.5.D If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

Mandatory Overtime. One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a nonscheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the

ODL, even if the ODL carrier would be working penalty overtime. However, if the Overtime Desired List does not provide sufficient qualified full-time regulars for required overtime, Article 8.5.D permits management to move off the list and require non-ODL carriers to work overtime on a *rotating basis* starting with the junior employee. This rotation begins with the junior employee at the beginning of each calendar quarter. Absent an LMOU provision to the contrary, employees who are absent on a regularly scheduled day (e.g. sick leave or annual leave) when it is necessary to use non-ODL employees on overtime will be passed over in the rotation until the next time their name comes up in the regular rotation.

Management *may* seek non-ODL *volunteers* rather than selecting nonvolunteers on the basis of juniority. Normally, carriers not on the Overtime Desired List may not grieve the fact that they were not selected to work overtime. The provisions of Article 8.5.D do not apply in the case of full-time letter carriers working on their own assignment on a regularly scheduled day. That situation is governed by Article 8.5.C.2.d as amended by the letter carrier paragraph above.

In addition, Article 8.5.G states:

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.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

The file presented to the DRT suggests that the last dispatch of value for the Waldo station is 18:00 hours or 6:00 P.M. Although there is no documentary evidence contained in the file to confirm this, management attempts to establish this as fact and the union offers no rebuttal.

The Step B Team agrees that Article 8.5.D requires management to use ODL carriers to the maximum extent prior to mandating non-ODL carriers to work overtime off of their assignment:

We also agree that management need not work ODL carriers up to twelve hours in every instance and may in limited circumstances, require carriers not on the ODL to work overtime to achieve the unit's LDOV. However, if the LDOV is consistently ignored, then it is the union's burden of proof to provide such evidence. If the LDOV is not met on a consistent basis, then the 12-hour limit as enumerated in Article 8.5 would be in effect. On the other hand, if the LDOV is consistently obtainable with normal staffing, then management may require the ODL carriers to work only to the scheduled LDOV, unless, such LDOV is not met. Moreover, the **Step B Team agrees that management cannot mandate on a continuous basis just to make the LDOV.** Management must realize that although they have the right to plan their staffing, they must ensure that such a plan does not result in a contractual violation. The National Parties agree as stated on page 8-27 of the JCAM 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. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime-desired lists to protect the interests of those employees who do not want to work overtime, and the interests of those who seek to work limited overtime. The parties agree this memorandum does not give rise to any contractual commitment beyond the provisions of Article 8, but is intended to set forth the underlying principles, which brought the parties to agreement (emphasis added).

The following is a breakdown of the specific elements for each of the days in question:

The file reflects that on 8/19/10, Three Non-ODL carriers were required to work mandatory overtime off of their bid assignment for a total of 1.90 hours. The file further reflects that ODL carrier Starks worked only .49 units of overtime and Carrier Hartman was not scheduled up to the DOV. It should also be noted that we cannot be completely certain that the DOV was achieved due to the fact that the individual TAGS reports for the ODL carriers were not submitted to the file. However, by reviewing the begin tour times reflected in the file and then reviewing the total hours found on the Overtime Alert Report, it appears as though the facility did not achieve the last dispatch of 6:00 P.M. Therefore, we would agree that ODL carriers were available to perform the work in question.

On 8/20/10, one Non-ODL carrier was required to work mandatory overtime off of their bid assignment for a total of .82 hours. ODL carriers Brenner, Starks and Wagner worked only eight hours and were not utilized for overtime work. We would agree that any of these carriers could have performed the work in question and returned to the facility in time for the last dispatch.

Management does not provide any evidence that there were additional mitigating factors that should have been considered that would give them cause to simultaneously schedule ODL and Non-ODL carriers.

Based upon the information contained in the case file, the DRT agrees that improper mandates of non-ODL carriers did occur in violation of Article 8 of the National Agreement.

The DRT mutually agrees to **RESOLVE** this grievance by determining management violated the National Agreement. The identified ODL carriers shall be paid the **2.72** hours worked by non-ODL carriers. This payment shall be at the overtime rate.



Anthony F. Battaglino
NALC Step B Representative
Dispute Resolution Team



Jason Tat
USPS Step B Representative
Dispute Resolution Team

cc: USPS Step A Representative
NALC Step A Representative
National Business Agent, NALC
Western Area Labor Relations
Labor Relations, Co/Wy District
Dispute Resolution Team File