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DECISION



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

FILE: B-193892

DATE: November 14, 1979

MATTER OF: Harry D. Carlson - Claim for backpay

AAC B

DIGEST: Employee claiming backpay for overlong detail may not be paid where record fails to support contention that employee was actually detailed to higher graded position and lower grade classification of position occupied by him was sustained by Civil Service Commission on appeal.

This action is in response to an appeal by Mr. Harry D. Carlson from our Claims Division's settlement certificate of November 24, 1978, by which his claim for retroactive temporary promotion and backpay was denied.

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Mr. Carlson, an employee at the U.S. Army Armament Research and Development Command, Picatinny Arsenal, Dover, New Jersey, claims that he is entitled to a retroactive temporary promotion and backpay from June 25, 1971, to March 19, 1977. On June 24, 1971, while Mr. Carlson was employed as a Supervisory Management Technician, GS-11, the Civilian Personnel Office apparently issued a form DD 95 which purported to establish Job No. 14638-S, a GS-12 Administrative Officer position. The position announcement was posted with a closing date of August 10, 1971. Mr. Carlson applied for that position but his SF 52 was disapproved and returned on October 27, 1971.

Mr. Carlson states that Job No. 14638-S was based on his duties and responsibilities in the Nuclear Development and Engineering Directorate (NDED) and that he was continually detailed to those GS-12 duties and responsibilities until he was reassigned through a reduction in force effective March 20, 1977. Mr. Carlson based his claim for backpay on this alleged detail in accordance with Reconsideration of Turner-Caldwell, 56 Comp. Gen. 427 (1977) in which the Comptroller General affirmed earlier determinations that employees detailed to higher graded position for more than 120 days without prior Civil Service Commission (CSC) approval are entitled to retroactive temporary promotion if certain conditions are met.

During the time period Mr. Carlson claims he was detailed to Job No. 14638-S, the record shows that he was reassigned to the position of Administrative Officer, GS-11, Job No. 14638.1-S, effective July 23, 1972. Effective June 22, 1975, while the title,

*Back pay claim
Retroactive promotion
Temporary promotion
Army personnel
Civilian employees*

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series, and grade of Mr. Carlson's position remained the same, the job number was changed to 15975-S. Mr. Carlson appealed the classification of his position but both the Picatinny Arsenal, by letter dated August 9, 1976, and the Civil Service Commission, by letter dated January 17, 1976, concluded that his position was properly classified.

By a letter dated June 11, 1976, Mr. Carlson made a claim for backpay to the Comptroller General. Our Claims Division referred the claim to the U.S. Army Finance and Accounting Center in Indianapolis which in turn referred it back to the Picatinny Arsenal. In accordance with the Comptroller General's ruling in 55 Comp. Gen. 1062 (1976) that an employee cannot be promoted to a position which does not exist, the Chief Counsel of the Picatinny Arsenal denied Mr. Carlson's claim on August 22, 1977, on the basis of the Civilian Personnel Officer's statement that Job No. 14638-S had never been established.

The Civilian Personnel Officer has explained that the job was never established because the position description was never "entered in the position control file as a result of processing a personnel document (SF 52, DA Form 279)," as required by the Army's Civilian Personnel Regulation (CPR) 501.6-1c(3), since the job as described was found to be inconsistent with the work situation it was intended to portray. Our Claims Division denied Mr. Carlson's claim on the same basis and pointed out that CSC Bulletin No. 300-40, issued May 25, 1977, to provide guidelines for implementing 56 Comp. Gen. 427 supra, provides that a prerequisite to an employee's entitlement to backpay for an overlong detail is a detail to an established position.

The general rule is that an employee is entitled only to the salary of the position to which he has been appointed, regardless of the duties he performs. See Patrick L. Peters, B-189663, November 23, 1977. However, an exception is made when an employee is detailed to a higher grade position for more than 120 days without prior Civil Service Commission approval. In such cases we allow retroactive temporary promotions with backpay for the period beginning with the 121st day of the detail until the detail is terminated. 56 Comp. Gen. 427 supra. The employee must meet any applicable statutory requirements for promotion to the higher grade position and since an employee cannot be promoted to a position which does not exist, we have held that the position to which the employee allegedly has been detailed must be an established position that

has already been classified at the higher grade level. See Katherine Crump-Wiesner, B-190335, February 14, 1978, and Matter of Herbert J. Buteau, B-187287, May 13, 1977.

Mr. Carlson contests the position of the Civilian Personnel Officer that Job No. 14638-S position was never established. He asks why, if the position was not established, a Form DD 95 purporting to establish Job. No. 14638-S was issued and why the job was advertised. In addition he asks how Job No. 14638.1-S, to which he was assigned on July 23, 1972, could exist if Job No. 14638-S did not exist since the former job was described as an addendum to the latter and the description of Job No. 14638.1-S dated May 19, 1972, makes reference to Job No. 14638-S.

The Civilian Personnel Officer has informed us that Mr. Carlson's SF 52 was cancelled because "the GS-12 duties portrayed in Job No. 14638-S were already contained in other established and filled jobs in the organization. In order for 14638.S to be valid, two other jobs would have had to be changed. Mr. Carlson's management opted not to make the changes, and so action on 14638-S was never completed." He further explains that the reference in the job description for Job No. 14638.1-S to Job No. 14638-S is an example of the "cover-sheet" technique of job description whereby the Personnel Office can show clearly how a lower grade established job falls short of a hypothetical higher grade job. By that technique the Personnel Office illustrates what changes in a job situation would be necessary to support a higher grade position.

