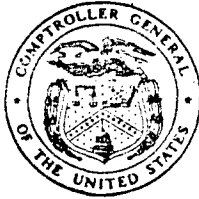


DECISION

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

FILE: B-200746

DATE: October 8, 1981

MATTER OF: Arthur A. Axelson

DIGEST: An employee who asked to be demoted from a supervisory to a journeyman position is not entitled to the pay of the WG-12 level from which the journeyman position had recently been downgraded by reason of a classification action. The position to which he was downgraded was in grade WG-11, and the fact that other journeymen retained the WG-12 grade by deferral of downgrading and later through saved grade and pay does not entitle this employee to the higher grade. The fact that his supervisor advised him that he would be eligible for the higher grade even though the form he signed indicated downgrading to the lower grade does not provide a basis for pay at the higher grade.

Mr. Arthur A. Axelson requested demotion from a supervisory to a journeyman wage grade position in November 1977. The demotion as implemented was to the level to which the journeyman position had recently been downgraded. Mr. Axelson claimed pay of the higher grade in which the other journeymen were serving under a deferral of forced reductions in grade authorized by the Department of the Navy. The claim was disallowed by Settlement Certificate Z-2817134, March 26, 1980, because Mr. Axelson's demotion was at his request within the meaning of former 5 U.S.C. 5345, thereby disqualifying him from entitlement to retained pay. We agree with that action and must sustain the disallowance of Mr. Axelson's claim.

Background

Mr. Axelson served as an Electronic Mechanic (Maintenance) Foreman, WS-2663-11, at the Naval Air Rework Facility, Jacksonville, Florida. His subordinate journeymen held positions of Electronics Mechanic (Maintenance) WG-2663-12, but effective June 6, 1977, the Civil Service Commission (CSC) and the Navy reclassified the journeyman position, reducing it to Industrial Electronic Control Mechanic, WG-2663-11. However, based on actions by the Commission and the Department, downgrading actions were suspended first for a period

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of 45 to 60 days and later, on November 25, 1977, for an indefinite period. On May 2, 1978, the Navy issued guidelines regarding the continued deferral of downgrading based upon classification actions. This deferral was continued until authority for such deferrals was cancelled pursuant to the Civil Service Reform Act, Public Law 95-454, October 13, 1978, 92 Stat. 1111. Thereafter, the subordinates were downgraded to WG-11 but they became entitled to limited retained grade and retained pay protection as provided by the Civil Service Reform Act.

On November 29, 1977, Mr. Axelson voluntarily asked in writing on a Standard Form 52, Request for Personnel Action, that he be demoted from his foreman position to a journeyman position. The grade level of the journeyman position as stated on that form was Industrial Electronic Control Mechanic, WG-2663-11. His supervisor, however, had led him to believe that he would be placed in grade WG-12 even though he signed the Standard Form 52 by which he agreed to a downgrading to WG-11. This advice proved to be incorrect, and on December 18, 1977, his demotion to grade WG-2663-11 became effective.

Our file contains an affidavit of the foreman, Mr. Donald McLeod, stating that he led Mr. Axelson "to believe that he [Mr. Axelson] would be placed in the WG-12 grade along with the mechanics at the time that Mr. Axelson signed the Form 52." Mr. McLeod's affidavit concludes:

"I felt sure at the time, as he [Mr. Axelson] did, that the information we had concerning the moratorium, and other correspondence received through the Civil Personnel Department, would place him in the WG-12 grade even though he signed the Form 52 stating otherwise."

On May 10, 1978, Mr. Axelson appealed his downgrading to the Office of Civilian Personnel, Department of the Navy. He argued that his position should have been WG-2663-12 for the duration of the moratorium. The Director of Civilian Personnel by letter of July 10, 1978, denied his appeal because he had voluntarily requested his demotion and the moratorium

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applied to incumbents of positions which were to be downgraded because of the job classification actions.

Legal Provisions and Conclusions

Prior to the Civil Service Reform Act of 1978, retained pay for prevailing rate employees was governed by 5 U.S.C. 5345 (1976), which provided 2 years of retained pay to prevailing rate employees who were demoted at a lower rate of pay. One of the qualifications in subsection 5345(a)(3) was that the employee's demotion not be "at his request."

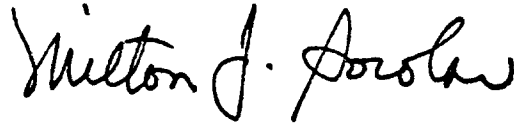
It is clear that Mr. Axelson requested a demotion from the supervisory position he occupied and that this request was for personal reasons in no way induced or requested by the Navy. It is also clear that Mr. Axelson was aware of the impending change in the journeyman position to which he was to be downgraded. Mr. Axelson's supervisor concluded that the requested downgrading would be to WG-12 rather than WG-11 and so advised him. As a matter of fact there was no authority to place Mr. Axelson in the WG-12 position. All employees entering the journeymen level whether by promotion, downgrading or lateral transfer could only be placed in the position as properly classified at WG-11. Sherman D. Rachels, B-196691, May 15, 1980. Incumbents of the erroneously classified WG-12 position were subject to various actions which allowed them to retain the higher grade for several years. Those actions, however, could be applied only to incumbents of the WG-12 position.

It is unfortunate that Mr. Axelson was led to believe that he would be downgraded to WG-12 rather than WG-11. However, the request for downgrading he signed clearly showed that he was accepting the WG-11 position and he was well aware of the fact that that position had recently been reclassified to WG-11. In spite of this he signed the request for downgrading and accepted the lower grade position at the pay rate which was legally applicable. We recognize that Mr. Axelson was downgraded to a level below that of his fellow employees (employees whom he had previously supervised). The fact that those employees were subject to a deferral of downgradings and later to saved grade and saved pay provisions because their positions

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were subject to an involuntary downward reclassification does not provide a basis for allowing additional pay in Mr. Axelson's case.

Accordingly the settlement of the Claims Division is sustained.

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

Acting Comptroller General
of the United States