

PLMT

# DECISION



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

*permanence*

*10,971*

FILE: B-194891

DATE: August 8, 1979

MATTER OF: Mr. Jacob Klein

*[Entitlement to Backpay for Period Incident to Temporary Promotion]*

DIGEST: A Federal employee appointed to a GS-13 position is detailed to perform duties of a GS-14 position and becomes entitled to a temporary promotion and backpay under 55 Comp. Gen. 539 (1975). Where the position is classified downward during the detail, since an occupant of a position may only receive the salary authorized for that position, if the employee continues on the detail after it is reclassified downward to a GS-13 level, he may not continue to receive the pay at the higher level on and after the reclassification effective date.

This action is in response to a letter dated April 6, 1979, with enclosures, from Mr. Jacob Klein, appealing a settlement by our Claims Division, dated March 16, 1979, which disallowed his entitlement to backpay for the period March 4, 1974, through October 24, 1976, incident to a temporary promotion received effective May 2, 1973. We sustain the disallowance because after March 3, 1974, he was not serving in a position officially classified at the higher grade.

*ABCO290*

The file reflects that Mr. Klein, a grade GS-13, Chemical Engineer with the Department of the Army at Aberdeen Proving Ground, Maryland, was unofficially detailed to a grade GS-14 Supervisory Mechanical Engineer position (Chief) in the Flame Section on January 2, 1973, and officially detailed to the position on April 2, 1973. That position was officially classified at the GS-14 level until March 3, 1974, at which time it was reduced to a grade GS-13 level. The reason given for the classification reduction was that on administrative examination it was determined that the organizational structure of that section was such that it would not support a Chief of the section at the grade GS-14 level.

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Based on our ruling in the Turner-Caldwell decisions, 55 Comp. Gen. 539 (1975) and 56 Comp. Gen. 427 (1977), our Claims Division authorized backpay for Mr. Klein based on a retroactive temporary promotion from May 2, 1973 (the 121st day of his detail) through March 3, 1974. The disallowance of his entitlement for the period subsequent to March 3, 1974, was due to the classification downgrading of the position at that time and that during the remainder of the period Mr. Klein did not occupy any position graded higher than grade GS-13.

Mr. Klein contends that the duties he performed before and after March 3, 1974, were the same; that there were no personnel realignments; and that the downgrading of the position was but a technicality. It seems to be his view that in order to be in consonance with the spirit of the Turner-Caldwell decisions, once an individual is detailed to a higher graded position and becomes entitled to the compensation of that position because of that detail, he is entitled to continue to receive the pay of the position until the duties and responsibilities of the position are altered or until he is removed, notwithstanding the fact that the position is classified downward.

We disagree. It was ruled in the Turner-Caldwell decisions that an employee detailed to a higher graded position for more than 120 days without Civil Service Commission approval (now Office of Personnel Management) is entitled to a temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail in the higher grade is terminated. As it relates to the present case, the key element in those decisions was the existence of a position classified at a grade higher than the position to which the detailee was officially appointed. Pay entitlements arising from details to a position other than the position to which officially appointed, like the pay entitlements of the position to which the employee is officially appointed, are solely dependent on the actual classification of the position in question.

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Chapter 51 of title 5, United States Code, provides a system whereby General Schedule positions in the Federal Government are grouped and identified by classes and grades based on their duties, responsibilities and qualification requirements. Individual agencies under the guidance of the Office of Personnel Management are authorized to place positions in appropriate classes and grades consistent with their needs and in conformance with standards published by the Commission. In this regard, CSC Bulletin No. 300-40, dated May 25, 1977, provided a reminder to all agencies in paragraph 4, citing to the United States Supreme Court decision in United States v. Testan, 424 U.S. 392 (1976). That paragraph indicated that in order for an employee to receive pay for the performance of particular duties that would qualify as a position, the position must be an established one, classified under an occupational standard to a particular grade or pay level.

It is fundamental that in order for an individual to be entitled to compensation for employment by the Federal Government in a particular position or grade level, the position or grade must be recognized and administratively established at the time the individual is performing the duties of that position or grade. This is true even where an individual is officially occupying a position at one grade level and is performing duties which would be performed by an employee classified at a higher grade.

In other words, a person serving on a detail to a position other than the one to which officially appointed, receives the salary of that position if the detail lasts more than 120 days. However, since it is within the authority of the agency to adjust the classification of any position regardless of the duties, the occupant of the position may only receive the salary authorized for the position at any one time.

Thus, it is our view that regardless of the length of detail beyond 120 days, if the position to which an employee is detailed is reclassified downward from a

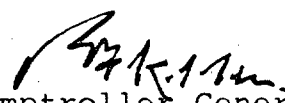
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higher grade level to a grade level equal to the position that the detailee was officially appointed to, he is not entitled to the pay at the higher level on and after the effective date of that reclassification action.

Accordingly, the action taken by our Claims Division disallowing that part of Mr. Klein's claim for the period following the position reclassification, is sustained.

Mr. Klein has also requested the opportunity to present oral testimony to us and to be assisted by counsel should it be of benefit to our reconsideration of his claim. While we are always willing to discuss matters with claimants, we do not hold formal hearings. Instead our decisions are based on the written record presented by the interested parties such as the agency and the claimant as in this case.

Acting

  
Comptroller General  
of the United States