

DOCUMENT RESUME

1990 - [A1172152]

[Claim for Backpay during Temporary Promotion]. W-180139. April 21, 1977. 3 pp.

Decision re: Camillo J. Rossi; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Navy: Military Sealift Command; Department of the Navy: Naval Construction Battalion Center, Davisville, BI.

Authority: Back Pay Act (5 U.S.C. 5596); F.P.M. ch. 550, subch. 8. Dianish, et al. v. United States, 183 Ct. Cl. 702 (1968). Coleman v. United States, 100 Ct. Cl. 41 (1943). 52 Comp. Gen. 631.

A personnel staffing specialist claimed additional pay for performance of duties during temporary promotion at a higher grade position. The claim for backpay and retirement benefits while performing temporary duty was disallowed, since he did not suffer unwarranted or unjustified personnel action. (RRS)

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S. Cyprian
Civ. Pers.

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20543**

FILE: B-180139

DATE: April 21, 1977

MATTER OF: Camillo J. Rossi - Claim for backpay

DIGEST:

Employee's temporary promotion expired but he continued to perform functions of higher grade position for 2 weeks before receiving permanent promotion. His claim for backpay and retirement benefits for that 2-week period is disallowed since he did not suffer unwarranted or unjustified personnel action under Back Pay Act, 5 U.S.C. § 5596 (1970).

This action is in response to a letter dated March 8, 1976, from Mr. Camillo J. Rossi appealing the certificate of settlement Z-500127 dated February 24, 1976, issued by our Claims Division, which disallowed his claim for additional pay for one pay period during which he performed the duties of a grade GS-9 but received compensation at the grade GS-6, step 10, rate.

Mr. Rossi was a Personnel Staffing Specialist, grade GS-9, at the Naval Construction Battalion Center in Davisville, Rhode Island, until July 23, 1972, when due to a reduction in force, he was transferred to the position of Purchasing Agent, grade GS-6. On November 25, 1973, he received a temporary promotion to Personnel Staffing Specialist, grade GS-9, step 10, and remained in that position until June 29, 1975, when his temporary promotion expired and he was returned to his previous grade GS-6 position of Purchasing Agent. However, Mr. Rossi continued to perform the functions of a grade GS-9 Personnel Staffing Specialist for 10 working days until July 12, 1975, when he was transferred and promoted to a grade GS-9 position with the Military Sealift Command in Washington, D.C. Mr. Rossi has claimed backpay for the 10 days during which he performed the work of a grade GS-9 while being paid at the grade GS-6 rate.

Mr. Rossi requests that his claim be considered within the spirit of Federal Personnel Manual (FPM), chapter 550, subchapter 8, which governs entitlement to backpay under the Back Pay Act, 5 U.S.C. § 5596 (1970). The Back Pay Act provides that an employee who, on the basis of an administrative determination or a timely appeal, is found by appropriate authority under applicable law or regulation to have undergone an unjustified or unwarranted personnel action that has resulted in the withdrawal or reduction of all or

B-180139

a part of his pay, allowances, or differentials is entitled, on the correction of the personnel action, to receive backpay and allowances for the period during which the personnel action was in effect. Mr. Rossi claim that he suffered an unjustified and unwarranted personnel action since his temporary promotion to grade GS-9 was not extended, while approximately 50 other employees with temporary appointments and promotions received extensions. Mr. Fossi also claims that the personnel officer requested him to continue performing grade GS-9 work after his reduction in grade and that the request constitutes an unjustified and unwarranted personnel action.

The general rule is that an employee of the Government 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 at a grade level higher than the one he holds, he is not entitled to the salary of the higher level unless and until he is successful in obtaining reclassification of his position. Dianish, et al. v. United States, 183 Ct. Cl. 702 (1968); Coleman v. United States, 100 Ct. Cl. 41 (1943); 52 Comp. Gen. 531 (1973). The same rule applies in the case of an employee who has been detailed to perform duties at a higher level. That employee receives only the salary of the position to which he has been appointed, in the absence of a provision of law, regulations or a collective bargaining agreement which renders the promotion mandatory and not discretionary under the circumstances.

Since the record does not indicate that there is a mandatory Navy policy or a collective bargaining agreement regarding temporary promotions, the failure of the Navy to extend Mr. Rossi's temporary promotion is not an unjustified or unwarranted personnel action justifying backpay under 5 U.S.C. § 5596 (1970).

With regard to the request by the personnel officer that Mr. Rossi continue to perform grade GS-9 duties after his reduction in grade, FPM chapter 300, subchapter 8, provides that an employee may be detailed to a higher grade position for as long as 120 days, plus one extension for a maximum of 120 more days. Paragraph 8-4b(1) states that for a detail of over 120 days an agency must obtain prior Civil Service Commission approval.

B-180139

Accordingly, the action of our Claims Division disallowing Mr. Rossi's claim for backpay is sustained.

R. K. Kessen
Deputy Comptroller General
of the United States