



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: David R. Barth and Charles H. Byrd, II - Backpay -
Higher Grade Duty Assignment

File: B-240239

Date: October 29, 1990

DIGEST

Although at the direction of their unit chief FBI firearms instructors performed duties of a position classified at a higher grade than the position they occupied, no right to increased pay exists. A federal employee is entitled only to the salary of his appointed position even though higher level duties were performed. Therefore, the employees are not entitled to backpay for performing the higher-graded duties.

DECISION

This action is in response to a request from the U.S. Department of Justice, Federal Bureau of Investigation, for an advance decision on the propriety of paying the backpay claims of Messrs. David R. Barth and Charles H. Byrd, II based on their performance of the duties of a higher-graded position. For the reasons stated below, the claims are denied.

BACKGROUND

Messrs. Barth and Byrd were assigned as Investigative Grade Firearms Instructors, grade GS-13, beginning on July 11, 1986, and April 27, 1987, respectively, with the Firearms Training Unit, Quantico, Virginia, where they worked in conjunction with Program Managers (Firearms Instructors), whose positions were graded at GM-14. The agency states that although under the Training Unit's organizational structure it was not intended, due to a heavy workload both Messrs. Barth and Byrd were doing essentially the same work as the grade GM-14 Program Managers. Both employees claim, and the FBI admits, that they were specifically assigned and required to perform the same job as the Program Managers. The FBI recommends that backpay be approved for both claimants along with 16 other grade GS-13 Firearms Instructors who have, since 1985, also been specifically required to perform at the grade GM-14 level. In making its recommendation the FBI emphasized the fact that these employees were specifically and knowingly instructed to perform duties outside their job description for an extended period of time.

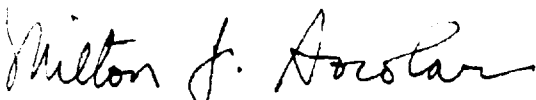
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OPINION

The general rule is that an employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted. This rule was reaffirmed by the United States Supreme Court in United States v. Testan, 424 U.S. 392, at 406 (1976), where the Court stated that ". . . the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claim that he should have been placed in a higher grade." The Court of Claims ruled in Wilson v. United States, 229 Ct. Cl. 510 (1981), that neither the detail statute (5 U.S.C. § 3341) nor the Federal Personnel Manual requires the granting of a temporary promotion for an overlong detail and that the absence of a mandatory provision granting the temporary promotion defeats the employee's entitlement under the Back Pay Act, 5 U.S.C. § 5596 (1988). Consequently, backpay is not available as a remedy for misassignments to higher level duties or improper classifications. Regina Taylor, B-192366, Oct. 4, 1978.

In Turner-Caldwell, III, 61 Comp. Gen. 408 (1982), we held that we would follow the Wilson decision with respect to all pending and future claims as of the date of our decision, May 25, 1982. See Winifred McCulley, B-229086, May 25, 1988, and cases cited therein.

Therefore, the claims of Messrs. Barth and Byrd for backpay must be denied in the absence of any evidence of agency regulation or collective bargaining agreement which requires temporary promotions for details to higher-graded positions. See Albert W. Lurz, 61 Comp. Gen. 492 (1982).

for 
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