

## REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )  
 Between ) GRIEVANT: Class Action  
 )  
 UNITED STATES POSTAL SERVICE ) POST OFFICE: New Haven, CT  
 )  
 And )  
 ) CASE Numbers:  
 NATIONAL ASSOCIATION OF LETTER ) USPS: B11N4BC 15029772  
 CARRIERS, AFL-CIO ) NALC: 19-328-14-GPO  
 )  
 )

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

## APPEARANCES:

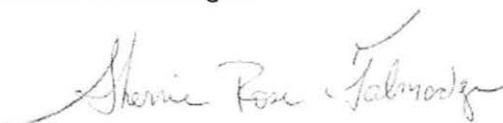
For the U.S. Postal Service: Barry McCann, Labor Relations Specialist  
 For the Union: Vincent J. Mase, Esq., President Branch 19

Place of Hearing:	Teleconference	<b>RECEIVED</b>  NOV 1 - 2015
Date(s) of Hearing:	July 29, 2015	
Date of Briefs Received:	September 9, 2015	
Date of Award:	October 5, 2015	
Relevant Contract Provisions:	Articles 8.5G, 15.3 and 41	
Date of Contract:	2011-2016	VICE PRESIDENT'S OFFICE NALC HEADQUARTERS
Type of Grievance:	Contract (remedy clarification)	

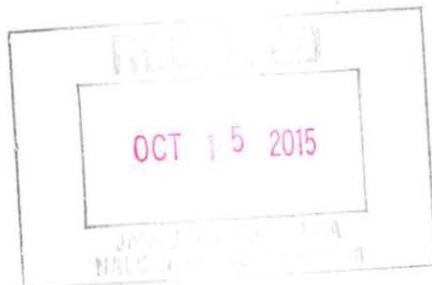
AWARD SUMMARY

The original Award in B11N-4B-C 13231618 issued by the undersigned arbitrator stated that, "Management is directed to cease and desist from violating Articles 8.5.G and 15.3 of the National Agreement. The non-OTDL carriers identified in the representative grievance are to be paid at the rate of triple time and one half or 350% for the hours they were forced to work overtime in violation of the contract". The Step B Team asked the parties to seek clarification from the undersigned arbitrator about whether the award was intended to provide the non-OTDL carriers 200% or 350% in addition to the payment for the overtime worked.

The Award was intended to provide these non-OTDL carriers identified in the representative grievance payment of an additional 200% in addition to the payment for the overtime they were forced to work in violation of the contract. Management's payment of 200% to the identified non-OTDL carriers would be in compliance with the award of damages.



Sherrie Rose Talmadge, Esq., Arbitrator



## ISSUE<sup>1</sup>

1. Did management violate Article 15 of the National Agreement by not complying with arbitration B11N-4B-C 13231618 when management failed to pay the remedy of 350% ordered by the arbitrator and,
2. If so, what is the proper remedy?

## BACKGROUND

On September 11, 2014, the undersigned arbitrator issued a decision and award for a Class Action grievance concerning an escalating remedy (B11N-4B-C 13231618, NALC: 19-775-13GPO) at the New Haven Postal Installation. In that matter the award stated:

The remedy for the violations of Articles 8.5.G and 15.3 for Letter Carriers who were included in the instant grievance who were not on the OTDL but were forced to work overtime assignments when OTDL Letter Carriers were still available up to 12 hours on the incident date is as follows:

1. Management is directed to cease and desist from violating Articles 8.5.G and 15.3 of the National Agreement.
2. The non-OTDL carriers identified in the representative grievance are to be paid at the rate of triple time and one half or 350% for the hours they were forced to work overtime in violation of the contract.

The parties disagreed as to how the decision should be applied and the Union filed the instant grievance. The Step B Team framed the issue as follows:

Did management violate Article 15 of the National Agreement by not complying with arbitration B11N-4B-C 13231618 when management failed to pay the remedy of 350% ordered by the arbitrator and if so, what is the proper remedy?

On December 30, 2014, the Step B Team issued the following decision:

The Dispute Resolution Team (DRT) has resolved this grievance. The Step B Team is in agreement that only an arbitrator may interpret a decision rendered by that arbitrator in which a disagreement exists among the local parties as to its intent. A joint conference call will be arranged with Arbitrator Sherrie Rose Talmadge, USPS Advocate Barry McCann and NALC Advocate Vincent Mase to ask her for a clarification of her decision, whether the award is an additional 200% or an additional 350% for the non-OTDL carriers involved. This conference call should take place as expeditiously as possible... [Emphasis added.]

