

41.2.A.2

2. Seniority is computed from date of appointment in the Letter Carrier Craft and continues to accrue so long as service is uninterrupted in the Letter Carrier Craft in the same installation, except as otherwise specifically provided.

Article 41.2.A.2 establishes the general rule that a letter carrier's seniority is computed continuously from the date of appointment in the Letter Carrier craft if the carrier serves without interruption in the Carrier craft and works in the same installation.

Note that Article 41.2.D provides for exceptions to Article 41.2.A.2's requirements that for a carrier's seniority to be computed continuously from the date of appointment in the Letter Carrier craft, the carrier must serve without interruption in the carrier craft and work in the same installation.

41.2.A.3

3. No employee solely by reason of this Article shall be displaced from an assignment the employee gained in accordance with former rules.

The purpose of Article 41.2.A.3 is to avoid displacing employees from bid assignments gained under earlier National Agreements if there are any changes in the National Agreement's seniority rules.

41.2.B

**B. Definitions**

41.2.B.2

1. Seniority for bidding on preferred Letter Carrier Craft duty assignments and for other purposes for application of the terms of the National Agreement shall be restricted to all full-time and full-time flexible regular city letter carriers.
2. Part-time regular letter carriers are considered to be a separate category and seniority for assignment and other purposes shall be restricted to this category.

Part-time regulars may use their seniority only in that category. Upon reassignment to part-time flexible or full-time status, part-time regulars begin a new period of seniority.

41.2.B.3

3. Full-time reserve letter carriers, and any unassigned full-time letter carriers whose duty assignment has been eliminated in the particular delivery unit, may exercise their preference by use of their seniority for available craft duty assignments of anticipated duration of five (5) days or more in the delivery unit within their bid assignment areas, except where the local past practice provides for a shorter period.
4. Part-time flexible letter carriers may exercise their preference by use of their seniority for vacation scheduling and for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned.

City carrier assistants may exercise their preference (by use of their relative standing as defined in Section 1.f of the General Principles for the Non-Career Complement in the Das Award) for available full-time craft duty assignments of anticipated duration of five (5) days or more in the delivery unit to which they are assigned that are not selected by eligible career employees.

**Application.** There is no difference in the application of opting (hold-down) rules between part-time flexibles (PTFs) and city carrier assistants (CCAs).

**Pecking Order.** Hold-down assignments are awarded to eligible career letter carriers by highest to lowest seniority first and then to eligible CCAs by highest to lowest relative standing in the installation.

5. A letter carrier who, pursuant to subsections 3 and 4 above, has selected a craft duty assignment by exercise of seniority shall work that duty assignment for its duration.

**Opting on Temporary Vacancies.** Article 41.2.B.3, 41.2.B.4, and 41.2.B.5 provide a special procedure for exercising seniority in filling temporary vacancies in full-time duty assignments. This procedure, called “opting,” allows carriers to “hold-down” vacant duty assignments of regular carriers who are on leave or otherwise unavailable to work for five or more days.

Full-time reserve, full-time flexible, and unassigned full-time letter carriers may opt on vacancies of fewer than five days where there is an established local past practice (Article 41.2.B.3).

**Eligibility for opting.** Full-time reserve letter carriers, full-time flexible schedule letter carriers, unassigned full-time carriers, PTFs, and CCAs may all opt for hold-down assignments.

CCAs may opt for hold-down assignments 60 calendar days from the date of the first appointment as a CCA. Once a new CCA has met this requirement there is no additional waiting period for applying for/being awarded a hold-down when the employee is reappointed as a CCA or converted to career. If a newly hired CCA previously served at least 60 calendar days as a CCA or career city letter carrier, this rule does not apply.

All unassigned regulars have opting rights, regardless of the reason for the unassigned status (Step 4, H94N-4H-C 96007241, September 25, 2000, M-01431).

Although Article 12.3 of the National Agreement provides that “an employee may be designated a successful bidder no more than six (6) times” during the contract period, a national settlement (H1N-1E-C 25953, May 21, 1984, M-00513) establishes that these restrictions do not apply to the process of opting for vacant assignments. Moreover,

opting is not “restricted to employees with the same schedule as the vacant position” (H1N-1J-C 6766, April 17, 1985, M-00843). Rather, an employee who opts for a hold-down assignment assumes the scheduled hours and non-scheduled day of the opted assignment. (See Schedule Status and Opting.)

National Arbitrator Bernstein held (H1N-3U-C 10621, September 10, 1986, C-06461) that an employee may not be denied a hold-down assignment by virtue of his or her potential qualification for overtime pay. For example, an employee who works forty hours Saturday through Thursday is eligible for a hold-down which begins on Friday even though he or she will earn overtime pay for work in excess of forty hours during the service week.

An otherwise qualified employee on light duty may not be denied hold-down assignments as long as the employee can perform all the duties of the assignment.

The national parties previously agreed that probationary employees may not opt (H8N- 2W-C 7259, November 25, 1980, M-00594).