Paragraph 501.6-1c of the CPR, the regulation currently governing position establishment, provides as follows:

"A position (full-time or part-time) is established when all of the following have occurred:

- "(1) A manpower space and funds are available.
- "(2) A properly signed job description has been prepared and the pay system, title, code, and grade have been officially authenticated.
- "(3) the position has been entered in the personnel control file as a result of processing a personnel document (SF 52, DA Form 279).

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"NOTE. The listing of a position on an organization chart of (sic) on a table of distribution and allowance (TDA), whether it has been approved or not, does not serve to 'establish' the position. Positions, from both a management and employee-entitlement standpoint, are not operational unless the above requirements have been met."

However, in 1971 the requirements were not so detailed and an established job was described at CPR 1-2.m(5) as "one for which personnel space(s) has been authorized, and a description has been prepared which has the signatory approval of the appropriate operating and personnel officials and for which the pay system, pay schedule, title, code, and grade have been determined." Since there was no requirement that the position description be entered in the position control file as the result of processing a personnel document, it can be reasonably argued that Job No. 14638-S was in fact established. However, the Civilian Personnel Officer states the job was not established. It is not clear why the job was not established. But it appears that the validity of the job depended on changes in two other jobs and, as stated above, such changes were not made.

Even if we were to assume that Job No. 14638-S was established, it does not follow that Mr. Carlson is entitled to backpay. This is so because we do not believe that he has showed that he was in fact detailed.

Paragraph 4 of the FPM Bulletin No. 300-40 defines a detail as follows:

"A detail is the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. For purposes of this decision, the position must be an established one, classified under an occupational standard to a grade or pay level." (Emphasis in original.)

The following guidelines with respect to documenting a detail are provided in FPM Bulletin No. 300-40, at para. 8.F:

"Acceptable documentation to substantiate a detail.
GAO regulations provide that claims are to be 'settled on a basis of facts as established by the Government agency concerned and by evidence submitted by the claimant' (4 C.F.R. 31.7).

"Commission instructions require agencies to record details in excess of 30 calendar days on SF 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder (FPM Supplement 296-31, Book II, Subchapter S3-13). While in the case GAO decided, this type of proof was not in the Official Personnel Folder, evidence in the form of agency memoranda reflecting the assignment was considered acceptable documentation. In addition, the personnel officer or that official's superior may certify in writing that reliable sources verify that the duties claimed were performed.

"In the absence of the above documentation the employee may provide other acceptable proof including:

- copies of Standard Forms 50 or 52, or official memoranda of assignment from the employee's possession,
- a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed, or
- a decision under established grievance procedures."

With respect to the first criterion, the file contains no evidence indicating that Mr. Carlson was ever formally detailed by means of a SF 50 or 52. Furthermore, the former Deputy Director of NDED, Alan M. Moss, stated in a memorandum dated June 29, 1977, that "To my knowledge, no formal SF 52 Form was initiated by my office either requesting a detail or an extension thereof during the claimed period of backpay by Mr. Carlson." Although Mr. Moss also stated that Mr. Carlson did perform the duties of Job No. 14638-S during the time period in question and Mr. Carlson has

submitted similar statements from other supervisors, in light of the record, these statements cannot be considered as establishing the fact of a detail.

It appears from the record that the attempted establishment of Job No. 14638-S was an effort to promote Mr. Carlson. As Mr. Moss stated:

"During the entire period of 25 June 1971 through 19 March 1977, I informally and formally assigned Mr. Carlson to the duties and responsibilities stated in job number 14638-S. I gave Mr. Carlson the same degree of responsibility for Administrative Action for my Directorate that was given to other Administrative Officers of other equivalent Directorates - such as FRL, ADED, IOD, ISSD whose Administrative Officers were of the GS-12 grade or higher. The administrative requirements of the NDED were many and complex and I had to rely heavily on Mr. Carlson for support. I made repeated attempts to have Mr. Carlson promoted to the GS-12 position. Reorganization, RIF's and Freezes always seemed to overlap each other as a preventative to accomplishing the promotion. The latest effort was during 1976 and here again the reorganization under ARRADCOM did not allow for any promotion."

Even Mr. Carlson seems to have recognized that he was not detailed since in his June 11, 1976, letter to the Comptroller General he states that "My case concerns the lack of detail or promotion action to a GS-341-12 position rather than detail action beyond 120 days without approval from CSC."

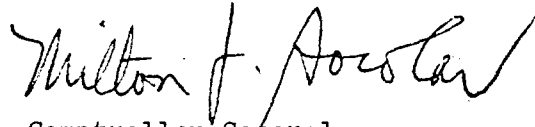
In view of the above the situation here is one of an accretion of duties which is a classification matter. In this connection paragraph 4 of FPM Bulletin No. 300-40 reads in pertinent part:

"* * * the Supreme Court recently ruled in United States v. Testan that classification actions upgrading a position may not be made retroactive so as to entitle an incumbent to backpay. Care must be taken to distinguish between employee claims based on details to higher graded positions, and to claims based on a classification action; only the former may be considered for retroactive correction under the Comptroller General decision."

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If an employee is performing higher graded duties and no detail can be established, the employee is entitled only to the salary of the position to which he had actually been appointed until his position is reclassified. B-189663, supra. Mr. Carlson has already made a classification appeal and the decision of the Civil Service Commission is binding on all concerned.

Accordingly, the settlement of our Claims Division is hereby sustained.

A handwritten signature in cursive script, reading "Milton F. Fowler".

For the Comptroller General
of the United States