

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-173783.154 DATE: JUN 21 1976

MATTER OF: Robert L. Bruce - Claims for retroactive promotion and salary differential

DIGEST: Civilian employee of Department of Army in Canal Zone claims retroactive promotion and salary differential following local command's reclassification of his position from NM-12 to NM-13 during January 1974. Army denied his claim on basis that local command does not have authority to promote to NM-13 level. Notwithstanding local command acted in good faith in not promoting employee, rule is that when position is reclassified to higher grade, agency must, within reasonable time after date of final position reclassification, either promote incumbent, if qualified, or remove him.

This action is at the request of Mr. Robert L. Bruce, an employee of the Department of the Army (Army), U. S. Army Forces Southern Command, Canal Zone. Mr. Bruce requests additional pay for the period from January 16, 1974, through April 18, 1975, incident to the reclassification of his position to a higher grade.

Mr. Bruce was appointed to the position of Transportation Officer, NM-2101, grade NM-12, step 10, at Carozal, Canal Zone, effective June 17, 1972. The position Mr. Bruce holds was reclassified to grade NM-13 during January 1974. The exact date of the reclassification is not shown in the record. However, Mr. Bruce stated that the reclassification was approved by a Position Review List on January 16, 1974, and that date is not challenged by the Army. The position subsequently was downgraded to NM-12 effective March 16, 1975, following a change in position title to Supervisory Transportation Specialist and a revised job description.

Mr. Bruce first appealed the Army's failure to promote him by letter of September 6, 1974. He based his request on our decision 53 Comp. Gen. 218 (1973). His request was denied by the Army on the basis that:

"Mr. Bruce does not have an inherent right to the position of Transportation Officer, NM-2101-13. Under the Department of the Army Career Program System, all positions registered therein at the GS-13 level or above will be filled from Army-wide referral records issued by the functional chiefs of the respective career programs. There does not exist locally the authority to promote an employee to such a position. Conjecture

suggests that the referenced decision of the Comptroller General did not involve a position covered by the career program."

Mr. Bruce submitted his claim to this Office following a grievance proceeding before his agency, which was denied on the basis that classification determinations absent adverse personnel actions, are not covered by agency classification grievance procedures.

In 53 Comp. Gen. 216, supra, we held that (quoting from the syllabus):

"(W)hen a position is reclassified to a higher grade, an agency must within a reasonable time after the date of final position reclassification, unless the employee is on detail in the position, either promote the incumbent, if qualified, or remove him, and the time frame for a 'reasonable time' is prescribed in 5 CFR. 311.701 and 5 CFR. 311.702."

The Army seeks to distinguish 53 Comp. Gen. 216, supra, from the present case on the basis that while the local command had authority to reclassify Mr. Bruce's position to the NM-13 level, it did not have authority to promote employees to the NM-13 level. Although the local command acted in good faith in delaying Mr. Bruce's promotion, it is well established that when an agency reclassifies a position to a higher grade, it must, within a reasonable time following the date of final position classification, either promote the incumbent, if he is otherwise qualified, or remove him from that position 53 Comp. Gen. 216, supra; 48 id. 268 (1968); and 37 id. 492 (1958).

Since the Army took no action to remove Mr. Bruce from his position and since there is no indication that Mr. Bruce was not qualified for the promotion, the Army should have promoted him within a reasonable time following the final position classification. In our decision 53 Comp. Gen. 216, supra, we defined "reasonable time" as mandating a promotion not later than the beginning of the fourth pay period after the date of the reclassification action.

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Accordingly, we are instructing our Claims Division to make settlement after obtaining an administrative report from the Army concerning the effective date of Mr. Bruce's promotion.

R. F. Keller
Deputy, Comptroller General
of the United States