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## DECISION



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

FILE: B-192759

DATE: November 17, 1978

MATTER OF: Merle H. Morrow - Retroactive Temporary  
Promotion

DIGEST: Employee was detailed from her excepted service position to higher grade competitive service position for 2 years without prior approval from Civil Service Commission. Commission Rule VI requires that employee serving under excepted appointment shall be assigned to competitive service position only with prior approval of Commission. Therefore, although employee was improperly placed in overlong detail she may not receive retroactive temporary promotion. Our Turner-Caldwell and Rankin decisions make it clear that if certain regulatory requirements concerning an employee's entitlement to retroactive temporary promotion are not met there is no entitlement to retroactive temporary promotion.

The Honorable Eleanor Holmes Norton, Chair, Equal Employment Opportunity Commission (EEOC), has requested a decision as to whether Ms. Merle H. Morrow, who is employed by EEOC in an excepted service position as an attorney-adviser, GS-905-13, is entitled to a retroactive temporary promotion for having been detailed to perform the duties of an equal opportunity specialist, GS-160-14, a position in the competitive service.

Chair Norton states that on June 24, 1974, Ms. Morrow was detailed on a temporary part-time basis (20 hours per week) to perform the duties of an equal opportunity specialist. After 1 year Ms. Morrow served in the equal opportunity specialist position full-time rather than part-time. Ms. Morrow's detail was effected without the knowledge or approval of EEOC's Personnel Office and upon learning of Ms. Morrow's detail the Director of Personnel ordered its termination.

Ms. Morrow filed a grievance requesting backpay as provided for in Federal Personnel Manual (FPM) Supplement 990-2, Book 550, Subchapter S8-6c(6)(e), June 16, 1977, which states in part:

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"An employee who is detailed beyond 120 days to a higher grade position without Civil Service Commission approval, is entitled to retroactive temporary promotion with backpay for the period beginning with the 121st day of the detail until the detail is terminated. Entitlement is conditional upon the employee meeting the usual placement requirements \* \* \* (Comptroller General decisions: 55 Comp. Gen. 536 (1975) and B-183086, March 23, 1977)."

The Director of Personnel, EEOC, denied Ms. Morrow's grievance because EEOC had never requested nor received Civil Service Commission approval for appointing Ms. Morrow to a competitive service position as required by Rule VI, Section 6.5, of the Commission's regulations. That rule states:

"Assignment of excepted employees.

"No person who is serving under an excepted appointment shall be assigned to the work of a position in the competitive service without prior approval of the Commission."

Chair Norton concludes that:

"Ms. Morrow appears to be locked into a 'Catch-22' situation. She is entitled to backpay under Chapter 550 because prior approval for the detail was not received. However, we have denied these benefits because prior approval for the detail from the excepted to the competitive service was not secured and the detail was, thereby, deemed 'illegal.' From my reading of Chapter 550 it appears that Ms. Morrow is entitled to backpay because she was detailed to a higher grade position, for a period longer than 120 days, without prior approval of CSC. Your decision, B-183086, In Re Reconsideration of Turner-Caldwell (March 23, 1977) is instructive, but does not address the excepted-competitive service complication. \* \* \*"

In 56 Comp. Gen. 427, our Turner-Caldwell decision referred to above by Chair Norton, we stated the rule concerning whether an employee was entitled to a retroactive temporary promotion for being placed on an overlong detail as follows:

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"\* \* \* we adhere to the view that under the detail provisions of the FPM, an agency head's discretion to make a detail to a higher grade position lasts no longer than 120 days, unless proper administrative procedures for extending the detail are followed. We further affirm that a violation of these provisions is an unjustified or unwarranted personnel action under the Back Pay Act, 5 U.S.C. § 5596 (1970), for which the corrective action is a retroactive temporary promotion and backpay, as set forth in our decision 55 Comp. Gen. 539, *supra*. It is necessary, however, that the employee satisfy the requirements for a retroactive temporary promotion. In this connection, certain statutory and regulatory requirements could affect the entitlements of an employee otherwise qualified for corrective action as a result of an improper extended detail. \* \* \*"

It may be true, as Chair Norton points out, that Ms. Morrow finds herself in a "Catch-22" situation. Turner-Caldwell decision, cited above, makes clear that an improperly extended detail automatically requires an award of a retroactive temporary promotion be made to the employee so detailed. In our decision Matter of William Rankin, Jr., 56 Comp. Gen. 432 (1977), we held that an employee who was detailed to a GS-17 position from a lower grade position for approximately 11 months without prior Civil Service Commission approval was not entitled to a retroactive temporary promotion because Commission regulations require that the Commission give its prior approval before a promotion to the supergrade position may be effected. The situation here is similar to that in Rankin in that the Commission never gave its prior approval to Ms. Morrow's assignment to the competitive service position as was required by Rule VI.

Since the Commission's prior approval of such an assignment was required by the regulations, Ms. Morrow may not be granted a retroactive temporary promotion.

*T. F. K. 114*  
Deputy Comptroller General  
of the United States