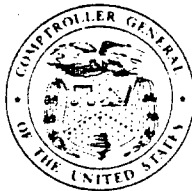


**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

FILE: B-185327

DATE: MAY 6 1976

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MATTER OF: James T. Hewitt - Within-grade step increase

**DIGEST:** Prevailing rate employee was reduced in grade from WS-10, step 4, to WG-10, step 3, in 1970. He was placed in WG-10, step 4, on May 13, 1973, incident to the implementation of Pub. L. No. 92-392, which action the Civil Service Commission held to be an equivalent increase. Employee promoted to his former position of WS-10, step 4, on July 15, 1973, begins a new waiting period for step 5 on May 13, 1973, the date of his last equivalent increase.

Mr. James T. Hewitt, an employee of the Department of the Navy at the Philadelphia Naval Shipyard, requests reconsideration of the denial of his claim by our Transportation and Claims Division's (now Claims Division) Settlement Certificate No. Z-2577095, dated August 28, 1975.

The Settlement Certificate disallowed Mr. Hewitt's claim for retroactive within-grade step increase and backpay because Mr. Hewitt had received an equivalent increase.

The pertinent facts are that Mr. Hewitt had attained step 4 in the position of Foreman Shipfitter, WS-10, on September 28, 1968. On March 28, 1970, he was reduced to Mechanic, WG-10, step 3 (with 2 years saved pay) as part of a reduction in force. Effective May 13, 1973, he was classified as a WG-10, step 4, with a 19 cents an hour wage increase incident to the new 5-step wage system in accordance with the provisions of Federal Personnel Manual Supplement 552-1, subchapter S10-7 (January 16, 1973), involving conversion from the 3- to 5-step rate system. On July 15, 1973, Mr. Hewitt was promoted to his former position of Foreman Shipfitter, WS-10, step 4.

The question is whether Mr. Hewitt may count the prior time in step 4 of WS-10 in meeting the waiting period for step 5. The agency, the Civil Service Commission, and our Claims Division conclude that the action of May 13, 1973, constituted an equivalent increase which would require a new waiting period to begin on that date.

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Mr. Hewitt argues that he did not receive an equivalent increase, at least for purposes of the promotion action to his former WS-10, step 4, position. He recognizes that the conversion action of May 13, 1973, when he was classified as a WG-10, step 4, from WG-10, step 3, with the 19 cents an hour increase, began a new waiting period for the fifth step of the WG-10 position. However, he believes that such action has no effect on determining his pay step upon promotion to his former position in grade WS-10, step 4.

Under the provisions of 5 U. S. C. § 5343(c) (Supp. III, 1973) the Civil Service Commission is responsible for administering the prevailing rate system. The pertinent language of FPM Supplement 532-1, subchapter S8-5b (January 16, 1973), is as follows:

"(3) Start of a waiting period. A waiting period starts:

\* \* \* \* \*

"--Upon receiving an equivalent increase."

A letter dated January 21, 1975, addressed to Mr. Hewitt from the Bureau of Policies and Standards, United States Civil Service Commission, states in pertinent part as follows:

"Public Law 92-392 established a 5-step pay schedule for wage grade employees that was implemented at the beginning of the first applicable pay period after April 30, 1973. You came under this new pay schedule on May 13, 1973, and at that time you advanced from step 3 to step 4 in wage grade 10. This within-grade increase was an equivalent increase. Since your inquiry included several specific questions on this equivalent increase, we would like to respond on a point by point basis.

"1) Your within-grade increase in WG-10 was an equivalent increase even though you did not receive an increase in pay equal to or greater than the step-rate

increment of your prior grade, WS-10. The implementation of the 5-step wage schedule was a unique event in the Federal Wage System and Public Law 92-392 provided certain guidelines and limitations for the conversion of wage grade employees to the new schedule that differed somewhat from the provisions of the present system. For example, Public Law 92-392, section 9(a)(1), provided that an employee could not advance more than one step upon conversion to the Federal Wage System. Likewise, certain employees with a retained rate of pay who advanced from step 3 to step 4 received an equivalent increase (for administrative purposes) even though they did not receive an increase in their existing rate of pay and even though the actual amount of the increase was less than the normal within-grade increase of their prior grade. On this matter, S10-7(a)(2)(b) in Federal Personnel Manual Supplement 532-1 states: 'Note: Because an employee cannot be advanced more than one step, the employee must begin a new waiting period under these circumstances even though he has received less than a within-grade increment. Advancement to step 4 constitutes an equivalent increase.' These guidelines also apply to employees like you who had previously held a higher grade and who had enough creditable service to advance to step 4. This is so in order to meet the requirements of Public Law 92-392 for conversion into the Federal Wage System. To reiterate, these procedures are somewhat different from the rules and regulations of the present Federal Wage System.

- "2) Once you have received an equivalent increase, all of your previous creditable service (including time spent in WS-10, step 4) is nullified and you begin a new

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waiting period from the time of your equivalent increase. Thus, your contention that S10-7(1)(c) of FPM Supplement 532-1 has no bearing in your case is in error. WG-10 was your grade at the time of your equivalent increase, and you did, in fact, begin a new waiting period for advancement to step 5 in WG-10.

- "3) As you indicated, a repromotion to a former grade of any employee whose earlier change to a lower grade was not for cause and was not at the employee's request is not counted as an equivalent increase. Thus, your repromotion to WS-10 on September 30, 1973, did not count as an equivalent increase and your creditable service for your next within-grade increase will be determined from your last equivalent increase - May 13, 1973.
- "4) You also indicate by reference to our instructions that the application of a new or revised wage schedule or application of a new pay or evaluation plan does not count as an equivalent increase. If you did not have the necessary 104 weeks of creditable service upon conversion to the Federal Wage System, you would have received an increase in pay in step 3 of the revised wage schedule. However, you also moved to step 4 - and this was the equivalent increase."

Since the Civil Service Commission has determined that the action of May 13, 1973, when Mr. Hewitt was given a within-grade increase from step 3 to step 4 in WG-10, was an equivalent

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increase under its implementing regulations of Public Law 92-392 we cannot as a matter of law say that the Commission is in error. Accordingly, the disallowance of Mr. Hewitt's claim is sustained.

Mr. Hewitt states that the provisions of section 9(b) of Public Law 92-392, approved August 19, 1972, 86 Stat. 574, apply to his case. However, this section merely exempts wage rates determined by negotiations between unions and agencies prior to the enactment of Public Law 92-392 from the provisions of the Prevailing Rate Systems. 55 Comp. Gen. 162, 163 (1975).

R. F. Keller

Deputy Comptroller General  
of the United States