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A. Kissinger
PLM II

DIVISION



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

FILE: B-192514

DATE: October 16, 1978

MATTER OF: Mr. Armand J. Richard

DIGEST: Where an employee performs duties that, if classified or graded, would be of a higher grade than the position he occupies, no right to increased pay exists, unless and until those duties are placed in an established and officially approved position at a higher grade or pay level, and the employee is appointed to that position.

This action is in response to a letter dated July 12, 1978, from Mr. Armand J. Richard, an employee at the Portsmouth Naval Shipyard, Portsmouth, New Hampshire 03801, concerning his entitlement to a retroactive temporary promotion and backpay incident to his employment at the shipyard for the period June 1976 through June 1977.

The matter of this claim was the subject of a settlement by our Claims Division dated June 27, 1978, which disallowed the claim on the basis that while Mr. Richard may have performed duties which if properly graded would have been placed in a higher grade, since there was no established position for those duties at such higher grade, no substantive right to additional pay for the period accrued.

The file in the employee's case shows that he was employed at the Portsmouth Naval Shipyard as a Shop 51 Electrician, with a position graded as WC-10. Apparently, during the period in question he was asked to and performed duties, which in the final analysis would ordinarily be performed by an employee at a higher grade.

In May 1977, in apparent recognition that the duties being performed were not included in the claimant's position, the employee sought to have the work graded as a "Shop Planner". Since he had been performing those duties since June 1976, he claimed pay at a higher grade retroactive to that time. In response to his request, by memorandum dated June 9, 1977, the employee was advised in part as follows:

"The Wage and Classification Division has reviewed your assigned duties and has concluded that you are indeed misassigned, since you now perform none of the

R-192514

duties of a Shop 51 Electrician. We have recommended to the Production Department that your misassignment be terminated and that you immediately should be returned to the duties of Electrician. We have also recommended that the Production Department, if it has a continuing need, write up your duties for classification action and that the resulting position be filled by merit promotion."

Chapter 53 of title 5, United States Code, and Part 530 of title 5, Code of Federal Regulations, Section 5346 of title 5, United States Code, provides a system whereby prevailing rate positions (positions in recognized crafts and trades) in the Federal Government are grouped and identified by classes and grades based on their duties, responsibilities and qualification requirements. That section authorizes the individual agencies under the guidance of the Civil Service Commission to place positions in appropriate classes and grades consistent with their needs and in conformance with standards published by the Commission. In this regard, CSC Bulletin No. 300-40, dated May 25, 1977, provided a reminder to all agencies in paragraph 4 thereof, and citing to the United States Supreme Court decision in United States v. Testan, 424 U.S. 392 (1976), that in order for an employee to receive pay for the performance of particular duties that would qualify as a position, the position must be an established one, classified under an occupational standard to a particular grade or pay level. Further, classification actions establishing or upgrading a position may not be made retroactive for back-pay purposes.

It is fundamental that in order for an individual to be entitled to compensation for employment by the Federal Government in a particular position or grade level, such position or grade must be recognized and administratively established at the time as the individual is performing such duties. This is true even where an individual is occupying a position at one grade level and is performing duties which would be performed by an employee classified at a higher grade. It is also true that an employee is only entitled to the salary of the position to which he is officially appointed. See United States v. Testan, *supra*, at 402.

B-192514

According to the material on file, the duties being performed by the employee during the period in question were materially different than those of the position he held as a Shop 51 Electrician and which duties may have been assigned a higher grade. However, there did not exist an established, official position for those duties during the period in question. Since the record shows that the only position the employee held was that of Electrician, WG-10, step 5, during the period in question, that is the only compensation to which he is entitled.

Accordingly, on review, the action taken by our Claims Division is sustained.

P. K. ...
Deputy Comptroller General
of the United States