



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wiley H. Stephens

File: B-222901

Date: December 5, 1986

DIGEST

A headquarters memorandum directing the promotion of all employees occupying Air Reserve Technician foreman positions constituted a nondiscretionary agency policy. Although the agency failed to include the employee's instrument mechanic foreman position on a list of positions to which the policy applied, the employee is entitled to a promotion with backpay retroactive to the date when other foremen were promoted. Omission of the existing and occupied foreman position from the list was an administrative error which resulted in the failure to carry out a nondiscretionary agency policy requiring the promotion.

DECISION

We have been asked to determine whether a retroactive promotion with backpay may be granted to Mr. Wiley H. Stephens, an Air Force Reserve Technician employed as an Instrument Mechanic foreman in aircraft maintenance at Dobbins Air Force Base.^{1/} We hold that Mr. Stephens is entitled to a promotion with backpay retroactive to October 28, 1984, the date on which he should have been promoted under an agency determination increasing by one grade all Air Reserve Technician foreman positions in aircraft maintenance.

BACKGROUND

Mr. Stephens' position was designated WS-3359-7, Instrument Mechanic Foreman, wage grade level 7, on July 28, 1982. By memorandum of September 1, 1984, Headquarters, Air Force Reserve, Robins Air Force Base, Georgia, announced rewritten and upgraded position descriptions reflecting the duties of all Air Reserve Technician foreman positions in aircraft

^{1/} The Accounting and Finance Officer, Air Force Reserve, Dobbins Air Force Base, submitted the request for an advance decision.

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maintenance and directed that the incumbents of those positions be promoted to the upgraded positions in conjunction with the first scheduled wage adjustment on or after July 28, 1984. The memorandum stated:

"The new ART [Air Force Reserve Technician] foreman position descriptions applicable to the addressed unit(s) replace all ART foreman positions currently established."

The memorandum attached a list purporting to cancel "all the ART foreman positions currently established at the serviced unit(s)." It also attached a list of the "new ART foreman positions being established at the serviced unit(s)," as well as the new position descriptions.

Except for Mr. Stephens, all foremen at grade level WS-7 were promoted to grade level WS-8 on October 28, 1984, in accordance with the September 1, 1984 memorandum and attachments. Mr. Stephens' position did not appear on either of the lists attached to the memorandum. Although Mr. Stephens occupied a WS-7 foreman position that should have been included, it was omitted from the list which was compiled on the basis of a unit manpower document which erroneously reflected Mr. Stephens' position as nonsupervisory. While the delay in resolving that discrepancy appears to be based on some question concerning the proper classification of Mr. Stephens' position, the record indicates that he continued to occupy the WS-7 supervisory position throughout the period here in question. He was never removed from the WS-7 position and it was never reclassified as a nonsupervisory position. Mr. Stephens was ultimately promoted to grade level WS-8 on February 16, 1986, in response to a letter of December 9, 1985, from the Classification Specialist, Dobbins Air Base, stating:

"[T]he position currently classified as WS-07 subordinate foreman position should be classified at the WS-08 level in line with current AFRES policy on grading procedure for wage supervisor positions."

Mr. Stephens has filed a grievance concerning the delay in effecting his promotion. Although the Civilian Personnel Officer, Dobbins Air Force Base, has confirmed the circumstances that delayed Mr. Stephens' promotion and has concluded that the failure to promote him on October 28, 1984, was an unwarranted personnel action, the grievance examiner has expressed doubt concerning the agency's authority to grant a retroactive promotion with backpay.

DISCUSSION

As a general rule, a personnel action may not be made retroactive so as to increase an employee's right to compensation. Janice Levy, B-190408, December 21, 1977. We have recognized an exception to this rule in the case where an administrative or clerical error results in a failure to carry out a nondiscretionary agency regulation or policy. Where this exception applies, retroactive promotion with backpay is available as a remedy under the Back Pay Act, 5 U.S.C. § 5596. See B-211784, May 1, 1984.

We believe this exception applies in the present case. By its memorandum of September 1, 1984, Headquarters established a nondiscretionary policy requiring the promotion of all Air Reserve Technician foremen. This conclusion follows from language in the memorandum stating that the new ART foreman position descriptions applicable to the addressed units replace "all ART foreman positions currently established." Mr. Stephens occupied the position of Instrument Mechanic Foreman as of September 1, 1984, and that position remained established throughout the period for which he seeks retroactive promotion. Its omission from the list of upgraded foreman positions attached to the memorandum of September 1, 1984, appears to have been the result of an administrative error committed at Headquarters level in listing Mr. Stephens' position as a nonsupervisory position on a unit manpower document. That listing appears to have been the result of a misapprehension on the part of Headquarters officials that Mr. Stephens did not exercise supervision over the electrical shop and therefore did not supervise the requisite number of employees to qualify as a foreman.

Since Mr. Stephens occupied a foreman position that should have been identified in the attachments to the September 1, 1984 memorandum and since he should have been promoted along with the other foreman, we find that he is entitled to a promotion with backpay retroactive to October 28, 1984, the date other Air Reserve Technician foremen were promoted. Retroactive promotion should place him in the appropriate step of grade level WS-8, and he should be given creditable service for time within grade retroactive to October 28, 1984. Under the Back Pay Act, Mr. Stephens is to receive an amount equal to the pay, allowances, or differentials which he would have normally received during the period of the unjustified or unwarranted personnel action. 5 U.S.C. § 5596(b)(A); 5 C.F.R. § 550.805(a).

for 
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