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**DECISION**



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

**FILE:** B-202424

**DATE:** September 4, 1981

**MATTER OF:** Russell E. Tudor - Supervisor's  
Retroactive Pay Adjustment

**DIGEST:** General Schedule employee who received pay adjustment effective December 2, 1979, as supervisor of prevailing rate employee with higher pay may not be granted retroactive pay prior to that date. Entitlement to pay adjustment was within discretion of agency since prior agency policy on pay adjustments was suspended during period of claim here and there was no abuse of discretion which warrants retroactive compensation.

This is in response to an appeal by Russell E. Tudor of our Claims Group Settlement No. Z-2824069, dated November 21, 1980, denying his claim for a retroactive pay adjustment as a supervisor of wage board employees.

The record shows that on January 12, 1979, Russell Tudor was promoted to a position of Supervisory Production Manager, grade GS-12, step 1, in the Bureau of Engraving and Printing, Department of the Treasury. Part of his duties involved supervising a wage board employee whose rate of pay exceeded his own salary. On February 6, 1979, Mr. Tudor's supervisor initiated a personnel action to adjust Mr. Tudor's salary based on the subordinate employee's prevailing rate. The supervisor was telephonically notified by the Office of Industrial Relations that its practice of effecting such pay adjustments had been temporarily suspended pending the outcome of the Treasury Department's review of the appropriateness of the Bureau's practice in granting such adjustments.

In November 1979, the Treasury Department determined that Mr. Tudor's position did meet the Federal Personnel Manual criteria necessary to warrant an upward adjustment of his pay. A personnel action was subsequently processed and Mr. Tudor's salary was adjusted effective December 2, 1979, from grade GS-12, step 1, to grade GS-12, step 4. Mr. Tudor's claim is for the difference between grade GS-12,

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step 1 and grade GS-12, step 5, from the initial day of his promotion, January 12, 1979, to the day before his salary was subsequently adjusted, December 1, 1979.

Mr. Tudor alleges that the failure to properly adjust his salary upon promotion was in violation of the Bureau's "mandatory" policy of adjusting a supervisor's pay, and thus constituted administrative error. He also states that he was unaware of any suspension of the Bureau's policy and that the failure to notify him of any suspension of past policy and the 11-month delay between his promotion and subsequent salary adjustment constitutes administrative error. There is no indication in the record before us why Mr. Tudor believes he is entitled to step 5 of grade GS-12 rather than step 4.

Our Claims Group denied his claim on the grounds that under 5 U.S.C. § 5333(b) and the implementing regulations in 5 C.F.R. § 531.301 et seq. the pay adjustment of supervisors is within the discretion of the agency concerned. Additionally, while there may have been a "mandatory" policy in the Bureau to grant the adjustments, it was apparently suspended during the period of his claim, and therefore there was no authority upon which the claim could be allowed.

As noted by our Claims Group, the applicable statute and regulations provide that a General Schedule employee may be paid at a step above that to which the employee is otherwise entitled when the employee supervises a prevailing rate employee whose rate of basic pay is higher. The implementing regulations set forth in title 5 of the Code of Federal Regulations, part 531, subpart C, also provide in pertinent part:

"§ 531.305 Adjustment of rates.

"(c) Effective date. The adjustment of a supervisor's rate of pay under the subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart."

Under the above-cited authorities, the supervisor is not entitled to a pay adjustment based solely on a determination that he supervises a prevailing rate employee whose basic pay exceeds the supervisor's basic pay. The decision to grant an employee a pay adjustment under 5 U.S.C. § 5333(b) and the time frame in which to effectuate the pay adjustment is within the discretion of the agency.

Our Office has permitted retroactive pay adjustments for supervisors where the agency has failed to follow a mandatory agency policy which requires such a pay adjustment under certain conditions. Billy M. Medaugh, 55 Comp. Gen. 1443 (1976), modified by 57 Comp. Gen. 97 (1977); and John O. Johnson, B-186896, November 2, 1976. In the present case, the Bureau's policy on supervisor's pay adjustments, which Mr. Tudor alleges was mandatory, was suspended during the period of his claim pending a review of the appropriateness of the policy. Thus, we do not find any mandatory policy in effect at the time of Mr. Tudor's promotion to grade GS-12, and the subsequent pay adjustment for Mr. Tudor was within the agency's discretion. Nor do we find that, under the circumstances present here, the 11-month delay between Mr. Tudor's promotion and subsequent pay adjustment constitutes an administrative error.

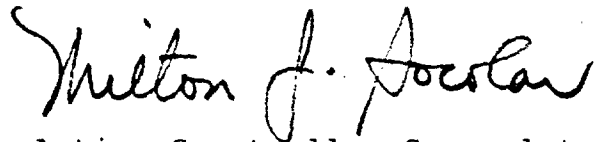
We have held that where agency action is committed to agency discretion the standard to be applied by the reviewing authority is whether the action is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. See 54 Comp. Gen. 310 (1974). Based upon the record before us we find nothing which would establish that the agency abused its discretion or acted improperly when it did not grant Mr. Tudor a pay adjustment during the period in question.

Mr. Tudor also states there is no written documentation showing that the Bureau's policy on pay adjustments was suspended. Although the decision to suspend pay adjustments was apparently never committed to writing, the administrative reports from the Bureau state that the policy was suspended at that time. This information has also been confirmed informally

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by Mr. R. L. Ellenberger, Acting Chief, Office of Industrial Relations, who also advised that several other supervisors similarly situated were affected by the suspension of the policy.

Accordingly, we sustain the determination of our Claims Group denying Mr. Tudor's claim for retroactive compensation.

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

Acting Comptroller General  
of the United States