

DECISION



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

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Reporter  
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[Claim For Backpay]

FILE: B-195596

DATE: July 8, 1980

MATTER OF: Alton R. Mullins - Conversion WG to GS -  
Night Differential

DIGEST: 1. An employee of NASA was converted along with his position from prevailing rate hourly wage system to General Schedule salary system while working the day shift in rotating shift arrangement. Shortly before conversion employee had been on night shift and was collecting night differential in addition to his scheduled rate. Night differential may be included in the computation of his basic pay for purposes of conversion only if he was collecting differential in last hour of pay status prior to conversion.

This action derives from an appeal of our Claims Division's Settlement Certificate, dated June 21, 1979, which denied the claim of Mr. Alton R. Mullins, an employee of the National Aeronautics and Space Administration (NASA). The Claimant seeks backpay incident to an alleged error in fixing his pay upon conversion of his position from the prevailing rate hourly wage system (WG) to the General Schedule salary system (GS). We are compelled to sustain the denial of Mr. Mullins' claim for the reasons stated below.

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Mr. Mullins' grade WG-11 position was converted to grade GS-7 effective May 2, 1971, and his pay was adjusted from the rate for grade WG-11, step 3 to the rate for grade GS-7, step 5. Prior to the conversion, Mr. Mullins was assigned to a rotating shift which required him to periodically alternate with other employees on day shift (8 a.m. - 4 p.m.), swing shift (4 p.m. - 12 p.m.), or night shift (12 p.m. 8 a.m.).

Employees on the day shift were paid the scheduled rate, and those on the swing shift and night shift were paid the scheduled rate plus a 10-cent per hour or 15-cent per hour night differential.

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B-195596

For the 3 days immediately preceding his conversion, April 29, 1971, through May 1, 1971, Mr. Mullins worked the day shift. Before then he had been on the night shift from April 25 to 26, 1971.

In computing Mr. Mullins' basic pay for the purpose of conversion, his agency used the scheduled rate and excluded night differential. By excluding night differential from the computation, the agency fixed his GS pay at a lower step rate than that which would have resulted from inclusion of night differential.

Mr. Mullins stated in his letter to our Claims Division, dated September 21, 1978, that, "two of my co-workers \* \* \* were converted at the same time I was, but their salary rates were based on night differential pay rates and adjusted upward accordingly."

The regulations governing the determination of an employee's basic pay for conversions were promulgated by the Civil Service Commission pursuant to the authority granted in 5 U.S.C. 5334(a). The applicable regulation in the instant case is contained in 5 C.F.R. 539 (1979) which conveys to the agency the authority and guidance necessary for converting positions to the General Schedule--but this regulation is silent with respect to night differential.

However, our Office addressed the problem of whether night differential should be included in computing basic pay for purposes of conversion under 5 C.F.R. 539 in 50 Comp. Gen. 332 (1970). While it was ruled in that case that night differential should be included in the computation, later decisions limited that ruling to include night differential only if the employee was receiving it at the time of conversion. 51 Comp. Gen. 641 (1972). We have construed this to mean that, "the agency may include the night \* \* \* differentials in determining an employees rate of basic pay only if he is in receipt of those differentials during the last hour

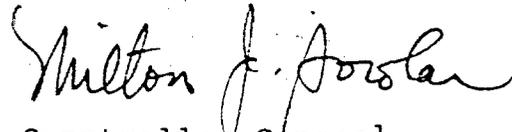
B-195596

he is in pay status prior to his conversion." B-186977, January 2, 1979 (emphasis added). In connection with the foregoing it should be noted that night differential was made a part of basic pay by statute in 1972, 5 U.S.C. 5343(f).

Mr. Mullins was on a rotating shift. He had been receiving night differential only 4 working days prior to his conversion, and it can be reasonably assumed that he went back to night shift shortly after his conversion. But at the "last hour" of pay status prior to his conversion, he was on day shift and was not collecting night differential.

It is regrettable that conversions of positions may result in disparate salaries among rotation shift employees who had been earning the same scheduled rate prior to their conversion. There is, however, no legal basis to disturb a conversion made in accordance with the lawfully prescribed regulations of the Civil Service Commission as construed by the previously cited decisions of this Office. See also 56 Comp. Gen. 624 (1977).

Accordingly, we sustain the denial of Mr. Mullins' claim for backpay incident to the conversion of his position from prevailing rate to General Schedule.



For the Comptroller General  
of the United States