

GUIDELINES (for Union use)
Grievances re: ODL carriers denied quarterly equity

Issue Statement: Did the Employer violate Contractual provisions, including but not limited to, Articles 3 and 8.5.G.2.b of the Collective Bargaining Agreement by failing to distribute overtime opportunities and/or hours equitably during the calendar quarter of ? If so, what is the remedy or what shall be the remedy?

FACTS TO CONSIDER: (provide evidence as necessary)

- What carriers are on the ODL? (provide list)
- How many OT hours were worked by each ODL carrier (including "refusals")?
- Did management provide the quarterly listing of OT hours/opportunities? (ref. Article 8.5.C.2.c) If so, is it accurate? (Does it only reflect off-assignment or NS day OT?)
- What was the average amount of chargeable OT hours worked by the ODL carriers?
- What hours could have been worked by the shorted carriers which were worked by the carriers who worked more than average?
- Are the shorted carriers still on the ODL?
- Were any of the shorted carriers owed "make-up" opportunities from before?
- Is there a history of this type of violation, proving management was aware of their contractual requirements?

ARGUMENTS/CITATIONS:

- Remember, the union has the burden of proving the Contract was violated.
- Article 8.5.C.2.b of the Joint Contract Administration Manual: During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the "Overtime Desired" list. Opportunities and hours must both be considered. All overtime worked by those on the ODL is counted toward quarterly equitably, with the exception of the first eight hours of overtime worked on the day of a holiday schedule.
- In her decision in case # B94N-4B-C 98116534, Arbitrator Talmadge opined that, since there were repeated equitability grievances, management was aware of the contractual requirement and, in order to attain equitability, overtime given to CCA's should have been given to the FTRs who were shorted.

REMEDY:

Compensate the appropriate ODL carriers for loss of overtime equitability; make them whole; and/or other appropriate remedy.

Remedies. National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-3200) that the Postal Service must pay employees deprived of "equitable opportunities" for the overtime hours they did not work only if management's failure to comply with its contractual obligations under Article 8.5.C.2 shows "a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of

employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.” In all other cases, Gamser held, the proper remedy is to provide “an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done...”

Equitable Distribution of Overtime Opportunities.

Seniority does *not* govern the availability of overtime work for those letter carriers who wish to work overtime. Nor is overtime distributed on a rotating basis. Rather, Article 8.5.C.2 provides that for those carriers who sign the Overtime Desired List, overtime “*opportunities*” must be distributed “*equitably*” (i.e., fairly). This does not mean that actual overtime hours *worked* must be **distributed *equally***.