

PLM-II
D. AGAZARIN



DECISION

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

[Date of Entitlement Determination For Within-Grade Increase] 9156

FILE: B-189852

DATE: February 14, 1979

MATTER OF: Terry Ray Ashbaugh - Within-Grade Advancement -
Equivalent Increase

DIGEST: Upon prevailing rate employee's promotion to a
General Schedule position his night differential
is part of his "rate of basic pay" for purpose
of determining whether or not he received an increase
of pay equivalent to a within-grade increase.

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Mr. Mark E. Schneider, Vice President, central region of the
Professional Airways Systems Specialists on behalf of Mr. Terry Ray
Ashbaugh, an employee of the Federal Aviation Administration
(FAA), Department of Transportation, requests our determination
as to the date Mr. Ashbaugh was entitled to receive a within-
grade increase.

The record shows that Mr. Ashbaugh, a prevailing rate employee,
was promoted to grade WG-11, step 3, on May 26, 1974. On
August 3, 1975, Mr. Ashbaugh was promoted to grade GS-9 in the
General Schedule. Prior to this promotion his scheduled rate of
pay was \$14,373 a year and he was being paid night differential
which increased his basic rate of pay to \$15,084.28 a year. In
accordance with agency regulations his rate of pay within GS-9
was set at step 7, \$15,409 a year. Paragraph 14a(2) of FAA
Order PTP 3550.1A provides in pertinent part that when employees
move from Wage Board positions to Classification Act positions
an employee will be placed in the lowest step rate of the
classified position that will not result in a loss in the
employee's basic rate of compensation on an annual basis.

Mr. Ashbaugh believes he was entitled to a within-grade
increase on May 26, 1977, 156 weeks after his promotion on
May 26, 1974, to WG-11, step 3, since he received satisfactory
performance ratings and had not received an equivalent increase. ?
Under 5 U.S.C. 5335(a) (1976) and Subpart D of Part 531,
5 C.F.R. the waiting period for an advancement from step 7 to
step 8 for a General Schedule employee is 156 weeks. This
waiting period begins when the employee receives an equivalent
increase, which for purposes of this case is an increase in his
rate of basic pay equal to or greater than, the amount of the
within-grade increase for the grade in which he is serving. See
5 C.F.R. 531.403, 531.406.

When he was not advanced within grade, Mr. Ashbaugh
filed a grievance within his agency on June 16, 1977. The FAA

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denied the grievance on the basis that Mr. Ashbaugh had received an increase in pay greater than a within-grade increase at the time he was placed in step 7 of grade GS-9 incident to his promotion of August 3, 1975.

The grievance examiner's report, in pertinent part, explained the agency's determination as follows:

"In paragraph S4-5a(f) /FPM Supplement 990-2, Book 531/ basic rate of pay is defined as 'the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.' Paragraph S4-8c(2) goes on to say that the 'determination of what constitutes an equivalent increase is based on a comparison of rates of basic pay rather than the actual amount received which may have been greater because of over-time, night and holiday pay, etc.' Therefore, in determining whether your movement from the Federal Wage System to the General Schedule was an equivalent increase, we must look at your scheduled rates of pay as a WG and GS employee, exclusive of any separately stated differentials. As a WG-11, step 3, your scheduled rate of pay was \$6.91 per hour or \$14,373 per year. As a GS-9, step 7, your scheduled rate of pay was \$15,409 per year. Since this is an increase of \$1,036 per year and the step increase for a GS-9 was \$428, you received an equivalent increase on August 3, 1975, the date of your movement to the General Schedule."

The issue in this case is whether the rate of basic pay of a prevailing rate employee includes night differential, since the determination of whether there was an equivalent increase upon transfer to the General Schedule, is made by comparing the rate of basic pay between the employee's Wage Board rate and his General Schedule rate.

We have never ruled on the question of whether night differential is included in the basic rate of compensation of a prevailing rate employee for purposes of determining whether

such an employee, upon transfer to a position in the General Schedule has had an increase in pay equivalent to a within-grade increase. However, section 5343(f) of title 5, United States Code (1976) provides that the night differential payable to a prevailing rate employee is a part of his basic pay.

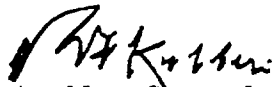
We have held that night differential is a part of the basic pay of a Wage Board employee for the purpose of determining his rate in the General Schedule upon conversion of his position to the General Schedule. 50 Comp. Gen. 332 (1970). In addition, we have held that night differential should be included as part of the rate of basic pay of a Wage Board employee for the purpose of determining his highest previous rate in a Wage Board position in setting the rate of pay of the employee upon transfer to a General Schedule position. B-175430, June 1, 1972, and December 19, 1973.

The definition of "rate of basic pay" in 5 C.F.R. 531.402(f) for purposes of determining whether or not a General Schedule employee has received an equivalent increase is "* * * the rate of pay fixed by law or administrative action for the position held by the employee before any deductions and exclusive of additional pay of any kind." Definitions in 5 C.F.R. 539.202(c) and 531.202(i) are identical for purposes of determining what rate a prevailing rate employee is entitled to upon conversion of his position to the General Schedule and for purposes of determining the highest previous rate of a prevailing rate employee transferring to a General Schedule position.

Basic pay for Wage Board employees as governed by 5 U.S.C. 5343(f), supra, includes the "scheduled rate" plus "night differential" as prescribed therein. This basic pay rate is equated to basic pay under the definition in 5 C.F.R. 539.202(c) and 5 C.F.R. 531.202(i). It does not appear reasonable to treat the night differential as "additional pay of any kind" when construing the same definition in 5 C.F.R. 531.402(f). This is particularly true in view of the statutory definition of basic pay as contained in 5 U.S.C. 5343(f). Accordingly, since Mr. Ashbaugh's rate of basic pay, as a WG-11, step 3, at the time of his promotion was \$15,084.28 per annum and as his rate of pay for a GS-9, step 7, was \$15,407 per annum, he received an increase of \$324.72 which was less than the \$428 step increase for a GS-9. Since Mr. Ashbaugh did not receive an equivalent increase upon his promotion on August 3, 1975, he was entitled to advance

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to step 8 of grade GS-9, on May 26, 1977, 156 weeks after his promotion to WG-11, step 3, if otherwise proper. The FAA should effect the advancement and provide Mr. Ashbaugh with appropriate backpay under 5 U.S.C. 5596 (1976).


Deputy Comptroller General
of the United States