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BROWNE
C.P.

DECISION



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

FILE: B-189492

DATE: February 14, 1978

MATTER OF: Sherman W. Blosser - Retroactive Promotion

DIGEST: Employee claims retroactive promotion and backpay from grade WS-17 to GS-14 while serving as Assistant Division Chief, Technical Facilities Division, Aero Propulsion Laboratory. Position was never established and classified at higher grade than employee's official position. Employee is entitled only to pay of position held, regardless of duties performed until position is classified to higher grade and he is appointed to reclassified position. Therefore, employee is not entitled to retroactive promotion and backpay.

This action concerns an appeal from Certificate of Settlement No. Z-2639298, May 19, 1977, which disallowed the claim of Mr. Sherman W. Blosser for a retroactive temporary promotion and backpay between grades WS-17 and GS-14 from July 1, 1972, until July 30, 1975. Mr. Blosser retired from Federal service on August 31, 1976. Between July 31, 1975, and August 31, 1976, Mr. Blosser was on sick leave pending a disability retirement.

The record shows that from March 1971 until his retirement Mr. Blosser's official position was Experimental Aircraft Engine Tester, General Foreman, WS-17, at the Technical Facilities Division of the Air Force Aero Propulsion Laboratory, Wright-Patterson Air Force Base, Ohio. From July 1, 1972, until July 30, 1975, Mr. Blosser served as Acting Assistant Division Chief of the Technical Facilities Division. The Aero Propulsion Laboratory requested that this position be classified at grade GS-14 or GS-15. However, the Civilian Personnel Division at Wright-Patterson Air Force Base determined that the position classified as a Facilities and Equipment Manager, GS-12. The Laboratory elected not to fill the position at said classification, and Mr. Blosser continued to act as Assistant Division Chief while holding the position of General Foreman, WS-17.

After Mr. Blosser left duty status on July 30, 1975, a new position, that of Supervisory Aerospace Engineer, GS-14, was

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created at the Laboratory. This position encompassed many of the duties performed by Mr. Blosser as Acting Assistant Division Chief. In addition it included the requirement of a degree in engineering. Mr. Blosser did not hold such a degree.

Mr. Blosser apparently bases his claim for a retroactive promotion and back pay on the subsequent creation of a GS-14 position in the Laboratory and our decisions B-183086, December 5, 1975 (Matter of Turner-Caldwell, 55 Comp. Gen. 539), and B-184990, February 20, 1976 (Matter of Marie Grant, 55 Comp. Gen. 785). In Turner-Caldwell we held that employees who are detailed to higher grade positions in excess of 120 days without prior Civil Service Commission approval are entitled to retroactive temporary promotions beginning on the 121st day of the detail. In Marie Grant we held that Turner-Caldwell would be applied retroactively to the extent permitted by the statute of limitations.

Unlike the employees in Turner-Caldwell and Marie Grant, Mr. Blosser was not detailed to a higher grade position. The position of Assistant Division Chief was never graded or classified. We stated in 55 Comp. Gen. 515 (1975) at page 516:

"The general rule is that an employee is entitled only to the salary of the position to which actually appointed, regardless of the duties performed. Thus, in a reclassification situation, an employee who is performing duties of a grade level higher than the position to which he is appointed is not entitled to the salary of the higher level position unless and until the position is classified to the higher grade and he is promoted to it."

In this connection we point out that the above rule concerning classification actions was recently confirmed by the Supreme Court of the United States in United States v. Testan, 424 U.S. 392 (1976).

Since the position in which Mr. Blosser served was not established and classified at a higher grade than his official position, there is no authority under the Back Pay Act, 5 U.S.C. § 5596 (1970), to grant a retroactive promotion

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and back pay. Accordingly, the settlement of our Claims
Division is sustained.

R. F. Kuttner

Deputy Comptroller General
of the United States