

Hold-down assignments

Article 41, Sections 2.B.3, 4 and 5 provide a special procedure for exercising seniority to fill temporary vacancies in full-time duty Grade 1 letter carrier assignments. This procedure, known as “opting,” allows carriers to “hold down” duty assignments vacant for five or more days. Full-time reserve letter carriers, full-time flexible letter carriers, unassigned full-time carriers and part-time flexible carriers may all opt for hold-down assignments. In the past, the contract’s opting provisions have raised many contentious issues. NALC has been forced to take grievances concerning the application of these provisions to national-level arbitration on four occasions. Pages 41-9 through 41-15 of the 2009 *Joint Contract Administration Manual (JCAM)* provide the parties’ detailed joint explanation of how the opting provisions are to be applied.

Currently, most “opting” disputes concern the application of Article 41, Section 2.B.5, which provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” This means that employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment until the opt ends. (See M-00239.) The scheduling rights of full-time or part-time carriers on hold-down create some of the most perplexing problems in the opting process.

Scheduled days and opting—An employee who successfully opts for a hold-down assignment is guaranteed the right to work the hours of duty and scheduled days of the regular carrier. (See M-00720.) A carrier on a hold-down, however, is not guaranteed the right to *not* work on non-scheduled days. This is the same rule that applies to the assignment’s regular carrier, who may, under certain conditions, be required to work on a non-scheduled day. However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason.

Remedies and opting—The *JCAM* provides the following discussion of remedies for opting violations:

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.

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.

This *JCAM* language establishes the basic “make whole” remedy for a carrier not properly awarded or scheduled on a hold-down assignment. Its real significance, however, is that in it, the Postal Service has also jointly agreed to the broader principle, applicable to all contract cases, that where contract violations are repetitive, “egregious or deliberate,” more than a simple make-whole pay remedy may be required “to insure future contract compliance.”

Out-of-schedule premium is not an appropriate remedy request for PTF carriers, since the out-of-schedule provisions of *ELM* 434.6 only apply to full-time employees. The parties also have agreed in M-00091 that when full-time employees “opt” on an assignment, they assume the hours and days off of the assignment without the Postal Service incurring any out-of-schedule liability.

A different situation arises when management assigns a full-time reserve or unassigned letter carrier to a vacant duty assignment. In such cases, the assigned letter carrier can be required to work the schedule of the vacant assignment, but the out-of-schedule premium provisions of *ELM* 434.6 still apply. See M-00940 for a complete explanation of this issue. ☒