

DECISION

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

MV

FILE: B-199461

DATE: April 15, 1981

MATTER OF: Salary Retention

- Claim for

DIGEST: Employee of Federal Aviation Administration accepted "career progression downgrade assignment" in May 1979, after FAA advised he would be entitled to salary retention. Statute and regulations governing salary retention were superseded effective January 1979, by statute and regulations governing pay retention which, under the circumstances, provides lesser monetary benefit to employee. Employee is entitled only to pay retention and may not receive additional compensation due to erroneous advice of agency officials.

The issue in this case is whether an employee, who has been promised salary retention by his employing agency in return for his voluntary downgrade to another position, may be limited to pay retention which provides less of a monetary benefit than salary retention. We hold that since the laws and regulations establishing pay retention have superseded those governing salary retention, the employee is entitled only to those benefits allowed under pay retention.

This decision is in response to an appeal by _____ of our Claims Group's settlement dated June 3, 1980, denying his claim for additional compensation incident to his voluntary downgrade.

The facts in this case are not in dispute. Effective May 6, 1979, _____, an employee of the Federal Aviation Administration (FAA), was selected for a "career progression downgrade assignment" from the position of Air Traffic Control Specialist (Systems Programming Specialist), grade GS-13, step 5, to the position of Supervisory Air Traffic Control Specialist (Facility Chief), grade GS-12. He was placed in grade GS-12, step 10, but was advised by the FAA that he would be entitled to "salary retention" for a period of up to 2 years. Subsequently, the FAA learned that

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was entitled only to "pay retention" which limited to one-half of the annual comparability adjustment allowable for grade GS-12, step 10. This meant that for the period from October 1979, to October 1980, pay was \$1,128 less under pay retention than under salary retention.

Our Claims Group held that was entitled only to pay retention under these circumstances. On appeal argues that since an administrative error occurred, he should not be penalized for the error of the FAA which promised him salary retention.

Under the provisions of 5 U.S.C. § 5337 (1976), an employee who was reduced in grade could under certain circumstances, be entitled to salary retention. Such employee would be entitled to the basic pay of his former position, including each increase in the rate of basic pay provided by statute, for a period of up to 2 years. See also 5 C.F.R. Part 531, Subpart E (1978). However, with the enactment of the Civil Service Reform Act of 1978, section 5337 was repealed by Title VIII of the Act. See section 801(a)(1,2) of Pub. L. No. 95-454. It was replaced by 5 U.S.C. § 5363, Pay Retention. Under that section, employees who suffer a reduction in pay under circumstances prescribed by the Office of Personnel Management by regulation may be entitled to pay retention. See 5 C.F.R. Part 536 (1980). The statute and implementing regulations for pay retention were effective in January 1979. See Federal Personnel Manual Bulletin No. 536-1, March 30, 1979. 54 S.C. 5301

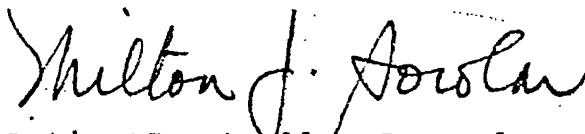
54 S.C.
Section 5363(a)(3) provides that an employee receiving pay retention is entitled to basic pay at a rate equal to (a) the employee's allowable former rate of basic pay, plus (b) one-half of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's new position if such allowable former rate exceeds such maximum rate

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for such grade. In other words, is limited to his former rate of basic pay (grade GS-13, step 5, \$31,113 per annum) plus one-half of each increase for grade GS-12, step 10, until his entitlement to pay retention ceases.

While it is unfortunate that was misinformed as to his entitlement to salary retention instead of pay retention, that error does not provide a basis for additional compensation. It is a well-settled rule of law that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See _____, 54 Comp. Gen. 747 (1975), and court cases cited therein. The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. See _____, 56 Comp. Gen. 131 (1976).

Since at the time of his downgrading there was no authority to provide an employee salary retention, is limited to the benefits provided under pay retention. Accordingly, we sustain the determination of our Claims Group denying claim for additional compensation.



Acting Comptroller General
of the United States