

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE:

DATE:

B-185794

MATTER OF:

Vincent A. Mariner - Retroactive Temporary Promotion
for Extended Detail to Higher Grade

DIGEST:

United States International Trade Commission detailed grade GS-14 employee to grade GS-15 position for approximately 15 months and failed to obtain approval of the Civil Service Commission for detail extension. Employee became entitled to temporary promotion and additional pay on 121st day of detail pursuant to rule in B-183086, December 5, 1975, 55 Comp. Gen. ____, that entitles employee detailed to higher grade to temporary promotion after serving 120 days where agency fails to obtain approval of detail extension. Therefore, under Back Pay Act, 5 U.S.C. § 5596, he may be given retroactive temporary promotion and backpay.

This matter involves a request for an advance decision as to whether Mr. Vincent A. Mariner, an employee of the United States International Trade Commission, may be awarded a retroactive temporary promotion and backpay for the time he was improperly detailed to a higher grade position.

Mr. Mariner occupied the position of Computer Systems Analyst, GS-14, on September 30, 1974, the date he was detailed to the GS-15 position of Acting Director, Automatic Data Processing Division. The employee occupied this position until his detail was terminated on January 15, 1976.

Mr. Mariner filed a grievance with his agency alleging that in accordance with the holding of our decision B-183086, December 5, 1975, 55 Comp. Gen. ____, he was entitled to a retroactive temporary promotion to grade GS-15 from January 28, 1975, the 121st day of his detail, until January 15, 1976, the day his detail was terminated, inasmuch as his agency had failed to seek or obtain an extension of his detail from the Civil Service Commission prior to his having served 120 days in such higher grade position. The grievance also requested backpay for the difference in pay between grade GS-14 and grade GS-15 during the period of the retroactive promotion.

The Back Pay Act of 1966, 5 U.S.C. § 5596 (1970), is the appropriate statutory authority for compensating an employee for pay, allowances, or differentials he would have received, but for a violation of a

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mandatory provision of a statute or regulation. 54 Comp. Gen. 760 (1975), 54 id. 1028 (1975). Our holding in B-183086, supra, concurred in a Civil Service Commission interpretation of Commission regulations governing details to higher grade positions contained in chapter 300 of the Federal Personnel Manual (1969 ed.) to the effect that an agency's discretionary authority to retain an employee on detail to a higher grade position continues no longer than 120 days and that the agency must either have obtained prior approval of the Commission for an extension of the detail or temporarily promote the detailed employees at the end of the specified time period. Based on this interpretation we held in B-183086, supra, that where an agency fails to seek prior approval of the Commission to extend an employee's detail period in a higher grade position past 120 days, the agency has a mandatory duty to award the employee a temporary promotion if he continues to perform the higher grade position.

In the instant case, the agency admits that, by reason of administrative oversight, it failed to seek approval for an extension of Mr. Mariner's detail. Thus, the agency concedes that under the aforementioned rule, Mr. Mariner became entitled to a temporary promotion to GS-15 on January 27, 1975, which entitlement continued through January 15, 1976, when the detail was terminated. On January 27, 1975, Mr. Mariner had over 1 year in grade as a GS-14 and thus satisfied the time-in-grade requirements for a promotion. On the basis of this record, the agency concedes that Mr. Mariner underwent an unjustified or unwarranted personnel action which resulted in a reduction of his pay in the amount of \$955.20.

In view of the foregoing, we hold that under the authority of the Back Pay Act of 1966, 5 U.S.C. § 5596, and implementing regulations, the agency may award Mr. Mariner a retroactive temporary promotion and backpay for the stated period.

R. P. KELLEY

~~Deputy~~

Comptroller General
of the United States