

11424 PLM-1
Mr. Schwimmer



DECISION

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

FILE: B-195229

DATE: September 14, 1979

MATTER OF: Ivey N. Brown - [Claim for Retroactive
Promotion and Backpay]

DIGEST: Employee alleges that upon appointment to GS-12 position he was told that he would be promoted to GS-13 when he satisfied "Whitten Rider," that he performed duties of GS-13, but that he was not promoted because of agency high grade freeze. His claim for retroactive promotion with backpay is denied since record fails to indicate detail to higher grade position. Also, unless there is mandatory agency policy stating otherwise, career-ladder promotion is discretionary with agency.

This action is in response to the appeal by Mr. Ivey N. Brown of our Claims Division settlement dated January 4, 1979, denying his claim for a retroactive temporary promotion and backpay. For the reasons stated below we sustain the settlement.

Mr. Brown was employed by the Naval Sea Systems Command as a Program Analyst, grade GS-12, and he claims that he accepted the position with the understanding that after satisfying the "Whitten Rider" promotion to GS-13 level would be the normal course. On September 1, 1975, Mr. Brown had completed his one year in grade requirement but was not promoted to the GS-13 level because an agency high grade freeze was in effect. In November 1976 Mr. Brown was promoted to the GS-13 grade level. Mr. Brown claims that he is entitled to a temporary retroactive promotion because he performed the duties of a GS-13 from September 1, 1975, through November 7, 1976. The agency and our Claims Division denied Mr. Brown's claim on the grounds that Mr. Brown was not detailed to another position classified at a higher grade. AGC00175

In his appeal Mr. Brown states that he does not base his claim on any statutory or regulatory requirement or that he was detailed to another position at a higher grade. Mr. Brown bases his claim on his belief that at the time of recruitment into the Government, the Government and he entered into a good faith agreement that he would be promoted to a GS-13 position after a year and that the Government failed to honor that commitment because of a high grade freeze.

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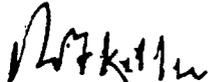
B-195229

Our Office has held that where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). Civil Service Commission Bulletin No. 300-40, May 25, 1977, defines a detail, in part, as the temporary assignment of an employee to a different position. Our Office has also held that an agency imposed freeze does not bar retroactive promotion and backpay. Annette Smith, 56 Comp. Gen. 732; John J. Curry, B-191796, July 13, 1978. Therefore, if Mr. Brown could establish that he was detailed to a higher grade position, the agency freeze would not bar his entitlement to a retroactive promotion and backpay. However, as stated above, Mr. Brown admits that he was not detailed to another position at a higher grade and, therefore, he is not entitled to the remedy provided by Turner-Caldwell, supra. AGC00013

In a career-ladder, the classification of a position depends on the grade the incumbent has reached through promotion and the fact that Mr. Brown may have been assigned duties performed by employees at higher grades in the career-ladder does not establish that he was detailed to that position. Unless an administrative regulation, instruction, or policy states otherwise, a career-ladder promotion is not mandatory and withholding it is within the discretionary authority of the official authorized to approve such promotion. Jerry M. Gillooly, B-191392, April 20, 1978.

In the absence of a showing that Mr. Brown was detailed to perform the duties of a different higher graded position, there is no legal basis upon which his claim may be allowed. The fact that Mr. Brown was led to believe that he would be promoted after one year in grade does not create a legal right for such promotion.

Accordingly, the action taken by our Claims Division disallowing his claim is sustained.


Deputy Comptroller General
of the United States