

DECISION

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

*PLM I**8772**GAO 88-411*

FILE: B-192253

DATE: December 27, 1978

MATTER OF: John E. Hansen, et al. - Claim for backpay

[Entitlement to The Minimum Two-Step Increase in Basic Pay]

DIGEST: Three employees were reassigned under competitive procedures to a position at the same GS grade having greater promotion potential. Reassignment to a position at the same GS grade where a promotion is only potential or expected some time after reassignment falls short of an actual promotion or transfer to a "higher General Schedule position" under 5 C.F.R. § 531.204(a). Consequently, the reassignment did not entitle the three employees to a two-step increase under 5 U.S.C. § 5334(b).

This decision is on claims filed by the National Treasury Employees Union, Atlanta, Georgia, on behalf of John E. Hansen, George F. Dickinson, Jr., and Michael McGee, for backpay as employees of the United States Customs Service, Miami, Florida.

The employees are of the opinion that upon the reassignment they were entitled to an increase in basic pay of not less than two step increases. They rely on 5 C.F.R. § 531.204(a) as the authority for their opinion.

The principal issue is whether the claimants' reassignment was a "transfer from one General Schedule position to a higher General Schedule position" within the meaning of Civil Service Commission regulation 5 C.F.R. § 531.204(a). If it was, the claimants were entitled to the minimum two-step increase in pay provided by 5 U.S.C. § 5334(b), the legislative provision implemented by this regulation.

The notification of personnel actions, issued in October 1977, show that the employees were reassigned under the Customs Service Merit Promotion Plan from their positions as Dog Handler, GS-301, grade GS-7, to Customs Inspector, GS-1890, grade GS-7. The pay rate (step) within grade GS-7 was the same before and after reassignment. The personnel actions changing the claimants' positions specifically state the nature of the action is a "Reassignment," which

~~003151~~*Dec.*

B-192253

means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion. Federal Personnel Manual (FPM) Supplement 990-2, Book 531, subchapter S2-2(j). The positions were "filled below full performance level," and if certain conditions were subsequently met, the claimants would be entitled to promotion through GS-9 without further competition.

Although the reassignment did not result in an immediate rise in General Schedule grade or salary, the Union argues that the claimants were transferred to a "higher General Schedule position" within the meaning of 5 C.F.R. § 531.204. The main reason for this view is that subsequent to their reassignment the claimants could anticipate promotion from Customs Inspector, GS-7, as trainees to GS-9, after they reached full performance capability and without competing for the promotion. This promotion potential or "journeyman" grade of GS-9 for Customs Inspector is more favorable than the GS-7 "journeyman" level for Dog Handler. As a further indication that the claimants' reassignment was to a higher level position, the Union observes that the claimants competed for their reassignment under the Customs Service Merit Promotion Plan.


In the ordinary sense of the term, the reassignment might be regarded as a transfer to a "higher General Schedule position," under the language used in 5 C.F.R. § 531.204(a). However, this regulation was issued to implement the statutory language in 5 U.S.C. § 5334(b), which provides for a minimum two-step pay increase only when a General Schedule employee is "promoted or transferred to a position in a higher grade." (Emphasis added.) The term "grade" in that section is defined by 5 U.S.C. §§ 5331(a) and 5102(a)(5) to mean a class of sufficiently equivalent positions in terms of difficulty, responsibility, and qualification requirements to be placed "within one range of rates of basic pay in the General Schedule." As shown in the General Schedule chart at 5 U.S.C. § 5332, each grade in the ascending order GS-1 to GS-18 is "one range" of "rates" or steps. A "grade," in other words, is one of the General Schedule levels ("one range of rates") between "GS-1" and "GS-18."

The fact that claimants competed for their reassignment under the Merit Promotion Plan does not change the result. Chapter 335, Subchapter 2, Requirement 1 (a)(1), of the FPM provides that plans under a merit promotion program must apply to a reassignment to

B-192253

"a position with known promotion potential." This requirement covered the claimants' reassignment. However, reassignment to a position where a promotion is only potential or expected some time after reassignment, such as in the claimants' case, falls short of an actual promotion or transfer to a higher General Schedule grade at the time of the reassignment.

The employees did not receive a "higher grade" within the meaning of 5 U.S.C. § 5334(b), since they remained within the same General Schedule range of rates, that is the GS-7 grade level, after their reassignment. Consequently, we are unaware of any basis for a two-step increase. The claims are disallowed.


Acting Comptroller General
of the United States