

6317
DECISION



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

FILE: B-191287

DATE: June 19, 1978

**MATTER OF: -- Promotion and Transfer
of Prevailing Rate Employee**

- DIGEST:**
1. Prevailing rate employee claims retroactive compensation since pay rate in new wage area after promotion and transfer was based upon pay rate in old wage area. While Civil Service Commission (CSC) instructions on pay administration are inconsistent as to which wage areas are compared, they are not contrary to law or outside the scope of CSC's authority. Claim is denied.
 2. Prevailing rate employee claims higher pay rate upon promotion and transfer to higher wage area based upon alleged entitlement to retain step increase no matter where he is employed. Claim is denied since there is no vested right to retain step increases when an employee is transferred or promoted.

This action is in response to the claim filed by _____, an employee of the Department of the Navy, for retroactive pay in connection with his promotion and transfer to a wage area with a higher wage schedule. The Chairman of the Civil Service Commission (CSC) has provided our Office with a report on this pay-setting action and has requested that we review the CSC's instructions on reassignments and promotions between different wage areas to determine whether these instructions are in compliance with Public Law 92-392 and decisions of our Office.

The record before us indicates that on March 17, 1975, _____ was promoted from Machinist (Marine) General Foreman, WS-13, step 5, at the Norfolk Naval Shipyard, Norfolk, Virginia, to a different position with the same title, WS-14, step 2, at the U.S. Naval Ship Repair Facility, Subic Bay, Philippines. _____ sought clarification from the Department of the Navy concerning his placement at step 2 of level 14 after comparing the relative wage rates for Norfolk and Subic Bay as set forth below:

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	Norfolk	Subic Bay
WS 13/5	\$8.60 per hour	\$9.61 per hour
WS 14/2	8.16	9.02
WS 14/5	9.14	10.10

argued that his new pay level was incorrectly set since his new pay rate at WS-14, step 2 (\$9.02 per hour) was \$0.59 per hour less than he would have received if he had transferred laterally to WS-13, step 5 at Subic Bay (\$9.61 per hour). He argued further that an employee should retain his step level within his grade no matter where he works or what pay scale applies. concludes that he should have been promoted at Norfolk and then transferred to Subic Bay or that he should have been transferred to Subic Bay and then promoted, with either action resulting in his pay level being set at WS-14, step 5.

The Department of the Navy responded that under the applicable promotion rules the Navy would look only to the employee's grade and hourly rate of pay, not his step level, and that when he was promoted was entitled to at least \$8.91 per hour which was achieved by placing him at step 2 of grade WS-14, \$9.02 per hour. The Navy also indicated that application of the highest previous rate rule was discretionary and that did not have any entitlement to a transfer at the same step of his grade.

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sought further clarification on this question from the CSC while at the same time he filed a claim with our Claims Division. The report from the CSC, dated December 12, 1977, refers to CSC instructions regarding pay administration for prevailing rate employees which are contained in Federal Personnel Manual (FPM) Supplement 532-1, as amended by Instruction 11, issued June 30, 1975. The CSC disagrees with contention that these 1975 amendments affect the outcome in this case, but we need not consider the effect of the 1975 amendments on claim since they were issued subsequent to promotion and transfer.

The CSC report refers to the applicable rule governing promotions of prevailing rate employees in effect at the time of the promotion as set forth in FPM

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Supp. 532-1, subchapter S8-3, which provided, in pertinent part as follows:

"d. Promotion. Upon promotion an employee is entitled to be paid at the lowest scheduled rate of the grade which exceeds his existing rate of pay by no less than one step-rate increment of the grade from which he is promoted * * *."

Existing rate of pay was defined in subchapter S8-2a, as follows:

"(4) Existing rate of pay means the scheduled rate of pay or retained rate of pay received immediately before the effective date of a transfer, promotion, change to lower grade, within-grade increase, or revision of a wage schedule."

