

DECISION



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

J. Kirkpatrick
PLM

787!

FILE: B-191768

DATE: October 2, 1978

MATTER OF: Robert Rann--Retroactive Promotion--Extended Detail

DIGEST: A GS-12 employee was detailed to a GS-14 position between July 17, 1972, and January 31, 1975. To satisfy the 1-year in-grade requirements of the Whitten Amendment and the required qualifying experience for promotion to GS-14, he is entitled to a retroactive temporary promotion restricted to GS-13 for 1 year, beginning on the 121st day of the detail. Having then satisfied the 1-year service requirements at GS-13, he is entitled to a retroactive temporary promotion to GS-14 for the remainder of the detail.

This decision is in response to a request from the Assistant Secretary of Labor for Administration and Management for an advance decision as to whether Mr. Robert Rann, an employee of the Department of Labor in the New York Region, may receive temporary retroactive promotions because of an improperly extended detail to a higher grade position.

Mr. Rann, who occupies a position designated Manpower Development Specialist, GS-12, was detailed from July 17, 1972, to January 31, 1975, to perform the duties of a position classified as Supervisory Manpower Development Specialist, GS-14. Except for the period between September 15, 1974, and January 13, 1975, when he was temporarily promoted to a position of Supervisory Manpower Development Specialist, GS-13, he continued to occupy his GS-12 position while he served on the GS-14 detail. Since the Whitten Amendment, 5 U.S.C. 3101 (note), required Mr. Rann to serve 1 year at grade GS-13 before he could be given a temporary promotion to grade GS-14, the Civil Service Commission's Bureau of Recruiting and Examining advised the Department of Labor by letter of December 15, 1977, that Mr. Rann could not receive a retroactive temporary promotion to grade GS-14 for the period of his detail.

The Department of Labor asks whether Mr. Rann may be granted two temporary retroactive promotions. The first would be a one-grade promotion to GS-13 for a period of 1 year beginning on the 121st day of his detail to the GS-14 position. The one-grade promotion for 1 year would satisfy the Whitten Amendment, as well as the 1 year of qualifying experience at grade GS-13 required by the

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Civil Service Commission, in order to be eligible for advancement to GS-14. The second retroactive temporary promotion would be to grade GS-14 for the period immediately following the 1 year at GS-13 until the termination of the detail on January 31, 1975.


In Reconsideration of Everett Turner and David L. Caldwell, 56 Comp. Gen. 427 (1977), we affirmed our position that the detail provisions of the Federal Personnel Manual limit an agency's discretion to extend a detail beyond 120 days unless proper procedures for extending the detail are followed. Further, we held that a failure to follow these procedures is an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. 5596 (1970), requiring a retroactive temporary promotion with backpay. See also 55 Comp. Gen. 539 (1975).

However, these decisions also held that eligibility for a retroactive temporary promotion requires compliance with applicable statutory and regulatory requirements. Among these requirements are the time-in-grade provisions of the Whitten Amendment and the qualification standards for the position to which the employee is detailed.

The proposal for granting Mr. Rann two retroactive temporary promotions, in order to satisfy the Whitten Amendment and the 1 year of qualifying experience, conforms to our decision in Friedman, Baker, and Holmes, B-189690, February 16, 1978, as modified by Mary Lee Groover, E-190174, April 21, 1978.

Mr. Rann, under the proposed arrangement, would be promoted to the highest grade to which he could have been promoted under the Whitten Amendment and other applicable requirements, as required by the above-cited decisions. The letter of the Bureau of Recruiting and Examining states that "experience which an employee gains while on detail is counted when evaluating his qualifications." Thus, for his service for 1 year beginning on the 121st day of his detail, Mr. Rann met the GS-13 level qualifying experience for promotion to GS-14.

Accordingly, Mr. Rann is entitled to the proposed retroactive temporary promotions if otherwise correct.


Deputy Comptroller General
of the United States