

11660 PLM-I

**DECISION**



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

FILE: B-195016

DATE: October 12, 1979

MATTER OF: Robert J. Flynn

*[Allegation of Improper Demotion by FAA Employee]*

DIGEST: Employee of Federal Aviation Administration *AGC00030* (FAA) occupied position as GS-12 Air Traffic Control Specialist requiring successful completion of specified program of training as integral part of satisfactory performance in that position and failure to meet training requirements constituted grounds for demotion. When employee failed to meet training requirements and was demoted to GS-11, his pay was properly set at step 3, although his work was of acceptable level of competence for purpose of step increase in GS-12, since his work was not satisfactory for purpose of setting pay at step 8 under FAA regulation implementing highest previous rate rule.

Mr. Robert J. Flynn claims that he was improperly demoted from grade GS-12, step 2, to grade GS-11, step 3, instead of to grade GS-11, step 8, by his employing agency, the Federal Aviation Administration (FAA).

The record shows that Mr. Flynn was promoted from a GS-11 position to GS-12, Air Traffic Control Specialist, a position which is developmental in nature. When he did not pass the training requirements and qualify for promotion to GS-13, his training was terminated and, pursuant to a voluntary request for demotion, he was demoted to GS-11, step 3. Step 3 was the step to which he would have been entitled if he had not been promoted to GS-12.

Mr. Flynn contends that the FAA misapplied the intent of its Order 3550.1A and the referenced guidelines of Subchapter S5, Book 531 of Federal Personnel Manual (FPM) Supplement 990-2. He believes that although he may have failed to meet the specified training requirements for promotion to GS-13, he did in fact meet the requirements for work performance for GS-12 since he performed at an acceptable level of competence and was advanced to GS-12, step 2. Thus Mr. Flynn concludes that in the circumstances presented he should have been demoted to step 8 of grade level GS-11. He apparently believes that paragraph 12e(1)(b) of the FAA Order should have been applied in his case. That paragraph provides, subject to certain exceptions, that when an employee voluntarily requests a demotion and his salary rate falls between two step rates in the lower grade,

*007239*

B-195016

he shall be paid the rate of the lower step. The paragraph is FAA's implementation of the highest previous rate rule.

The rate of basic pay to which an employee is entitled upon change of position or type of appointment is governed by regulations prescribed by the Civil Service Commission (now the Office of Personnel Management). 5 U.S.C.A. § 5334. The Civil Service Commission prescribed such regulations in title 5 of the Code of Federal Regulations, section 531.203(c) (1978), which states in pertinent part that:

"\* \* \* when an employee is reemployed, transferred, reassigned, promoted, or demoted, the agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate. \* \* \*" (Emphasis added.)

We have consistently viewed this regulation as vesting discretion in the agency regarding application of the highest previous rate rule in the establishment of an employee's rate of pay. Paswater, B-191881, July 25, 1978; and Russell, B-186554, December 28, 1976.

Where, as in the present case, agency action is committed to agency discretion through the application of definitive agency orders, the standard to be applied by the reviewing authority in reviewing the action of the agency is whether the action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Morvitz, B-192562, June 11, 1979. Arbitrariness and capriciousness exist if agency action lacks a rational basis. 54 Comp. Gen. 310 (1974).

In accordance with the analysis which follows we find no evidence in the record that the agency's action in Mr. Flynn's case lacks a rational basis and there was nothing improper in the agency's refusal to apply the highest previous rate rule in the circumstances presented by Mr. Flynn's claim.

Prior to his demotion Mr. Flynn occupied the position of Air Traffic Control Specialist, GS-2152-12, at the Philadelphia International Airport where the journeyman position is GS-14. This position was developmental in nature and was described as follows in the "Position Summary":

"At all training and developmental levels, employees must learn the skills needed for operation at higher levels of responsibility. The assignments are not continuing. Success in training and developmental positions depends on the ability to acquire the knowledge needed at higher levels within reasonable periods of time established for training programs. Failure of employees to pass training requirements for or accept promotion to higher grade air traffic control specialist positions may constitute grounds for reassignment, demotion, or separation from employment. The training portion of duty assignment is considered an integral part of the position." (Emphasis added).

The administrative record further indicates that Mr. Flynn's GS-12 Air Traffic Control Specialist (ATCS) position at the Philadelphia International Tower was a "Trainee Position" which is defined in paragraph 4(n) of the agency's Order PT 3550.1A as follows:

"Trainee Position. Any position specifically covered by a Civil Service Commission approved training agreement providing for promotion upon successful completion of training; OR any other position for which successful completion of a specified program of training has been formally established as a requirement for satisfactory service in the position or for advancement to the next higher level." (Emphasis added).