The CSC states that when an employee changes wage areas at the time of promotion, the existing rate of pay is the rate of pay the employee was earning before promotion in the old wage area and the one-step increment is measured in the old wage area. Thus, the CSC concludes that rate of pay was properly set at step 2 of grade WS-14 at Subic Bay.

The CSC letter continues by stating that once the employee's promotion entitlement is determined, it is necessary to determine whether he received an equivalent increase for the purposes of a within-grade increase. The CSC letter refers to the definition of an equivalent increase as set forth in FPM Supp. 532-1, subchapter S8-5e(1), which provided, in pertinent part, as follows:

"* * * an increase or increases in an employee's scheduled rate of pay equal to or greater than the amount of the within-grade increase for the grade in which the employee is serving."

However, under the CSC's instructions, certain increases in pay were not counted as equivalent increases such as:

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"A transfer or reassignment in the same grade and step rate to another local wage area which has a higher wage schedule. If the employee is transferred to a higher grade, determination of whether (there) is an equivalent increase will be made in the same manner as if the employee had been transferred at the same grade and step rate and then promoted to the higher grade." FPM Supp. 532-1, subchapter S8-5f(1).

The CSC letter points out that by comparing the rate in the new wage area (Subic Bay) for the grade and step from which promoted (WS-13, step 5) and the rate for the grade and step to which promoted (WS-14, step 2), did not receive an equivalent increase at the time of his promotion. Since had served the requisite waiting period since his last equivalent increase, he was entitled to advancement to grade WS-14, step 3, effective on the date of his promotion.

The CSC letter then turned to the question of entitlement under the highest previous rate rule which was set forth in FPM Supp. 532-1, subchapter S8-3c, in pertinent part, as follows:

"Subject to S8-3d, and to pay retention provisions in subchapter S9, when an employee is reemployed, transferred, reassigned, promoted, or changed to a lower grade, an agency may pay him at any rate of his grade which does not exceed his highest previous rate; however, if his highest previous rate falls between two rates of his grade, the agency may pay him at the higher rate * * *."

In computing the highest previous rate, the CSC instructions in subchapter S8-3e(5) provided the following guidance:

"If the highest previous rate was earned in a wage job it is the current rate of the grade and step-rate of the former job on the same type of wage schedule in the wage area in which the employee is being employed, or the actual earned rate, whichever is higher.* * *"

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The CSC letter states that under the above-cited instructions highest previous rate would be considered grade WS-13, step 5, at Subic Bay (\$9.61 per hour) and that upon promotion to grade WS-14 he could have been placed at step 4 at Subic Bay since it would have provided a greater benefit than that provided under the promotion rule. In addition, the CSC letter points out that placement in step 4 would not have constituted an equitalent increase, and, in view of prior creditable service, he could have been placed in step 5 of grade WS-14. However, since use of the highest previous rate under such circumstances is discretionary with the employing agency, the CSC concludes that the Navy was not required to set his pay at step 5 of grade WS-14.

The CSC letter disputes contention that he was, in essence, entitled to two separate actions, a promotion and a reassignment to a new wage area at the same step and grade. The CSC argues that had a single entitlement to reassignment to a new wage area at a higher grade and that he could not have been transferred to a non-existent WS-13 position at Subic Bay nor promoted to a non-existent WS-14 position at Norfolk. The letter continues by disputing contention that an employee is entitled to retain the same step in his grade if he is transferred or reassigned at the same grade to a new wage area. The CSC argues that if an employee is deemed to be entitled to retain his step in his grade so long as he is continuously employed in that grade, then the discretion granted to the agencies under the highest previous rate rule would be contrary to law. In addition, the CSC concedes that the Federal Wage System promotion rule would operate to deprive an employee of the benefit of a step increase he has acquired where a simultaneous promotion and change to a higher wage area occurs such as in the present case. The CSC argues, however, that an employee's entitlement to a step level in his grade continues only so long as the employee remains in same position without a break in service, and the CSC cites a decision of our Office, 21 Comp. Gen. 791 (1942) in support of that proposition.

