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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-186896

DATE: November 2, 1976

MATTER OF: John O. Johnson - Supervisor's retroactive pay adjustment

DIGEST: Supervisor, whose salary was less than that of wage board employee supervised, did not receive pay adjustment he was entitled to under written agency policy. 5 U.S.C. 5333(b) authorizes agencies to adjust pay of General Schedule supervisors who supervise wage board employees with higher pay rates. Failure to follow mandatory agency policy is unjustified or unwarranted personnel action. Accordingly supervisor is entitled to retroactive pay adjustment under Back Pay Act of 1966. 55 Comp. Gen. 836 (1976).

Mr. John O. Johnson, an employee of the Bureau of Reclamation, Department of Interior, appeals our Claims Division Settlement No. Z-2528244, May 11, 1976, which disallowed his claim for retroactive pay adjustments pursuant to 5 U.S.C. 5333(b) (1970). That provision authorizes General Schedule employees to be paid at step rates above those to which they otherwise would be entitled when they supervise wage board employees whose basic pay is higher than the rates to which the supervisors are entitled.

In an administrative report on this matter, the Bureau of Reclamation reported that Mr. Johnson's initial assignment as a supervisor over wage board employees was effective December 4, 1966. Apparently, on that date he became eligible for a pay adjustment under 5 U.S.C. 5333(b) as a General Schedule employee who supervised a wage board employee whose salary exceeded his own. However, for reasons that the Bureau of Reclamation is unable to determine, Mr. Johnson's salary was not adjusted until July 22, 1973. Apparently the rate setting provisions were unknown to payroll clerks who processed Mr. Johnson's appointment. He filed a claim for the back pay denied him by the agency's failure to adjust his salary. However, our Claims Division found that the pay adjustment provided by section 5333(b) is discretionary with the employing agency. Furthermore, the

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Claims Division interpreted the following Department of Interior regulation as not affecting the permissive and discretionary nature of the pay adjustment under section 5333(b):

"It is the policy of the Department, within this authority, to pay Classification Act and IGS Supervisors at the nearest rate in their grades which exceeds the highest rate paid to any wage board employee under their regular supervision." 370 Departmental Manual 531, 3.2

Thus, finding no automatic entitlement to the claimed pay adjustments, the Claims Division denied Mr. Johnson's claim.

The issue presented is whether the agency's failure to adjust Mr. Johnson's salary pursuant to the above policy constitutes an administrative error -- unjustified or unwarranted personnel action for the purposes of the Back Pay Act of 1966, codified at 5 U.S.C. 5596 (1970). This Office recognized in 55 Comp. Gen. 836 (1976) that the erroneous actions which we previously treated as administrative error exceptions to the rule against retroactive salary adjustments would also constitute "unjustified or unwarranted personnel action/s/" under 5 U.S.C. 5596. We thus held:

"Since 5 U.S.C. 5596 provides broad statutory authority to rectify erroneous personnel actions by providing backpay to employees injured by such actions, it effectively covers those cases which previously could only be handled under our 'administrative error' exceptions to the prohibition against retroactive salary payments. * * * Hence, in the present case and in the future, we will apply the standards of 5 U.S.C. 5596 to such cases." 55 Comp. Gen. 836, supra.

We have previously defined an administrative error as including a situation where a nondiscretionary administrative regulation or policy has not been carried out. 52 Comp. Gen. 920 (1973). Thus, a threshold question in making any determination with regard to administrative error, is whether the above-quoted Department of Interior policy statement mandates a pay adjustment.

We believe that the plain language of the policy statement contained in the Departmental Manual requires that supervisors, such as Mr. Johnson, who are otherwise eligible for pay adjustments under section 5333(b), must have their salary adjusted. In support of this conclusion, the Bureau of Reclamation has advised this Office that they consider the subject policy as a directive rather than an option, and that implementation of the policy is a mandatory Department requirement. An administrative agency's interpretation of its own regulations should be given great weight. Zemel v. Rusk, 381 U.S. 1 (1965). Indeed, the Bureau of Reclamation advises that its practice has been to adhere to such policy. In a report to us dated February 6, 1976, the Bureau stated:

"It is our practice, in applying the provisions of section 5333(b), 5 U.S.C., and the Departmental Manual to make the pay adjustment for a supervisor no later than the first pay period following the application of a revised hourly pay schedule which resulted in the wage board employee receiving an increase in pay rate."

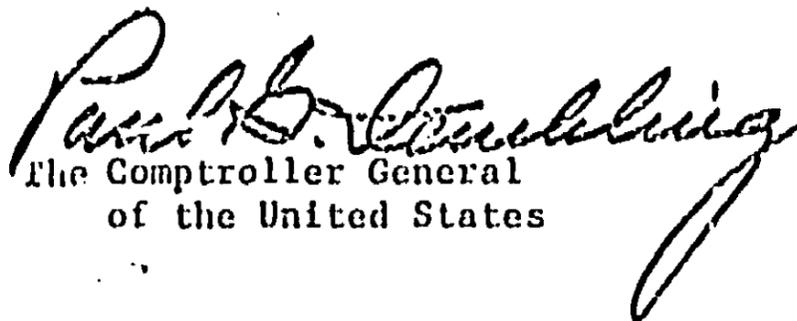
This, in effect, establishes an automatic procedure whereby an eligible supervisor receives the pay adjustment made available by section 5333(b) "no later than the first pay period following the application of a revised hourly pay schedule."

In accordance with these statements of policy and practice, upon discovery in 1973 that Mr. Johnson was eligible for pay adjustment under section 5333(b), his salary was immediately adjusted by the Bureau of Reclamation. Furthermore, the Bureau of Reclamation recommends payment of the subject claim under the administrative error rule on the basis that had the agency policy and practice been followed, Mr. Johnson would have had his salary adjusted effective December 4, 1966.

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We concur with the Bureau of Reclamation that the Department's policy of adjusting the pay of supervisors of wage grade employees, who are otherwise eligible, is of a mandatory nature. It follows that by failing to carry out a nondiscretionary administrative policy the agency has committed an administrative error which, pursuant to 55 Comp. Gen. 836, supra, constitutes an "unjustified or unwarranted personnel action" for the purposes of the Back Pay Act. This denial of a specific benefit to which Mr. Johnson was entitled by reason of his position, as determined above, constitutes a withdrawal or reduction in the benefits to which he is entitled, and he is, therefore, entitled to back pay under that Act. B-180486, September 20, 1976.

Accordingly, a settlement in favor of Mr. Johnson for the period from December 4, 1966, through July 21, 1973, will be made in the amount found due.


For The Comptroller General
of the United States