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DECISION

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

FILE: B-200000 DATE: May 25, 1982

MATTER OF: Albert C. Beachley and Robert S. Davis - Extended Details to Higher Grade Positions - Agency Regulation and Provision of Negotiated Agreement

DIGEST:

1. Where agency asserts that its regulation was intended to make temporary promotions for details to higher grade positions mandatory after 60 days, thereby establishing a nondiscretionary agency policy, that regulation may provide the basis for backpay. While other interpretations of the regulation could be made, the agency's interpretation is a reasonable one.

2. Where the parties to a collective bargaining agreement agree that the provisions in the negotiated agreement were intended to make temporary promotions for details to higher grade positions mandatory after 60 days thereby establishing a nondiscretionary agency policy, those contract provisions may provide the basis for backpay. While other interpretations of the negotiated agreement could be made, the interpretation of the parties is a reasonable one.

3. Although this claim pertains to the interpretation of a collective bargaining agreement, it is appropriate for GAO to assert jurisdiction since to refuse to do so would be disruptive to labor-management procedures due to the impact such a refusal would have on other claims and grievances. Moreover, there is no arbitration award involved, no one has objected to submission of the matter to GAO, and the matter is in an area of our expertise and has traditionally been adjudicated by this Office.

The issues in this case are whether we will accept the agency's interpretation of its own regulation concerning temporary promotions for overlong details and whether we will

accept the interpretation of the parties of a similar provision in the collective bargaining agreement concerning temporary promotions for overlong details. These issues arise in connection with our reconsideration of the claims of Mr. Albert C. Beachley and Mr. Robert S. Davis for retroactive temporary promotions and backpay in connection with alleged overlong details to higher grade positions as employees of the Social Security Administration, Department of Health, Education, and Welfare (now Department of Health and Human Services).

We decide that since the above interpretations are reasonable, the claims may be paid as recommended by the agency.

MR. BEACHLEY'S CLAIM

The record shows that Mr. Beachley was detailed from his official position as a GS-12 Computer Specialist to a position as a GS-13 Computer Systems Analyst for the period from June 5, 1972, through November 25, 1972, in the Division of Health Insurance Systems. Mr. Beachley filed a claim for backpay with his agency and was granted a retroactive temporary promotion beginning August 4, 1972, the 61st day of his detail, and continuing through November 25, 1972, the last day of the detail. This action was based on paragraph D3 of chapter III of the Social Security Administration Headquarters Promotion Plan Guide 1-1, which states that if an individual's assignment to higher level work is expected to exceed 60 days in a 12-month period, the assignments should normally be made by temporary promotion rather than by detail. Mr. Beachley claimed that under the agency regulation he was entitled to a retroactive temporary promotion and backpay for the entire period of his detail and accordingly timely filed a claim with the General Accounting Office under 4 C.F.R. Part 31.

MR. DAVIS' CLAIM

Similar circumstances underlie Mr. Davis' claim. The record shows that he claimed to have performed the duties of a GS-13 Computer Systems Analyst rather than the duties of his official position as a GS-12 Computer Specialist, during the period from May 30, 1973, to June 5, 1977. In

response to his claim for backpay, the agency concluded that his detail to the higher grade GS-13 position was limited to the period from June 1, 1973, to April 1, 1974. The agency granted Mr. Davis a retroactive temporary promotion with backpay effective August 10, 1973, the 61st day of the documented detail, and continuing to April 1, 1974, the last day he was considered detailed. The agency relied upon the detail provisions contained in Article 17, Section C, of the negotiated collective bargaining agreement, effective August 31, 1972, between the Social Security Administration and Local 1923, American Federation of Government Employees. Like the agency regulation applied to Mr. Beachley's claim that contract provision provided that when details to higher grade positions are expected to exceed 60 days the employee should normally be given a temporary promotion instead.

Contending that the negotiated agreement's detail provision allowed him a retroactive temporary promotion and backpay for the entire period of his detail, Mr. Davis timely filed a claim with GAO under 4 C.F.R. Part 31.

ACTION OF OUR CLAIMS GROUP

Our Claims Group not only denied the claims of Mr. Beachley and Mr. Davis for the first 60 days of their details, but also held that the agency's action in granting backpay from the 61st day of the details was improper. The claims settlement stated, in pertinent part, as follows:

> "Since your agency's promotion plan and your union's collective bargaining agreement merely state that temporary promotions should normally be given instead of details to higher grade positions which would exceed 60 days, they cannot be considered nondiscretionary, so as to require that you be promoted prior to the 121st day of your detail. Therefore, your agency's settlement of your claim was incorrect in that it temporarily promoted you 60 days too soon. * * *."

AGENCY'S REQUEST FOR RECONSIDERATION

The Social Security Administration requested reconsideration of the claims settlements pursuant to 4 C.F.R. Part

32. It argues that its interpretation of its own regulation and the interpretation of the collective bargaining agreement by both management and union should be given effect. It submitted copies of guidelines for processing backpay cases signed by five of its division directors in which it is implicit that management and union have consistently viewed the contract provisions as establishing a nondiscretionary agency policy. The agency also points out that the issue is of great importance since it not only involves decisions it has already made on over 220 claims, but also bears on the larger issue of the interpretation of the negotiated agreement.