Subsequently, the advocates contacted the arbitrator and agreed to hold a conference call on July 29, 2015. During the conference call each advocate presented his

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<sup>1</sup> This issue was framed by the Step B Team who directed the parties to contact the Arbitrator

Arbitration decision continued.

position concerning the scope of the remedial award clarification. The advocates were asked to submit written position statements that were received by September 9, 2015.

The Management advocate sent the Connecticut B Team Management Representative Nilza Mercado an email dated August 28, 2015 inquiring whether the cases out of New Haven that were held had been resolved after the issuance of the arbitration decision B11N-4B-C 13231618 that required the Service to pay non-OTDL carriers 350%. By response email dated August 28, 2015 B Team Representative Mercado replied, "Yes, the cases held were resolved after the award with the grievants being paid at 200% rate." The email also confirmed that the NALC Step B Union Representative, Charles Page, had retired as of February 1, 2015.

The Union also filed a separate grievance (B11N-4B-C 15029773, 19-333-14GPO) concerning whether Management violated Article 15 of the National Agreement by not paying OTDL carriers when non-OTDL carriers were used to do work off their assignments while the OTDL carriers were available and prior DRT decisions had awarded these payments. On January 12, 2015 the Step B Team issued a decision stating that it had resolved the matter.

### **POSITIONS OF THE PARTIES**

#### **UNION POSITION**

The Union argued that my award of a remedy of 350% to the non-OTDL letter carriers did not specify if this was in addition to the overtime the non-OTDL carriers have been paid or whether it is inclusive of the overtime the non-OTDL carriers have been paid. The Union urged finding that the 350% award to the non-OTDL carriers is in addition to the 150% they have already received when they were forced to work overtime.

The Union also asserted that, when I issued the initial decision and award, there was an oversight when I did not address a remedy for the OTDL carriers who were denied the opportunity to work overtime when the non-OTDL carriers were forced to work the overtime. The Union requested that I address that oversight and rule in favor of the Union and award the OTDL carriers 350% for the time worked by the non-OTDL carriers that the overtime desired list carriers should have worked. The Union acknowledged that its post-hearing brief did not mention a remedy for the OTDL carriers, which had been pointed out by the arbitrator during the teleconference. However, the Union argued that the brief is not evidence, but is supposed to highlight the evidence and testimony of the witnesses.

Therefore, the Union contended that the arbitrator should have considered the documents

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for a clarification of the remedy.

Arbitration decision continued.

in the joint moving papers which requested a remedy for both the non-OTDL letter carriers and the OTDL letter carriers. The B Team (in B11N-4B-C 13231618) wrote, "The Team could not reach common ground regarding the appropriate remedy to be awarded to all affected letter carriers listed in the file", which was a reference to both the OTDL and non-OTDL letter carriers. The Union also noted that its witnesses in the case in chief were the stewards, who testified as to the continuing violations and escalating remedies, and two non-OTDL letter carriers who testified about the negative impact about being forced to work overtime. The Union pointed out that they did not have OTDL letter carriers as witnesses because there was no need for their testimony. The fact that the letter carriers had signed the OTDL was inherent evidence that they were ready, willing and able to work that overtime and, if the overtime is given to non-OTDL carriers, the contractual rights of the OTDL carriers were violated. The failure to specify a remedy for the OTDL carriers was an injustice that should be addressed.

#### **POSTAL SERVICE POSITION**

The Service maintained that the only issue before the arbitrator is whether or not my award ordered a monetary payment to non-OTDL employees for a total of 350%, therefore owing an additional 200% to the 150% already paid, or whether the award is an additional 350%, along with the 150% already paid, for a total of 500%. The Service contended that the only way to properly interpret the award was to pay the grievants a total compensatory remedy of 350%. The B Team interpreted the award in this manner when they finalized the held grievances by paying an additional 200% to the non-OTDL carriers. To grant what the Union is now asking would escalate the remedy. The case file contained numerous settlements in which the parties escalated the remedies to the point of the April resolutions culminating in a monetary resolution of 350% in lieu of administrative leave. In no circumstance did the Union seek a remedy of 500% plus a day of administrative leave. The Union sought payment for the hours worked at triple time and a half. This is the remedy that was incorporated in the arbitrator's award and the remedy that the Union asked for in the original B Team impasse for the arbitration case. No additional monetary remedy should be granted to the non-OTDL carriers. To adopt what the Union is now seeking for a remedy would not have been in line with what the local parties had been agreeing to when resolving these prior cases. The Service asked for a determination that they fully complied with the original decision and award. Based on the email confirmation of the Step B Management Representative Mercado, the Service had fully complied with the

Arbitration decision continued.

award when it paid each of the non-OTDL carriers who was forced to work overtime an additional 200% in addition to the 150% they received for working the overtime. The total payment received by the grievants was 350% for the hours the non-OTDL carriers worked when the OTDL carriers were available.

