18039

DECISION

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

FILE: B-201080 DATE: May 6, 1981

MATTER OF: Mr. Manuel R. Negron - Retroactive Temporary Promotion and Backpay

DIGEST: A National Guard Avionics Technician, WG-12, performed all the duties of the Avionics Supervisor position after that position became vacant. The record shows that he was assigned and performed all the duties of the officially established position, and therefore he was detailed to the position and he is entitled to a retroactive temporary promotion and backpay pursuant to Turner-Caldwell, 56 Comp. Gen. 427 (1977).

This decision is in response to a claim by Mr. Manuel R. Negron, through his representative the National Federation of Federal Employees (NFFE), for a retroactive temporary promotion and backpay for the period during which he alleges that he was detailed to a higher-grade position. For the reasons set forth below, the claim is allowed.

Mr. Negron was employed by the Air National Guard, San Juan, Puerto Rico, as an Avionics AGE Technician, WG-12. His representative alleges that during the period from January 15, 1979, through February 8, 1980, Mr. Negron performed the duties of an Avionics AGE Supervisor, WQ-11, during which time the position was vacant due to the departure of the previous supervisor, MSgt. Luis Collazo. Mr. Negron's claim was initially denied based on an investigation by the Chief of Maintenance which failed to produce any evidence which substantiated his claim. The question presented is whether there is sufficient evidence to document that Mr. Negron was detailed to an officially established higher-graded position.

115161

We have held that employees who have been detailed to higher-grade positions for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the details are terminated. Everett Turner and David L. Caldwell, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977). Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the Civil Service Commission in order to provide additional information to assist agencies in the proper application of these decisions.

Our decision Jose Lujan, 59 Comp. Gen. 200 (1980), extended coverage of the Turner-Caldwell cases to National Guard Technicians in hourly wage pay plan positions because the Technician Personnel Manual (TPM) of the National Guard adopted the same standards for details to higher-grade positions. Therefore, we can evaluate the merits of Mr. Negron's claim under the provisions of the TPM and our decisions.

We note, however, that effective February 15, 1979, the Office of Personnel Management in FPM Bulletin 300-48, dated March 19, 1977, gave Federal agencies greater authority to detail employees to higher-grade positions. Under the Bulletin, agencies are delegated authority to detail employees to higher-grade positions (1) for up to one year during major reorganizations as determined by the agency, and (2) for up to 240 days in other situations not involving major reorganizations. However, we were informally advised by the National Guard that the TPM was not amended to give the National Guard greater authority to detail employees until March 17, 1981. Therefore, in deciding Mr. Negron's claim the TPM provision, which only allows details to higher-grade positions for 120 days, is controlling.

Paragraph 4 of FPM Bulletin 300-40 defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. Paragraph 8F

of the FPM Bulletin requires agencies - in accordance with FPM Supplement 296-31, Book II, subchapter S3-13, to record details in excess of 30 calendar days on Standard Form 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, paragraph 8F further allows the employee to provide other forms of acceptable proof of his detail. Such acceptable documentation includes (1) official personnel documents or official memoranda of assignment, (2) a decision under established grievance procedures, or (3) a written statement from the person who supervised the employee during the period in question, or other management official familar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed. The evidence presented in support of Mr. Negron's claim must be tested against these prescribed criteria.

The NFFE submitted the following evidence to show that Mr. Negron was detailed to an officially established higher-graded position. First, there is a signed statement by two employees of the Avionics AGE Shop to the effect that Mr. Negron performed all the duties of Shop Supervisor from January 1979 until March 3, 1980, including maintaining records, attending supervisors meetings, and coordinating job responsibilities. These employees also state that they were present at a meeting on March 3, 1980, when the Avionics Officer, Captain Godreau, relieved Mr. Negron of his "additional duties" as Avionics AGE Supervisor and appointed another employee to supervise the Avionics AGE Shop. Second, there is a signed statement from MSgt. Louis Collazo, who resigned from the position as the Avionics Shop Supervisor in December 1978. Mr. Collazo states that Captain Godreau asked him to train Mr. Negron in all phases of the shop operation because Mr. Negron would be taking charge of the shop in his present grade since the position would not be officially announced or filled. MSgt. Collazo also states that Mr. Negron held a compatible military position, and, as far as he knew, based on visits to the shop following his

resignation, Mr. Negron's duties and responsibilities were exactly the same as his when he was shop supervisor. Third, NFFE submitted the justification for an excellent performance rating for Mr. Negron, for the period in question, which states that Mr. Negron was " * * * able to manage the Avionics AGE Shop in a high operational and excellent level even though he has been acting on [sic] the position as Shop Supervisor for the past ten months plagued with a personnel shortage." Finally, NFFE submitted an AF Form 2095 "Assignment/Personnel Action," dated February 10, 1979, and signed by the Squadron Commander, which shows that Mr. Negron was assigned to the duties of Avionics AGE Shop Supervisor effective February 10, 1979.

After considering this evidence the Adjutant General's Office ruled that Mr. Negron was neither appointed nor detailed to the AGE Section Supervisor position nor was he given the responsibility to manage the section. Instead the duties assigned to Mr. Negron were considered by his supervisor to be additional duties, and were a part of Mr. Negron's job description which stated that he should perform other duties as assigned.

We disagree with the conclusion that Mr. Negron was not detailed to a higher-grade position. The evidence submitted shows that Mr. Negron performed all duties of the Avionics AGE Supervisor, WQ-11. The evidence also shows that he was informally detailed by his supervisors to perform all these duties. This informal detail was confirmed by the Form AF 2095 which recorded Mr. Negron's assignment to the supervisor's position. Since the Avionics AGE Supervisor position was an officially established position, our Turner-Caldwell decisions and the FPM Bulletin hold that Mr. Negron is entitled to a retroactive temporary promotion and backpay for the period beginning with the 121st day of the detail until the detail was terminated.

The submission alleges that the detail began on January 15, 1979. However, the best evidence of the assignment contained in the record is the Form AF 2095 which indicates that Mr. Negron was assigned to the supervisor's position effective February 10, 1979. Since this form is the basis for our allowance of the claim, we hold that the detail began on February 10, 1979, and that Mr. Negron may receive his retroactive temporary promotion and backpay beginning on the 121st day following that date.

Milton J. Socolar
Acting Comptroller General
of the United States