

PLM-1

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**DECISION**

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

FILE: B-195253

DATE: January 8, 1980

MATTER OF: Bernard E. St. Louis [Claim for Backpay for  
Extended Detail]

DIGEST: Department of the Army employee claims retroactive *AGCO 0020*  
promotion and backpay while performing higher level  
duties in view of Turner-Caldwell decisions,  
55 Comp. Gen. 539 (1975), affirmed at 56 id. 427  
(1977). Employee has no entitlement to backpay  
since detail was not to established position clas-  
sified at higher grade, and in absence of detail to  
such position, claim is for wrongful classification  
for which backpay may not be allowed. United States v.  
Testan, 424 U.S. 392 (1976).

This decision is in response to the appeal by Mr. Bernard E. St. Louis of our Claims Division settlement denying his claim for a retroactive temporary promotion and backpay incident to an extended detail from GS-9 to GS-11. The issue presented for our decision is whether Mr. St. Louis is entitled to a retroactive promotion under our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977).

Mr. St. Louis claims that while he was employed by the Department of the Army he performed duties outside of his position description for the period from February 6, 1976, to September 9, 1977. Our Claims Division settlement denied his claim on the ground that he was not detailed to an established position classified at a higher grade, as required by later Comptroller General decisions and Civil Service Commission Bulletin No. 300-40, May 15, 1977. Mr. St. Louis argues that to require the existence of an established position is to deny any remedy to an employee assigned to a job or to duties where there is no established position. In his letter of appeal Mr. St. Louis also claims he was verbally detailed to an abolished position for the period from January 31, 1978, to November 27, 1978, for which he also seeks a retroactive temporary promotion to grade GS-11 and backpay.

Our Office has held that where an employee is detailed to a higher grade position and the agency fails to seek Civil Service Commission (now Office of Personnel Management) approval to extend the detail for a period beyond 120 days, the agency must award the

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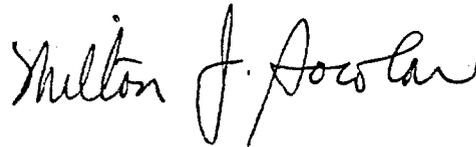
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employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. Turner-Caldwell, supra. It is essential, however, that the employee be detailed to an established higher grade position in order to receive backpay. See Charles W. McGinnis, B-192961, July 9, 1979, and decisions cited therein.

An employee may not be promoted to a position which has not been classified and, therefore, he may not be afforded the remedy under our Turner-Caldwell decisions of a temporary promotion and backpay. See Hubert J. Buteau, B-187287, May 13, 1977. The proper course of action in such a case is to file a position classification appeal with the employing agency and the Office of Personnel Management. See Doris M. Palmer, B-192720, September 14, 1979, and 5 C.F.R. Part 511, Subpart F.

It appears that Mr. St. Louis did file a classification appeal for the period from February 6, 1976, to September 9, 1977, but his appeal was denied by the Department of the Army. In this regard the United States Supreme Court has held in United States v. Testan, 424 U.S. 392 (1976), that neither the Classification Act, 5 U.S.C. §§ 5101-5115 (1976), nor the Back Pay Act, 5 U.S.C. § 5596 (1976), creates a substantive right to backpay for periods of wrongful position classification. Thus, in the absence of an established position, Mr. St. Louis' claim is for wrongful position classification and our Turner-Caldwell decisions are not applicable.

Accordingly, we sustain our Claims Division denial of Mr. St. Louis' claim.



For the Comptroller General  
of the United States