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DECISION



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

FILE: B-184280

DATE: February 17, 1977

MATTER OF: Richard L. Cepela - Retroactive step
adjustment and backpay

DIGEST: Employee who was granted less than highest previous rate upon appointment and subsequent promotion is not entitled to retroactive step adjustment and backpay where agency exercised its discretion as established by its regulations in denying the highest previous rate. Such action does not constitute an administrative error warranting corrective action.

This action results from the appeal by Richard S. Cepela of our Claims Division settlement dated March 4, 1976, which disallowed his claim for backpay as a former employee of the National Aeronautics and Space Administration (NASA).

The facts in Mr. Cepela's case were fully set forth in the settlement of March 4, 1976, and need not be repeated except as pertinent to the present decision of the case. Mr. Cepela's claim for backpay was disallowed on the ground that NASA exercised its discretion as established by its regulations in denying him the highest previous rate upon appointment. Such action did not appear to constitute administrative error warranting corrective action.

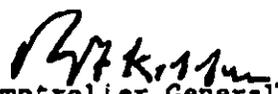
Mr. Cepela states that Mr. John Burroughs who was promoted to the position held by him prior to his transfer to ERDA was placed in step 10 of grade GS-8, from step 10 of grade GS-7. Mr. Cepela claims he should have been given the top step of the grade GS-8 at the time he was promoted to the position under the highest previous rate rule. Mr. Cepela was not given the highest previous rate because NASA exercised administrative discretion to limit him to the minimum step for the reasons given in the Claims Division settlement of March 4, 1976.

A similar decision was made by NASA concerning Mr. John E. Burroughs when he was employed December 20, 1971; at grade GS-7, step 3. He could have been given step 10 of the grade based on highest previous rate, \$14,925 which was equivalent to grade GS-11, step 7 at the time. On December 24, 1972, Mr. Burroughs

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received a within grade increase to step 4 of the grade. In October 1974 Mr. Burroughs was reassigned and advanced to step 10 of the grade based on highest previous rate rule. This action was taken at the request of Mr. Burroughs' supervisor and is documented by memorandum dated October 25, 1974. Mr. Burroughs was promoted to grade GS-8, step 10 in February 1976. He was given the benefit of highest previous rate in accordance with NASA's Policy Directive (NPD) 3531.2 which states that "employees generally shall be given the benefit of highest previous rate rule in determining basic rates of compensation * * * any exception to this policy must be based on meaningful factors and shall be justified in writing." No request for exception to the policy was made by Mr. Burroughs' supervisor, since the reasons for the contrary determination in 1971 no longer existed.

Accordingly, the action taken in the Claims Division settlement of March 4, 1976, disallowing Mr. Cepela's claim for backpay is sustained.


Deputy Comptroller General
of the United States