

DECISION



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

*For Shute*  
*P. 14*  
**7562**

FILE: B-183086

DATE: September 7, 1978

MATTER OF: Retroactive temporary promotion for  
extended details to higher grades.

DIGEST: Department of Health, Education, and Welfare detailed employees to higher grade positions, but finds it difficult or impossible to show that vacancies existed. Claims of employees for backpay under Turner-Caldwell, 56 Comp. Gen. 427 (1977), may be considered without any finding of vacancies. It is not a condition for entitlement to a retroactive temporary promotion with backpay that there must have existed, at the time a detail was ordered, a vacant position to which the claimant was detailed. However, the position must be established and classified.

This action is in response to a letter dated June 5, 1978, from the Assistant Secretary for Personnel Administration, Department of Health, Education, and Welfare, requesting an interpretation of our Turner-Caldwell decision B-183086, dated March 23, 1977, 56 Comp. Gen. 427, with respect to Identical-Additional (IA) positions. The Assistant Secretary states that IA positions exist where large bodies of employees are appointed to do the same work under one common position description and classification. The letter states that it is the understanding of the Department of Health, Education, and Welfare that a condition for entitlement to retroactive temporary promotion with backpay is that there must have existed, at the time the detail was ordered, a vacant, officially classified position to which the claimant was detailed. However, it appears that a number of employees have been detailed to higher grade duties, but it may be difficult or impossible in some cases to show that vacancies existed. Therefore, we have been asked whether the position to which an employee is detailed must be vacant before he can acquire entitlement to a retroactive temporary position with backpay.

Our recent decision B-161266, dated June 12, 1978, 57 Comp. Gen. \_\_\_\_, concerned a request by the Federal Labor Relations Council for an advance decision as to the legality of implementing a backpay

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award granted by an arbitrator because the Internal Revenue Service (IRS) failed to temporarily promote two grievants during their assignments to higher grade duties. The IRS argued there were no vacant, funded positions to which the grievants could have been assigned. We stated that we were unaware of any requirement that a position be vacant in order for an employee to be detailed to that position, and we pointed out that the definition of a detail as set forth in the Federal Personnel Manual (FPM), chapter 300, subchapter 8, states that a position is not filled by a detail since the employee continues to be the incumbent of the position from which he is detailed.

The Federal Personnel Manual, chapter 300, subchapter 8, further states that details may be made to meet emergencies occasioned by abnormal workload, change in mission or organization, or unanticipated absences. The FPM also states that a detail may be made pending official assignment, pending description and classification of new position, pending security clearance, and for training purposes. Thus, there is no FPM requirement that an employee must be detailed to a vacant position; rather, the FPM merely authorizes an agency to detail an employee to higher grade duties for a short period under the circumstances stated above.

In addition, FPM chapter 335, subchapter 4, lists some uses of a temporary promotion. Included are situations where an employee has to perform the duties of a position during the extended absence of an incumbent, to fill a position which has become vacant until a permanent appointment is made, to assume responsibility for an increased workload for a limited period, or to participate in a special project which will last for a limited period. In this connection we point out that there is only one example cited which requires a vacant position. Moreover, it is apparent that there is no vacant position when an employee is temporarily promoted to perform the duties of a position during the extended absence of the incumbent.


Finally, the United States Civil Service Commission (CSC) has promulgated implementing guidance concerning our Turner-Caldwell decision in CSC Bulletin No. 300-40 dated May 25, 1977, subject: GAO Decision Awarding Backpay for Retroactive Temporary Promotions of Employees on Overlong Details to Higher Graded Jobs (B-183086). Paragraph 4 of that bulletin states: "For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.) If the

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position must be vacant, besides established and classified, the CSC would have so stated when it forcefully set forth the requirements for the implementation of the decision. It is clear from the statement in the bulletin that the crucial aspect in the Turner-Caldwell line of cases is that the position be established and classified. Vacancy is not a mandatory condition.

Two additional points made in our earlier decisions should be noted. In 56 Comp. Gen. 427, we emphasized the necessity of an employee satisfying the existing statutory and regulatory requirements before acquiring entitlement to a retroactive temporary promotion with backpay. Examples given include the time-in-grade requirements of the "Whitten Amendment," 5 U.S.C. § 3101 note, and requirements governing appointments to supergrade positions under 5 U.S.C. § 3324. Secondly, B-191266, June 12, 1978, supra, concludes with the caveat that the decision does not change the general rule that the mere accretion of duties in a position does not entitle the occupant to a promotion.

Accordingly, there is no necessity that a personnel office find there was a vacant position as a condition for considering retroactive action under Turner-Caldwell with respect to IA positions.

  
Deputy Comptroller General,  
of the United States