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**DECISION**



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

FILE: B-192642

DATE: ~~March~~ 1, 1979

MATTER OF: Glenn E. Silvey - Claim for Backpay  
for Detail to Higher Grade

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DIGEST: Employee, classified as grade GS-13, alleges that he performed grade GS-14 duties in 1969-1970 and that he was only paid GS-13 salary. Claim for retroactive promotion with backpay is denied. Record fails to indicate detail to established higher graded position.

AGC 00102

This matter arises from a request for reconsideration of our Claims Division settlement Z-2706711, dated June 19, 1978, which denied the claim of Glenn E. Silvey for a retroactive temporary promotion and backpay.

Mr. Silvey entered duty as a Special Agent of the Federal Bureau of Investigation (FBI) in 1951. He was promoted to a grade GS-13 on December 24, 1961, and on February 18, 1969, was approved as a field supervisor in Oklahoma City. He served as a field supervisor until November 18, 1970, and remained a GS-13 throughout this time. On November 18, 1970, he was removed from supervisory duties. His field supervisor position was then filled by an individual who was promoted to a GS-14 position 90 days after appointment. Mr. Silvey has filed a claim for retroactive temporary promotion and backpay for the period February 18, 1969, through November 18, 1970, in accordance with our decisions in the Turner-Caldwell cases, 55 Comp. Gen. 539 (1975), and 56 Comp. Gen. 427 (1977). He alleges that he was detailed to an established GS-14 position in excess of 120 days without receiving GS-14 salary. His claim was filed in this Office on June 29, 1976.

Section 71a of title 31, United States Code, provides that any claim not received in the General Accounting Office within 6 years after the date the claim accrued is barred from consideration. Consequently, the portion of Mr. Silvey's claim which arose prior to June 29, 1970, cannot be considered.

At the time of Mr. Silvey's performance of supervisory duties while a GS-13, the FBI position description for a GS-13 Special Agent provided that individuals so classified "may serve as field supervisors." In addition, the FBI policy at that time required these individuals to complete 2 years of continuous full-time supervisory

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B-192642

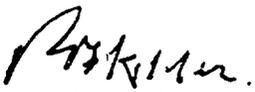
service in order to be eligible for a GS-14. The position description for a GS-14 Supervisory Special Agent required individuals so classified to "have had extensive supervisory experience" and provided that these individuals "may be assigned to a field office as a field supervisor."

In our Turner-Caldwell cases, supra, we established the rule that, for purposes of the Back Pay Act, 5 U.S.C. 5596 (1976), an agency has no authority, absent prior Civil Service Commission (now Office of Personnel Management) approval, to detail an employee to a higher graded job beyond 120 days. Where an agency does not obtain such approval and keeps an employee on overlong detail, the employee is deemed to have been temporarily promoted from the 121st day of the detail until the employee is returned to regular duty and is entitled to backpay for that period.

We do not believe that Turner-Caldwell is applicable in the instant case because the record does not indicate that Mr. Silvey was actually detailed to a higher graded position. B-189673, February 23, 1978. We have held that a detail involves an established position classified under an occupational standard to a particular grade or pay level B-185730, June 1, 1977. The record in this case indicates that Mr. Silvey performed supervisory duties in his capacity as a GS-13 and not while detailed to an established position classified under an occupational standard to a higher grade or pay level. In fact, when Mr. Silvey left his field supervisor position, it was filled by an individual in a grade GS-13 who subsequently was promoted to a grade GS-14 when the FBI policy of 2 years of supervisory experience as a GS-13, noted above, was reduced to 90 days.

Mr. Silvey's dissatisfaction with the pay he recieved while a field supervisor is based in substance on a claim that his position was misclassified. However, in United States v. Testan, 424 U.S. 392 (1976), the Supreme Court held that classification actions provide only prospective relief and no backpay award.

Accordingly, the disallowance of Mr. Silvey's claim by our Claims Division is sustained.

  
Deputy Comptroller General  
of the United States