Mr. Flynn was advised by letter dated October 6, 1978, from the Chief of the Philadelphia International Tower, that he had failed to meet the requirements of the National Terminal Training Program. Mr. Flynn was further advised that his case was being processed in accordance with the agency's Order 3330.30A, which provided the following "General Policy" guidelines:

"GENERAL POLICY. The employment policy for the air traffic control occupation shall be that continued employment in all ATC specialities is contingent upon satisfactory progression to full performance levels and that failure to progress to the full performance levels shall be a basis for reassignment, demotion or dismissal from the ATC occupation.

\* \* \* \* \*

"EXCEPTIONS TO DISMISSAL. The following situations are permissible as exceptions to dismissal from the ATC occupation:

- a. Towers. Those employees who fail to progress to the full performance level in one of the ATC terminal facilities may be considered for reassignment to:

"(1) Their previous option at a grade level not to exceed that previously held in that option; . . ."

By letter to the Chief of the Philadelphia International Tower, dated December 7, 1978, Mr. Flynn requested voluntary reassignment and downgrading to the position of Air Traffic Control Specialist, GS-11, at the Reading Tower, Reading, Pennsylvania, which was a lower level facility. In addition, the administrative record indicates that on December 21, 1978, Mr. Flynn acknowledged and affirmed by endorsement to the action request that the downgrading to GS-11 was being effected pursuant to his voluntary request.

In view of the fact that Mr. Flynn's demotion from a trainee position was voluntary, the salary setting rules contained in paragraph 12(e) of the agency's Order PT P3550.1A established his entitlement as follows:

- "e. Voluntary Demotion. (NOTE: Except for subparagraphs (4) and (5) below, the rules contained in this subparagraph apply only to that type of 'demotion at the employee's request' which, under guidelines contained in Subchapter S5, Book 531 of FPM Supplement 990-2, makes the employee ineligible for salary retention.)

\* \* \* \* \*

- "(2) From a 'Trainee Position.'

"When an employee in a 'trainee position' (as defined in paragraph 4n) requests a demotion, his/her salary shall be reduced as follows:

- "(a) If the employee returns to the grade from which he/she was promoted, set his/her salary where it would have

B-195016

been set had he/she not been promoted, taking into account any within-grade increase(s) to which he/she would have become entitled had he/she remained at the lower grade."

In accordance with this authority Mr. Flynn was returned to the grade GS-11 from which he had been previously promoted. Since Mr. Flynn had attained the level of GS-11, step 2, prior to his promotion to the GS-12 position, and in consideration of the fact that Mr. Flynn would have been entitled to a within-grade increase had he remained at the lower grade, his salary level upon demotion was set at GS-11, step 3.

We find that the language regarding Subchapter S5, Book 531 of FPM Supplement 990-2 contained in paragraph 12(e) of Order PT P 3550.1A, supra, merely states that the rules in paragraph 12(e) apply only to "demotions at the employee's request" when he is not entitled to pay retention. Since Mr. Flynn occupied a training position and his request for demotion was voluntary, his pay rate could not be set under the highest previous rate rule in paragraph 12(e)(1). Rather, it had to set under paragraph 12(e)(2). In addition, Mr. Flynn did not perform satisfactorily in the GS-12 ATCS position as he contends. He performed at an acceptable level of competence for the purpose of advancement to step 2 of the grade. However, the ATCS GS-2152-12 "Position Summary" clearly states that the training portion of the duty assignment is an integral part of the position. Also, the definition of a "Trainee Position" noted above is equally clear in requiring successful completion of a specified program of training in order to constitute satisfactory service in that position. Therefore, since Mr. Flynn did not meet the specified training requirements, his service at that GS-12 ATCS position was not satisfactory for the purpose of setting his pay rate under paragraph 12(e).

Paragraph 12(e) of Order PT P 3550.1A sets forth a uniform procedure for application of the highest previous rate rule and various exceptions including the one applicable to voluntary demotions from training positions. That exception permits the trainee who cannot complete his training to return to his former lower grade position. It also states that such a trainee will be placed in the step in the lower grade that he would have been entitled to if he had remained in that grade. We find the above rules a proper exercise of administrative discretion.

B-195016

In view of the above we conclude that Mr. Flynn was properly placed in step 3 of GS-11 in accordance with the applicable regulations. Therefore, his claim is denied.

  
Deputy Comptroller General  
of the United States