However, this restriction was modified with the subsequent agreement that CCAs may not opt for the first 60 calendar days of their first appointment as a CCA and once the CCA has met this requirement there is no additional waiting period.

Carriers acting in 204b supervisory positions may not opt for hold-down positions while in a supervisory status (Step 4, H1N-4B-C 16840, October 24, 1983, M-00552). A national prearbitration settlement (H1N-5W-C 26031, January 12, 1989, M-00891) established that an employee’s supervisory status is determined by PS Form 1723, which shows the times and dates of an employee’s 204b duties.

**Duty Assignments Eligible for Opting.** Vacancies in full-time non-Carrier Technician assignments, including Reserve Regular assignments, are available for opting. When a Reserve Regular letter carrier opts on an available assignment, his/her temporarily vacated Reserve Regular position becomes available for opting if vacated for five days or more. However, as is the case with any opt, a carrier on an opt for a Reserve Regular assignment must work the assignment for its duration and is not eligible to opt on any other assignments for the duration of the opt. Vacant routes under consideration for reversion are available for opting until they are reverted or filled, provided the anticipated vacancy is for five days or more (Step 4, H0N-5R-C 6380, January 21, 1993, M-01128).

However, not all anticipated temporary vacancies create opting opportunities. Carrier Technician positions are not available for opting because they are higher level assignments which are filled under Article 25 of the National Agreement. Auxiliary routes are not available as hold-downs because they are not full-time (Step 4, H8N-5B-C 14553, May 15, 1981, M-00625). Full-time flexible positions are not subject to opting because they are not bid assignments.

Except where a local past practice provides for a shorter period, vacancies lasting less than five days need not be filled as hold-downs. Clarifying the meaning of this five-day requirement, National Arbitrator Kerr held that opting is permitted when vacancies are expected to include five or more work days, rather than vacancies that span a period of five calendar days but may have fewer than five days of scheduled work (W1N-5G-C 11775, March 20, 1986, C-05865). However, these anticipated five days may include a holiday (H8N-4E-C 14090, July 1, 1982, M-00237).

An employee does not become entitled to a hold-down assignment until the anticipated vacancy actually occurs. Thus, an employee who successfully opts for a vacancy that fails to materialize is not guaranteed the assignment.

**Temporarily Vacant Carrier Technician Assignments.** Temporarily vacant Carrier Technician assignments are not filled under the opting provisions of Article 41.2.B.3 & 41.2.B.4. Rather, they are higher level assignments filled under the provisions of Article 25 (Step 4, H8N-3P-C 25550, May 6, 1981, M-00276).

**Posting and Opting.** The National Agreement does not set forth specific procedures for announcing vacancies available for hold-downs. However, procedures for announcing vacancies and procedures for opting for hold-down assignments may be governed by LMOU or past practice (Memorandum, February 7, 1983, M-0446). The LMOU or past practice may include: method of making known the availability of assignments for opting, method for submission, a cutoff time for submission, and duration of hold-down. In the absence of an LMOU provision or mutually agreed-upon local policy, the bare provisions of Article 41.2.B apply. In that case, there is no requirement that management post a vacancy, and carriers who wish to opt must learn of available assignments by word of mouth or by reviewing scheduling documents.

**Duration of Hold-Down.** Article 41.2.B.5 provides that once an available hold-down position is awarded, the opting employee “shall work that duty assignment for its duration.” An opt is not necessarily ended by the end of a service week. Rather, it is ended when the incumbent carrier returns, even if only to perform part of the duties, such as to case but not carry mail.

**Exceptions to the Duration Clause.** There are situations in which carriers temporarily vacate hold-down positions for which they have opted, such as for vacation. Such an employee may reclaim and continue a hold-down upon returning to duty (Step 4, H4N-3U-C 26297, April 23, 1987, M-00748). If the opting employee's absence is expected to include at least five days of work, then the vacancy qualifies as a new hold-down within the original hold-down. Such openings are filled as regular hold-downs, such that the first opting carrier resumes his or her hold-down upon returning to duty (until the regular carrier returns).

A CCA's five-day break in service between 360-day terms does not end an opt (hold-down). A five-day break in service can only create another opt (hold-down) opportunity if it creates a vacancy of five workdays. In such case the opt is for the five day period of the break.

An opting employee may bid for and obtain a new, permanent full-time assignment during a hold-down. A national prearbitration settlement (H1N-5G-C 22641, February 24, 1987, M-00669) established that such an employee must be reassigned to the new assignment. If there are five or more days of work remaining in the hold-down, then the remainder of the hold-down becomes available to be filled by another opting carrier.

An employee on a hold-down assignment may accept a temporary supervisory position (204b). However, the hold-down must be reposted for the duration of the remainder of the original vacancy provided it is for five days or more. A carrier who has accepted a 204b detail only retains the right to the hold-down until it is awarded to another letter carrier.

An employee on a hold-down assignment may voluntarily terminate the assignment to accept a higher level assignment under the provisions of Article 25. In such cases, the vacancy must be made available for opting for the duration of the original vacancy, provided it is for five days or more.