ANALYSIS AND CONCLUSION

We have held that an agency, by its own regulation or by the terms of a collective bargaining agreement, may establish a specified period under which it becomes mandatory to promote an employee who is detailed to a higher grade position. Thus, an agency may establish a specified period by regulation, or it may bargain away its discretion and agree to a specified period through a provision of a collective bargaining agreement. If the regulation or the agreement establish a nondiscretionary agency policy and if the provision in question is consistent with applicable Federal laws and regulations, then the violation of such a mandatory provision in a regulation or negotiated agreement which causes an employee to lose pay, allowances or differentials may be found to be an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596. For a comprehensive analysis of our case law in this regard, see John Cahill, 58 Comp. Gen. 59 (1978). And see also, as a specific case example, Burrell Morris, 56 Comp. Gen. 786 (1977).

The primary issue raised by the Social Security Administration in this appeal is whether the agency regulation and the comparable provision of the collective bargaining agreement, both of which use the word "normally", establish a nondiscretionary agency policy.

In considering the interpretation given an agency regulation by officials of that agency, we give great weight to their interpretation. This is especially the case where, as here, the agency has promulgated supplemental personnel regulations and policies for its employees within the general

framework and consistent with Office of Personnel Management regulations. See 5 U.S.C. § 301 and Chapter 171 of the Federal Personnel Manual. Here, the Social Security Administration asserts that the wording of the detail provision was intended to make temporary promotions for details to higher grade positions mandatory after 60 days, thereby establishing a nondiscretionary agency policy, the violation of which is compensable under the Back Pay Act, 5 U.S.C. § 5596. See Kenneth Fenner, B-183937, June 23, 1977. While other interpretations of the regulation could be made, the agency's interpretation is a reasonable one.

Similarly, in considering the interpretation given a provision of a collective bargaining agreement by the parties to the agreement, we give great weight to the parties' own interpretation. We have stated that if such an interpretation is reasonable, we will accept it even if other interpretations could be made. Fish and Guy, B-197660, June 6, 1980. In Mr. Davis' case the joint position of the agency and the union that the 60-day detail provision is mandatory in the sense of being a nondiscretionary agency policy is a reasonable interpretation.

Accordingly, the claims settlements in the cases of Mr. Beachley and Mr. Davis are reversed in part and the agency's awards of backpay from the 61st day of their details are upheld. However, the denial of the two employees' claims for backpay for the first 60 days of their details are sustained since there are no provisions in the negotiated agreement or agency regulations providing for backpay retroactive to the first day of the overlong detail.

One other aspect of this case should be clarified; that is, whether it is appropriate for us to assert jurisdiction over the claim of Mr. Davis since it pertains to the interpretation of a collective bargaining agreement. We have held that while the enactment of the Federal Service Labor-Management Relations Statute did not take away our jurisdiction to settle claims under Title 31 of the United States Code, it is our intent to exercise discretion in determining which cases are appropriate for adjudication by GAO so as to insure compatibility with the labor-management program. Schoen and Dadant, B-199999, October 9, 1981, 61 Comp. Gen. _____.

In the circumstances of this case, we feel it is appropriate for us to assert jurisdiction and, in fact, to refuse to do so would be extremely disruptive due to the impact such a decision would have on other claims or grievances. Several recent cases have clarified our jurisdictional policies on claims involving matters of mutual concern filed pursuant to 4 C.F.R. Parts 31 and 32. None of the restrictions established in those cases apply to this case. First, we note that there is no arbitration award involved. Compare, Gerald H. Hegarty, B-202105, July 7, 1981, 60 Comp. Gen. ____, where we held that we will not review or comment on the merits of an arbitration award. Secondly, we note that no one has objected to submission of this matter to GAO. Compare, Samuel R. Jones, October 9, 1981, 61 Comp. Gen. ____ where we held that we would not assume jurisdiction over claim filed under 4 C.F.R. Part 31 where the right relied upon arises solely under the collective bargaining agreement and one of the parties to the agreement objects to submission of the matter to GAO. Thirdly, we note that this Office frequently considers the type of overlong detail issue presented by this case. It is in an area of our expertise and concerns a matter which has traditionally been adjudicated by this Office. Compare, Linda A. Vaccariello, B-199998, dated today, where we held that, even where no one objects to submission of the matter to GAO, we will decline to assert jurisdiction over labor-management issues which are customarily adjudicated solely under grievance-arbitration procedures. Thus, in the circumstances of this case, our assumption of jurisdiction is consistent with our underlying policy of fulfilling our statutory responsibility to adjudicate claims in a manner which facilitates the smooth functioning of the labor-management program established by 5 U.S.C. Chapter 71.

for Milton J. Socolar
Comptroller General
of the United States