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DECISION



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

FILE: B-173783.200

DATE: July 31, 1978

MATTER OF: William G. Atherton - Details to higher
level position

DIGEST: Employee was detailed to higher level position on several occasions for varying periods. He is only entitled to retroactive temporary promotion for each individual detail which lasted more than 120 days. Since the employee's separate details do not appear here to have been made for the purpose of circumventing the regulations governing temporary promotions for over-long details we shall await a specific case in which such violation is alleged before deciding whether two or more details may be aggregated for the purpose of awarding a retroactive temporary promotion.

This decision, made at the request of Janice K. Mendenhall, Director of Administration, General Services Administration (GSA), deals with whether an employee who is placed on a series of details totaling more than 120 days would be entitled to a retroactive temporary promotion under our Turner-Caldwell decisions 55 Comp. Gen. 539 (1975) and 56 id. 427 (1977). In Ms. Mendenhall's submission she gives an example of one employee's claim which is similar to other cases at GSA.

The facts in the example submitted are as follows:

"Mr. William G. Atherton, Assistant Buildings Manager, GS-11, was detailed to the position of Buildings Manager, GS-12, for a total of 383 days from October 1970 through December 1974. This did not involve a continuous detail but rather a series of consecutive details with breaks of various lengths between periods of detail. The chronology is as follows:

B-173783.200

<u>"Dates of Detail</u>	<u>Length of Detail</u>	<u>Length of Break Between Detail</u>
10/22/70 - 1/4/71	74 days	668 days
11/3/72 - 1/2/73	61 days	371 days
1/9/74 - 6/9/74	152 days	92 days
9/8/74 - 12/1/74	91 days	8 days
12/18/74 - 12/20/74	5 days"	

In view of the above the following questions are posed:

- "1. Are a series of details to be accumulated over the 6 year statute of limitations period to calculate entitlement to backpay and retroactive temporary promotion under the Turner-Caldwell Decision B-183086?
- "2. If the answer to No. 1 is negative, should all details any part of which occurred within the preceding year (365 days) be accumulated?
- "3. If the answer to No. 2 is negative, what period between details would be sufficient to ignore in terms of accumulating the details or to lead to the assumption that there was no attempt made to circumvent the regulations governing temporary promotions for overlong details?
- "4. Would the answer to the above apply equally to consecutive details to the same position and details to different positions?"

In our Turner-Caldwell decision, 55 Comp. Gen. 539 (1975), affirmed at 56 Id. 427 (1977), we held that an agency's discretionary authority to retain an employee on detail to a higher grade position continues no longer than 120 days and the agency must either seek prior approval of the Civil Service Commission for an extension of the detail or temporarily promote the detailed employee at the end of the specified time period. Where an agency

fails to seek prior approval of the Commission to extend an employee's detail period in a higher grade position past 120 days, the agency has a mandatory duty to award the employee a temporary promotion if he continues to perform the higher grade position.

The above-cited decisions were based in part on a reading of subparagraph 8-4f, subchapter 8, chapter 300, of the Federal Personnel Manual (FPM), which reads as follows:

"(1) When it is found that a detail will exceed 120 days or when there is a question of the propriety of the detail, the agency must request prior approval of the Commission on Standard Form 59."
(Underscoring supplied.)

It is evident from all of the above that the rule concerning retroactive temporary promotions for extended details only applies when a given detail lasts more than 120 days, as an agency may detail an employee for a lesser period without prior Commission approval. The fact that an employee may have been detailed two or more times, each detail being less than 120 days but all of the details together aggregating more than 120 days, does not alone entitle him to a retroactive temporary promotion. Each detail is a separate personnel action and for the purpose of applying our Turner-Caldwell decisions each detail must have exceeded 120 days before a determination may be made that the employee must receive a retroactive temporary promotion. Accordingly, questions 1 and 2 are answered in the negative.

With respect to questions 3 and 4, there is no allegation that there was any intent to circumvent the regulations governing temporary promotions for overlong details in Mr. Atherton's case, so we do not find it necessary to answer those hypothetical questions now. We prefer to await a specific case in which all of the facts are known before deciding whether two or more details may be aggregated for the purpose of awarding a retroactive temporary promotion. We shall defer our judgment until such a specific case is submitted.

Applying the above principles to Mr. Atherton's case, he would only be entitled to a retroactive temporary promotion from the 121st day to the 152d day of his third detail (January 9 to June 6, 1974), described above. Since the other details were for less than

B-173783.209

121 days our Turner-Caldwell decisions are inapplicable and he would not be entitled to retroactive temporary promotions for such short periods of time.


Acting Comptroller General
of the United States