

DECISION

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

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FILE: B-215886**DATE:** October 23, 1984**MATTER OF:** Banaag S. Novicio - Highest Previous Rate**DIGEST:**

Army employee, a former local hire with the United States Government in the Philippine Islands, appeals from a decision of our Claims Group disallowing his claim for salary adjustment based on the highest previous rate rule. Employee contends that he should be placed at grade and step that are equivalent in authority to grade and step he held in Philippines. However, highest salary rate earned in prior employment with Government when converted to United States dollars, was less than grade GS-1, step 1. Employee's claim is denied because employee's Army salary exceeds the highest rate he previously earned. The highest previous rate rule applies only to the salary rate earned by the employee, not to his level of job responsibility.

Mr. Banaag S. Novicio appeals from Settlement Z-2850647, June 8, 1984, of our Claims Group disallowing his claim for a retroactive salary adjustment based on the highest previous rate rule. We affirm the Claims Group's disallowance, since Mr. Novicio's salary exceeds the highest rate he previously earned.

FACTS

Mr. Novicio was employed in various positions with agencies of the United States Government as a Foreign Service Local (FSL) in the Philippine Islands from 1946 to 1975, when his position was abolished. Though he was briefly a General Schedule employee (as a GS-3 and GS-4) during the 1950's, for the majority of his employment he was classified as a FSL employee. Mr. Novicio attained his highest salary rate in 1975, as an FSL-17F. Although the local grade was the counterpart to GS-12 in terms of job responsibility, it paid less than the rate for grade GS-1, approximately \$3,423 per year.

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In July 1981, Mr. Novicio accepted a civilian appointment with the Department of the Army at the Presidio of San Francisco at grade GS-3, step 1, \$11,070 a year. He claims that proper application of the highest previous rate rule would entitle him to a salary at GS-4, step 10 or \$14,248 a year. He further alleges that he accepted the position on the basis of an understanding with the Presidio personnel office that he was entitled to receive such a salary. The Standard Form 50, Notification of Personnel Action, documenting Mr. Novicio's appointment, contains the notation "PAY RATE IS SUBJECT TO UPWARD RETROACTIVE ADJUSTMENT UPON VERIFICATION OF PRIOR SERVICE." Additionally, the record indicates that the Presidio personnel office sought permission from the Office of Personnel Management (OPM) to appoint Mr. Novicio at a higher level. That request was vigorously pursued, but was ultimately denied by OPM.

OPINION

Under the provisions of the "highest previous rate" rule, published at 5 C.F.R. § 531.203(c) (1984), an agency has discretionary authority to set the salary of an employee at the lowest step of the employee's grade that equals or exceeds the employee's highest previous rate of pay. The rule applies only to the salary rate previously earned by the employee, and not to the grade or step level the employee previously attained. 34 Comp. Gen. 691, 694 (1955); Ronald L. Fontaine, B-214885, August 20, 1984. Thus, since the salary set for Mr. Novicio at the time of his appointment in July 1981, exceeded the highest previous rate he had earned as a Federal employee, there has been no violation of the highest previous rate rule.

Unfortunately, even if personnel officials mistakenly promised Mr. Novicio a salary adjustment and retroactive pay, we cannot provide him with relief. It is a well-established principle of law that in the absence of specific statutory authority, the United States is not responsible for the erroneous acts of its officers, agents or employees, even though committed in the performance of their official

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duties. Schweiker v. Hansen, 450 U.S. 785 (1981); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); German Bank v. United States, 148 U.S. 573 (1893); 54 Comp. Gen. 747 (1975); 53 Comp. Gen. 834 (1974).

For the reasons given above, we affirm the settlement of the Claims Group.



Acting Comptroller General
of the United States