The Service further noted that since all arbitrator decisions are final and binding, as agreed to by the parties, any argument concerning the OTDL employees has no bearing on what the arbitrator is being asked to clarify in the instant matter. The Union's attempt to raise this issue during the conference call was a ploy to persuade the arbitrator to grant an additional 150% of the original award to the non-OTDL carriers.

### **DISCUSSION**

The narrow remedial issue that was framed by the B Team to the arbitrator for clarification was, "Did management violate Article 15 of the National Agreement by not complying with arbitration B11N-4B-C 13231618 when management failed to pay the remedy of 350% ordered by the arbitrator and if so, what is the proper remedy?" The B Team specified that, "A joint conference call will be arranged with Arbitrator Sherrie Rose Talmadge, USPS Advocate Barry McCann and NALC Advocate Vincent Mase to ask her for a clarification of her decision, whether the award is an additional 200% or an additional 350% for the non-OTDL carriers involved."

My intention was for the non-OTDL carriers who were forced to work overtime in violation of the contract to be paid 200% in addition to the overtime pay (150%) they had already received. This would result in a total compensatory award to the non-OTDL carriers of 350%.

As reasoned in my original award,

In determining the appropriate remedy, I have considered the most recent Step B award in the installation dated March 18, 2013, in which the B Team awarded the forced non-OTDL carriers an additional 50% of pay as an escalating remedy along with penalty time (in total 250%) and administrative leave for failure to cease and desist from violating the contract. On April 20, one month later, at the New Haven GPO the parties at the Formal A level settled forced overtime grievances for the monetary award of triple time and one-half (350%) in lieu of administrative leave.

Although I am sympathetic to the Union's position that it would be appropriate that the additional time spent at work by non-OTDL carriers who were forced to work overtime in violation of the contract be restored to them in the form of administrative leave, in this instance I adopt the monetary remedy that was agreed to by the Union and Management at

the local level of triple time and one-half in lieu of administrative leave. To award an administrative day in addition to the 350% would be to further escalate the remedy, which does not appear to be warranted at this time. The reason for the escalating remedy was to address an ongoing overtime issue. In this case, once the Area and District became aware of these ongoing issues, they sought to address and alleviate the underlying problems that resulted in the ongoing forced overtime. There was evidence of some improvement of the situation in the testimony by two of the carriers that there has been a reduction in the incidents of forced overtime at the New Haven GPO. Accordingly, I find that the appropriate remedy in this matter for those non-OTDL carriers who were forced to work overtime when OTDL carriers had not been maximized is a monetary award of 350% for the hours they were forced to work overtime in violation of the contract and an order for management to cease and desist from violating Articles 8 and 15.3 of the contract.

In my decision I had adopted the monetary remedy that had been agreed to by the Union and Management at the Formal A on April 20, 2013 of triple time and one-half in lieu of administrative leave. There was no indication that the parties had agreed to 350% in addition to the overtime pay received. Rather, I understood that at Formal A the parties agreed to a pay a remedy of 200% in addition to the overtime pay of 150% for a total compensatory award of 350%.

Although the Union argued that I should also reopen the issue of a remedy for the OTDL letter carriers who were available and not maximized prior to the assignment of the non-OTDL carriers to work the overtime, the scope of my remedial clarification is limited by the instructions of the B Team. The B Team provided very narrow grounds to address the clarification of my prior award and specifically did not include the issue of a remedy for the OTDL carriers. Moreover, I have been informed that the Union had filed a separate grievance (B11N-4B-C 15029773, NALC: 19-333-14GPO), concerning a remedy for the OTDL carriers when non-OTDL carriers were used to do work off their assignments while the OTDL carriers were available, that was resolved by the B Team. Furthermore, I want to point out that in my initial decision, in which the stipulated issue was "What is the appropriate remedy?", I addressed the remedy requested by the Union in its detailed post-hearing brief, which sought an escalating remedy for the non-OTDL carriers, but did not ask for a remedy for the available OTDL carriers who had been bypassed.

Arbitration decision continued.

**AWARD**

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Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator