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DECISION



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

FILE: B-195373/B-200743

DATE: May 12, 1981

MATTER OF: Gilbert C. Atencio and Dale T. Evans -
[Claim for Retroactive Temporary Promotion and Backpay]

DIGEST: Two employees classified as Machine Operators WG-07, claim that they were detailed to the position of Weigher WG-08. The record contains statements from their supervisors that they were detailed to perform the duties of the Weigher, WG-08, an established, classified position. Under these circumstances, the employees have met their burden of proof to show that they were detailed and that they are entitled to relief pursuant to our Turner-Caldwell, decisions, 55 Comp. Gen. 539 (1975), 56 Comp. Gen. 427 (1977).

The action is in response to a request for a decision by James J. Mulcahy, Assistant Director of Personnel, Department of the Treasury, Director of the Mint, concerning the claims of Mr. Gilbert C. Atencio and Mr. Dale T. Evans for retroactive temporary promotions and backpay. The claims are based on the rationale of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) 56 Comp. Gen. 427 (1977). We held therein that employees detailed to higher grade positions for more than 120 days without Civil Service Commission (CSC) (now Office of Personnel Management) approval, are entitled to retroactive temporary promotions with backpay from the 121st day of the details until they are terminated. The claimants are represented by the American Federation of Government Employees (AFGE) in this matter. CD600085

Mr. Atencio and Mr. Evans were employed by the Department of Treasury, United States Mint, in Denver, Colorado, as Machine Operators, WG-07. Mr. Atencio claims that from November 2, 1970, through February 1977, he was detailed to perform the duties of a Weigher, WG-08. Mr. Evans claims that he was detailed to perform the duties of a Weigher WG-08, from May 4, 1970, through December 1974, and from January 1976, DL603907

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through February 1977. The Superintendent of the Denver Mint originally recommended to the Bureau of the Mint that Mr. Evans and Mr. Atencio should be granted a retroactive temporary promotion and backpay for periods of work after May 1974. The Director of the Mint rejected that recommendation and denied both claims on the basis that they involved questions of classification rather than an improper detail. His letter of December 1, 1978, indicates that during the period of the alleged detail, there was a career ladder program in effect whereby employees were initially hired at the WG-5 level, progressed to the intermediate WG-7 level, and ultimately reached the full performance level of WG-8. Based on this rationale our Claims Group denied the claims.

The AFGE requested reconsideration of the denial. Our Office of General Counsel wrote a memorandum to our Claims Group in which it held that there was sufficient evidence to conclude that the employees were detailed to higher grade positions entitling them to a retroactive temporary promotion and backpay. This conclusion was partly based on a memorandum dated November 16, 1977, signed by the Counting and Review Branch Foreman, and the Assistant Superintendent Coining Division, which stated that each claimant was detailed to perform the duties of a Weigher WG-08. Also relied on was a letter of recommendation for temporary promotion by the Superintendent of the Denver Mint which rebutted the argument that the duties the claimants performed were part of a career ladder program. The letter stated that the Weigher WG-08 position was a non-career ladder. Therefore we determined that the employees were entitled to a retroactive temporary promotion and backpay beginning 121 days after the detail began.

Our Claims Group informed the agency of our General Counsel's memorandum in its settlement letter of April 11, 1980. The agency objected to our conclusions based on the following reasons: First, the agency correctly points out that under Civil Service Commission Bulletin No. 300-40, in order to qualify for a retroactive temporary promotion and backpay, an employee must be detailed to a

position established and classified under an occupational standard to a grade or pay level. In addition, the agency argues, that before an employee may be placed in a position, the duties must be established and the title and grade must be approved. Federal Personnel Manual Supplement 296-31, subchapter 2-5. The agency alleges that although there was a Weigher WG-08 position, the specific duties that the employee in question performed had not been evaluated by competent classification authority. Further, the agency argues that the supervisors are not qualified to make classification decisions.

After consideration of these arguments, we hold that the employees are entitled to a retroactive temporary promotion and backpay for the following reasons.

As previously stated, we held in our Turner-Caldwell decisions where an employee is detailed to a higher grade position and the agency fails to seek CSC approval to extend the detail for a period beyond 120 days, the agency must award the employee a retroactive temporary promotion and backpay for the period of the detail in excess of 120 days. The Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977, was issued by the CSC in order to provide additional information to assist agencies in the proper application of these decisions. Paragraph 4 of the FPM Bulletin defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to his regular duties at the end of the detail. The Bulletin also states that: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." In this case there was a position established and classified as a WG-08 Weigher. The agency does not dispute this fact. Thus, we need only determine that the employees were detailed to and performing the duties of the higher grade position.

Paragraph 8F of the FPM Bulletin requires agencies, in accordance with FPM Supplement 296-31, Book II, Subchapter S3-13, to record details in excess of 30 calendar days on a Standard Form 52 or other appropriate form and

to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, Paragraph 8F recognizes that the employee may provide other forms of acceptable proof of his detail. Such acceptable documentation includes official personnel documents or official memoranda of assignment, a decision under established grievance procedures, or a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed.

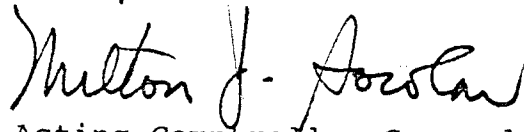
As indicated above, although the assignment of an employee to a particular higher grade position need not be formally documented, there must be official recognition of his assignment to and performance of the higher grade duties. While statements of coworkers as to the nature of the employee's duties may be corroborative evidence of a detail, such evidence alone is insufficient to document a detail. William L. DeGraw, B-194369, August 24, 1979. On the other hand, official recognition may be established by the statements of the employee's supervisors or other management officials indicating that to their knowledge he performed the duties of the higher grade position. See Dale W. Weaver, B-198759, February 10, 1981.

Although Messrs. Evans' and Atencio's supervisors did not have the authority to classify the position, the supervisors' statements that the employees performed the duties of that position are acceptable evidence of a detail. Here, the employees' supervisors have stated that they performed the duties of the Weigher WG-08 position, which is an established, classified position. Accordingly, we hold that the employees have met their burden of proof to show that they were detailed to a higher grade position.

Thus, Mr. Atencio is entitled to a retroactive temporary promotion and backpay for the period from June 1974 through February 1977, and Mr. Evans is so entitled for

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periods from June 1, 1974, through December 1974, and
January 1976, through February 1977, less the first
120 days of each period.

A handwritten signature in cursive script that reads "Milton J. Aroslan".

Acting Comptroller General
of the United States