**Involuntary Reassignment and Hold-Downs.** The duration provision in the National Agreement generally prevents the involuntary removal of employees occupying continuing hold-down positions.

National Arbitrator Bernstein (H1N-3U-C 10621, September 10, 1986, C-06461) held that an employee may not be involuntarily removed from (or denied) a hold-down assignment in order to prevent his or her accrual of overtime pay (See Eligibility for opting). For example, suppose an employee who worked eight hours on a Saturday then began a forty-hour Monday-through-Friday hold-down assignment. Such an employee may not be removed from the hold-down even though he or she would receive overtime pay for the service week.

Article 41.1.A.7 of the National Agreement states that unassigned full-time regular carriers may be assigned to vacant residual full-time duty assignments for which there are no bidders. However, National Arbitrator Mittenthal ruled that an unassigned regular may not be invol-

untarily removed from a hold-down to fill a residual full-time vacancy (H1N-3U-C 13930, November 2, 1984, C-04484). Of course, management may decide to assign an employee to a residual vacancy pursuant to Article 41.1.A.7 at any time, but the employee may not be required to work the new assignment until the hold-down ends. However, the employee may voluntarily choose to end the hold-down at any time and assume the new assignment in this circumstance.

**Removal From Hold-Down.** There are exceptions to the rule against involuntarily removing employees from their hold-downs. PTFs and CCAs 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 PTFs or CCAs if there is not sufficient work available for them on a particular day (H1N-5D-C 6601, September 11, 1985, M-00097).

In such situations, the PTF’s or CCA’s opt is not terminated. Rather, the PTF or CCA 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 “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.

This rule applies to CCAs.

There is no difference in the application of opting (hold-down) rules between PTFs and CCAs. However, a CCA may be bumped from an opt if necessary to provide 40 hours of straight-time work over the course of a service week to PTF letter carriers assigned to the same work location (Article 7, Section 1.C). In this situation, the opt (hold-down) is not terminated. Rather, the CCA is temporarily bumped off the assignment as necessary on a day-to-day basis.

Another exception occurs if the LMOU allows the regular carrier on a route to bump the Carrier Technician to another route when the regular carrier is called in on a non-scheduled day to work on his/her own route. In such cases, the Carrier Technician is allowed to displace an employee who has opted on an assignment on the technician’s string if none of the other routes on the string are available. In such cases a part-time flexible or city carrier assistant employee’s opt is not terminated. Rather, he/she is temporarily bumped on a day-to-day basis (Step 4, N8-N-0176, January 9, 1980, M-00154).

**PTF and CCA Pay Status and Opting.** Although a PTF or CCA 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 PTF or CCA who assumes the duties of a full-time regular by opting is still paid as a PTF or CCA as appropriate during the hold-down. While they must be allowed to work the assignment for the duration of the vacancy, PTFs and CCAs are not guaranteed eight hours daily or forty hours weekly work by virtue of the hold-down alone.

PTFs do not receive holiday pay for holidays which fall within the hold-down period by virtue of the hold-down. Rather, PTFs continue to be paid for holidays per Article 11.7. CCAs receive holiday pay in accordance with Article 11.8.

**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 (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.

**Scheduled Days and Opting.** The distinction between the guarantee to work certain scheduled days and the right to specific days off is important. 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. It must be noted, however, that days off are assumed only in the sense that a hold-down carrier will not work on those days unless otherwise scheduled. In other words, a hold-down carrier is not guaranteed the right to not work on non-scheduled days. Of course, 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.

For example, suppose there is a vacant route with Thursday as the scheduled day off. The carrier who opts for such a route is guaranteed the right to work on the scheduled work days, but is not guaranteed work on Thursday. This does not necessarily imply that Thursday is a guaranteed day off; the carrier on a hold-down may be scheduled to work that day as well, either on or off the opted-for assignment. 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. To do so would violate the guarantee to work all of the scheduled days of the hold-down.

**Remedies and Opting.** Where the record is clear that a PTF or CCA 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 or CCA 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 ensure 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 ensure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

#### 41.2.B.6

##### 6. **Relative Seniority Standing**

- (a) In cases of appointment on the same day, where there is a tie in seniority, the relative standing on the appointment register will determine the more senior carrier.

CCAs do not have seniority, but do have relative standing. Relative standing for CCAs is addressed in Appendix B, 1. General Principles, Sections f, g, and h of the 2019 National Agreement.

#### **APPENDIX B**

**Appendix B is the reprinting of Section I of the 2013 Das Award, the creation of a new non-career employee category. Provisions of the Das Award that were modified in the 2019 National Agreement are indicated in bold. Those provisions that are reflected in another part of the National Agreement or Joint Contract Administration Manual are not reprinted herein.**

##### **1. GENERAL PRINCIPLES**

- f. When hired, a CCA’s relative standing in an installation is determined by his/her original CCA appointment date to the installation, using Article 41.2.B.6.(a) where applicable, and adding the time served as a city letter carrier transitional employee for appointments made after September 29, 2007 in any installation.