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PLM-II

DECISION



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

FILE: B-195943

DATE: December 12, 1979

MATTER OF: Robert J. Millet

DIGEST: GS-12 employee of the Air Force claims a retroactive temporary promotion for performing duties which were subsequently classified at grade GS-13. Claim is denied as an employee may not receive a retroactive temporary promotion to a position for the period before it is classified. 55 Comp. Gen. 1062 (1976).

By a letter dated August 3, 1979, Robert J. Millet appealed Certificate of Settlement Z-2812375, issued June 12, 1979, which denied his claim for a retroactive temporary promotion and backpay.

The record shows that Mr. Millet is a GS-12 engineer with the Department of the Air Force whose duty station is Headquarters, Air Force Communications Security Center, San Antonio, Texas. On November 7, 1977, in conjunction with an internal reorganization Mr. Millet was assigned the duties of Chief, TEMPEST Engineering Branch. He continued to perform these duties for approximately one year. However, the position was not established until August 7, 1978, at which time it was classified at grade GS-13. He was detailed to that position for 60 days.

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On November 21, 1978, Mr. Millet filed a claim which was indorsed by LTC Howard Ritchie, for a retroactive temporary promotion to grade GS-13 from November 7, 1977, until November 11, 1978. The claim was denied on June 12, 1979, on the basis of 55 Comp. Gen. 1062 (1976) which held that an employee may not be promoted to a position which has not been established and classified. Mr. Millet has requested reconsideration of the action of the Claims Division on the following grounds:

- (1) That the SF-50's documenting his detail to the GS-13 position were prepared after the detail had been completed;
- (2) That a notice of a pending reduction in force identified his unestablished position as one of those affected;

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(3) That he received an Outstanding Performance Award for working in the unestablished position.

Mr. Millet acknowledges that the position to which he was assigned was in fact unestablished. He states, in reference to Colonel Ritchie's indorsement, "The sole purpose of obtaining his * * * indorsement was to substantiate the fact that the position in question did exist (even though on an unofficial basis) and was occupied by myself as of Nov 7, 1977."

The general rule in cases of this nature is that an employee of the Government is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. United States v. Testan, 424 U.S. 392 (1976). The Supreme Court in Testan held that neither the Classification Act, 5 U.S.C. 5101 et seq., nor the Back Pay Act, 5 U.S.C. 5596, creates a substantive right to back pay for periods of wrongful classification. In 55 Comp. Gen. 1062, as stated by the Claims Division, it was held that an employee may not be promoted to a position prior to its classification.

Accordingly, the disallowance of Mr. Millet's claim is sustained.

Milton J. Fowler

For the Comptroller General
of the United States