DISCUSSION AND CONCLUSIONS

With the enactment of Public Law 92-392, approved August 19, 1972, 86 Stat. 564, the mechanism for pay adjustments for prevailing rate employees has changed from an administrative

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system which was largely discretionary with the executive branch to a statutory system under the Federal Wage System. Under the provisions of 5 U.S.C. § 5343(c)(5) (1976), the CSC is directed to prescribe rules governing the administration of pay for individual employees on appointment, transfer, promotion, demotion, and other changes in employment status. We note that for the most part the CSC rules governing pay administration for prevailing rate employees (for example, promotions) have remained basically unchanged since their initial implementation in 1968 under the Coordinated Federal Wage System. In addition, we would point out that the legislative history of Pub. L. 92-392 indicates a congressional intent to continue the established practices and policies relating to Federal blue collar employees which had previously been adopted administratively, except where Congress expressly indicated that changes were to be made. See S. Rep. No. 92-791, 92d Cong., 2d Sess. 2 (1972); H.R. Rep. No. 92-339, 92d Cong., 1st Sess. 6 (1971). See also B-140583, December 10, 1975.

At the outset, we must state our disagreement with the CSC in its characterization of the action involving as a reassignment to a new wage area at a higher grade. Such a characterization is inconsistent with the CSC's definitions of promotion and reassignment as set forth in FPM Supp. 532-1, subchapter S8-2a(7) and (9) and the Navy's stated intention as evidenced by the personnel action. We believe received a promotion which also involved a change of duty station to a new wage area, and the question to be decided is at what step is to be placed in grade 14 upon his promotion to a higher wage area.

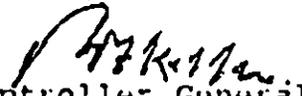
We must point out that on their face the CSC instructions for prevailing rate employees concerning equivalent increases and highest previous rate are inconsistent with the rule concerning promotions. As set forth above, the CSC instructions concerning equivalent increases and highest previous rate make the comparison of rates based on the new wage area while the rule on promotions compares the rate in the old wage area with the rates in the new wage area. However, while the CSC instructions may be inconsistent with regard to which wage area will be the basis for comparing rates, we cannot conclude that these instructions are inconsistent with applicable provisions of law or outside the authority vested in the CSC for issuance of rules necessary to carry out the law.

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As noted above, the statute provision requires the CSC to issue rules governing the administration of pay upon the promotion of prevailing rate employees. 5 U.S.C. § 5343(c)(4) (1976). Congress, in enacting Pub. L. 92-392, set forth no specific guidance or entitlement for employees upon promotion, which is in contrast to Congress' treatment of reductions in rates of pay. As provided in 5 U.S.C. § 5345 (1976), an employee who is reassigned to a lower wage area may, under certain circumstances, retain his rate of pay for up to 2 years from the date of reassignment. In the absence of such a specific statutory entitlement, we cannot say as a matter of law that the CSC is in error in implementing a promotion rule which compares wage rates between two wage areas and effects the result produced in case.

Furthermore, we cannot agree with contention that an employee is entitled to retain his step in his grade no matter where or in what position he is employed. As we stated in 21 Comp. Gen. 791, *supra*, with regard to step increases for General Schedule employees, there is no vested right to retain a step increase acquired in one permanent position after the employee is transferred, promoted, or reduced in grade to another permanent position with separate duties and responsibilities whether in the same or different grade. The authority for within-grade or step increases for prevailing rate employees is contained in 5 U.S.C. § 5343(e), and this provision appears to parallel the statutory provision governing within-grade increases for General Schedule employees. We are unable to find any provision in Pub. L. 92-392 or any indication in its legislative history that prevailing rate employees are entitled to retain their step increases upon promotion, transfer, or other position change. We agree with the CSC that if an employee was entitled to retain his step increase, then the agency would have no discretion under the highest previous rate rule in setting pay rates at less than the acquired step level.

Accordingly, we conclude that the CSC's instructions are not inconsistent with the provisions of Pub. L. 92-392 or our decisions and that claim may not be allowed.


Acting Comptroller General
of the United States