

**DECISION**

10,997  
PLB-1  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-170675

DATE: August 8, 1979

*Entitlement to Night Differential for Employees Promoted*  
MATTER OF: Ralph G. Nail et al. - Promotion from Wage Board to  
General Schedule Position

DIGEST: Employees who were promoted from wage board to General Schedule positions are entitled to have night differential included in wage board rate of pay for purpose of determining highest previous rate upon transfer to General Schedule position. See Terry Ray Ashbaugh, B-189852, February 14, 1979.

This decision is rendered in response to a Consent Order of Remand issued by the United States District Court for the Northern District of Georgia, Atlanta, Division, dated May 10, 1979, in connection with pending litigation in Ralph G. Nail, v. United States, CA No. C77-1497A, and related cases. The court's order remands the case to our Office for a decision authorizing the Federal Aviation Administration (FAA) to recompute the plaintiffs' pay rates in the General Schedule positions to which they were promoted on the basis of highest previous rates determined by their wage board rates of pay, including night differential. Although the parties to the litigation are agreeable to judicial settlement of the four cases before the District Court, the Consent Order of Remand reflects the concern that the FAA will be unable to administratively settle similar claims in the absence of a specific ruling in the matter. DLG 02553

The practice of the FAA in promoting wage board employees to the General Schedule has been to exclude any night differential from the rate of basic pay in the wage board position in determining the appropriate rate of pay in the General Schedule position. However, we have held in Terry Ray Ashbaugh, B-189852, February 14, 1979, that the applicable regulations contemplate that night differential be included as part of the rate of basic pay of a wage board employee for the purpose of determining his highest previous rate upon transfer to a General Schedule position. See also B-175430, June 1, 1972, and December 19, 1973. Consistent with those decisions, the FAA may administratively settle claims not barred by the statute of limitations on the basis of a straight rate comparison under 5 CFR 531.201, et seq., of the employee's wage board rate of pay, including night differential, with the rate of basic pay in the General Schedule.

*Milton J. Aroslan*  
For The Comptroller General  
of the United States

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