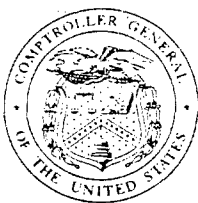


PLM-1

DECISION



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

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FILE: B-186711

DATE: April 17, 1979

MATTER OF: Fred T. Larsen - Claim for backpay incident to detail to higher-graded position

DIGEST: Grade GS-12 employee who was detailed to grade GS-13 position from June 24, 1976, through May 7, 1977, claims retroactive temporary promotion and backpay. Agency questions entitlement for entire period claimed since incumbent of grade GS-13 position returned to the office for 2-month period on November 7, 1977. Since evidence indicates that grade GS-13 employee did not perform the duties of his position and the claimant continuously performed higher grade duties, claim may be allowed for entire period of October 22, 1976, 121st day of detail, through May 7, 1977.

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DLG-0006
This action is in response to a request for an advance decision from Ms. Nedra A. Blackwell, an authorized certifying officer of the Bureau of Reclamation, Pacific Northwest Region, U.S. Department of the Interior, reference 360, concerning the claim of Fred T. Larsen, an employee of the Bureau of Reclamation at Moses Lake, Washington, for backpay incident to a detail to a higher-graded position from June 24, 1976, through May 7, 1977. After Mr. Larsen had served on detail for more than 120 days during the assignment of the higher-graded employee at another location, the latter employee returned to Moses Lake for about 2 months. The question presented for decision is what effect the return of the higher-graded employee has on Mr. Larsen's claim.

The report from Interior states that due to the emergency created by the Teton Dam disaster, Mr. Neil Stessman, the Center Director of the Columbia Basin Job Corps Conservation Center (Job Corps), was detailed to the Claims Office in Idaho Falls for an indefinite period. Mr. Larsen, who was the Assistant Center Director, grade GS-12, was informally designated Acting Center Director and that action was officially confirmed by memorandum dated July 30, 1976, which designated Mr. Larsen as Acting Center Director from June 24, 1976, until further notice. Mr. Larsen assumed the responsibilities of the position of Center Director, grade GS-13.

The record indicates further that on November 6, 1976, the Center Director, Mr. Stessman, returned to the Job Corps Center and that from November 7 through December 31, 1976, he worked 107 hours

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on Job Corps duties and 48 hours on Teton Dam claims. Also, during this period he was on annual leave for 133 hours. Mr. Larsen reportedly worked 176 hours on Job Corps duties and took 112 hours of annual leave during this period. The record indicates further that effective January 2, 1977, Mr. Stessman, the Center Director, was officially transferred to the Claims Office and that Mr. Larsen was notified on January 14, 1977, that he was designated Acting Center Director pending appointment of a replacement. Mr. Larsen served as Acting Center Director through May 7, 1977, when a new Center Director reported for duty.

The agency has determined that Mr. Larsen would be entitled to a temporary promotion and retroactive backpay for the period from October 22 to November 6, 1976, since he was detailed to a higher-graded position more than 120 days without Civil Service Commission approval. The agency questions, however, Mr. Larsen's entitlement to the temporary promotion during the period the Center Director had returned to the office. The agency also questions whether an interruption in Mr. Larsen's detail would affect his entitlement to a temporary promotion with retroactive backpay for the period January 2 through May 7, 1977.

The agency has submitted evidence which tends to establish that even though the Center Director returned to the office, Mr. Larsen "for all practical purposes" continued serving as Acting Center Director. This evidence consists of the following documents:

1. Mr. Larsen's claim for the period June 24, 1976, through May 7, 1977, in which he states that he was not released as Acting Center Director during that time;
2. A memorandum from Mr. Stessman stating that he returned to the Center for such short periods of time that he was unable to substantially relieve Mr. Larsen of the responsibilities of Center Director;
3. A memorandum from an employee of the Center that he was appointed Acting Center Director by Mr. Larsen while Mr. Larsen was on annual leave in December 1976; and
4. A letter from the new Center Director indicating that from all information available to him, Mr. Larsen served as Acting


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Center Director without interruption from June 1976, until May 1977. The letter also states a time summary shows that most of Mr. Stessman's time during his brief return was spent utilizing compensatory time earned while on his detail.

Our Office has held that where an employee is detailed to a higher-graded position and the agency fails to seek Civil Service Commission approval to extend the detail for a period beyond 120 days, the agency is obligated to award the employee a retroactive temporary promotion and backpay if he continues to perform those higher grade duties. See Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). However, where an employee has been detailed more than one time, each detail is treated as 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. See William G. Atherton, B-173783.200, July 31, 1978.

In the present case, however, the evidence indicates that Mr. Larsen performed the duties of Acting Center Director without interruption from June 24, 1976, through May 7, 1977. There is nothing in the record before us that shows that Mr. Larsen's detail was ever formally or informally terminated when the Center Director, Mr. Stessman, returned to the office in November and December of 1976. In addition, the management official who would appear to be most familiar with the situation, Mr. Stessman, has stated that he did not perform the duties of Center Director upon his return to the office for that 2-month period. Therefore, based upon the evidence in the record before us, we believe that Mr. Larsen's detail was not interrupted or terminated when Mr. Stessman returned and that he should be awarded a retroactive temporary promotion and backpay from the 121st day of the detail, October 22, 1976, until the detail was terminated by the appointment of a new Center Director on May 8, 1977.

Accordingly, the claim may be paid consistent with the above discussion if otherwise proper.


Deputy Comptroller General
of the United States