

DECISION

11974 ^{Plm-1}
^{Mr. Heitzman}
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-195480

DATE: November 8, 1979

MATTER OF: Ronald J. Beach - [Claim for Retroactive
Promotion and Backpay]

DIGEST: Although WG-10 employee performed some duties of WG-12 employee, he is not entitled to retroactive promotion and backpay since he was not appointed or detailed to the higher-graded position and he did not perform full range of duties of WG-12 employee. Claims presented to GAO are considered on basis of written record and burden of proof is on claimants to establish liability of United States and claimants' right to payment.

This action is in response to the appeal of Mr. Ronald J. Beach of our Claims Division settlement dated March 15, 1979, denying his claim for a retroactive temporary promotion and backpay. For the reasons stated below we sustain the settlement.

Mr. Beach was employed at the Mare Island Naval Shipyard, Vallejo, California, as a Pipefitter (Nuclear), WG-10. Mr. Beach says that he performed the full range of duties of a Pipefitter (Shipboard Systems Test), WG-12, for the period January 2, 1975, to October 18, 1976. Thus, he contends he is entitled to a temporary promotion and backpay on the basis of our Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977), which held that employees are entitled to temporary promotions for extended details to higher-level positions, provided they meet certain requirements.

The Navy denied Mr. Beach's claim on the basis that there was no documentation in his personnel file to substantiate his detail claim. In addition, the Navy states that information submitted by the Structural Group where Mr. Beach's regular job and the alleged higher-graded job were located indicates that the duties he performed during the period in question were not the full duties of a WG-12. Our Claims Division denied Mr. Beach's claim for the same reasons.

Mr. Beach has provided statements from supervisors as to the type of work he did. However, there is nothing in the record that indicates that Mr. Beach was detailed to a higher-graded position. Civil Service Bulletin No. 300-40, May 25, 1977, defines a detail, in part, as the temporary assignment of an employee to a different

110809

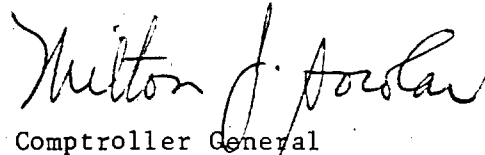
~~007732~~

position. At most, the statements indicate that Mr. Beach may have been performing some higher-graded duties. There are innumerable instances in the Government service where employees perform certain duties of a higher classification, but as a general rule an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties he performs. When an employee performs duties normally reserved to employees in a grade level higher than the one he holds, he is not entitled to the salary of the higher grade level until such time as he is promoted to that grade. Dianish v. United States, 183 Ct. Cl. 702 (1968); 55 Comp. Gen. 515 (1975).

This principle was confirmed in United States v. Testan, 424 U.S. 392 (1976), a case involving the issue of entitlement of an employee to backpay for errors in position classification levels. The Supreme Court ruled that an employee is only entitled to the salary of the position to which appointed and that neither the Classification Act nor the Back Pay Act creates a substantive right in the employee to backpay for the period of any claimed wrongful classification. Mr. Beach's claim that he performed higher-graded duties is in the nature of an appeal of his job classification under a prevailing rate system. Therefore, he should have appealed the alleged improper position classification to his agency and the Civil Service Commission. See 5 C.F.R., Part 532, Subpart G (1975, 1976).

All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment. 4 C.F.R. § 31.7 (1975 to 1979). We do not believe Mr. Beach has met the burden of proof.

Accordingly, we sustain our Claims Division determination denying Mr. Beach's claim for retroactive promotion and backpay.



For The Comptroller General
of the United States